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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5339-14T2

NEW JERSEY MOTOR VEHICLE
COMMISSION,

Petitioner-Respondent,

v.

ANDRE M. JOHNSON,

Respondent-Appellant.

Submitted December 20, 2016 - Decided March 14, 2017

Before Judges Reisner and Rothstadt.

On appeal from the New Jersey Motor Vehicle
Commission, Docket No. J-10752.

Pastor & Pastor, attorneys for appellant
(James R. Pastor, on the brief).

Christopher S. Porrino, Attorney General,
attorney for respondent (Melissa H. Raksa,
Assistant Attorney General, of counsel;
Jennifer R. Jaremback, Deputy Attorney
General, on the brief).

PER CURIAM

Andre M. Johnson appeals from a July 16, 2015 order issued
by the New Jersey Motor Vehicle Commission (MVC), suspending his

driving privileges for an aggregate of 240 days.¹ After reviewing the record in light of the applicable law, we remand this matter to the agency to reconsider the issue of laches and to consider, under the unusual circumstances of this case, whether to exercise its discretion to forego administrative prosecution of these very stale charges.

The record consists of stipulated documents and Johnson's sworn testimony at the Office of Administrative Law hearing. The agency's prosecuting representative did not present any witnesses. The record can be summarized as follows.

The suspension stems from acts that occurred from 2004 to 2008, when Johnson was in the throes of drug addiction. In 2004, he fraudulently obtained a driver's license in the name of a relative. He obtained a motorcycle registration in the relative's name in 2006. He used the license to drive while his actual license was suspended. Between 2006 and 2007, he committed motor vehicle violations totaling more than twelve points. In 2008, he was arrested for drug offenses after being caught using the false driver's license.

¹ The MVC Commissioner granted a stay of the suspension pending appeal. The stay shall remain in effect pending the Commissioner's decision on remand.

Following his arrest, and his subsequent sentence to Drug Court probation, Johnson turned his life around.² He successfully completed the Drug Court program, is living a law-abiding life, is supporting his three children and his disabled mother, and has a steady job for which a driver's license is indispensable.

While he was serving his Drug Court probationary term, in 2011, Johnson was also criminally prosecuted for unlawfully obtaining the false driver's license, and received a probationary term. He believed that the 2011 criminal prosecution had finally resolved any issues concerning his wrongful conduct from years before, and that he could get on with his life as a rehabilitated offender.

However, in January 2013, the MVC sent Johnson a suspension notice, seeking to suspend his driving privileges for 730 days, based on falsely obtaining the driver's license - the same conduct for which he had already been criminally prosecuted and punished. In February 2013, the MVC sent Johnson another notice seeking to impose multiple additional suspensions for the motor vehicle offenses he committed in 2006 and 2007. Altogether, the agency proposed to suspend Johnson's license for 1300 days.

² As part of his criminal sentence, he served a four-month license suspension from December 2, 2008 to March 24, 2009.

After an administrative hearing, the administrative law judge (ALJ) recommended reducing the suspension to a total of 240 days, and the agency adopted that recommendation with no further analysis. On this record, it is undisputed that a license suspension of that magnitude would result in the loss of Johnson's now-stable and steady employment. It would also significantly disrupt longstanding child custody and care arrangements and other family responsibilities, including taking his severely ill mother to medical appointments.


Before the ALJ, Johnson claimed laches due to the agency's significant delay in pursuing the charges. See In re Arndt, 67 N.J. 432 (1975). Instead of responding to that issue with legally competent evidence, or even with a hearsay statement from a witness, the agency regulatory officer who was prosecuting the case made extensive factual representations in his post-hearing brief. The ALJ noted the lack of evidence, but nonetheless relied on those representations. As a result, the ALJ's decision on the laches issue, which the agency adopted, is not supported by a residuum of legally competent evidence. See Clowes v. Terminix Int'l, Inc., 109 N.J. 575, 599 (1988); Weston v. State, 60 N.J. 36, 51 (1972).

In addition, on this unusually compelling record, neither the ALJ nor the agency has satisfactorily explained how suspending

this individual's license now, for violations he committed a decade ago, serves what the ALJ characterized as a "rehabilitative" purpose. Accordingly, we remand this matter to the MVC for reconsideration. We do not retain jurisdiction.

Remanded.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION