

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**NORTH PROVIDENCE POLICE  
DEPARTMENT**

v.

**CHARLES GALATIS**

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**C.A. No. T17-0004  
16407502137**

**DECISION**

**PER CURIAM:** Before this Panel on September 27, 2017—Magistrate Kruse Weller (Chair), Magistrate Noonan, and Chief Magistrate Guglietta, sitting—is Charles Galatis’ (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Hearing Magistrate) of the Rhode Island Traffic Tribunal denying Appellant’s Motion to Vacate the default judgment entered on the charged violation of G.L. 1956 § 31-27-2.1 “Refusal to submit to chemical test.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On September 25, 2016, Officer Hunt of the North Providence Police Department issued Appellant a citation for the aforementioned violation. *See* Summons No. 16407502137. On October 7, 2016, Appellant was arraigned and pleaded not guilty to two charged violations.<sup>1</sup> (Tr. at 3.) The Appellant received notice that he must appear before the Rhode Island Traffic Tribunal on October 19, 2016 for a pre-trial conference. *Id.* On that date, Appellant failed to appear. As a result, the presiding magistrate entered default judgment and imposed the mandatory penalties.

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<sup>1</sup> The Appellant was also charged with violating § 31-47-9 “Operating a motor vehicle without insurance.”

On February 16, 2017, Appellant filed a Motion to Vacate the default judgment. A hearing on Appellant's Motion was held on February 24, 2017. *Id.* at 1. After the hearing, the Hearing Magistrate denied Appellant's Motion, reasoning that the Appellant failed to meet the "excusable neglect" standard by arguing that he had "mixed up the court date." *Id.* at 3. The Hearing Magistrate did, however, dismiss the insurance violation, and reduce the penalties imposed on the Refusal to Submit to Chemical Test charge. *Id.* at 4.

Thereafter, Appellant filed a timely appeal of the Trial Magistrate'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 Magistrate’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 that the reason he failed to appear before the Traffic Tribunal on October 19, 2016 met the standard necessary to show excusable neglect.

“It is well settled that unexplained neglect, whether by a party or its counsel, standing alone, will not automatically excuse noncompliance with orderly procedural requirements.” *Astors’ Beechwood v. People Coal Company, Inc.*, 659 A.2d 1109, 1115 (R.I. 1995) (citing *Iddings v. McBurney*, 657 A.2d 550, 553 (R.I. 1995)). The Rhode Island Supreme Court has defined “excusable neglect” as

“[a] failure to take the proper steps at the proper time, not in consequence of the party’s own carelessness, inattention, or willful disregard of the process of the court, but in consequence of some unexpected or unavoidable hindrance or accident, or reliance on the care and vigilance of his counsel or on promises made by the adverse party.” *Pleasant Management LLC v. Carrasco*, 960 A.2d 216, 224-225 (R.I. 2008) (quoting *Jacksonbay Builders, Inc. v. Azarmi*, 869 A.2d 580, 584 (R.I. 2005)).

Accordingly, “[r]elief from a counsel’s failure to comply with procedural requirements will not be not be granted ‘unless it is first factually established that his [or her] neglect was occasioned by some extenuating circumstance of sufficient significance to render it excusable.’” *Astors’ Beechwood*, 659 A.2d at 1115 (quoting *King v. Brown*, 103 R.I. 154, 157, 235 A.2d 874, 875 (R.I. 1967)). Therefore, “[e]xcusable neglect that would qualify for relief from judgment is generally that course of conduct that a reasonably prudent person would have taken under similar circumstances.” *Astors’ Beechwood*, 659 A.2d at 1115 (quoting *Pari v. Pari*, 558 A.2d 632, 635 (R.I. 1989)).

The record in the instant matter does not contain sufficient evidence to satisfy a finding of “excusable neglect.” *Pleasant Management LLC*, 960 A.2d at 224-225. On October 19, 2016, the presiding magistrate entered default judgment when Appellant failed to appear. *See* Traffic Trib. R. P. 17. The Appellant’s calendaring error is insufficient to warrant a finding of excusable neglect. *See e.g.*, *Pleasant Management, LLC* 960 A.2d at 225 (excusable neglect when attorney violated anti-contact rule by telling opposing party to “forget about court,” causing the default judgment against them); *State v. Dominguez*, 679 A.2d 873, 874–75 (R.I. 1996) (finding excusable neglect when defendant missed ten-day motion to dismiss deadline because his counsel was not appointed until after deadline expired). Excusable neglect involves more than forgetful error. Accordingly, this Appeals Panel finds that the Hearing Magistrate’s did not err by denying Appellant’s Motion to Vacate.

## IV

### Conclusion

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

ENTERED:

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Magistrate Erika Kruse Weller (Chair)

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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.