

**IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND FOR
ORANGE COUNTY, FLORIDA**

PEDRO CRESPI,
Petitioner,

CASE NO.: 2008-CA-214
WRIT NO.: 08-02

vs.

**STATE OF FLORIDA, DEPARTMENT
OF HIGHWAY SAFETY AND
MOTOR VEHICLES,**
Respondent,

Petition for Writ of Certiorari
from the Florida Department of
Highway Safety and Motor Vehicles,
Roberta Koczan, Hearing Officer.

Stuart I. Hyman, Esquire,
for Petitioner.

Heather Rose Cramer, Assistant General Counsel,
for Respondent.

Before POWELL, THORPE, GRINCEWICZ, J.J.

PER CURIAM.

FINAL ORDER GRANTING PETITION FOR WRIT OF CERTIORARI

Petitioner Pedro Crespi timely filed this petition seeking certiorari review of the Florida Department of Highway Safety and Motor Vehicles' (Department) Final Order of License Suspension, sustaining the suspension of his driver's license pursuant to section 322.2615, Florida Statutes. This Court has jurisdiction pursuant to section 322.2615, Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(C). We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

On August 31, 2007, Deputy Parker of the Orange County Sheriff's Office conducted a traffic stop and identified Petitioner as the driver of the vehicle. Deputy Parker observed that Petitioner's eyes were red and glassy and his balance was unsteady. Deputy Parker also observed an odor of alcohol on Petitioner's breath. Based on Petitioner's performance on the field sobriety exercises, Petitioner was arrested and read the implied consent warning. Petitioner refused to submit to a breath-alcohol test and the Department suspended his driving privileges. Petitioner requested and was granted a formal review hearing pursuant to section 322.2615, Florida Statutes.

Prior to the formal review hearing, Petitioner issued and served a subpoena duces tecum upon Deputy Parker requesting "all field sobriety testing manuals received in courses on field sobriety testing." Deputy Parker appeared at the formal review hearing on October 10, 2007, without the requested training manuals. Deputy Parker testified that he did have a manual but he did not say why he failed to bring it to the hearing. Petitioner moved to set aside the suspension based on Deputy Parker's failure to bring the subpoenaed manual. The hearing officer entered an order rescheduling the hearing to November 16, 2007, and requiring Deputy Parker to appear at the next hearing with the requested manuals.

At the second review hearing, Deputy Parker again failed to appear with the manuals and Petitioner again moved to set aside the suspension based on Deputy Parker's failure to appear with the required manuals. The hearing officer denied Petitioner's motion to set aside and offered Petitioner an opportunity to seek enforcement of the subpoena duces tecum. Petitioner declined the opportunity to seek enforcement.

On December 6, 2007, the hearing officer entered an order denying Petitioner's other motions to set aside and sustaining the suspension of his driver's license finding that the law

enforcement officer had probable cause to believe that Petitioner was driving or in actual physical control of a motor vehicle while under the influence of alcoholic beverages and that Petitioner refused to submit to a breath test after being requested to do so. Petitioner timely seeks certiorari review by this Court.

The Court's review of an administrative agency decision is governed by a three-part standard of review: (1) whether procedural due process was accorded; (2) whether the essential requirements of the law were observed; and (3) whether the decision was supported by competent, substantial evidence. *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982). "It is neither the function nor the prerogative of a circuit judge to reweigh evidence and make findings [of fact] when [undertaking] a review of a decision of an administrative forum." *Dep't of Highway Safety & Motor Vehicles v. Allen*, 539 So. 2d 20, 21 (Fla. 5th DCA 1989).

This Court, in its appellate capacity, has issued previous decisions on similar facts holding that there is a denial of due process when a law enforcement officer fails to bring field sobriety manuals pursuant to a subpoena duces tecum and the hearing officer sustains the suspension of the petitioner's driver's license. *See Sherer v. Dep't of Highway Safety & Motor Vehicles*, 12 Fla. L. Weekly Supp. 286a (Fla. 9th Cir. Ct. Sept. 23, 2004); *Robinson v. Dep't of Highway Safety & Motor Vehicles*, 3 Fla. L. Weekly Supp. 478b (Fla. 9th Cir. Ct. Oct. 24, 1995)(officer's failure to bring field sobriety testing manuals to an administrative hearing as required by a lawfully issued subpoena constitutes a denial of due process); *Thornton v. Dep't of Highway Safety & Motor Vehicles*, No. CI 93-5808 (Fla. 9th Cir. Ct. March 30, 1994)(hearing officer's refusal to issue subpoena duces tecum for field sobriety manuals was violation of due process).

