

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

BRETT ELHILOW,

Petitioner,

v.

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Respondent.

APPELLATE DIVISION (CIVIL)
CASE NO.: 502010CA001053XXXXMB

Appealed from the Department of
Highway Safety and Motor Vehicles

Opinion filed: **NOV 14 2011**

Appeal from the Department of Highway Safety and Motor Vehicles.

For Petitioner: Richard Springer, Esq.
3003 South Congress Ave., Suite 1A
Palm Springs, FL 33461

For Respondent: Damaris Reynolds, Esq.
PO Box 540609
Lake Worth, FL 33454

PER CURIAM.

Brett Elhilow ("Elhilow") seeks review of the Hearing Officer's order sustaining the suspension of his license. We find that, because the Hearing Officer failed to consider whether Elhilow's refusal to submit to a breath test was incident to a lawful arrest as required by the Florida Supreme Court's recent decision in *Dep't Highway Safety and Motor Vehicles v. Hernandez*, 36 Fla. L. Weekly S243a (Fla. June 9, 2011), the matter must be remanded to the Hearing Officer for a determination of whether the refusal to submit to a breath test was incident to a lawful arrest.

Accordingly, the Petition for Writ of Certiorari is **GRANTED**. The order of suspension

is **QUASHED** and the matter is **REMANDED** to the Hearing Officer to make a finding of whether the refusal to submit to a breath test was incident to a lawful arrest.

SASSER, BARKDULL, FRENCH, JJ., concur.