

01-126-CD
COMMONWEALTH OF PENNSYLVANIA -VS- DOUGLAS MARVIN WALLACE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
Plaintiff

vs.

DOUGLAS MARVIN WALLACE,
Defendant

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* No.: 01-126 -CD
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* Type of Case: Civil
*
* Type of Pleading: Petition for Appeal from
* Order of Department of Transportation
* Suspending Operator's Privileges
*

* Filed on Behalf of: Defendant

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* Counsel of Record for this Party:

*

* Kim C. Kesner, Esquire
* Supreme Court I.D. #28307
* 23 North Second Street
* Clearfield, PA 16830
* Phone: (814) 765-1706
* Fax: (814) 765-7006
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* Other Counsel of Record:

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

COMMONWEALTH OF PENNSYLVANIA, *
DEPARTMENT OF TRANSPORTATION, *
Plaintiff *
*
* No.: 01- -CD
vs. *
*
DOUGLAS MARVIN WALLACE, *
Defendants *

PETITION FOR APPEAL FROM ORDER OF
DEPARTMENT OF TRANSPORTATION SUSPENDING
OPERATOR'S PRIVILEGES

TO: THE HONORABLE JUDGES OF SAID COURT

AND NOW, comes DOUGLAS MARVIN WALLACE, by his counsel, Kim C. Kesner, Esquire and hereby appeals in accordance with 75 Pa.C.S.A. §1550 an Order or other determination of the Department of Transportation for the suspension of his operator's privileges, having a mail date of December 26, 2000, and in support hereof represents the following:

1. Petitioner, Douglas Marvin Wallace, is an adult individual with a mailing address of P.O. Box 172, Hannacroix, New York, 12087.
2. By Notice with a mail date of December 26, 2000, Petitioner was advised by the Pennsylvania Department of Transportation that based upon a conviction in the State of New York on November 21, 2000 of an offense which occurred in New York on September 25, 2000, his Pennsylvania driving privilege is suspended for a period of one (1) year, effective January 30, 2001 at 12:01 a.m. by authority of Section 1532(b) of the Pennsylvania Vehicle Code. A copy of said Notice of Suspension is attached hereto as Exhibit "A" and incorporated herein by reference.
3. Petitioner avers that the ordered suspension is unauthorized, improper and unlawful generally and for the following particular reasons:

a. Petitioner was convicted in Albany County, New York on November 21, 2000 of the offense of Driving While Ability Impaired.

b. The conviction arose out of an incident occurring in the Town of Bethlehem, Albany County, New York on September 25, 2000.

c. At the time of Petitioner's conviction, he held a New York Driver's License.

d. Petitioner has not held a Pennsylvania Driver's License since October 19, 2000.

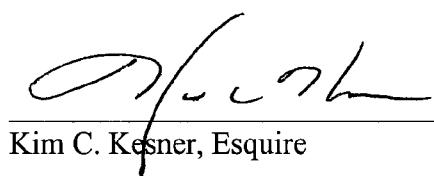
e. Petitioner believes and therefore avers that at the time he was issued a New York license, he was not a resident of Pennsylvania.

f. That at the time of hearing hereon, Petitioner should have completed all of the requirements of the sentence imposed by the Albany County Court including limitations on his New York driver's privilege.

g. That under the facts and circumstances of this case, Section 1581 of the Pennsylvania Vehicle Code does not authorize the Pennsylvania Department of Transportation to treat Petitioner's conviction as if it had occurred in Pennsylvania and/or to treat Petitioner's conviction as equivalent to a violation of Section 3731 of the Pennsylvania Vehicle Code (Driving Under the Influence) and/or to suspend Petitioner's driving privilege.

WHEREFORE, Petitioner respectfully requests judicial review in accordance with Section 1550 of the Pennsylvania Motor Vehicle Code and that a hearing de novo be scheduled upon sixty (60) days written notice to the Department in accordance with Section 1550(c).

Respectfully submitted,



Kim C. Kesner, Esquire

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
DECEMBER 26, 2000

DOUGLAS MARVIN WALLACE	003546102992031 003
R D 1 BOX 418-A	12/19/2000
CURWENSVILLE PA 16833	17305088
	04/18/1956

Dear Motorist:

Section 1581 of the Vehicle Code requires the Department to treat certain out of state convictions as though they had occurred in Pennsylvania. Therefore, as a result of the Department receiving notification from NEW YORK of your conviction on 11/21/2000 of an offense which occurred on 09/25/2000, which is equivalent to a violation of Section 3731 of the Pa. Vehicle Code, DRIVING UNDER INFLUENCE, your driving privilege is being SUSPENDED for a period of 1 YEAR(S), as mandated by Section 1532B of the Vehicle Code.

The effective date of suspension is 01/30/2001, 12:01 a.m.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, Credit will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD SERVING THIS SANCTION.

Please see the enclosed application for restoration fee information.

