

83 A.D.3d 460  
Supreme Court, Appellate Division,  
First Department, New York.

In re Dennis **VAETH**, Petitioner,

v.

**NYS DEPARTMENT OF MOTOR  
VEHICLES**, et al., Respondents.

April 7, **2011**.

### Synopsis

**Background:** Department of **Motor Vehicles** (DMV) suspended truck driver's license.

**[Holding:]** Proceeding pursuant to article 78, the Supreme Court, Appellate Division, held that findings that driver violated Traffic Laws was supported by substantial evidence.

Dismissed.

West Headnotes (2)

#### [1] **Automobiles**

🔑 **Gross or culpable negligence, recklessness, racing or speeding**

Finding by Department of **Motor Vehicles** (DMV) was supported by substantial evidence that truck driver violated statute prohibiting driving at a speed greater than was reasonable and prudent under the conditions, warranting suspension of his license after crash; driver admitted he was driving his tractor-trailer at a speed of 50 to 55 miles per hour while the road was wet and it was raining and dark, and driver's truck hit a disabled **vehicle** stopped in a breakdown lane, killing one passenger and injuring another. **McKinney's Vehicle and Traffic Law § 1180(a)**.

1 Cases that cite this headnote

#### [2] **Automobiles**

#### 🔑 **Weight and Sufficiency of Evidence**

Finding by Department of **Motor Vehicles** (DMV) was supported by substantial evidence that truck driver violated statute prohibiting following another **vehicle** more closely than was reasonable given due regard to speed and conditions, warranting suspension of his license after crash; driver admitted he swerved out of the right lane of traffic and hit a disabled **vehicle** parked in the breakdown lane in the rear of the **vehicle**, killing one passenger and injuring another. **McKinney's Vehicle and Traffic Law § 1129(a)**.

2 Cases that cite this headnote

#### Attorneys and Law Firms

**\*\*283** Johnson Liebman, LLP, New York (**Charles D. Liebman** of counsel), for petitioner.

Eric T. Schneiderman, Attorney General, New York (**Marion R. Buchbinder** of counsel), for respondents.

**TOM, J.P., SAXE, DeGRASSE, FREEDMAN, ABDUS-SALAAM, JJ.**

#### Opinion

**\*460** Determination of respondent New York State Department of **Motor Vehicles**, dated January 5, 2010, which suspended petitioner's driver's license for one year upon finding that petitioner violated **Vehicle and Traffic Law § 1180(a)** and **§ 1129(a)**, unanimously confirmed, the petition denied and the proceeding brought pursuant to CPLR article 78 (transferred to this Court by order of Supreme Court, New York County [Carol R. Edmead, J.], entered March 31, 2010), dismissed, without costs.

[1] Petitioner's tractor-trailer hit a disabled **vehicle** stopped in a breakdown lane, pushing it into a concrete median. As a result of the crash, one passenger was killed and another was injured. **\*461** As petitioner admitted that he was driving his large **vehicle** at a speed of 50 to 55 miles per hour while the road was wet and it was raining and dark, respondent's finding that petitioner violated **Vehicle and Traffic Law § 1180(a)** was supported by substantial evidence (*see Pinkow v. Herfield*, 264 A.D.2d 356, 357–358, 695 N.Y.S.2d 20 [1999]). The fact that petitioner claimed to have not been

speeding and the absence of physical evidence as to his speed does not \*\*284 warrant a different finding (see *People v. Lewis*, 13 N.Y.2d 180, 184, 245 N.Y.S.2d 1, 194 N.E.2d 831 [1963] ).

[2] Furthermore, there was substantial evidence that petitioner violated **Vehicle** and Traffic Law § 1129(a). Petitioner admitted that he swerved out of the right lane of traffic and hit the disabled **vehicle** parked in the breakdown lane in the rear of the **vehicle**. The fact that the disabled **vehicle** was not moving does not render the statute inapplicable (see *Guzman v. Schiavone Constr. Co.*, 4 **A.D.3d** 150, 772 N.Y.S.2d 25 [2004], *lv. dismissed and denied* 3 N.Y.3d 694, 785 N.Y.S.2d 13, 818 N.E.2d 655

[2004] ). Rather, it “imposes ... a duty to be aware of traffic conditions, including **vehicle** stoppages” (*Johnson v. Phillips*, 261 A.D.2d 269, 271, 690 N.Y.S.2d 545 [1999] ). Had petitioner been driving with the required attention to the condition of the highway and the fact that the **vehicle** was disabled, the accident could have been avoided.

We have considered petitioner's remaining contentions and find them unavailing.

#### Parallel Citations

83 A.D.3d 460, 922 N.Y.S.2d 283, 2011 N.Y. Slip Op. 02813