

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

872

TP 23-00666

PRESENT: SMITH, J.P., BANNISTER, OGDEN, AND GREENWOOD, JJ.

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IN THE MATTER OF STEVEN J. PARSONS, PETITIONER,

V

MEMORANDUM AND ORDER

NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES  
APPEALS BOARD, RESPONDENT.

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LEONARD CRIMINAL DEFENSE GROUP, PLLC, ROME (JOHN G. LEONARD OF  
COUNSEL), FOR PETITIONER.

LETITIA JAMES, ATTORNEY GENERAL, ALBANY (JONATHAN D. HITSOUS OF  
COUNSEL), FOR RESPONDENT.

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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 [Scott J. DelConte, J.], entered November 30, 2022) to review a determination of respondent. The determination revoked petitioner's driver's license.

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

Memorandum: Petitioner commenced this proceeding pursuant to CPLR article 78 seeking to annul the determination revoking his driver's license based on his refusal to submit to a chemical test. We confirm the determination. Petitioner contends that he was denied due process because the refusal report lacked reasonable grounds for the arrest, including details to support the claim of impairment or intoxication and the claim that petitioner refused the test. Petitioner did not preserve that contention for our review inasmuch as he did not raise an objection based on his due process rights before the Administrative Law Judge (*see Matter of Gorman v New York State Dept. of Motor Vehs.*, 34 AD3d 1361, 1361 [4th Dept 2006]). We have no discretionary authority to review that contention in this CPLR article 78 proceeding (*see Matter of Khan v New York State Dept. of Health*, 96 NY2d 879, 880 [2001]).

Finally, we conclude that the determination is supported by substantial evidence (*see Matter of Geary v Commissioner of Motor Vehs. of State of N.Y.*, 92 AD2d 38, 41 [4th Dept 1983], *affd* 59 NY2d 950 [1983]; *see also Matter of Huttenlocker v New York State Dept. of*

*Motor Vehs. Appeals Bd.*, 156 AD3d 1464, 1464 [4th Dept 2017]).

Entered: February 2, 2024

Ann Dillon Flynn  
Clerk of the Court