



**AFFIRMED**  
MOTOR VEHICLE COMMISSION

**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

By ORLA

Date 9-24-15

**INITIAL DECISION**

OAL DKT. NO. MVH 00534-15

AGENCY DKT. NO. EXXXX- XXXX-07822

**MOTOR VEHICLE COMMISSION,**

Petitioner,

v.

**AHMAD A. ELAYAN,**

Respondent.

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**Kenneth Vercammen, Esq.,** for petitioner, New Jersey Motor Vehicle Commission (Kenneth Vercammen & Associates)

**Ahmad Elayan, pro se**

Record Closed: August 6, 2015

Decided: August 10, 2015

BEFORE **KIMBERLY A. MOSS, ALJ:**

**STATEMENT OF THE CASE AND PROCEDURAL HISTORY**

Petitioner, New Jersey Motor Vehicle Commission (MVC) alleges that respondent Ahmad Elayan's (Elayan) driving privileges' should be suspended for twenty-seven months because he was involved in a fatal accident while failing to keep right and careless driving. Petitioner sent a scheduled suspension notice to respondent dated August 25, 2014. Respondent contested the suspension. The matter was

transmitted to the Office of Administrative Law (OAL) and filed on January 12, 2015. Petitioner filed several motions to dismiss for respondent's failure to answer interrogatories. A hearing was held on June 12, 2015. Respondent arrived one half hour late for the hearing. At that time respondent provided interrogatory answers to petitioner. Petitioner's witnesses testified at that time. The hearing was adjourned to August 6, 2015, to allow petitioner to review respondents interrogatory answers before respondent testified. Respondent surrendered his license on June 12, 2015. The hearing concluded on August 6, 2015, at which time the record closed.

## **FACTUAL DISCUSSION**

### **Testimony**

#### **Richard Skorski**

Richard Skorski (Skorski) works in Towaco, New Jersey. He travels on Route 206 to get to and from work. On May 28, 2014, he was traveling to work on Route 206 at approximately 5:36 a.m. he was going southbound following a black jeep. He saw head lights coming from the northbound lane and saw a white van come from the north bound lane to the southbound lane and strike the black jeep. He gave a statement to the police.

#### **Lawrence Cicileo**

Lawrence Cicileo (Cicileo) works in North Bergen, New Jersey. He takes Route 206 to get to and from work. On May 28, 2014, he was traveling southbond on Route 206 behind Skorski. The sun was coming up but he still needed to use his headlights. A white van came into the southbound lane and hit a jeep. Route 206 at the area of the accident has two southbound lanes and one northbound lane. He did not see any animals in the road. He did not see any deer. He gave a statement to the police.

Raymond Carrasco

Raymond Carrasco has been a New Jersey State Trooper for two years. On May 28, 2014, he was on the night shift, 7:00 pm to 7:00 a.m., out of the Sussex station. He went to the scene of the collision. When he arrived, he observed two overturned vehicles, firefighters and EMS workers. One person was trapped in one of the vehicles unconscious, who was pronounced dead at the scene. The collision occurred at approximately 5:00 a.m. Carrasco spoke to Elayan at the scene. Elayan stated that he was driving northbound on Route 206 and saw a deer to the right. He reacted to a slight movement of the deer. Elayan stated that after the movement of the deer, he anticipated that the deer would come into the road, and jerked the van to the left crossing into the southbound lanes of Route 206 striking a jeep that was proceeding southbound on Route 206. The collision occurred at milepost 121 of Route 206. There is a curve in the road before this signpost. Carrasco spoke to Skorski and Cicileo at the scene. There was never a deer on the road.

Carrasco prepared a fact briefing sheet the day of the collision, which was reviewed by his superior. He issued Elayan tickets for failure to keep to the right. The diagram in the crash report is accurate. Pictures were taken at the scene by detective sergeant Weiss which accurately depict the scene. The fatal unit of the state police arrived on the scene at approximately 6:15 a.m. and did a fatal accident report.

