*Date of mailing: October 14, 2022

STATE OF NEW JERSEY
MOTOR VEHICLE COMMISSION
CASE FILE #: CXXXX XXXXX 05912

IN THE MATTER OF	**:**	**FINAL ADMINISTRATIVE DECISION AND ORDER OF SUSPENSION**
MATTHEW CIARAMELLA	**:**	**(Hearing on the papers)**
		SUSPENSION TERM: 730 DAYS
		EFFECTIVE DATE: 11/9/22

This is the Motor Vehicle Commission's (Commission) Final Administrative Decision in the matter of Matthew Ciaramella (Ciaramella).

This matter arises out of an Interstate Driver License Compact (N.J.S.A. 39:5D-1 to 5D-14) state notification sent by the New York Department of Motor Vehicles to the Commission, reporting that Ciaramella was convicted of driving while ability impaired (NYDWAI). Ciaramella does not dispute this conviction. A copy of the Out-of-State Conviction report is attached hereto as Exhibit P-1 (reporting conviction under AAMVA "ACD CODE: A25"; which signifies "driving while impaired"[1]).

Pursuant to the Interstate Driver License Compact (N.J.S.A. 39:5D-4), the Commission issued a Scheduled Suspension Notice informing Ciaramella that his New Jersey driving privilege was subject to suspension for a period of 730 days pursuant to N.J.S.A. 39:4-50, N.J.S.A. 39:5-30, N.J.S.A. 39:5D-4, and N.J.A.C. 13:19-11.1 to -11.2. Ciaramella was subject to a 730-day suspension because this was his second alcohol-related conviction, the first one occurring on August 15, 2011 in New Jersey. A copy of

[1] "ACD" is the AAMVA (American Association of Motor Vehicle Administrators) Code Dictionary which states use to translate traffic offense convictions and withdrawals into a uniform format, for transmitting under the National Driver Register/Problem Driver Pointer System (NDR/PDPS) and also the Commercial Driver License Information System (CDLIS). See generally, 49 U.S.C.S. §30304; 23 C.F.R. Ch. III, Pt. 1327 and App. A.

the Scheduled Suspension Notice is attached hereto as Exhibit P-2.

In response to the Scheduled Suspension Notice, Ciaramella (represented by John E. Hogan, Esq.) requested a hearing, arguing that: a New York DWAI conviction is not "substantially similar" to a New Jersey driving while intoxicated (DWI) conviction under N.J.S.A. 39:4-50; Ciaramella has already been punished for the NYDWAI conviction and therefore a suspension of his New Jersey privilege is "duplicative"; Ciaramella's driving privilege should be suspended pursuant to the amended N.J.S.A. 39:4-50, which took effect December 1, 2019, and not the version of the law in effect on the date of the offense; the proposed 730-day suspension violates the principles of Full Faith and Credit, and Equal Protection given the sentence imposed by the New York court[2]; and Ciaramella is entitled to a hearing. A copy of Ciaramella's hearing request dated is attached hereto as Exhibit R-1.

The Commission issued a letter to Ciaramella acknowledging his hearing request, further advising Ciaramella that he was being afforded an opportunity for a hearing on the papers, and that it was his burden to demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration (BAC) of less than .08%." The Commission further stated that this was not "an opportunity to re-litigate [the New York] matter or to collaterally attack the New York court conviction in this administrative forum." The Commission also instructed Ciaramella to "provide a notarized affidavit setting forth all facts in support of [his] position and provide copies of any supporting documents or other

[2] It is noted that the New York court sentence providing for a suspension of Ciaramella's reciprocity driving privilege in the State of New York did not and could not affect his ability to drive in all 49 other states (but only concerned the privilege within the State of New York), since New York was not Ciaramella's "home state" which issued his driver's license on the date of the offense. See N.J.S.A. 39:5D-2(b); see also In re Johnson, supra, 226 N.J. Super. 1 (App. Div. 1988).

evidence (including, but not limited to, the official plea transcript from the State of New York proceeding and/or official court order signed by the New York judge indicating specific findings made in connection with [his] conviction)." A copy of the Commission's letter is attached hereto as Exhibit P-3.

Ciaramella responded to the Commission with a letter and an affidavit. In his affidavit, Ciaramella stated that he was charged with violations of the following New York laws on September 1, 2019[3]: N.Y. Veh. & Traf. Law §1192(2) (driving while intoxicated, per se, BAC 0.08% or greater); N.Y. Veh. & Traf. Law §1192(3) (driving while intoxicated); and N.Y. Veh. & Traf. Law §1128D (stopping/parking).[4] Ciaramella also stated that the three charges were "disposed of" with a conviction for NYDWAI, which conviction "was not based upon a reading of .08% or more but, instead, was based upon the lesser included offense of driving while impaired, which assumes a reading below a 0.08%. This offense is not clearly the equivalent of a NJ DWI."

