

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.**

**DISTRICT COURT
SIXTH DIVISION**

Arman Tovmasian :
 :
v. : **A.A. No. 2018 - 149**
 :
State of Rhode Island :
(RITT Appeals Panel) :

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate disposition of the facts and the law applicable thereto.

It is, therefore, ORDERED, ADJUDGED AND DECREED, that the Findings and Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision rendered by to the Appeals Panel in this case is hereby AFFIRMED.

Entered as an Order of this Court at Providence on this 27th day of February, 2019.

By Order:

_____/s/_____
Stephen C. Waluk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

**STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc. DISTRICT COURT
SIXTH DIVISION**

Arman Tovmasian	:	
	:	
v.	:	A.A. No. 2018-149
	:	(T17-0019)
State of Rhode Island	:	(16-409-152513)
(RITT Appeals Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this case Mr. Arman Tovmasian urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed his conviction (by default judgment) for a civil traffic violation — “Motor Vehicle Plates for Persons with Disabilities.” Jurisdiction for the instant appeal is vested in the District Court by G.L. 1956 § 31-41.1-9; the applicable standard of review is found in G.L. 1956 § 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to G.L. 1956 § 8-8-8.1.

For the reasons I will explain in this opinion, I have concluded that the Appeals Panel’s decision affirming Appellant’s conviction by

default judgment should be AFFIRMED. I so recommend.

I

Facts and Travel of the Case

We may glean from the electronic record attached to this case and the Decision of the Appeals Panel that on June 13, 2017 Mr. Tovmasian was cited by a member of the Providence Police Department for a violation of G.L. 1956 § 31-28-7, “Motor Vehicle Plates for Persons with Disabilities.” *See* Summons No. 16-409-152513.

The summons he was given clearly indicated an arraignment date of July 11, 2017 at 8:00 a.m. *See* Copy of Summons in electronic record (ER) attached to this case, at 33. However, Appellant failed to appear and a default judgment was entered against him by a judge of the Providence Municipal Court. *Decision of Appeals Panel*, at 1. The next day, July 12, 2017, he filed a Motion to Vacate that default judgment. *Id.* However, Mr. Tovmasian failed to appear once again on the day set for hearing, July 25, 2017. *Id.* As a result, his Motion was denied. *Id.*

Mr. Tovmasian then filed an appeal (from the denial of his Motion to Vacate) to an appeals panel of the Rhode Island Traffic Tribunal, which was heard on September 20, 2017 by Magistrate Goulart

(Chair), Magistrate Abbate, and Judge Parker, at which he did appear. *Id.*

On August 14, 2018, the appeals panel issued its written decision. *Id.* at 4. Citing Rule 17(c) of the Traffic Tribunal Rules of Procedure, the panel held that the arraigning Municipal Court judge was fully authorized to enter a default judgment when Mr. Tovmasian failed to appear for his scheduled arraignment. *Decision of Appeals Panel*, at 3. Moreover, the panel found that the hearing judge “appropriately” denied his Motion to Vacate given that he did not appear to press his Motion. *Id.* at 3-4. As a result, the appeals panel affirmed the denial of Appellant’s Motion to Vacate. *Id.* at 4.

Appellant filed a further appeal to the District Court on August 27, 2018. Subsequently, on September 18, 2018, a briefing schedule was set: Appellant’s Memorandum was due on October 17, 2018; that of the City of Providence was made due on November 16, 2018. Appellant Tovmasian never submitted his Memorandum — and neither did the City of Providence (since it had nothing to respond to). Given that Appellant’s memorandum is now more than 90 days past due, I shall proceed to decide the case without further delay.

II Standard of Review

The standard of review which must be employed in this case is enumerated in Gen. Laws 1956 § 31-41.1.-9(d), which states as follows:

(d) *Standard of review.* The judge of the district court shall not substitute his or her judgment for that of the appeals panel as to the weight of the evidence on questions of fact. The district court judge may affirm the decision of the appeals panel, or may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the appeals panel's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the appeals panel;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

This provision is a mirror-image of the standard of review found in Gen. Laws 1956 § 42-35-15(g) — a provision of the Rhode Island Administrative Procedures Act (APA). Accordingly, we are able to rely on cases interpreting the APA standard as guideposts in this process. Under the APA standard, the District Court “ ... may not substitute its judgment for

that of the agency and must affirm the decision of the agency unless its findings are ‘clearly erroneous.’” *Guarino v. Dep’t. of Soc. Welfare*, 122 R.I. 583, 584, 410 A.2d 425 (1980)(citing Gen. Laws 1956 § 42-35-15(g)(5)). See also *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993).

And our Supreme Court has reminded us that reviewing courts lack “the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Liberty Mutual Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). This Court’s review “... is confined to a reading of the record to determine whether the judge’s decision is supported by legally competent evidence or is affected by an error of law.” *Link*, 633 A.2d at 1348 (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

III

Applicable Law

Rule 17 of the Traffic Tribunal Rules of Procedure states, in pertinent part:

Rule 17. Judgment —

...

(c) *Default Judgment.* A default judgment may enter against the defendant upon the defendant's failure to

appear at a trial and/or the first appearance. A default judgment may enter upon proof that:

- (1) The officer issued the summons consistent with the statutory requirements as set forth in Rule 3(b); and
- (2) A copy of the summons was served upon the defendant in person or by mailing to his or her last known address.

Upon entry of a default judgment, the defendant's operator's license and/or privileges may be ordered suspended pending compliance with the judgment imposed in the discretion of the court.

IV Analysis

In his Notice of Appeal to this Court, which may be found on pages 5-7 of the Electronic Record attached to this case, Mr. Tovmasian briefly alleges that he was late on the days of his arraignment and his motion because of child-care responsibilities. Given the opportunity to expand upon this explanation in a memorandum, he failed to submit one.

His excuse was, quite obviously, personal. Many motorists who are summonsed into Court find themselves in a similar circumstance. Mr. Tovmasian had just shy of a month (from the date he was cited to the date of arraignment) to make child-care arrangements. Under Rule 17(c), when he failed to appear, the arraigning judge was fully authorized to enter a default judgment against him.

And while his arraignment date may have been beyond his control, *he caused* the motion to be filed and heard on a certain date. Under these circumstances, and in the absence of a further explanation, I have no basis upon which to find that the decision of the Appeals Panel affirming the denial of the Motion to Vacate by a judge of the Providence Municipal Court was founded upon an error of legal error or unlawful procedure. *See* § 42-35-15(g)(3),(4). Neither did it constitute an abuse of discretion; nor was it arbitrary or capricious. *See* § 42-35-15(g)(6). I therefore recommend that the decision of the Appeals Panel be affirmed.

V
Conclusion

Upon careful review of the record and the positions of the parties, I recommend that this Court AFFIRM the decision rendered by the Appeals Panel in this case.

/s/
Joseph P. Ippolito
Magistrate

February 27, 2019