You will be notified of any outstanding restoration requirements approximately 30 days before the eligibility date of the restoration of your driving privilege. You must follow those instructions very carefully in order to have your driving privilege restored.

APPEAL

You have the right to appeal this action to the Court of Common Pleas (Civil Division) within 30 days of the mail date, DECEMBER 26, 2000, of this letter. If you file an appeal in the County Court, the Court will give you a time-stamped certified copy of the appeal. In order for your appeal to be valid, you must send this time-stamped certified copy of the appeal by certified mail to:

Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104-2516

Sincerely,

Rebecca L. Bickley

Rebecca L. Bickley, Director
Bureau of Driver Licensing

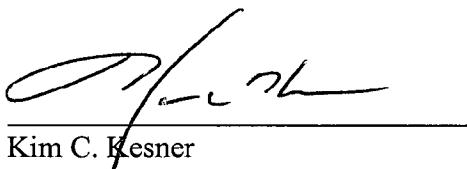
SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P.O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 9:00 PM)
IN STATE 1-800-932-4600
OUT-OF-STATE 717-391-6190
TDD IN STATE 1-800-228-0676
TDD OUT-OF-STATE 717-391-6191

Commonwealth Of Pennsylvania :
: S. S.
County Of Clearfield :

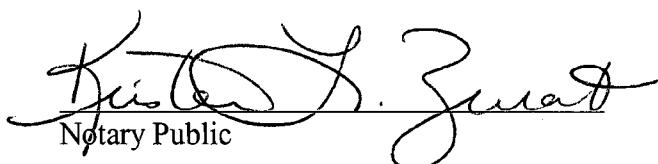
On this the 24th day of January, 2001, before me the undersigned authority personally appeared, KIM C. KESNER, ESQUIRE, who acknowledged that he has been retained by Petitioner to file the within Petition for Appeal; that at the filing of this Petition, Petitioner is located in the State of New York and unavailable to execute a Verification and that the facts contained in the foregoing Petition are true and correct to the best of his knowledge, information, and belief, based upon information provided by the Petitioner.

IN WITNESS WHEREOF, I have hereunto subscribed my hand and official seal.



Kim C. Kesner

Sworn to and subscribed before me this 24th day of January, 2001.



Kristen L. Zurat
Notary Public

My Commission Expires:



CERTIFICATE OF SERVICE

AND NOW, I do hereby certify that on the 24th day of January, 2001, I caused to be served a true and correct, time stamped copy of the Petition for Appeal From Order of Department of Transportation Suspending Operator's Privileges on the following and in the manner indicated below:

By United States Mail, Certified Mail,
Return Receipt Requested, Addressed as Follows:

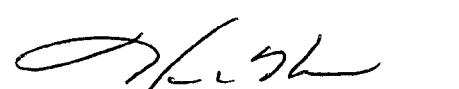
Pennsylvania Department of Transportation
Office of Chief Counsel
Third Floor, Riverfront Office Center
Harrisburg, PA 17104-2516

By United States Mail, First Class
Postage Prepaid, Addressed as Follows:

William Kuhar, Esquire
Office of Chief Counsel
1209 State Office Building
300 Liberty Avenue
Pittsburgh, PA 15222

Douglas Marvin Wallace
P.O. Box 172
Hannacroix, NY 12087

Date: 1/24/01



Kim C. Kesner, Esquire

IN THE COURT OF COMMON PLEAS OF
CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION
NO. 01-
-CD

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Plaintiff

vs.

DOUGLAS MARVIN WALLACE,
Defendant

PETITION FOR APPEAL FROM
ORDER OF DEPARTMENT OF TRANSPORTATION
SUSPENDING OPERATOR'S
PRIVILEGES

FILED

100-02-021474
JAN 24 2001
William A. Shaw
Prothonotary
Keener
Dd \$80.00

#3cc atty Keener
1cc GA.

KIM C. KESNER
ATTORNEY AT LAW
23 North Second Street
CLEARFIELD, PA 16830
(814) 765-1706

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

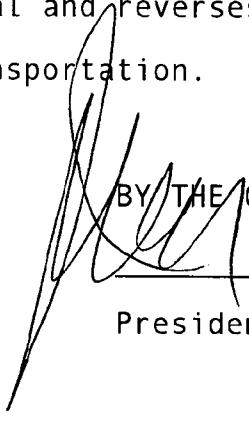
COMMONWEALTH OF PENNSYLVANIA : :

VS : NO. 01-126-CD

DOUGLAS MARVIN WALLACE : :

O R D E R

NOW, this 26th day of June, 2001, the Court hereby
SUSTAINS the appeal and reverses the suspension of the
Department of Transportation.


BY THE COURT,

President Judge

FILED

JUN 26 2001

William A. Shaw
Prothonotary

FILED

JUN 26 2001

01140 cc atty Kuhn
William A. Shaw
Prothonotary

Not
cc atty Kuhn

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William A. Shaw
Prothonotary