In his affidavit, Ciaramella further stated that: he had ordered additional records pertaining to the matter and would submit them to the Commission "with the intention of demonstrating the distinction in proofs;" the New York court imposed a "90 day loss of license" and financial penalties; New York "also offers a work license for its residents;" he attended counseling after the arrest; he needs his driver's license for his job as an accountant for a construction company; a 730-day suspension of his New Jersey driving privilege violates the principles of Full Faith and Fair Credit and Equal Protection; and

[3] Although the Out-of-State Conviction report lists a citation date of August 31, 2019, the New York court's disposition of charges lists a date of September 1, 2019 (Exhibit R-2, attachment to affidavit). This one-day difference in the New York documents as to the offense date has no effect on the analysis or outcome herein.

[4] Ciaramella states that the violation of N.Y. Veh. & Traf. Law §1128D was for a stopping/parking violation. However, N.Y. Veh. & Traf. Law §1128D is the citation to the statute for improperly crossing lane markings. Ciaramella was ultimately convicted of a violation of N.Y. Veh. & Traf. Law §1201, which is the stopping/parking violation.

any suspension imposed by New Jersey should be based on the amended N.J.S.A. 39:4-50 (of note, the amended NJ DWI law did not take effect until December 1, 2019).

Attached to Ciaramella's affidavit was the New York court's disposition of charges, dated December 17, 2019, showing initial charges of N.Y. Veh. & Traf. Law §1192(2) (driving while intoxicated, per se, BAC 0.08% or greater); N.Y. Veh. & Traf. Law §1192(3) (driving while intoxicated); and N.Y. Veh. & Traf. Law §1128D (improperly crossing roadway lane markings). According to the court disposition, on November 18, 2019, the charge of N.Y. Veh. & Traf. Law §1192(3) (driving while intoxicated) was disposed of as a conviction for a violation of NYDWAI, N.Y. Veh. & Traf. Law §1192(1). The N.Y. Veh. & Traf. Law §1192(2) (driving while intoxicated, per se, BAC 0.08% or greater) charge was "covered" under the NYDWAI conviction, and the violation of N.Y. Veh. & Traf. Law §1128D (improperly crossing roadway lane markings) was disposed of as a stopping/parking violation under N.Y. Veh. & Traf. Law §1201A.

In counsel's letter accompanying Ciaramella's affidavit, Ciaramella argues for retroactive application of the amended N.J.S.A. 39:4-50, based on the fact that "the proposed suspension will go into effect after [the] effective date of the new sentencing scheme…." (A copy of counsel's letter and Ciaramella's affidavit are attached hereto collectively as Exhibit R-2).

The Commission has not received any additional documentation or legal argument from Ciaramella.

Based on the documentary exhibits in the record, I find the following:

1. On September 1, 2019, Ciaramella was charged with violations of N.Y. Veh. & Traf. Law §1192(2) (driving while intoxicated, per se, BAC 0.08% or greater); N.Y. Veh. & Traf. Law §1192(3) (driving while intoxicated); and N.Y. Veh. & Traf. Law §1128D (improperly crossing roadway lane markings).

2. On November 18, 2019, Ciaramella was convicted of a violation of N.Y. Veh. & Traf. Law §1192(1) (NYDWAI), and a parking/stopping violation (N.Y. Veh. & Traf. Law §1201A) in response to the original charges of N.Y. Veh. & Traf. Law §1192(3) (driving while intoxicated); N.Y. Veh. & Traf. Law 1192(2) (driving while intoxicated; per se, BAC 0.08% or greater); and N.Y. Veh. & Traf. Law §1128D (improperly crossing roadway lane markings).
3. Although Ciaramella states, in his affidavit, that the charges were disposed of on December 17, 2019, that date is the date the disposition of charges document was prepared by the court. The charges were actually disposed of on November 18, 2019, as stated by the court in the disposition of charges (attachment to Ciaramella's affidavit, part of Exhibit R-2).
4. Ciaramella has not submitted any court findings supporting a conclusion that the New York conviction was based exclusively upon a violation of a proscribed BAC of less than 0.08%.
5. None of the documentation submitted by Ciaramella shows his BAC level on the date of the offense, despite having been charged with NY DWI per se.
6. The New York DWAI statute, N.Y. Veh. & Traf. Law §1192(1), is not a per se offense as constructed and enacted by the New York legislature.
7. The August 31, 2019 (charged September 1, 2019) offense was Ciaramella's second alcohol-related offense; the first conviction in his Certified Abstract of Driver History Record was a New Jersey DWI conviction on August 15, 2011, for a DWI offense committed on June 10, 2011.

