

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT NO. MVH 08183-15

AGENCY DKT NO. 07862

**NEW JERSEY MOTOR VEHICLE
COMMISSION,**

Petitioner,

v

AVROHOM Y. ZEFFREN,

Respondent.

Anthony J. Apicelli, Jr., Esq., for petitioner

Norman Douglas Smith, Esq., for respondent

Record Closed: February 15, 2017

Decided: March 7, 2017

BEFORE **CATHERINE A. TUOHY, ALJ:**

STATEMENT OF THE CASE

Respondent, Avrohom Y. Zeffren (Zeffren) appeals from the decision of the Motor Vehicle Commission (Commission) to suspend his license for a period of 930 days (thirty-one months) due to his involvement in an accident resulting in the death of an individual pursuant to N.J.S.A. 39.5-30

PROCEDURAL HISTORY

By letter dated February 10, 2015, the Commission notified Zeffren of its decision to suspend his license effective March 7, 2015 for a period of 930 days (thirty-one months) pursuant to N.J.S.A. 39:5-30. Zeffren appealed the decision by requesting a hearing. The matter was transferred by the Commission to the Office of Administrative Law (OAL) where it was filed on June 3, 2015 as a contested case. N.J.S.A. 52:14B to -15; N.J.S.A. 52:14F-1 to -13. The hearing was held at the offices of the OAL in Mercerville, New Jersey, on February 15, 2017 and the record closed on that date.

FACTUAL DISCUSSION AND FINDINGS

Many of the material facts in this case are undisputed. The accident that led to the fatality in this matter occurred on August 10, 2014 at approximately 3.20 p.m. at Cedarbridge Avenue near its intersection with Arlington Ave. in Lakewood Township, Ocean County. Cedarbridge Avenue is a four lane roadway with two lanes in each direction running east and west. Martin Luther King Drive is a two lane roadway that intersects with Cedarbridge Avenue. The accident involved Respondent Zeffren who was operating a blue Honda and the deceased David Gaines who was the operator of a white Suzuki GSX motorcycle travelling behind Zeffren.

In support of its case, the Commission presented the testimony of the only eyewitness to the accident, Shoshona M. Gerhardt (Gerhardt). At the time of the accident Gerhardt was operating her Toyota Sienna minivan with her nine-year-old son in the back seat. She was heading east on Cedarbridge Avenue and stopped at a red light at the intersection of Cedarbridge and Martin Luther King Drive. She was the first car stopped at the light. While stopped at the light on Cedarbridge Avenue, she observed Zeffren's blue Honda make a right hand turn from Martin Luther King Drive onto Cedarbridge Avenue with a motorcycle travelling behind him that also made a right hand turn from Martin Luther King Drive onto Cedarbridge Avenue. They were a half to three-quarters of a block ahead of her while she was stopped at the light. There were

no other cars travelling directly in front of her. Gerhardt stated that immediately before the accident she heard a 'revving' up sound and the motorcycle began accelerating as it began moving from the left lane into the right lane of Cedarbridge Avenue at the exact same time that Zeffren's vehicle was moving into the right hand lane. She stated that the motorcycle sped up into the car and collided into the right passenger side door of Zeffren's vehicle. The driver of the motorcycle became airborne on impact and Zeffren's vehicle and the motorcycle travelled about a half block further before coming to a stop. She gave a statement to the investigating officer, Sargent Frank Work.

Sgt. Frank Work of the Lakeside Township police department testified that he was the accident investigator who responded to the scene of the accident at Cedarbridge and Arlington Avenue and supervised the preparation of P-4. He has had training for accident investigation including crash 1, 2, and crash reconstruction. He has had occasion to investigate at least twenty-five fatal accidents in the course of his employment. He spoke with Zeffren at the scene who consented to give a blood sample. The toxicology reports showed no evidence of alcohol or drugs in Zeffren's system. The operator of the motorcycle had already been removed from the scene before Sgt Work arrived. He took measurements at the scene and looked for physical evidence including gouge marks in the road and fluid stream from the motorcycle where it went down on its side leaking oil or transmission fluid. Sgt Work stated that there were three vehicles involved in this accident. Zeffren, Mr. Gaines, the motorcyclist; and Mrs. Weidman, who was operating a Toyota Avalon on Arlington Ave travelling northbound and who was stopped at the stop sign. She stated to Sgt Work that she did not see the crash occur until the motorcycle struck the front of her car. The only eyewitness to the accident was Gerhardt. Sgt. Work issued Zeffren a summons for careless driving which was dismissed in municipal court. Sgt. Work did not recall if Zeffren advised him why he made the lane change.

Zeffren testified on his own behalf and stated that he was driving on Martin Luther King Drive at its intersection with Cedarbridge Avenue which was controlled by a stoplight. The light was green for traffic in his direction. There were cars stopped on Cedarbridge at the red light. He proceeded to make a right hand turn onto Cedarbridge

and moved into the right hand lane and then changed into the left hand lane after utilizing his left directional. It was his intention to make a left hand turn onto Clover Avenue which was up the road. He was travelling twenty-five mph when he observed the motorcycle behind him travelling very close, approximately four-five feet from his rear bumper. He decided that the motorcyclist was dangerously close to him and decided to change lanes into the right lane. He put on his right directional and checked his mirrors. He did not observe anyone in the right hand lane and so he proceeded to turn into the right hand lane. He stated it was his intention to move to the right hand lane to make way for the motorcycle who was tailgating him. The next thing Zeffren recalled was that Gaines' motorcycle hit Zeffren's vehicle in the middle right side between the two doors and Gaines was ejected from his motorcycle. Zeffren did not recall hearing the motorcyclist 'revving up' or accelerating before the impact.

In reviewing the record therefore, I **FIND** as **FACT** that the motorcycle operated by Mr. Gaines was tailgating the vehicle operated by Zeffren. I further **FIND** as **FACT** that Zeffren activated his right blinker and checked his side and rear view mirrors prior to making the change from the left lane to the right lane. I further **FIND** as **FACT** that while Zeffren was in the process of making his change to the right lane, Gaines abruptly attempted to pass Zeffren on the right and the accident occurred.

LEGAL ANALYSIS AND CONCLUSIONS

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(a) The Legislature has vested authority in the Commission to impose a driver's 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. 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." Id. at 155, see also David v. Strelecki, 51 N.J. 563 (1968) A decision to suspend 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 an individual in an accident where it is alleged by the Commission that respondent operated his vehicle in a careless manner N.J.S.A. 39:4-97.

Based on the above, I **CONCLUDE** that the Commission has not met its burden in this matter of proving that Zeffren was the cause of this fatality by operating his vehicle in a careless manner. The laws of the highway have not been violated in this case. While unquestionably a tragic accident, from the record before me, the collision was not the result of his actions

ORDER

Accordingly, it is **ORDERED** that the Scheduled Suspension Notice issued by the Motor Vehicle Commission under date of February 10, 2015, to respondent Avrohom Y Zeffren, is **REVERSED**.


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.

March 7, 2017
DATE



CATHERINE A. TUOHY, ALJ

Date Received at Agency.

March 7, 2017 (emailed)

Date Mailed to Parties.

3/8/17

/mel

WITNESSES

For Petitioner:

Soshona M. Gerhardt

Sgt Frank Work, Lakeside Township Police Department

For Respondent:

Avrohom Y. Zeffren

EXHIBITS

For Petitioner:

P-1 Handwritten Statement of Gerhardt (not admitted into evidence)

P-2 Death Certificate of David Gaines

P-3 DMV Abstract of Respondent

P-4 Crash Investigation Diagram

For Respondent:

None