

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PROVIDENCE**

v.

**RAMON MINAYA**

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**C.A. No. T13-0004  
07409098324**

**DECISION**

**PER CURIAM:** Before this Panel on February 13, 2013—Magistrate DiSandro (Chair, presiding), Chief Magistrate Guglietta, and Magistrate Noonan sitting—is Ramon Minaya’s (Appellant) appeal from a decision of Magistrate Goulart, sustaining the charged violations of G.L. 1956 § 31-47-9, “Operating a motor vehicle without evidence of insurance,” § 31-3-1, “Operation of unregistered motor vehicle,” and § 31-8-3, “Improper use of evidences of registration or certificate of title.” The Appellant was represented by counsel before this Panel. Jurisdiction is pursuant to § 31-41.1-8.

**Facts and Travel**

On October 12, 2012, an officer of the Providence Police Department charged Appellant with the aforementioned violations of the motor vehicle code. The Appellant contested the charges, and the matter was set down for arraignment on November 13, 2012. At arraignment the defendant plead not guilty and the matter was set down for trial on January 15, 2013.

However, Appellant failed to appear for his scheduled trial on January 15, 2013, 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 January 24, 2012, 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 hearing should be excused. Specifically, Appellant maintains that he missed his court dates because he was late for the hearing. Additionally, Appellant contends that he is a victim of fraud because he was not the person who received this citation.

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 (quoting Jacksonbay Builders, Inc. v. Azarmi, 869 A.2d 580, 584 (R.I. 2005)).

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 Boranian v. Richer, 983 A.2d 834, 840 (R.I. 2009)).

Additionally, Appellant failed to show that he was not the violator who received the citation. The citation is of the kind that is physically handed to the violator, but Appellant contends that he received the ticket in the mail. Appellant’s defense does not provide adequate evidence to show that he was a victim of fraud. See State v. Tillinghast, 465 A.2d 191 (R.I. 1983) (explaining that the burden of persuasion on affirmative defenses shifts to the defendant.) Accordingly, the motion hearing judge did not abuse his discretion when he denied the Appellant’s motion to vacate the default judgment.

After a review of the record and the oral arguments presented to this Court, this Panel finds that the decision of the hearing judge was supported by the reliable, probative, and substantial evidence of record. The hearing judge did not abuse his discretion when he sustained the violations of § 31-47-9, “Operating a motor vehicle without evidence of insurance,” § 31-3-1,

“Operation of unregistered motor vehicle,” and § 31-8-3, “Improper use of evidences of registration or certificate of title.”

**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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Magistrate Domenic A. DiSandro III (Chair)

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Chief Magistrate William R. Guglietta

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Magistrate William T. Noonan

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