Analysis

There is no dispute that Ciaramella was convicted of NYDWAI. Thus, the sole issue to be determined here is whether Ciaramella has met his burden to prove, with clear and

convincing evidence, that his New York conviction was for an offense "based **exclusively** upon a violation of a proscribed BAC of less than .08%." In re: Maxine Basch, (unreported) (App. Div. 2013), Dkt. No. A-6009-11T1, 2013 N.J. Super. Unpub. LEXIS 1764 at 1, 6-7, and N.J.S.A. 39:4-50(a)(3). In the absence of such proof, Ciaramella is subject to the mandatory minimum 730-day suspension of his New Jersey driving privileges, pursuant to New Jersey's DWI statute, N.J.S.A. 39:4-50 that was in effect on the date of the offenses, September 1, 2019, and N.J.A.C. 13:19-11.1 et seq. The remainder of Ciaramella's arguments have no merit.

Despite the requirement noted in the Commission's response to Ciaramella's hearing request that Ciaramella demonstrate, "by clear and convincing evidence, that the State of New York conviction was based **exclusively** upon a violation of a proscribed blood alcohol concentration of less than .08%," Ciaramella failed to submit any proof whatsoever regarding a BAC, much less proof of an official court finding on the record as to any BAC being the exclusive basis for entry of the DWAI conviction.

Ciaramella's argument that the NYDWAI conviction was "not based upon a reading of .08% or more but, instead, was based upon the lesser included offense of driving while impaired, which assumes a reading below a 0.08%," which "is not clearly the equivalent of a NJ DWI" misses the mark. (Exhibit R-2, ¶ 4) The New Jersey legislature specifically provided in the New Jersey DWI statute, N.J.S.A. 39:4-50(a)(3), that it is the driver's burden to show that the out-of-state conviction was "based exclusively" on the BAC level below 0.08%, explicitly providing that: "unless the defendant [driver] can demonstrate [that exclusive basis]" (emphasis added), the offense will be considered a substantially similar offense to New Jersey's DWI statutory provision. The fact that there is the "impairment of driving ability" element in the particular statutory provision Ciaramella was convicted of, and the absence of any specific BAC level admitted or acknowledged as

the basis for that impairment, means that Ciaramella cannot meet the "clear and convincing evidence" standard required under this burden.

The controlling New Jersey case law has well established that the Commission has the authority to suspend a New Jersey licensee's driving privilege for an out-of-state conviction, pursuant to N.J.S.A. 39:5D-4, and that N.Y. Veh. & Traf. Law §1192(1) is substantially similar to N.J.S.A. 39:4-50. State v. Zeikel, 423 N.J. Super. 34, 44-49 (App. Div. 2011); New Jersey Div. of Motor Veh. v. Lawrence, 194 N.J. Super. 1, 2-3 (App. Div. 1983). See Mize v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-0781-17T1, 2018 N.J. Super. Unpub. LEXIS 2542; Markowiec v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-2492-15T1, 2018 N.J. Super. Unpub. LEXIS 257 (the driver's argument based on there being no BAC evidence for his NYDWAI conviction was rejected by the Appellate Division and the court affirmed the NJMVC's suspension of the home state New Jersey driver license); Ford v. NJMVC, (unreported) (App. Div. 2014), Dkt. No. A-3117-12T1, 2014 N.J. Super. Unpub. LEXIS 304, at 5, certif. denied, 217 N.J. 587 (2014); Xheraj v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-2125-12T1, 2013 N.J. Super. Unpub. LEXIS 2893; Wayne v. NJMVC, (unreported) (App. Div. 2013), Dkt. No. A-3008-12T1, 2013 N.J. Super. Unpub. LEXIS 1827, at 8-9; New Jersey Motor Veh. Comm'n v. Gethard, (unreported) (App. Div. 2012), Dkt. No. A-4657-10T3, 2012 N.J. Super. Unpub. LEXIS 287, at 5; In re: Alan D. Weissman, (unreported) (App. Div. 2009), Dkt. No. A-2154-07T3, 2009 N.J. Super. Unpub. LEXIS 1303, at 2 (the court specifically notes that "[n]either N.Y. Veh. & Traf. Law §1192(1) nor N.J.S.A. 39:4-50(a), require a minimum blood alcohol reading for a conviction"). See also State v. McCauley, (unreported) (App. Div. 2006), Dkt. No. A-4622-04T2, 2006 N.J. Super. Unpub. LEXIS 2422 (the court rejected McCauley's argument that he fit within the "very limited exception" in the statute, N.J.S.A. 39:4-50(a)(3), even assuming that his BAC was 0.06%, since New York's driving