Ahmad Elayan

Elayan was driving a white van in May 2014. He was working delivering bread. He is from Hudson County and not familiar with Sussex County. He is not used to seeing foxes and bears in the open although he has seen deer. Three or four days prior to May 28, 2014, Elayan was driving on Route 84 which had construction going on. There was a concrete barrier erected and there is a cliff opposite the barrier. As he

was coming out of a turn there was a deer in the road. Elayan struck the deer, which was a nerve wracking experience.

On May 28, 2014, Elayan was driving a white van northbound on Route 206. He saw a deer on the side of the road. He saw the deer move toward the car and turned the car into the southbound lane of 206 striking a jeep, which caused the van to overturn. Prior to turning into the southbound lane of 206, he did not realize that there were vehicles in the southbound lane of Route 206. He was focused on the deer. The deer did not enter the roadway. The roads are not usually busy at the time the collision occurred.

Elayan is a car salesman. He needs his license to work. He has a wife and children. He is currently suspended from his job until this matter is resolved. He delivered bread to get extra money.

Based upon a review of the entire record as well as the testimony of witnesses and evidence offered, I **FIND** the following to be **FACTS**:

On or about May 25, 2014, Elayan was driving on Route 84 while construction was going on and a barrier was erected. Opposite from the barrier was a cliff. As Elayan came out of a turn on Route 84 a deer was in the road. Elayan hit the deer.

On May 28, 2014, Elayan was driving a white van on Route 206 northbound at approximately 5:36 a.m. near milepost 121. Thomas Biasi was driving a black jeep on Route 206 southbound at approximately 5:36 a.m. near milepost 121. Route 206 in that area has one northbound lane and two southbound lanes. Double yellow lines separate the northbound lane of Route 206 and the southbound lanes of Route 206. The northbound lane is twelve feet in width and the southbound lanes are each eleven feet in width. Elayan saw a deer in the grassy area next to the road. He focused on the deer. When the deer moved Elayan thought that the deer was going to move into the

road and Elyan turned his vehicle into the southbound lane of traffic striking the jeep that Biasi was driving. Biasi died as a result of injuries from the collision. No deer enter the roadway.

Elyan received a speeding ticket in March 2006. He received a ticket for making a U-turn in March 2014 and he received tickets for careless driving and failure to keep right on May 26, 2014, to which he pled guilty. Elyan received a ticket for the May 28, 2014 collision for failure to keep right.

### **LEGAL ANALYSIS AND CONCLUSION**

The Commission is empowered to suspend a motorist's driving privileges for a violation of any provision of the motor vehicle statutes or for any other "reasonable grounds." N.J.S.A. 39:5-30. The Legislature has vested the authority in the Commission, subject to prompt review, to impose a driver license suspension as a preliminary matter prior to a plenary proceeding in a motor vehicle fatality case. N.J.S.A. 39:5-30(e)(3). Where the Commission proposes suspension of driving privileges under N.J.S.A. 39:5-30 as an administrative enforcement of the motor vehicle regulations, it bears the burden of proof by the preponderance of the competent and credible evidence of facts essential to such suspension. Atkinson v. Parsekian, 37 N.J. 143, 149 (1962).

The primary object of a suspension or revocation of a driver's license "is to foster safety on the highway and not to impose criminal punishment to vindicate public justice." Atkinson, supra, 37 N.J. at 155; see also David v. Strelecki, 51 N.J. 563 (1968). The determination rests on a finding that "a law of the highway has been violated and that the highway would be a safer place for the public if the violator were removed as a driver for some period of time." Ibid. Suspensions must be imposed only for the purpose of reforming the particular motorist and are not to be imposed

administratively for the purpose of deterring others. This matter involves a proposed suspension of respondent's license for a substantial period due to the death of another motorist during an accident in which it is alleged that respondent failed to keep right and careless driving.

There is no dispute as to how the collision occurred. Elayan turned into the southbound lane of traffic from the northbound lane of traffic at the 121 mile post of Route 206. He struck the vehicle Biasi was driving. The collision caused Baisi's death. At no time was a deer in the northbound lane of traffic to cause him to try to avoid it. Elaysan did not notice that there were any cars in the southbound lane of traffic on Route 206 before he turned into the southbound lane of traffic. In fact there were three cars in the southbound lanes of traffic on Route 206. He was clearly more focused with the deer that was not on the road than the cars that were on the road.

