

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS
PROVIDENCE, Sc.
SIXTH DIVISION

DISTRICT COURT

Rhonda Krikorian :
 :
 v. : A.A. No. 2012 – 0117
 : (C.A. No. T12 – 009)
 State of Rhode Island :
 (RITT Appellate Panel) :

ORDER

This matter is before the Court pursuant to § 8-8-8.1 of the General Laws for review of the Findings and Recommendations of the Magistrate.

After a de novo review of the record and the memoranda of counsel, the Court finds that the Findings & Recommendations of the Magistrate are supported by the record, and are an appropriate dispositions of the facts and the law applicable thereto.

It is, therefore, **ORDERED, ADJUDGED AND DECREED**, that the Findings & Recommendations of the Magistrate are adopted by reference as the Decision of the Court and the decision of the appellate panel of the Traffic Tribunal is **AFFIRMED**.

Entered as an Order of this Court at Providence on this 5th day of September, 2012.

By Order:

_____/s/_____
Stephen C. Waluk
Chief Clerk

Enter:

_____/s/_____
Jeanne E. LaFazia
Chief Judge

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Rhonda Krikorian	:	
	:	
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State of Rhode Island	:	(07-203-045884)
(RITT Appellate Panel)	:	

FINDINGS & RECOMMENDATIONS

Ippolito, M. In this appeal, Ms. Rhonda Krikorian urges that an appeals panel of the Rhode Island Traffic Tribunal (RITT) erred when it affirmed a trial magistrate’s verdict adjudicating her guilty of a moving violation — “Duty in accident resulting in damage in highway fixtures” in violation of Gen. Laws 1956 § 31-26-5. Jurisdiction for the instant appeal is vested in the District Court by Gen. Laws 1956 § 31-41.1-9 and the applicable standard of review is found in subsection 31-41.1-9(d). This matter has been referred to me for the making of findings and recommendations pursuant to Gen. Laws 1956 § 8-8-8.1. After

a review of the entire record I find that the decision of the panel is supported by reliable, probative, and substantial evidence of record and is not clearly erroneous and should be affirmed; I so recommend.

FACTS & TRAVEL OF THE CASE

On November 7, 2011, Warwick Police Officer Raymond Cox responded to Manor Drive for a report of a motorist leaving the scene of an accident, after causing damage to a highway fixture. When he arrived, he saw skid marks and “approximately four feet of curb damage.” Decision of Panel, at 1.¹ He saw a gold vehicle, registration OB-765, on the lawn of a residence at 111 Aster Drive. The Officer spoke to a Mr. Haba, who described the accident — including the registration of the car involved and the damage to the curb — and identified Appellant Krikorian as the driver. Decision of Panel, at 2. Officer Cox cited Appellant, who lives at 111 Aster Drive, for a violation of Gen. Laws 1956 § 31-26-5 — “Duty in accident resulting in damage in highway

¹ It should be noted that the trial transcript submitted in this case is not in the customary format. Signed on each page by a “Fredy Kishfy,” it is particularly difficult to review. In my view the appellate panel could well have taken the position that it was inadequate, precluding meaningful review, and dismissed Ms. Krikorian’s appeal. See Falcone v. State, 871 A.2d 361, 363 (R.I. 2005). Instead, the appellate panel performed its statutory function to the best of its ability with the resources available to it; and so will this Court.

fixtures.” See Summons Number 07-203-045884.

At her arraignment before a judge of the Traffic Tribunal on December 9, 2011, Ms. Krikorian entered a not guilty plea; the matter was set for trial January 20, 2012. Her trial proceeded on that date before Judge Albert Ciullo. Officer Cox testified, as did Mr. Haba and Ms. Krikorian. The trial judge found the violation had been proven to a standard of clear and convincing evidence; accordingly, the trial judge found Appellant guilty, fined her \$500, and imposed to a two-month license suspension.

Aggrieved by this decision, Appellant Krikorian filed a timely appeal, seeking review by an RITT appellate panel. On September 21, 2011, the appeal was heard by a panel comprised of: Magistrate Alan Goulart (Chair), Chief Magistrate William Guglietta, and Judge Lillian Almeida. In a decision dated May 7, 2012, the appeals panel affirmed the decision of the trial magistrate. On May 15, 2012, Ms. Krikorian filed the instant complaint for judicial review in the Sixth Division District Court pursuant to Gen. Laws 1956 § 31-41.1-9. A conference was held before the undersigned on June 19, 2012. Appellant was granted until July 19, 2012 to submit a memorandum but, to date, nothing has been received. Accordingly, I will proceed to decide the case on the record of the proceedings below.