while ability impaired statute, N.Y. Veh. & Traf. Law §1192(1), "on its face" is not a "per se" offense and his conviction under that provision "must have been based on other evidence") and In re: Maxine Basch, MVC Chief Administrator Supplemental Final Decision and Final Order on Remand, issued January 8, 2016, found at http://www.nj.gov/mvc/pdf/about/jab_final_decisions16.pdf (suspension imposed for NYDWAI conviction in accord with Appellate Division remand instruction where a "plea bargain" had been entered to the lesser-included offense, also noting other potential evidence of impairment included officer observations, field sobriety tests and/or admissions, as well as a BAC result of .17%)[5].

As constructed and enacted by the New York legislature, N.Y. Veh. & Traf. Law §1192(1) is specifically, on its face, not a per se type of offense; instead, it is the impairment of a person's ability to operate a motor vehicle that is the critical statutory element established by Ciaramella's conviction. Compare, New Jersey Div. of Motor Veh.

[5] For context only, the Commission notes that in its experience handling the many out-of-state New York reported "driving while ability impaired" convictions, in those instances where the supporting documents are submitted, it is frequently the case that the NYDWAI conviction was the result of a "plea bargain" to this lesser-included offense and that the police reports and chemical test documents reveal potential evidence of BAC levels of 0.08% and above as well as observational-type evidence including field sobriety tests, officer observations, driving behavior, and/or driver admissions.

In a typical year, the Commission receives approximately 200 such driving while ability impaired reported convictions, for which it receives a significant number of hearing requests as to the proposed administrative suspension action. Such hearing requests are among the approximate 8,000 to 9,000 hearing requests the Commission handles for the various proposed administrative suspension actions issued each year, not including those involving the medical and fatal accident type cases. These arise from the enormous volume of both in-state and out-of-state reported convictions that are sent to the Commission on a daily basis, amounting to more than 1 million convictions yearly coming from the in-state court matters alone. The Commission recognizes that each of these DWAI case matters must be assessed on a case-by-case basis in accordance with the particular submissions made by the driver in an effort to meet the clear and convincing evidence standard for fitting within the limited affirmative defense in the New Jersey DWI statute.

v. Ripley, 364 N.J. Super. 343, 349-50 (App. Div. 2003) (in which the court specifically discusses the NYDWAI offense and the fact that NYDWAI contains the element of impaired driving ability, thus distinguishing it from a statute like the former Utah "alcohol-related reckless driving" statute that was at issue in that case, which Utah statute did not have impaired driving ability as an element of the offense); accord Zeikel, supra, 423 N.J. Super. at 46, 47 (the court "viewed 'impaired driving ability' as the crucial element necessary to apply the statute of another jurisdiction as substantially similar to New Jersey's DWI statute.").

In Zeikel, supra, the court determined that a conviction under New York's DWAI statute was "substantially similar" to a conviction under New Jersey's DWI statute to qualify as a prior conviction for sentencing purposes under N.J.S.A. 39:4-50(a)(3). Zeikel, supra, 423 N.J. Super. at 45-49. The court rejected the defendant's argument that New Jersey sets a higher threshold than New York by requiring a finding of "intoxication," reasoning that "[i]ntoxication not only includes obvious manifestations of drunkenness but any degree of impairment that affects a person's ability to operate a motor vehicle". Id. at 48. See also, State v. Aziz, (unreported) (App. Div. 2020), Dkt. No. A-1268-18T4, 2020 N.J. Super. Unpub. LEXIS 757, in which the Appellate Division affirmed the lower court's holding that the appellant's prior conviction for New York DWAI constituted a prior conviction under New Jersey law. In relying on Zeikel, the court stated: "[In Zeikel,] We held that absent proof that a New York DWAI conviction was based exclusively on a blood alcohol reading of less than .08, a DWAI conviction is 'substantially similar [in] nature' to driving under the influence under New Jersey law, and shall be treated as a prior conviction for sentencing enhancement purposes." Aziz, supra, at 2, quoting Zeikel, supra, at 48. The Aziz court further noted that, "[f]irst, a New York defendant conceivably may be prosecuted for DWAI, instead of DWI, simply because there is no BAC evidence

