

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**CITY OF PROVIDENCE**

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v.

**C.A. No. M17-0022  
16409145129**

**TARIQ MAHMOUD**

**DECISION**

**PER CURIAM:** Before this Panel on September 27, 2017—Magistrate Kruse Weller (Chair), Magistrate Noonan, and Chief Magistrate Guglietta, sitting—is Tariq Mahmoud’s (Appellant) appeal from a decision of Judge Daniel P. McKiernan of the Providence Municipal Court (Hearing Judge), sustaining the charged violation of G.L. 1956 § 31-20-9, “Obedience to stop signs.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On February 25, 2017, a Providence Police Officer (Officer) charged Appellant with the aforementioned violation of the motor vehicle code. *See* Summons No. 16409145129. The Appellant failed to appear for his arraignment on April 4, 2017. As a result, a Providence Municipal Court judge entered a default judgment. On August, 22, 2017, Appellant filed a Motion to Vacate; however, Appellant again failed to appear for the hearing, on September 5, 2017. As a result, Appellant’s Motion was denied. The Appellant subsequently appealed the Hearing Judge’s decision. Forthwith is this Panel’s decision.

**II**

**Standard of Review**

Pursuant to § 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 Ins. 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.” *Id.* (citing *Envtl. 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.” *Id.* Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant argues that the Hearing Judge's decision to deny his Motion to Vacate was made upon unlawful procedure and affected by an error of law. Sec. 31-41.1-8(f). Specifically, Appellant argues he failed to appear before the Providence Municipal Court on September 5, 2017, because he believed the hearing on his Motion to Vacate was scheduled for 9:00 a.m., not 8:00 a.m. when it was heard.

The Rhode Island Traffic Tribunal Rules of Procedure Rule 17(c) provides,

“[d]efault judgment. A default judgment may enter against the defendant upon his or her failure to appear at a trial and/or arraignment. A default judgment may enter upon proof that: (i) the officer issuing the summons consistent with the statutory requirements set forth in Rule 3(b) signed the summons, and (ii) 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.” Traffic Trib. R. P. 17(c).

This Panel pauses to note that the record contains no evidence as to the merits of Appellant's Motion as Appellant failed to appear. With what information may be gleaned from the record, Appellant's failure to appear at his arraignment resulted in a Providence Municipal Court judge properly entering a default judgment pursuant to Rule 17(c) of our Rules of Procedure. *Id.* The Appellant, again, failed to appear before the Hearing Judge to argue his Motion to Vacate on September 5, 2017. As a result, the Hearing Judge appropriately denied Appellant's Motion. Therefore, based on the little evidence that is within the record, this Panel finds that the Hearing Judge did not err in denying Appellant's Motion as Appellant failed to appear to pursue his own motion.

**IV**

**Conclusion**

This Panel has reviewed the entire record before it. Having done so, the members of this Panel finds that the Hearing Judge's decision was made upon lawful procedure and not affected by an error of law. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the decision of the Hearing Judge is affirmed.

ENTERED:

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Magistrate Erika Kruse Weller

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Magistrate William T. Noonan

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

Note: Chief Magistrate William R. Guglietta participated in this Decision but was no longer a member of this Court at the time this Decision was issued.