

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF EAST PROVIDENCE**

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v.

**C.A. No. T12-0087  
12404506773**

**HUDSON CARVALHO**

**DECISION**

**PER CURIAM:** Before this Panel on January 23, 2013—Judge Almeida (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Goulart sitting—is Hudson Carvalho’s (Appellant) appeal from a decision of Magistrate DiSandro, denying the Appellant’s Motion to Vacate the trial judge’s decision sustaining the charged violations of G.L. 1956 § 31-47-9, “Operating a motor vehicle without evidence of insurance,” and § 31-3-32, “Expiration of registration.” The Appellant appeared pro se before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On September 22, 2012, an officer of the East Providence Police Department charged Appellant with the aforementioned violations of the motor vehicle code. Appellant failed to appear for his scheduled arraignment on November 1, 2012, and the Court entered a default judgment against him. Following the entry of the default judgment, Appellant filed a Motion to Vacate pursuant to Rule 20 of the Traffic Tribunal Rules of Procedure (Rule 20). After a hearing on December 6, 2012, at which time the Appellant failed to appear, his Motion to Vacate was denied. It is from the denial of his motion that Appellant now appeals to this Panel.

### Standard of Review

Pursuant to G.L. 1956 § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (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.

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact." Link v. State, 633 A.2d 1345, 1348 (R.I. 1993) (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). "The review of the Appeals Panel is confined to a reading of the record to determine whether the judge's [or magistrate's] decision is supported by legally competent evidence or is affected by an error of law." Link, 633 A.2d at 1348 (citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). "In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may

remand, reverse, or modify the decision.” Link, 633 A.2d at 1348. Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. See Janes, 586 A.2d at 537.

### **Analysis**

On appeal, Appellant contends that his absence from his arraignment and motion hearings should be excused. Specifically, Appellant maintains that he missed his court dates because he was confused with the process.

Rule 20 of the Rules of Procedure for the Traffic Tribunal reads, in relevant part: “On motion and upon such terms as are just the court may relieve a party or the party’s legal representative from a final judgment, order, or proceeding for . . . excusable neglect.” Traffic Trib. R.P. 20. “It is a well-established principle in Rhode Island that a motion to vacate a default judgment is within the discretion of the trial justice before whom the motion is brought. Such findings will not be disturbed upon appeal unless there is an error of law or an abuse of that discretion.” Phoenix Constr. Co., Inc. v. Hanson, 491 A.2d 330, 331 (R.I. 1985) (citing Friendly Homes, Inc. v. Shareholders and Creditors of Royal Homestead Land Co., 477 A.2d 934, 937 (R.I. 1985)). The burden is squarely on Appellant to show that his “failure to take the proper steps at the proper time [was] not in consequence of [his] own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident . . . .” Pleasant Management, LLC v. Carrasco, 960 A.2d 216 (R.I. 2008) (quoting Small Business Loan Fund Corp. v. Gallant, 795 A.2d 531, 533 (R.I. 2002)).

The record reflects that Appellant did not follow the “course of conduct which a reasonably prudent person would take under similar circumstances.” Id. (quoting Pari v. Pari, 558 A.2d 632, 635 (R.I. 1989)). Accordingly, this Panel is satisfied that it was not an abuse of the hearing judge’s discretion, having taken “account of all relevant circumstances surrounding

[Appellant's] omission[]," Id. (quoting Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 389 (1993)), to deny his Rule 20 motion.

The Appellant was fully informed of the dates he needed to appear before the Court and has not produced evidence sufficient to merit excusing his absence. The Supreme Court has held that "to establish excusable neglect, the party generally must show that the circumstances that caused the party to miss a deadline were out of that party or counsel's control." Rivera v. Rose, 14 A.3d 939, 945 (R.I. 2011) (quoting Boronian v. Richer, 983 A.2d 834, 840 (R.I. 2009)). Additionally, Appellant failed to show that he took remedial measures in order to comply with both of the statutes he violated.

After a review of the record and the oral arguments presented to this Court, this Panel finds that the decision of the trial judge was supported by the reliable, probative, and substantial evidence of record. Accordingly, the trial judge did not abuse his discretion when he denied the Appellant's motion to vacate the default judgment.

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the motion hearing judge's decision was not an abuse of discretion. Substantial rights of Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violations are sustained.

ENTERED:

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Judge Lillian M. Almeida (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate Alan R. Goulart

DATE: \_\_\_\_\_