at all" and "[s]econdly, a DWAI offender with less than .08 B.A.C. still commits an offense substantially similar in nature to a New Jersey DUI under N.J.S.A. 39:4-50(a), so long as the less-than-.08 reading is not the exclusive basis for the New York conviction." Id. at 2-3. With the Aziz court further explaining that the totality of the circumstances in that case, if proved, concerning the field sobriety tests, the officer's observations and the defendant's driving behavior, as well as the driver's refusal to submit to a "binding" chemical test, would be sufficient to "establish an observational DUI violation under [New Jersey] law." Id. at 3-4.

Governing New Jersey case law repeatedly recognizes that "observational" evidence is by itself sufficient in New Jersey to support a conviction under New Jersey's unified DWI statute, N.J.S.A. 39:4-50, even without a BAC result. See, e.g., State v. Sorenson, 439 N.J. Super. 471, 479-82 (App. Div. 2015) (noting distinction between the "per se violation" and the "observation violation" both under New Jersey's DWI statute, N.J.S.A. 39:4-50); State v. Campbell, 436 N.J. Super. 264, 267-68 (App. Div.), certif. denied, 220 N.J. 208 (2014) (noting that New Jersey DWI prosecutions under N.J.S.A. 39:4-50(a) may be pursued on "four distinct alternative grounds" one type of which is the "so-called 'observation' cases based on other non-BAC evidence of a defendant's impairment while driving"); State v. Kent, 391 N.J. Super. 352, 384 (App. Div. 2007) (affirming a defendant's DWI conviction based upon his erratic driving in causing a single-car accident and a police officer's field observations of his multiple signs of inebriation, despite the inadmissibility of hearsay laboratory reports measuring the BAC level in defendant's blood sample); see also State v. Howard, 383 N.J. Super. 538, 548 (App. Div.) (quoting State v. Kashi, 360 N.J. Super. 538, 545 (App. Div. 2003), aff'd, 180 N.J. 45 (2004)), certif. denied, 187 N.J. 80 (2006) (instructing that a violation of N.J.S.A. 39:4-50 can be proven "through either of two alternative evidential methods: proof of a

defendant's physical condition or proof of a defendant's blood alcohol level.").

Moreover, the court in Zeikel, supra, 423 N.J. Super. at 48 (App. Div. 2011), confirmed that a conviction of New Jersey's driving while intoxicated statute is sustainable if it is supported by sufficient evidence of "any degree of impairment that affects a person's ability to operate a motor vehicle" while further highlighting that "[like] New Jersey, New York defines impairment broadly to include any degree of impairment of a person's physical or mental abilities to operate a motor vehicle." See also, In re Johnston, 75 N.Y.2d 403, 409-10, 553 N.E.2d 566, 554 N.Y.S.2d 88 (1990) (New York's highest judicial tribunal construes "impairment" under N.Y. Veh. & Traf. Law § 1192(1) as meaning that "the actor by 'voluntarily consuming alcohol . . . has actually impaired, to any extent, the physical and mental abilities which he is expected to possess in order to operate a vehicle as a responsible and prudent driver", quoting People v. Cruz, 48 N.Y.2d 419, 427, 399 N.E.2d 513, 423 N.Y.S.2d 625 (1979)).

Absent clear and convincing evidence presented by Ciaramella that a BAC of less than 0.08% was made the exclusive basis of the NYDWAI conviction, Ciaramella's New Jersey driving privilege is subject to suspension. See, e.g., Markowiec v. NJMVC, (unreported) (App. Div. 2018), Dkt. No. A-2492-15T1, 2018 N.J. Super. Unpub. LEXIS 257 (affirming the Commission's final decision and order suspending Markowiec's driving privilege based on a NYDWAI where Markowiec argued that there was no chemical test performed and that his BAC was under 0.08%, but there was no clear and convincing evidence, such as a plea transcript or court order showing that the conviction was based exclusively on a BAC of less than 0.08%. The court also emphasized that the finding of substantial similarity between a NYDWAI and a New Jersey DWI did not turn on evidence of a BAC level). A conviction for driving while ability impaired need not be based on BAC at all, or it may be based on a BAC below 0.08% in combination with other

observational evidence supporting the element of impaired driving ability.[6]

Given these factors, Ciaramella has failed to show, by clear and convincing evidence, that his NYDWAI conviction was based exclusively on a BAC of less than .08%, as is required to meet the very limited exception in New Jersey's DWI statute.[7]

