

New York State - Department of Motor Vehicles
Safety Hearing Bureau

FINDING SHEET

Administrative

Law Judge: Marc Berger Place: New York Date: 6/26/15 Case: 34-964328

RESPONDENT:

Luis K. Quizhpi-Tacuri
34-28 110th Street, Apt. 1
Corona, NY 11368

APPEARANCES:

Luis K. Quizhpi-Tacuri (R)

Craig M. Bondy (A)
225 Broadway, Suite 850
New York, NY 10007
(Attorney for Respondent)

Steve Vaccaro (A)
Law Office of Vaccaro & White
17 Battery Place, Suite 204
New York, NY 10004
(Attorney for Estate)

FINDINGS:

This hearing was scheduled and held pursuant to Section 510(3) of the Vehicle and Traffic Law of New York State (VTL) to investigate a fatal accident that occurred on 10/8/13, in Kings County.

The evidence adduced at this hearing established that on 10/8/13, at approximately 5:15 P.M., Respondent was operating a 2006 Chevrolet van southbound in the right lane of Prospect Park West at the intersection of 3rd Street in the City of New York, County of Kings. The road was straight and level. It was clear and the road was dry. At the location, Prospect Park West is one-way street southbound with two traffic lanes separated by broken white lines and a bicycle lane on its eastern side (Motor Vehicle Accident and Mechanism Report, Exhibit #3, p. 4). The intersection is governed by three-phase traffic signals and pedestrian signals.

At the time of the accident, Respondent was approaching the intersection when he saw a ball roll into the street from east to west. He then heard a loud sound and felt his van shake. Bystanders instructed him to pull over and he did so. He found that he had run over the decedent, a 12 year old pedestrian, Samuel Cohen-Eckstein, with his driver's side

rear wheel. The Police Accident Report (Exhibit #2) indicates that the pedestrian had been crossing against the traffic signal and in the middle of the intersection. The Motor Vehicle Collision and Mechanism Report (Part 1) indicates that the pedestrian ran off the sidewalk (Exhibit #3, p. 2). It also characterizes the location as a residential area. The Motor Vehicle Collision and Mechanism Report (Part 2) (Exhibit #3, p. 3) indicates that it appears that the pedestrian fell under Respondent's vehicle and was struck by the rear tire.

The impact caused the death of Decedent. The Police Accident Report notes apparent contributing factors as pedestrian error/confusion and failure to yield right-of-way on the part of the decedent. Respondent was not issued any summonses or criminally charged in this case.

At the hearing, Respondent testified that he was driving at a speed of approximately 25 miles per hour but could not say how he knew this. He conceded that he saw the boy's soccer ball roll across the width of his vehicle from east to west prior to hearing the impact on the side of his vehicle, admittedly taking no action as a result of this observation despite seeing the vehicle immediately to his left stop. Not only did Respondent not stop, he passed the other vehicle on its right. He acknowledged on examination that the block is bordered by a public park on one side and residences on the other side. He also indicated that he was on his way to a 5:00 P.M. appointment to deliver building materials when the accident occurred at 5:15 P.M.

The sight of a ball rolling into the street in a residential area adjacent to a park in the afternoon should have warned the respondent of the likely presence of children - to carefully observe his surroundings and make appropriate adjustments, including slowing down or stopping if necessary. Additionally, the fact that the vehicle immediately to his left suddenly stopped after the ball passed should have been an indication to the respondent to use extra care instead of passing that vehicle on its right.

The evidence shows that Respondent was in violation of VTL section 1146(a), failure to use due care to avoid colliding with a pedestrian and VTL section 1123(b), passing on the right unsafely. These violations contributed to this accident and warrant taking action against the driver's license and/or driving privileges of Respondent.

Respondent produced a Washington State driver's license at the hearing that was in effect on the accident date and continues to be in effect (Exhibit #5). However, the respondent testified that he was not a resident of Washington at the time of the accident and that he has resided in New York State for approximately nine years.

VTL Section 250(5) defines the term "resident" as a person who lives in New York State with the intent to make New York State a "fixed and permanent" place to live, and further provides that it shall be presumptive evidence that a person who maintains a place of abode in New York State for a period of at least 90 days is a resident of this state.

I find that for more than 30 days prior to the accident date, the respondent was a resident of New York State. Therefore, his license from the State of Washington was invalid on the accident date pursuant to VTL Section 250(2), which requires that New York State residents obtain a New York State driver's license within 30 days of becoming a resident of the state.

I therefore find that the respondent violated VTL Section 509(1) by driving without a valid license on the accident date, 10/8/13.

DISPOSITION:

For each of the above-cited violations, Respondent's New York State driver's license and/or driving privileges are suspended for a period of 180 days. Said suspensions to run concurrently.

Dated: 6/29/15

Marc Berger 008

Marc Berger
Administrative Law Judge