

STATE OF MAINE
PENOBSCOT, SS.

SUPERIOR COURT
Docket No. AP-05-5

DO NOT WRITE
ON THIS

OCT 12 2005

BERNARD ROSSIGNOL,)
) Petitioner,)
))
))
) v.)
))
))
SECRETARY OF STATE,)
) Respondent.)

FILED & ENTERED
SUPERIOR COURT
SEP 23 2005
PENOBSCOT COUNTY

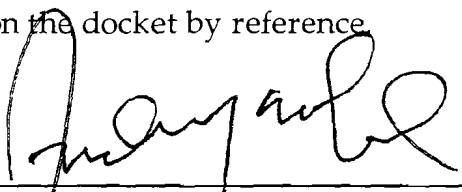
ORDER

In this Rule 80C appeal, the Petitioner asserts that the Respondent wrongfully imposed an administrative suspension of his driving privileges ostensibly for refusing to submit to a breath alcohol test. Petitioner's arguments center on the implied consent warnings (as supplemented by the officer) which are contained on the videotape supplied as part of the record. After review of the record, the court agrees with the hearing officer - although the officer gave flawed information to the Petitioner, the Petitioner had already refused the Intoxilyzer test after a correct reading of the implied consent language. Indeed, Petitioner refused the test before the warnings, after the warnings, and after the flawed supplement to the warnings.¹ Upon these facts, the court cannot conclude that the hearing officer's decision was incorrect under any standard.

Accordingly, the Petitioner's appeal is denied.

The Clerk may incorporate this Order upon the docket by reference.

Dated: September 23, 2005



Andrew M. Mead
JUSTICE, MAINE SUPERIOR COURT

¹ It should be noted that some of the flawed warnings contained errors which actually overstated the penalties that would flow from a refusal.

Date Filed 3/9/05 PENOBSCOT County Docket No. AP-2005-5

Action RULE 80C APPEAL

ASSIGNED TO JUSTICE ANDREW M. MEAD

BERNARD ROSSIGNOL vs. MATTHEW DUNLAP, Sec. of State on behalf of the Bureau of Motor Vehicles

Plaintiff's Attorney
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WAYNE R. FOOTE, ESQ.

Defendant's Attorney
STATE OF MAINE
OFFICE OF THE ATTORNEY GENERAL
6 STATE HOUSE STATION
AUGUSTA, ME. 04333-0006
BY: DALE DENNO, AAG

Date of
Entry

3/9/05	Petition for Review of Final Agency Decision (5 M.R.S.A. §11001 et seq.) (attachment attached) filed by Petitioner.
3/9/05	Notice of Assigned Justice filed. Pursuant to Administrative Order, Single Justice Assignment of Civil Cases, Docket No. SJC-323, the above referenced case is specially assigned to Justice Andrew M. Mead. /s/Margaret Gardner, Clerk. Copy forwarded to Petitioner's attorney.
3/16/05	Entry of Appearance by Dale Denno, AAG, on behalf of Respondent. (Copy of Notice of Assigned Justice forwarded to AAG Denno this date.)
4/13/2005	Administrative record filed by Defendant.
4/14/2005	Notice and Briefing Schedule 80C Appeal forwarded to all attorneys of record.
5/20/05	Brief of Petitioner filed.
6/13/05	Reply Brief of Respondent, Secretary of State, Bureau of Motor Vehicles filed.
6/13/05	Videotape (Exhibit D to the document entitled Supplemental Findings of Fact to the Original Decision, included in the original Certified Record at Tab 2, page 15) filed by Respondent, Secretary of State, Bureau of Motor Vehicles.
7/12/05	Motion to Withdraw pursuant to M.R.Civ.P. Rule 89 filed by Mandi Odier-Fink, Esq. on behalf of Plaintiff.
7/12/05	Entry of Appearance filed by Wayne R. Foote, Esq. on behalf of Plaintiff.
7/22/05	Court's Ruling on Petitioner's Motion to Withdraw Pursuant to M.R.Civ.P. Rule 89 filed 7/12/05; Granted. (Mead, J.) Copy forwarded to all attorney of record and to Mandi Odier-Fink, Esq.