It remains undisputed that Ciaramella was convicted by the State of New York of N.Y. Veh. & Traf. Law §1192(1), "driving while ability impaired," while holding and presenting a New Jersey driver's license. Accordingly, the State of New Jersey is required to suspend his New Jersey driving privilege in accordance with the Interstate Driver

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[6] Indeed, it is noted that under the New York DUI statute's "Probative value" section as to "Chemical test evidence", N.Y. Veh. & Traf. Law §1195(2)(b), evidence of a BAC of 0.051% to 0.069%, is considered "relevant evidence, but shall not be given prima facie effect, in determining whether the ability of such person to operate a motor vehicle was impaired by the consumption of alcohol." Therefore, for a conviction of NYDWAI to be entered with this BAC amount there must have been other sufficient observational evidence to support the "impairment of ability to operate a motor vehicle" statutory element, as the NYDWAI provision is specifically not a per se offense. Similarly, if the BAC test result evidence was 0.05% or below, that range is considered "prima facie evidence that the ability of such person to operate a motor vehicle was not impaired by the consumption of alcohol", and thus again, this means that with this lower level BAC amount there must have been sufficient other observational evidence despite that BAC result to establish beyond a reasonable doubt the element of "impairment of ability to operate a motor vehicle" for such NYDWAI conviction. N.Y. Veh. & Traf. Law §1195(2)(a).

[7] That very limited exception in the New Jersey statute most specifically would apply where there was a conviction under a per se law in another state, for which the other state's per se threshold was lower, at the time of the offense, than the per se prong contained within the New Jersey "unified" DWI statute, N.J.S.A. 39:4-50 (which contains a per se prong as well as an observational prong). An example of this would be a New York DWI- per se 0.08 conviction, under N.Y. Veh. & Traf. Law §1192(2) ("driving while intoxicated; per se"), that specifically occurred during the timeframe in which the New York per se statutory threshold had been lowered to 0.08 prior to the effective date of the New Jersey law changing its per se threshold from 0.10 to 0.08; namely between July 1, 2003, and January 19, 2004. See, New Jersey Div. of Motor Veh. v. Pepe, 379 N.J. Super. 411, 414, footnote 1 (App. Div. 2005) (in which the court points out the different effective dates for New York's and New Jersey's lowering of the statutory BAC per se threshold to 0.08); also, it is noted that currently the State of Utah has lowered its statutory per se threshold to a BAC of 0.05, thus specific Utah convictions under its DWI-per se provision would meet this limited exception.) This is not the case for Ciaramella's conviction under the NYDWAI statutory provision, N.Y. Veh. & Traf. Law §1192(1).

License Compact Agreement (N.J.S.A. 39:5D-1 to -14) and the New Jersey Administrative Code (N.J.A.C. 13:19-11.1).

The governing regulation, N.J.A.C. 13:19-11.1(a) and (b), provides that out-of-state convictions shall be given the same effect as if such convictions had occurred in the State of New Jersey. Indeed, N.J.A.C. 13:19-11.1(b) explicitly states that New Jersey driving privileges shall be suspended pursuant to New Jersey law. See, e.g., Martinez v. NJMVC, (unreported) (App. Div. 2010), Dkt. No. A-0147-09T3, 2010 N.J. Super. Unpub. LEXIS 597 at 4-5; see also New Jersey Div. of Motor Vehicles v. Egan, 103 N.J. 350, 357 (1986) (the New Jersey Supreme Court reviewed and upheld the policy of the Director of the Division of Motor Vehicles to exercise the discretion granted by N.J.S.A. 39:5D-4 to "uniformly impos[e] New Jersey's more stringent penalty instead of being reduced to 'the least common denominator of other States[.]'"); DiGioia v. NJMVC, (unreported) (App. Div. 2021), Dkt. No. A-3587-19, 2021 N.J. Super. Unpub. LEXIS 533 (the court declared, in affirming the Commission's imposition of suspension of the New Jersey home state license for a New York conviction, that "the Compact simply requires that New Jersey consider appellant's New York conviction as if the offense occurred in New Jersey, which the Commission indisputably did"); State v. Luzhak, 445 N.J. Super. 241, 248 (App. Div. 2016) (the court again emphasized that New Jersey has a "strong public policy against drunk driving"); and State v. Thompson, 462 N.J. Super. 370, 375 (App. Div. 2020) (in which the Appellate Division reiterated the New Jersey Supreme Court's declaration regarding the construction of the DWI laws: "As the Supreme Court held in [State v. Tischio, 107 N.J. 504 (1987)] – and it apparently bears repeating – '[w]e are thus strongly impelled to construe [the statute] flexibly, pragmatically and purposefully to effectuate the legislative goals of the drunk-driving laws,' [Id. at 514] which, of course, are to rid our roadways of the scourge of drunk drivers [Id. at 512]. See

also [State v. Mulcahy, 107 N.J. 467, 479 (1987)] (recognizing, in quoting [State v. Grant, 196 N.J. Super. 470, 476 (App. Div. 1984)], that the drunk driver remains 'one of the chief instrumentalities of human catastrophe')."

Furthermore, it is also well-established by New Jersey case law that it is proper under the doctrine of dual sovereignty, and specifically is not a violation of double jeopardy, for the "home state" which issued the driver license to impose the statutorily mandated suspension after receiving a report of such out-of-state alcohol-related driving conviction under the Interstate Compact. See Pepe, supra, 379 N.J. Super. at 418-419; In re Johnson, 226 N.J. Super. 1 (App. Div. 1988); and Lawrence, supra, 194 N.J. Super. at 2-3.

The court in Pepe, supra, 379 N.J. Super. at 416, specifically held that the "suspension imposed by NJDMV is in accordance with the statute, N.J.S.A. 39:4-50, and not redundant to the penalty imposed in New York, which involved only defendant's driving privileges within that state." (citing Boyd v. Div. of Motor Vehicles, 307 N.J. Super. 356, 360 (App Div.), certif. denied, 154 N.J. 608 (1998), emphasis added). The Pepe court further instructed that "under the doctrine of dual sovereignty, the double jeopardy clause does not bar two states from prosecuting a defendant for the same offense." Id. at 418. The Pepe court also considered Pepe's constitutional equal protection, res judicata/collateral estoppel and laches-type arguments in the context of that Compact case and found those to be without merit.

It remains undisputed, and I therefore find, that Ciaramella was convicted of an alcohol-related driving offense that occurred on August 31, 2019 and for which he was charged September 1, 2019, in the State of New York (for which he was convicted on November 18, 2019). As such, pursuant to N.J.S.A. 39:5D-4, 39:5-30, 39:4-50 and N.J.A.C. 13:19-11.1 et seq., I order his New Jersey driving privilege to be suspended for

730 days. The suspension period imposed here is the minimum mandated by New Jersey statute for Ciaramella's second alcohol-related driving offense, which was committed before December 1, 2019; Ciaramella was convicted of the first DWI offense on August 15, 2011, for an offense committed on June 10, 2011 in New Jersey). Pursuant to N.J.S.A. 39:4-50, the mandatory penalty for a second alcohol-related offense is 730 days (for offenses committed prior to December 1, 2019). The New Jersey DWI statutory penalties were amended effective December 1, 2019, for offenses committed on or after that date; the operative date is the offense date, not when the New Jersey suspension would take effect, as suggested by Ciaramella. Thus, the amended penalties do not apply here. State v. Scudieri, 469 N.J. Super. 507 (App. Div. 2021) ("When it amended N.J.S.A. 39:4-50.4a, the Legislature clearly stated that the new legislation would become effective over four months after it was signed into law and apply only to the class of defendants who committed offenses on or after December 1, 2019. That decision by the Legislature represented its unequivocal intent to apply the new statute prospectively, and therefore the common law exceptions to the presumption of prospective application do not apply.") See also, State v. Carrero, No. A-1445-20, 2022 N.J. Super. Unpub. LEXIS 213 (App. Div. Feb. 10, 2022) ("adopt[s] the legal analysis and holding in Scudieri" in the context of a DWI offense under N.J.S.A. 39:4-50 that was committed before December 1, 2019) and State v. Williams, No. A-0196-20, 2022 N.J. Super. Unpub. LEXIS 529 (App. Div. Apr. 1, 2022) (also applies Scudieri in context of DWI offense; holding "that the 2019 amendments to the DWI statute do not apply retroactively"; "the amendments only apply to offenses that occur on or after December 1, 2019"). Thus, there is no discretion to impose a reduced suspension term.

Conclusion and Final Order

Based on the foregoing, I conclude that the Commission's proposed suspension is proper. I specifically conclude that Ciaramella's submissions to the Commission are insufficient to meet his affirmative burden to show, by clear and convincing evidence, that his NYDWAI conviction was based exclusively on a BAC below 0.08%. The New Jersey legislature, in N.J.S.A. 39:4-50, explicitly required that the submitted evidence meet this high standard of proof. The New Jersey Supreme Court has stated:

> The clear and convincing evidence standard is not a hollow one, as
>
> [c]lear-and-convincing evidence is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue.
>
> [New Jersey Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 168 (2010), quoting In re Seaman, 133 N.J. 67, 74 (1993) (citation, internal quotation and editing marks omitted).]

