

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

DISTRICT COURT  
SIXTH DIVISION

REBECCA A. HARTE,  
Appellant

:

:

VS.

: AA 6-2011-0161

:

R. I. DIVISION OF MOTOR VEHICLES,  
OPERATOR SECTION CONTROL,  
Appellee

:

JUDGMENT

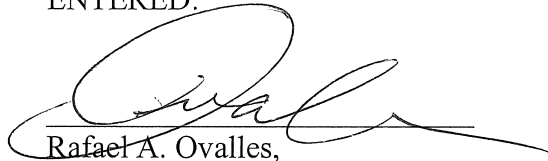
This matter came before Ovalles, J., on appeal from the R. I. Division of Motor Vehicles/ Operator Control Section and after a review of the record in its totality, a decision having been rendered, it is hereby,

ORDERED, ADJUDGED AND DECREED:

That the decision of the Administrator of the Department of Motor Vehicles/ Operator Control Section is supported by the whole record and is a proper disposition of the facts and laws applicable thereto, and is therefore hereby affirmed.

Entered as an Order of this Court at Providence, Rhode Island on this 17<sup>th</sup> day of September 2012.

ENTERED:



Rafael A. Ovalles,  
Associate Judge

Dated: 17<sup>th</sup> September, A.D., 2012

PER ORDER:



**Stephen C. Waluk, Chief Clerk**

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

DISTRICT COURT  
SIXTH DIVISION

REBECCA A. HARTE,  
Appellant

:

VS.

: A. A. 6-2011-0161

R. I. DIVISION OF MOTOR VEHICLES,  
OPERATOR SECTION CONTROL,  
Appellee

:

DECISION

OVALLES, J. This matter came before the Court on appeal from the R. I. Division of Motor Vehicles/ Operator Section Control (hereinafter DMV or Appellee), pursuant to R. I. General Laws § 42-35-15(a).<sup>1</sup> Rebecca A. Harte (hereinafter Appellant or Plaintiff) appealed a license suspension.

On appeal, Appellant contends that the DMV’s suspension order “to condition the reinstatement of [her] Rhode Island driver’s license on the reinstatement of her rights to operate a motor vehicle in [The Commonwealth of] Massachusetts is an unwarranted exercise of discretion in violation of statutory provisions and contrary ... [to] prior rulings of this Court.” (Appellant’s Brief, p. 2). Appellant requests that this Court vacate the suspension of Appellant’s R. I. motor vehicle operator’s license, registration and commercial driver’s license (hereinafter CDL); moreover, Appellant requests that her motor vehicle operator’s license be reinstated without further requirement that her Massachusetts’ driving privileges be restored. For the reasons that follow, the DMV’s suspension order is affirmed.

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<sup>1</sup> Administrative Procedures, §§ 42-35-1, 42-35-18.

## FACTS AND PROCEDURAL HISTORY

The parties have agreed to the following facts:<sup>2</sup>

1. Plaintiff Rebecca A. Harte is a resident of [the City of] Pawtucket, [the State of ] Rhode Island;
2. At all times material hereto, she held a valid Rhode Island Driver's License with a commercial driver['s] license ("CDL") endorsement;
3. On or about June 10, 2005, Plaintiff was convicted in the [Commonwealth] of Massachusetts of driving under the influence ("DUI") first offense;
4. On or about September 23, 2009, Plaintiff pled guilty to a second DUI offense in the [Commonwealth] of Massachusetts;
5. As a result of this second offense in 2009, the Massachusetts Registry of Motor Vehicles ordered an eight (8) year suspension of her license to operate a motor vehicle in [the Commonwealth of] Massachusetts effective October 8, 2009;
6. [Appellant], although aware of her suspension since the time of conviction of her second DUI offense, failed to ever notify [the State of] Rhode Island of the suspension or second DUI offense;
7. The [Commonwealth] of Massachusetts did not notify [the State of] Rhode Island of Plaintiff's conviction or license suspension until September 29, 2011;
8. Immediately upon receiving notice from the [Commonwealth] of Massachusetts regarding Plaintiff's second DUI offense and subsequent suspension, [the State of] Rhode Island issued an Order on September 30, 2011 suspending Plaintiff's

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<sup>2</sup> Joint Stipulation of Facts, appended herewith. The parties agreed to items 1 through 12. The Court makes additional factual finding in items 13, 14 and 15.

- driver's license and registration along with a lifetime revocation of her CDL privilege, effective October 10, 2011;
9. On or about October 10, 2011, Plaintiff's driver's license expired;
  10. On or about November 3, 2011, Plaintiff's counsel turned in her license and registration plates to the [State of] Rhode Island Division of Motor Vehicles, Operator Control Section;
  11. Plaintiff is eligible for reinstatement of her Rhode Island driver's license on February 3, 2012, conditioned on a reinstatement from [the Commonwealth of] Massachusetts, the filing of an SR-22 and payment of applicable reinstatement fees;
  12. Pursuant to federal regulations, Plaintiff's CDL privilege remains suspended indefinitely under the lifetime revocation;
  13. The DMV voluntarily waived any objection to Appellant's untimely appeal to the District Court, in order to allow the Court to address the merits of this action;<sup>3</sup>
  14. Appellant filed a Complaint in the District Court on November 9, 2011;
  15. Appellant did not request a hearing before the DMV.

### APPLICABLE RHODE ISLAND LAW

#### A. Standard of Review

The District Court has jurisdiction to hear appeals from the DMV pursuant to R. I. General Laws § 42-35-15(a). The District Court's jurisdiction is limited, however, by R. I. General Laws § 42-35-15(g), which states in pertinent part:

The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the

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<sup>3</sup> Please see DMV's letter of May 23, 2012.

agency or remand the case for further proceedings, or it may reverse or modify the decision if substantial rights of the [A]ppellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

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

The District Court, therefore, lacks the authority to assess witnesses' credibility or to substitute its judgment for that of the DMV concerning the weight of the evidence on questions of fact. Link v. State, 633 A. 2d 1345 (R. I. 1993). The District Court is limited to a determination of whether the DMV's decision is supported by competent evidence. Nickerson v. Reitsma, 853 A. 2d 1202 (R. I. 2004); Marran v. State, 672 A. 2d 875 (R. I. 1996); Starlight Communications Holdings, Inc. v. R. I. Department of Labor and Training, 2007 R. I. Super. Lexis 15 (R. I. Superior Court 2007).

The District Court may reverse the decision of the DMV only where the decision "is clearly erroneous in light of the reliable, probative, and substantial evidence, or where it is arbitrary or capricious or that it is characterized as an abuse of discretion." Champlin's Realty Associates v. Tikoian, 989 A. 2d 427, 431 (R. I. 2010); Costa v. The Registry of Motor Vehicles, 543 A. 2d 1307, 1309 (R. I. 1988). Substantial evidence is that which a reasonable mind might accept to support a conclusion. Newport Shipyard v. R. I. Commission for Human Rights, 484 A. 2d 893, 897 (R. I. 1984); Dominican Taxi, Inc. v. State of Rhode Island/ Division of Public Utilities Commission, 1999 R. I. Super. Lexis 43 (R. I. Superior Court 1999). However, questions of law are not binding upon a reviewing court and may be freely reviewed to determine what the law is and its

applicability to the facts. Champlin's Realty Associates, 989 A. 2d @ 432; Rossi v. Employees' Retirement System of Rhode Island, 895 A. 2d 110 (R. I. 2006).

Ultimately, the District Court is not entitled to substitute its judgment for that of the DMV on questions of fact “even in a case in which the court might be inclined to view the evidence differently and draw inferences different from the [DMV].” Johnston Ambulance Surgical Associates, Inc. v. Nolan, 755 A. 2d 799, 805 (R. I. 2000).

#### B. Rhode Island Administrative Procedure Act/

##### Operator's License Suspension or Revocation

The DMV's decisions are subject to the provisions of the Rhode Island Administrative Procedure Act (APA). Larue v. Registrar of Motor Vehicles, Department of Transportation, Office of Operator Control, 568 A. 2d 755, 757 (R. I. 1990). The District Court's authority to entertain administrative appeals from the DMV is vested in R. I. G. L. § 42-35-15(a). Town of Burriville v. R. I. State Labor Relations Board, 921 A. 2d 113, 117 (R. I. 2007); Rossi v. Employees' Retirement Systems, 895 A. 2d 106, 109 (R. I. 2006). Rhode Island General Laws § 42-35-15(a) states in pertinent part that “any person, including any small business, who has exhausted all administrative remedies available to him or her within the agency, and who has been aggrieved by a final order in a contested case is entitled to judicial review.” Town of Richmond v. R. I. Dept. of Environmental Management, 941 A. 2d 151, 153 (R. I. 2008). R. I. G. L.

§ 42-35-15(b) provides that the aggrieved party must initiate judicial review by filing a complaint in the Superior Court, Sixth Division District Court, or Family Court as provided by our General Laws within 30 days of the mailing notice of the final decision.

However, the procedure is slightly different in an appeal from a decision of the DMV's Administrator, when the order suspends or revokes an operator's license.

The DMV's Administrator's decision to suspend or revoke an operator's license must be provided in writing. R. I. G. L. § 31-10-3 (b). The notice to the operator must set forth the legal grounds for revocation and provide the operator with notice of the appeals procedure. R. I. G. L. § 31-10-3(b). If an operator is aggrieved by a DMV's decision, the operator must request a hearing with the DMV within 10 days of receipt of the suspension or revocation notice. R. I. G. L. §31-11-15. Once a hearing is requested, the DMV must provide an operator a hearing within 20 days. R. I. G. L. § 31-10-3(b).<sup>4</sup> After a hearing, the DMV shall issue a written decision, which an aggrieved operator may appeal to the Sixth Division, District Court "within 10 days from the date of the notice to that person of the issuance of the order." R. I. G. L. § 31-11-15.

### DISCUSSION

The agreed facts show that Appellant received notice of the DMV's decision to suspend her operator's license due to a second DUI conviction. Appellant had 10 days to request a hearing in writing before the DMV. Appellant was informed of the 10-day-time restriction as required by law and contained within the notice of the Administrator's suspension order.

However, Appellant did not request a hearing; moreover, Appellant's next contact with the DMV occurred on November 3, 2011, when Appellant's attorney turned over

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<sup>4</sup> R. I. G. L. § 31-10-3(b) specifically states that "upon his or her request the division of motor vehicles shall afford the license applicant an opportunity for a hearing as early as practical and no later than twenty (20) days after receipt of the request."

her license plates and operator's license. (Joint Stipulation of Facts, p. 2). Appellant filed a complaint in the Sixth Division, District Court on November 9, 2011, more than 30 days after the DMV's notice of suspension.

Rhode Island General Laws § 42-35-15(a) requires litigants to exhaust all available administrative remedies before seeking judicial review.<sup>5</sup> Appellant did not exhaust any administrative remedy before seeking judicial review before the District Court. Appellant was entitled to a second hearing within the DMV, if one had been requested within 10 days, post receipt of the suspension notice. Instead, Appellant took no action. Appellant's inaction has left this Court without a final written agency decision to review.

Moreover, even accepting that the DMV's suspension order constitutes the final action that this Court can review, R. I. G. L. § 31-11-15 requires Appellant to institute suit in this Court within 10 days, after receiving notice of the suspension order. Appellant has not met the statutory time restrictions.<sup>6</sup>

It is a well established principle in Rhode Island law that subject matter jurisdiction is indispensable in all judicial proceedings. The absence of subject matter jurisdiction can be raised at any time, by any party or the court "sua sponte." Warwick School Committee v. Warwick Teacher's Union Local 915, 613 A. 2d 1273, 1276 (R. I. 1992). Moreover, Rhode Island law strictly proscribes parties from waiving or conferring subject matter jurisdiction by agreement. Warwick School Committee, 613 A. 2d @

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<sup>5</sup> Colonial Hilton Inns of New England, Inc. v. Rego, 284 A. 2d 69 (1971).

<sup>6</sup> Appellant also missed the usual Administrative Procedure Act deadline of 30 days for filing a complaint for judicial review in a contested case, in as much as, the DMV's initial notice was issued on September 29, 2011 and, Appellant filed its complaint on November 9, 2011.



1277; State v. Kenney, 523 A. 2d 853 (R. I. 1987). Upon finding that subject matter jurisdiction is lacking, “th[is] [C]ourt shall dismiss the action.”<sup>7</sup>

This Court lacks subject matter jurisdiction in this action, because Appellant neglected to timely appeal the suspension of her operator’s license before this Court. Even though the DMV has waived any objection to Appellant’s untimely appeal, for the purpose of allowing this Court to address the suspension of the Appellant’s license and enforcement of the Interstate Driver License Compact Agreement between the State of Rhode Island and the Commonwealth of Massachusetts, this Court is prevented from addressing those issues, absent subject matter jurisdiction.

