

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

809

TP 12-01670

PRESENT: CENTRA, J.P., SCONIERS, VALENTINO, WHALEN, AND MARTOCHE, JJ.

IN THE MATTER OF JOHN FALBO, JR., PETITIONER,

V

MEMORANDUM AND ORDER

BARBARA J. FIALO, NEW YORK STATE COMMISSIONER
OF MOTOR VEHICLES, RESPONDENT.

JOHN FALBO, JR., PETITIONER PRO SE.

ERIC T. SCHNEIDERMAN, ATTORNEY GENERAL, ALBANY (FRANK K. WALSH OF
COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Oneida County [Norman I. Siegel, A.J.], entered August 25, 2011) to review a determination of respondent. The determination suspended petitioner's inspection station license and imposed a civil penalty of \$1,750.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination that he had violated Vehicle and Traffic Law § 303 (e) (3) and 15 NYCRR 79.8 (c) (3) in connection with his business as a certified vehicle inspector. We conclude that the determination was supported by substantial evidence that petitioner refused to conduct an inspection and made affirmative misrepresentations regarding the number of inspection certificates that he had available (*see generally Matter of Jennings v New York Off. of Mental Health*, 90 NY2d 227, 239). Petitioner did not preserve for our review his additional contentions regarding new evidence and further justifications for his actions inasmuch as he did not raise those contentions before the Administrative Law Judge (*see Matter of Gorman v New York State Dept. of Motor Vehs.*, 34 AD3d 1361, 1361).

Entered: July 19, 2013

Frances E. Cafarell
Clerk of the Court