

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC

DISTRICT COURT
SIXTH DIVISION

SHARON GAGNE SMITH

VS.

A.A. NO. 03-123

RHODE ISLAND TRAFFIC TRIBUNAL :

JUDGMENT

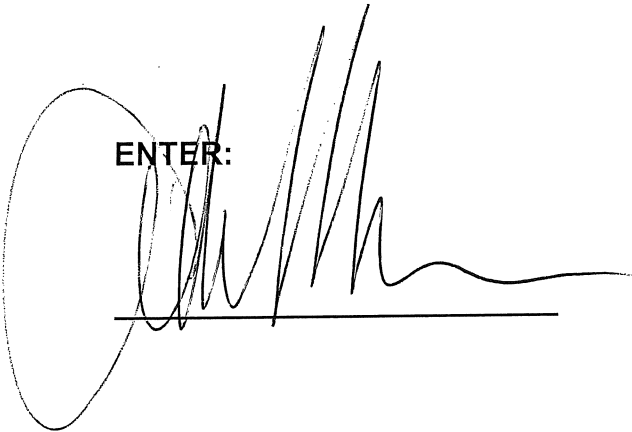
This cause came on before DeRobbio, C.J. on an appeal from the Rhode Island Traffic Tribunal Appeals Panel, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Traffic Tribunal is hereby affirmed.

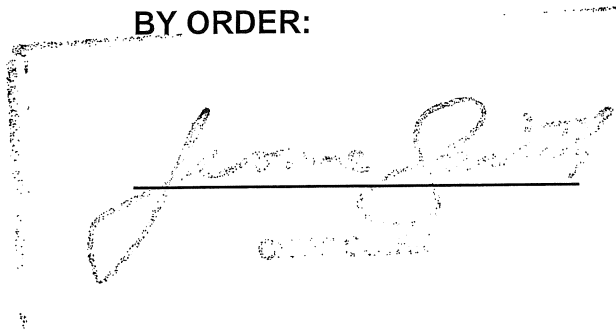
Dated at Providence, Rhode Island, this 24th day of March , 2004.

ENTER:



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BY ORDER:



A handwritten signature in black ink, appearing to read 'DeRobbio', is written over a horizontal line. The signature is enclosed in a faint rectangular box.

The Traffic Tribunal Appeals Panel, after hearing thereon, upheld the decision of the Trial Magistrate.

Thereafter, Sharon Gagne Smith filed a complaint for judicial review in the Rhode Island District Court.

The standard of review is provided by Rhode Island General Laws 31-41.1-9(d):

(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 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 proceeding 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.

On questions of fact, 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. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing Rhode Island General Laws § 42-35-15(g)(5). The Court will not substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. Cahoone v. Board of Review of the

Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968). Stated differently, the findings of the agency will be upheld even though a reasonable mind might have reached a contrary result. Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213, 215 (1968). See also D'Ambra v. Board of Review, Department of Employment Security, 517 A.2d 1039, 1041 (R.I. 1986).

The Court, after a review of the entire record, finds the following.

That the standard of review of the appeals panel is controlled by section 31-41.1-8 which provides:

- (f) **Standard of review.** 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 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 in excess of the statutory authority of the judge or magistrate;
 - (2) Made upon unlawful procedure;
 - (3) Affected by other error of law;
 - (4) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (5) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The standard of review that the District Court must apply to the findings, conclusions of law and decision of the Appeals Panel of the Traffic Tribunal are the same standards that the Appeals Panel must apply to the Trial Magistrate's findings, conclusions of law and decision.

On reviewing the entire record, the Court must determine whether or not the Appeals Panel's decision was proper in view of the evidence and record it reviewed.

The Court reviewed the entire record of the Trial Magistrate and the Appeals Panel.

A review of the entire record demonstrates that:

On March 27, 2004, at approximately 12:45 a.m., appellant was operating a motor vehicle in the West Shore Road area of Warwick, Rhode Island. She was stopped by a Warwick police officer who detected by radar that appellant was going 41 in a 35 mile per hour zone. The police officer also cited Ms. Gagne-Smith for a laned roadway violation and for a refusal to take a chemical test.

A hearing was held before Magistrate DiSandro on June 23, 2003. The charged violations were sustained. A timely appeal was filed by appellant on July 1, 2003, and was scheduled to be heard on August 12, 2003. At that time, appellant requested a continuance in order to obtain an attorney. The court granted the continuance to September 10, 2003.

The Court thereafter held a trial with the appellant being represented by counsel. The Trial Magistrate heard the witnesses, made findings of fact, and applied the applicable law to his findings of fact. The Trial Magistrate assessed credibility of the witnesses and made judgments as to the weight of the evidence.

In a review of the record, this Court finds that the Trial Magistrate was not erroneous in his findings of fact and conclusions of law.

In the review by the Appeals Panel, the appellant did not file a transcript with the appeal. The Appeals Panel made the following conclusion:

"This panel is unable to adequately review the record in order to determine if Magistrate DiSandro's decision contained errors of law or fact. Substantial rights of the appellant have not

been prejudiced. Accordingly, we affirm the trial judge's decision and deny the appeal."

Section 31-41.1-9(c) provides:

"(e) *Transcript of hearings.* Transcripts of the record of any hearing may be obtained at the cost of the traffic tribunal if prepared by the tribunal or at a rate specified in the contract between the tribunal and the contractor, if prepared by a private contractor."

The record is clear that the appellant did not provide a transcript to the Appeals Panel, and the Appeals Panel was correct in its determination. In the interest of justice, the District Court, however, examined the entire record and listened to the electronic recordings of the proceedings held before the Trial Magistrate and Appeals Panel.

A review of the entire record demonstrates that there is substantial, probative and reliable evidence to support the findings of fact, conclusions and decisions of the Trial Magistrate and the determination of the Appeals Panel.

On findings of fact, as to the weight of the evidence, neither this Court nor the Traffic Tribunal shall substitute its judgment for that of the Trial Magistrate.

The scope of judicial review by the Court is limited by Section 31-41.1-9(d).

Upon careful review of the evidence, this Court finds that the decision of the Traffic Tribunal was not "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record," and that said decision was not "arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Accordingly, the decision of the Traffic Tribunal is hereby affirmed.