N.J.S.A. 39:4-82 provides:

Upon all highways of sufficient width, except upon one-way streets, the driver of a vehicle shall drive it on the right half of the roadway. He shall drive a vehicle as closely as possible to the right-hand edge or curb of the roadway, unless it is impracticable to travel on that side of the roadway, and except when overtaking and passing another vehicle subject to the provisions of sections 39:4-84 and 39:4-85 of this Title.

N.J.S.A. 39:4-97 provides:

A person who drives a vehicle carelessly, or without due caution and circumspection, in a manner so as to endanger, or be likely to endanger, a person or property, shall be guilty of careless driving.

I **CONCLUDE** that petitioner has proven by a preponderance of the evidence that Elayan failed to keep to the right and drove carelessly which caused the death of Biasi.

The offense respondent committed was very serious and requires appropriate punishment. A twenty-seven month suspension of driving privileges is appropriate. Respondent received tickets for careless driving and failure to keep to the right two days before the fatal collision where he again was charged with careless driving and failure to keep right. In addition on March 27, 2014 he received a ticket for a prohibited U turn. All of these tickets were received within an approximate two month period. Administrative suspensions are remedial in nature, designed to promote public safety rather than to punish wrongdoers. Atkinson v. Parsekian, 37 N.J. 143, 155 (1962). Given the totality of the circumstances, I **CONCLUDE** that the scheduled suspension notice dated August 25, 2014, setting forth a period of suspension of twenty-seven months is appropriate.

**ORDER**


Accordingly, it is hereby **ORDERED** that Respondent's New Jersey driving privileges be suspended for a twenty-seven month period. The Commission shall set forth the effective date of this suspension in an Order of suspension to Respondent under separate cover. However the period of suspension shall begin retroactive to on June 12, 2015, when I ordered petitioner surrender his driver's license.

I hereby **FILE** my initial decision with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION** for consideration.

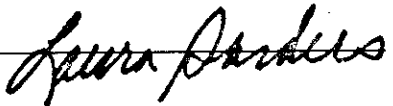
This recommended decision may be adopted, modified or rejected by the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION**, who by law is authorized to make a final decision in this matter. If the Chief Administrator of the Motor Vehicle Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **CHIEF ADMINISTRATOR OF THE MOTOR VEHICLE COMMISSION, 225 East State Street, PO Box 160, Trenton, New Jersey 08666-0160**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

8-10-15  
DATE

  
KIMBERLY A. MOSS, ALJ

Date Received at Agency:

  
DIRECTOR AND  
CHIEF ADMINISTRATIVE LAW JUDGE

Date Mailed to Parties: **AUG 13 2015**  
ljb



**APPENDIX**

**WITNESSES**

For Petitioner

Richard Skorski  
Lawrence Cicileo  
Trooper Raymond Carrasco

For Respondent

None

**EXHIBITS**

For Petitioner

- P-1 New Jersey Crash Investigation Report Dated May 28, 2014
- P-2 Statement of Richard Skorsky Dated May 28, 2014
- P-3 Photo of Scene of Collision
- P-4 Photos of the Scene at the Collision Number 2 to 38
- P-5 Photos at the Scene of the Collision Numbers 85-95
- P-6 Statement of Lawrence Cicileo Dated May 28, 2014
- P-7 Death Certificate of Thomas Biasi,
- P-8 State Police Fact Briefing Sheet
- P-9 Photos at the Scene of the Collision Numbers 74-82
- P-10 Fatal Accident Report
- R-11 Motor Vehicle Abstract of Ahmad Elayan



*State of New Jersey*  
**OFFICE OF ADMINISTRATIVE LAW**  
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**A copy of the administrative law  
judge's decision is enclosed.**

**This decision was mailed to the parties  
on     AUG 13 2019**