Accordingly, this action is hereby dismissed.

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<sup>7</sup> District Court Civil Rule 12 (h) states in pertinent part that “whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.”

STATE OF RHODE ISLAND  
PROVIDENCE, S.C.

DISTRICT COURT  
SIXTH DIVISION

REBECCA A. HARTE

V.

A.A. No. 6AA-2011-0161

R.I. DIVISION OF MOTOR VEHICLES,  
OPERATOR CONTROL


**JOINT STIPULATION OF FACTS**

1. Plaintiff Rebecca A. Harte is a resident of Pawtucket, Rhode Island.
2. At all times material hereto, she held a valid Rhode Island Drivers License with a commercial driver license (“CDL”) endorsement.
3. On or about June 10, 2005, Plaintiff was convicted in the state of Massachusetts of driving under the influence (“DUI”), first offense.
4. On or about September 23, 2009, Plaintiff pled guilty to a second offense DUI in the state of Massachusetts.
5. As a result of this second offense in 2009, the Massachusetts Registry of Motor Vehicles ordered an eight (8) year suspension of her license to operate a motor vehicle in Massachusetts effective October 8, 2009.
6. Plaintiff, although aware of her suspension since the time of conviction of her second DUI offense, failed to ever notify Rhode Island of the suspension or second DUI offense.


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7. The state of Massachusetts did not notify Rhode Island of Plaintiff's conviction or license suspension until September 29, 2011.
8. Immediately upon receiving notice from the state of Massachusetts regarding Plaintiff's second DUI offense and subsequent suspension, Rhode Island issued an Order on September 30, 2011 suspending Plaintiff's driver's license and registration along with a lifetime revocation of her CDL privilege, effective October 10, 2011.
9. On or about October 10, 2011, Plaintiff's driver's license expired.
10. On or about November 3, 2011, Plaintiff's counsel turned in her license and registration plates to the Rhode Island Division of Motor Vehicles, Operator Control Section.
11. Plaintiff is eligible for reinstatement of her Rhode Island driver's license on February 3, 2012, conditioned on a reinstatement from Massachusetts, the filing of an SR-22 and payment of applicable reinstatement fees.
12. Pursuant to federal regulations, Plaintiff's CDL privilege remains suspended indefinitely under the lifetime revocation.

Respectfully submitted,  
Rhode Island Division of Motor Vehicles,  
By and through its attorney,

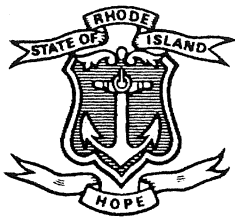
  
\_\_\_\_\_  
Marcy Coleman (#6305)  
Rhode Island Division of Motor Vehicles

Respectfully submitted,  
Rebecca Harte,  
By and through her attorney,

  
\_\_\_\_\_  
John C. Manni, Esq. (#3603)  
1405 Plainfield Street

600 New London Avenue  
Cranston, RI 02920  
Tel.: 401-462-1208  
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Johnston, RI 02919  
Tel.: 401-944-2647



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

DIVISION OF MOTOR VEHICLES  
OFFICE OF LEGAL COUNSEL  
600 New London Avenue  
Cranston, RI 02920-3024  
(401) 462-1208 fax (401) 462-0830

May 23, 2012

The Honorable Rafael A. Ovalles  
District Court of Rhode Island  
Garrahy Judicial Complex  
One Dorrance Plaza  
Providence, RI 02903

Re: Rebecca A. Harte v. Rhode Island Division of Motor Vehicles  
6AA-11-0161

Dear Judge Ovalles,

I am in receipt of your letter dated May 16, 2012, in which you requested clarification of the issue of timeliness of the request for hearing and/or filing of an appeal. Pursuant to your direction, I have contacted Attorney John C. Manni regarding the issue. At this time, in order for the Court to reach the merits of the case, the Division of Motor Vehicles would waive the timeliness of the appeal and/or request for hearing. Please advise me regarding any further steps that I need to take with regard to the appeal.

Sincerely,

Marcy Coleman, Esq.  
Deputy Chief of Legal Services

Cc John Manni, Esq.  
1405 Plainfield Street  
Johnston, RI 02919

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