

SCAN

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. THOMAS P. PHELAN,

Justice

TRIAL/IAS, PART 14
NASSAU COUNTY

In the Matter of the Application of LISA STRAX,

Petitioner,

ORIGINAL RETURN DATE: 03/20/03

SUBMISSION DATE: 04/10/03

INDEX No.: 019174/02

XXX

For a Judgment under Article 78 of the Civil Practice Law and Rules for dismissal of a certain summons

-against-

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, THE NASSAU COUNTY POLICE DEPARTMENT and NASSAU COUNTY,

Respondents.

MOTION SEQUENCE #1

The following papers read on this motion:

Notice of Petition.....	1
Answering Papers.....	2,3
Reply.....	5
Respondents' Brief.....	4

This petition pursuant to article 78 of the CPLR for a judgment dismissing Uniform Traffic Ticket LI178827-5 or directing respondent New York State Department of Motor Vehicles and/or the Nassau County Police Department to provide and permit the inspection of a deposition in support of said ticket is denied and this proceeding is dismissed.

Plaintiff was issued Uniform Traffic Ticket No. LI178827-5 by a Nassau County police officer on May 18, 2000, charging her with a violation of New York State Vehicle & Traffic Law ("VTL") §1180B, i.e., speeding. The ticket was returnable before the Nassau County Traffic and Parking Violations Agency ("Agency"). The reverse of the ticket specifically stated: "NOTICE: YOU ARE ENTITLED TO RECEIVE A SUPPORTING DEPOSITION FURTHER EXPLAINING THE CHARGES PROVIDED YOU REQUEST SUCH SUPPORTING DEPOSITION WITHIN THIRTY DAYS FROM THE DATE YOU ARE DIRECTED TO APPEAR IN COURT AS SET FORTH ON THE APPEARANCE TICKET. DO YOU REQUEST A SUPPORTING DEPOSITION?" Petitioner checked "yes" and it is not disputed that her request was timely made on June 1, 2000. No response was forthcoming.

The first conference on petitioner's ticket was held on September 28, 2001. On or about October 30, 2001, petitioner moved before the Agency pursuant to Criminal Procedure Law (CPL) §100.40(2) to dismiss the ticket based upon the police officer's failure to provide a supporting deposition. (See, *People v Guerrerio*, 181 Misc2d 517). That motion was denied. The Judicial Hearing Officer found that petitioner's motion was untimely. CPL §255.20 mandates that pre-trial motions be made within 45 days of arraignment and petitioner's application was made more than one year after the entry of her "not-guilty" plea.

Petitioner's traffic ticket was issued by a Nassau County police officer and was to be answered before the Nassau County Traffic and Parking Violations Agency. Respondent New York State Department of Motor Vehicle does not have jurisdiction over the Nassau County Traffic and Parking Violations Agency. (See General Municipal Law §§370, 371). Moreover, it is the Nassau County Police Department that is obliged to provide the supporting affidavit. A valid claim has not been advanced against the New York State Department of Motor Vehicles and the petition against it is dismissed.

As for the County respondents, insofar as petitioner seeks dismissal of the ticket pursuant to the CPL, the controversy is ripe. (See, *Wahl v Jackson*, 276 AD2d 797, lv to app. den. 96 NY2d 205). While the CPLR and CPL do not apply to administrative adjudications of traffic violations performed under the auspices of the New York State Department of Vehicles (see, 15 NYCRR 123.1; see also *Miller v Schwartz*, 128 AD2d 783, aff'd 72 NY2d 869; see also, *Wahl v Jackson*, supra), the Nassau County Traffic and Parking Violations Agency is a distinct entity. It was established pursuant to General Municipal Law §371(2) at Nassau County Administrative Code Chapter XXIV. It operates under the direction and control of the County Executive (General Municipal Law §370[2]). Section 24-1.1(b) at the Nassau County Administrative Code empowers the Executive Director of the Agency to establish such rules, regulations, procedures and forms as he may deem necessary to carry out the Agency's functions. However, the Executive Director of the Agency has not enacted any rule or regulation which changes the requirements of the CPL or renders them inapplicable. Applying the CPL, petitioner's motion to dismiss was in fact untimely.

The motion to dismiss the ticket for want of a supporting deposition was not timely. The petition is accordingly denied. (*People v Key*, 45 NY2d 111; see also *People v Campbell*, 141 Misc2d 470).

This proceeding is dismissed without costs.

This decision constitutes the order of the court.

Dated: 6-16-03

ENTERED

JUN 19 2003

HON THOMAS P. PHELAN

J.S.C.
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MASSAU COUNTY
COUNTY CLERK'S OFFICE