STANDARD OF REVIEW

The standard of review which this Court must employ is enumerated in Gen. Laws 1956 § 31-41.1.-9(d), which provides as follows:

(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 the 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 proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial 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.

This standard is akin to the standard of review found in Gen. Laws 1956 § 42-35-15(g), the State Administrative Procedures Act (APA).

Under the APA standard, 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.’”² Thus, the Court will not substitute

² Guarino v. Department of Social Welfare, 122 R.I. 583, 584, 410 A.2d 425 (1980) citing R.I. GEN. LAWS § 42-35-15(g)(5).

its judgment for that of the panel as to the weight of the evidence on questions of fact.³ Stated differently, the findings of the panel will be upheld even though a reasonable mind might have reached a contrary result.⁴

To reiterate, our review is strictly appellate in nature, involving a review of the record of the proceedings before the RITT. Accordingly, this Court has no power to grant Ms. Krikorian's request for a new trial. See Complaint of Rhonda Krikorian, filed May 15, 2012.

APPLICABLE LAW

In the instant matter the Appellant was charged with violating three sections of the traffic code. One charge was eliminated by the appellate panel. The following two charges remain: the first is presented in pertinent part; the second in its entirety:

31-26-51. Duty in accident resulting in damage to highway fixtures. — The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of his or her name and address and the registration number of the vehicle the driver is driving. The driver shall upon request exhibit his or her

³ Cahoone v. Board of Review of the Department of Employment Security, 104 R.I. 503, 246 A.2d 213 (1968).

⁴ Id., at 506-507, 246 A.2d at 215.

operator's or chauffeur's license and shall immediately give notice of the accident to a nearby office of local or state police. In the event the office so notified does not have jurisdiction of the locale of the accident, it shall be the duty of the officer receiving the notice to immediately give notice of the accident to the office having jurisdiction.

ISSUE

The issue before the Court is whether the decision of the appeals panel was supported by reliable, probative, and substantial evidence in the record or whether or not it was clearly erroneous or affected by error of law.

ANALYSIS

In the "Analysis" section of the decision it rendered in this case, the appellate panel placed great reliance on the Rhode Island Supreme Court's decision in Link v. State, 633 A.2d 1345 (R.I. 1993). In particular, the panel cited the Court's pronouncement that the appellate panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." Decision of Panel, at 4 citing Link, 633 A.2d at 1348 (citing Liberty Mutual Insurance Co. v. Janes, 586 A.2d 536, 537 (R.I. 1991)). Accordingly, the panel indicated it would be impermissible for it to second-guess the trial magistrate's determinations of what testimony should be accepted and what ought to be disregarded."

Decision of Panel, at 4-5 citing Environmental Scientific Corp. v. Durfee, 621 A.2d 200, 206 (R.I. 1993). And, in this case it is particularly important that we acknowledge the limitations which have been placed upon the panel’s review of the factual determinations of a RITT trial judge — because the arguments presented to this Court by the Appellant in support of her request for reversal are essentially factual.

Ms. Krikorian’s defense was simple — she testified she was not involved in the accident. Trial Transcript, at 3-4. In addition, she submitted photographs that allegedly showed her car was undamaged. Trial Transcript, at 2-3.

But, at the end of the day, the trial judge’s decision to convict Ms. Krikorian was essentially based on his finding that Mr. Haba was a credible witness. Decision of Panel, at 3 citing Trial Transcript, at 4.

To reiterate, the panel review of a trial judge’s verdict is limited. And, when reviewing RITT cases, this Court’s role is doubly limited: our duty in this case is to decide whether the panel was “clearly erroneous” when it found Judge Ciullo’s adjudication of Ms. Krikorian was not “clearly erroneous” — in essence, we perform a limited review of a limited review. See Gen. Laws 1956 § 31-41.1-8(f) and Gen. Laws 1956 § 31-41.1-9(d). See also Link v. State, 633 A.2d 1345, 1348 (R.I. 1993)(opining, construing prior law — which was also

“substantively identical” to the APA procedure — that the District Court’s role was to review the trial record to determine if the decision was supported by competent evidence). In my view, the panel’s decision satisfied this standard.

CONCLUSION

Upon careful review of the evidence, I recommend that this Court find that the decision of the appellate panel was made upon lawful procedure and was not affected by error of law. Gen. Laws 1956 § 31-41.1-9. Furthermore, said decision is not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record. Gen. Laws 1956 § 31-41.1-9.

Accordingly, I recommend that the decision of the appeals panel be AFFIRMED.

_____/s/_____
Joseph P. Ippolito
MAGISTRATE

September 5, 2012