

Dep't of Transportation v. Davis

OATH Index No. 2223/22, mem. dec. (Aug. 18, 2022)

Respondent is the registered owner of a vehicle that accumulated eight finally adjudicated red light camera violations within 12 months. Petitioner ordered respondent to complete a safe vehicle operation course. Because respondent failed to complete the course, the City may seize and impound the vehicle.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF TRANSPORTATION
Petitioner
- against -
CLIFTON DAVIS
Respondent

MEMORANDUM DECISION AND ORDER

JULIA H. LEE, *Administrative Law Judge*

Petitioner, the Department of Transportation (“Department”), brought this proceeding under the Dangerous Vehicle Abatement Law, seeking an order permitting it to seize and impound respondent’s vehicle. Admin. Code §§ 19-199.2-199.5 (Lexis 2022); 34 RCNY § 4-18 (Lexis 2022). The petition alleges that seizure is warranted because respondent failed to comply with an order dated May 20, 2022, requiring respondent to complete a safe vehicle operation course after receiving 128 notices of liability (“NOLs”) for school speed camera violations and ten NOLs for red light camera violations within 12 months (Pet. Exs. 3, 5).

Trial was scheduled for August 1, 2022, to be conducted remotely via videoconference because of the COVID-19 pandemic. Respondent did not appear. Petitioner presented proof that it timely served respondent with the petition and notice of hearing, which provided log-in information for the videoconference and advised respondent that he could face the seizure and impoundment of his vehicle if he failed to complete the safe vehicle operation course within 45 days of the May 20 order (Pet. Exs. 2, 4, 5). Accordingly, upon petitioner’s motion, I found respondent in default and proceeded with the trial in respondent’s absence. At trial, petitioner

relied exclusively on documentary evidence consisting of DOT and Department of Finance exhibits.

For the reasons below, I find that the City is entitled to seize and impound respondent's vehicle until respondent completes the required course.

ANALYSIS

Under the Dangerous Vehicle Abatement Law, the Department may require "a registered owner of a covered vehicle . . . to complete a safe vehicle operation course . . . and to certify completion of such course to the department within the time period set forth in such rules." Admin. Code § 19-199.4(a). A "covered vehicle" is "any motor vehicle that, in accordance with the records of the department of finance, has accumulated five or more finally adjudicated red light camera violations as determined by the department, or 15 or more finally adjudicated school speed camera violations as determined by the department, within any 12-month period." Admin Code § 19-199.2. The registered owner must certify completion of the safe vehicle operation course within ten days from the date of completion of the course. Admin. Code § 19-199.4(a); 34 RCNY § 4-18(c)(2). If a registered owner fails to complete the safe vehicle operation course, "the covered vehicle may be subject to impoundment . . ." Admin. Code § 19-199.5(a). The course is designed to educate vehicle owners about the dangers of exceeding speed limits and failing to comply with traffic signals. 34 RCNY § 4-18(a).

Petitioner alleges that a vehicle with license plate KKG1882, registered to respondent, accumulated 128 NOLs for school speed camera violations and ten NOLs for red light camera violations within 12 months (Pet. Exs. 1, 3). On February 1, 2022, petitioner served respondent with a "Safe Vehicle Operation Course Notice," stating that the vehicle could be seized and impounded for failure to complete the safe vehicle operation course within 45 days (Pet. Exs. 1, 1a). On May 20, 2022, petitioner served respondent with "Safe Vehicle Operation Course Order," stating that respondent had failed to complete the safe vehicle operation course as required and that respondent had to either complete the course or appear for trial at this tribunal on August 1, 2022 (Pet. Exs. 3, 5).

At trial, petitioner presented un rebutted evidence that eight NOLs were issued to respondent from May 25, 2021, to October 15, 2021, based upon images recorded by the Red Light Camera Unit of the vehicle failing to stop for the red light at the stop line or before entering the

crosswalk (Pet. Ex. 6). All of the violations were finally adjudicated (Pet. Ex. 8).

Petitioner proved that the vehicle registered to respondent accumulated five or more finally adjudicated red light camera violations within 12 months and that respondent failed to certify completion of a safe vehicle operation course, as required. Thus, the vehicle is subject to impoundment.

Respondent may move to vacate the default as provided for in section 1-45 of our rules of practice. A motion to vacate a default must include two showings: good cause for respondent's failure to appear and a meritorious defense to the petition. 48 RCNY § 1-45 (Lexis 2022); *see, e.g., Police Dep't v. Grant*, OATH Index No. 508/07, mem. dec. (Oct. 12, 2006). Such motion must be made "as promptly as possible," and must comply with the formal requirements of section 1-52 of our rules. 48 RCNY § 1-52. If a motion to vacate the default is granted, a new trial will be held on the petition. If a motion to vacate the default is denied, respondent may seek judicial review of this Order. Admin. Code § 19-199.5(b); C.P.L.R. 7801 (Lexis 2022).

FINDINGS AND CONCLUSIONS

1. Petitioner properly served respondent with the petition and notice of hearing and respondent failed to appear for the scheduled trial.
2. The vehicle registered to respondent accumulated eight finally adjudicated red light camera violations within 12 months.
3. Respondent was informed by service of a Safe Vehicle Operation Course Notice and Safe Vehicle Operation Course Order that respondent was required to complete a safe vehicle operation course within 45 days and that failure to do so could result in seizure and impoundment of respondent's vehicle.
4. Respondent failed to certify the completion of a safe vehicle operation course, in violation of sections 19-199.2-199.5 of the Administrative Code and section 4-18(d)(1) of the Rules of the City of New York.

ORDER

The City of New York is entitled to seize and impound respondent's vehicle, with license plate KKG1882, until respondent certifies completion of the safe vehicle operation course to the Department, and pays the associated fees and expenses incurred by the City for seizure and impoundment. Admin. Code § 19-199.5; 34 RCNY § 4-18(d)(2).

Julia H. Lee
Administrative Law Judge

August 18, 2022

APPEARANCES:

ROXANNE KORNREICH, ESQ.
Counsel for Petitioner

No Appearance by or for Respondent