Ciaramella's submissions to the Commission fall far short of this standard and cannot be said to constitute "evidence so clear, direct and weighty and convincing as to enable the factfinder to come to a clear conviction, without hesitancy, of the precise facts in issue."

The effective date of suspension of Ciaramella's driving privilege is November 9, 2022. (Suspension term: 730 days).

Also, pursuant to the governing statutory and regulatory requirements under N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2, Ciaramella must successfully complete or show satisfactory proof of completion of an alcohol/drug education and highway safety program. It is noted that with respect to any alcohol education classes/program already completed pursuant to the New York conviction, Ciaramella may present any official

documentation as to such classes/program to the Intoxicated Driver Program (IDP)/Intoxicated Driver Resource Center (IDRC), which will determine whether these can be accepted in partial or full satisfaction of the IDP alcohol/drug education program required pursuant to N.J.S.A. 39:4-50(b) and N.J.A.C. 13:19-11.2.

This constitutes the Commission's final decision in this matter.[8] Any appeal from this decision must be made to the Appellate Division of the Superior Court by filing a Notice of Appeal with the Appellate Division within 45 days from the date of this decision. If an appeal is filed with the court, pursuant to Court Rule, R. 2:5-1(e), service of copies of all papers must be made on both the New Jersey Motor Vehicle Commission, Chief Administrator, as well as the Attorney General. The Appellate Division may be contacted by calling (609) 815-2950.

Note: The Superior Court, Appellate Division has provided specific instructions for the filing of papers. Please visit the Judiciary's website at www.njcourts.gov/courts/appellate.html.

If you file an appeal with the court and you are seeking a stay of this Order while your appeal is pending, your request for stay, made pursuant to New Jersey Court Rule 2:9-7, must be in writing and submitted to the NJMVC with proof that a notice of appeal has been filed with the Appellate Division. Your request for stay and proof of filing should be submitted to the Office of Legal and Regulatory Affairs, NJMVC (attention: STAY REQUEST/

[8] Although this matter had been considered among those that were being processed for transmission to the Office of Administrative Law for a plenary hearing, upon further review by the Commission it was noted that there are no factual issues requiring an evidentiary hearing and therefore this final administrative decision and order was issued. See Frank v. Ivy Club, 120 N.J. 73, 98 (1990), cert. denied, 498 U.S. 1073, 111 S. Ct. 799, 112 L. Ed.2d 860 (1991); Pepe, supra, 379 N.J. Super. 411 (App. Div. 2005).

APP. DIV. PROOF OF FILING) either by fax to (609) 984-1528, or by email to: StayrequestAppDivcase@mvc.nj.gov. *Please include a fax number or an email address where the determination as to your stay request will be sent.

Further Note: A stay of this Order is not automatically granted upon filing a Notice of Appeal with the Appellate Division. In requesting that a stay be granted in conjunction with the filing of your appeal, you have the burden to show that your case meets each of the factors set out in New Jersey case law to warrant the issuance of that type of injunctive relief. See, Garden State Equality v. Dow, 216 N.J. 314, 320 (2013).

Latrecia Littles-Floyd
Acting Chair and Chief Administrator

LLF:ea/kw

c: John E. Hogan, Esq.

EXHIBIT LIST

*Copies redacted of other drivers' personal identifying information

Commission Exhibits

P-1 Copy of NYDMV Out-of-State Conviction report dated October 27, 2019, received by the Commission November 4, 2019 (1 page, redacted) *

P-2 Copy of New Jersey Motor Vehicle Commission, Scheduled Suspension Notice, (front and back), date prepared November 21, 2019 (2 pages)

P-3 Copy of Commission letter to Ciaramella advising him of the opportunity to submit clear and convincing evidence of the conviction being exclusively based on a BAC of less than 0.08% (affording a hearing on the papers), dated January 2, 2020 (2 pages)

Ciaramella's Exhibits

R-1 Copy of hearing request (2 pages) from John E. Hogan, Esq., dated December 5, 2019

R-2 Copy of letter to the Commission from John E. Hogan, Esq., dated January 28, 2020 (5 pages), with enclosed Affidavit of Matthew Ciaramella, dated January 26, 2020 (5 pages)