

Petition for Writ of Certiorari to Review Quasi-Judicial Action, Department of Highway Safety and Motor Vehicles: DRIVER’S LICENSES – cancellation of Special Supervision Services Program (SSS Program) – Sworn arrest affidavit stating that there was an indication of alcohol influence by the petitioner was competent substantial evidence to support the hearing officer’s decision to re-impose Petitioner’s license revocation for violating the terms of the SSS program. Petition denied. *Maier v. Fla. Dep’t of Highway Safety and Motor Vehicles*, No. 12-000061AP-88B (Fla. 6th Cir. App. Ct. June 19, 2013).

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
APPELLATE DIVISION**

WILLIAM MAHER
Petitioner,

vs.

Ref. No.: 12000061AP-88B
UCN: 522012AP000061XXXXCV

FLA. DEP’T OF HIGHWAY SAFETY
AND MOTOR VEHICLES
Respondent.

ORDER AND OPINION

THIS CAUSE is before the Court on a Petition for Writ of Certiorari seeking review of an Order of License Revocation issued by the Department of Highway Safety and Motor Vehicles (“DHSMV”). Petitioner’s license revocation was re-imposed after Petitioner’s enrollment in a DUI program operated by Suncoast Safety Council (“Suncoast”) was terminated for failure to abstain from alcohol per the terms of the program. Because the order re-imposing revocation of Petitioner’s license was supported by competent substantial evidence, the Petition for Writ of Certiorari is DENIED.

FACTS AND PROCEDURAL HISTORY

Petitioner's driver's license was revoked for five years after being convicted of two charges of Driving Under the Influence within a five year period. Pursuant to § 322.271, Fla. Stat., Petitioner sought and obtained reinstatement of his license on a restricted basis. As a condition of his restricted license, Petitioner was required to enroll in and strictly comply with

the terms of the DUI Special Supervision Services Program (“SSS Program”) administered by Suncoast. A mandatory condition of participation in the SSS Program is complete abstinence from alcohol.

On October 31, 2012, Suncoast notified Petitioner of its recommendation to cancel Petitioner’s enrollment in the SSS Program due to Petitioner’s use of alcohol in violation of the terms of the SSS Program. The basis for finding that Petitioner failed to abstain from alcohol was an indication of alcohol use in the arrest affidavit from Petitioner’s September 2, 2012 arrest for domestic battery. In that affidavit, Officer Eisenhardt of the Clearwater Police Department stated under oath that there was an indication of alcohol influence by Petitioner. The affidavit stated that “the defendant was intoxicated and punched the victim in her head and ear.” The affidavit also referenced a statement from the victim claiming she sustained injuries, “which she said was caused by the defendant five days ago, in their home, after he was intoxicated.”

On November 8, 2012, DHSMV issued two administrative orders to Petitioner following receipt of Suncoast’s recommendation of cancellation. One order cancelled the participation in the DUI program due to substance abuse, the other re-imposed the revocation based on rescinding the restricted reinstatement. On November 13, 2012, Petitioner appealed the recommendation from Suncoast canceling his restricted license. Petitioner’s appeal was heard by Pride Integrated Services, DUI Programs of Pasco County (Pride) pursuant to Fla. Admin. Code R. 15A-10.031(1). At this appeal, the Pride staff reviewed the materials submitted by Suncoast, including the September 2, 2012 arrest affidavit and statements from Petitioner. After reviewing the evidence, Pride determined that “there was no compelling reason to disagree with Suncoast Safety Council in their decision to cancel Mr. Maher from the Program.” Pride notified Petitioner of its decision by letter dated November 20, 2012. Pursuant to Fla. Admin. Code R. 15A-10.031(1)(d), Pride’s recommendation served as the final decision of the DHSMV. Petitioner filed the instant petition, arguing that Pride’s decision was not based on competent substantial evidence.

STANDARD OF REVIEW

In reviewing an administrative order, this Court is limited to determining (1) whether procedural due process has been accorded, (2) whether the essential elements of law have been observed, and (3) whether the administrative findings are supported by competent, substantial

evidence. *Vichich v. Dep't of Highway Safety & Motor Vehicles*, 799 So. 2d 1069, 1073 (Fla. 2d DCA 2001).

DISCUSSION

Petitioner contends that Pride's order was not supported by competent substantial evidence. Petitioner asserts that the only evidence of alcohol consumption was a conclusory statement in the arrest affidavit stating that the defendant was intoxicated. Petitioner also argues that his wife's testimony, as well as his own, that he did not consume any alcoholic beverages that day, contradict the arrest affidavit. However, it is not the job or function of the circuit court to reweigh evidence and make findings of fact when it undertakes a review of an administrative decision. *Dep't of Highway Safety & Motor Vehicles v. Satter*, 643 So. 2d 692, 695 (Fla. 5th DCA 1994). The hearing officer assigned to hear the case by the department is "the trier of fact and in the best position to evaluate the evidence." *Dep't of Highway Safety & Motor Vehicles v. Favino*, 667 So. 2d 305, 309 (Fla. 1st DCA 1995). In determining whether a decision is supported by competent evidence, the issue is not "whether...there exists substantial competent evidence to support a position contrary to that reached by the agency." *City of West Palm Beach v. Education Dev. Ctr.* 504 So. 2d 1385, 1386 (Fla. 4th DCA 1987). Rather, the proper issue to be determined is "whether there is substantial competent evidence to support the agency's conclusion." *Id.*

In the instant case, Pride reviewed all the information and documentation provided by Suncoast and the petitioner. This documentation included the sworn arrest affidavit stating that there was an indication of alcohol influence by the petitioner, and that the petitioner was intoxicated on the date of the incident. Upon reviewing this information, Pride determined that there was no compelling reason to disagree with Suncoast's recommendation to cancel the petitioner's participation in the program. This decision was based on competent substantial evidence.

Therefore, it is,

ORDERED AND ADJUDGED that the Petition for Writ of Certiorari is DENIED.

DONE AND ORDERED in Chambers at St. Petersburg, Pinellas County, Florida, this _____ day of _____ 2013.

Original Order Entered on June 19, 2013 by Circuit Judges Amy M. Williams, Peter Ramsberger, and Jack Day.

Copies furnished to:

MICHAEL D. KENNY, ESQUIRE
BAUER CRIDER & PARRY
1550 SOUTH HIGHLAND AVENUE, SUITE C
CLEARWATER, FL 33756

JUDSON M. CHAPMAN
SENIOR ASSISTANT GENERAL COUNSEL
DEPT. OF HIGHWAY SAFETY AND MOTOR VEHICLES-LEGAL OFFICE
P.O. BOX 2940
PINELLAS PARK, FL 33780-2940