

STATE OF RHODE ISLAND & PROVIDENCE PLANTATIONS  
PROVIDENCE, Sc.

DISTRICT COURT  
SIXTH DIVISION

State of Rhode Island

v

Louis Depina

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:  
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A.A. No. 2012-170

JUDGMENT

This cause came before Woodcock Pfeiffer J. on Administrative Appeal, and upon review of the record and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Appeals Panel is reversed.

Dated at Providence, Rhode Island, this 28<sup>th</sup> day of January, 2014.

Enter:

By Order:

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/s/

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/s/

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PROVIDENCE, SC.

DISTRICT COURT  
SIXTH DIVISION

STATE OF RHODE ISLAND :  
 :  
v :  
 :  
LOUIS DEPINA :

A.A. No. 12-170

**DECISION**

**WOODCOCK PFEIFFER, J.** This matter is before the Court on the timely appeal of the Appellant, Louis Depina, from a decision of the Appeals Panel of the Rhode Island Traffic Tribunal (hereinafter “Panel”) upholding a Magistrate’s decision to sustain the charged violation of G.L. 1956, § 31-3-1, “Operation of unregistered vehicle”.

**Facts and Procedural History**

The trial in the above matter was held at the Traffic Tribunal on March 6, 2012, and the following testimony was elicited.

On November 27, 2011, Officer James McQuinn (McQuinn) of the Cranston Police Department was dispatched to a location for possible drag racing.<sup>1</sup> Upon his arrival on the scene, he observed approximately 20 to 25 vehicles, which attempted to leave upon observing the arrival of the police. McQuinn successfully blocked a vehicle operated by the Appellant from exiting a parking lot.<sup>2</sup> McQuinn testified that the vehicle, a Buick LeSabre, had an Indiana Transport Plate. Upon running a VIN check on the scene, McQuinn discovered that the vehicle was unregistered at the time, but that it had last been registered in

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<sup>1</sup> Transcript at 2.

<sup>2</sup> Transcript at 3.

Rhode Island.<sup>3</sup> In addition, McQuinn stated “it was determined that the vehicle plate was not registered to that vehicle and that it was being used improperly. It was used for no commercial or business reason for transport.”<sup>4</sup> McQuinn based the latter conclusion on the fact that the Appellant was using the vehicle at that time for “normal” traffic.<sup>5</sup> He also stated: “There was no paperwork to support that it was used ... to be transported from Indiana or any other state.”<sup>6</sup> According to McQuinn, the Appellant stated that he had been watching, not participating, in the drag racing.<sup>7</sup> On cross examination, the Officer stated that they “completed several checks on the transporter plate, and we were unable to get anything back on the transporter plate. There was no supporting documentation for the plate.”<sup>8</sup> McQuinn could not recall where the Appellant said the plate had come from, but stated that Appellant told him “he was using it for normal vehicle activity.”<sup>9</sup> The Appellant was then cited for violating G.L. 1956 § 31-3-1, operation of unregistered motor vehicle, and G.L. 1956 § 31-8-3, improper use of evidences of registration or certificate of title.

The Appellant then took the stand. The Appellant testified that he “located the registration for the plate inside the vehicle, told him where it was, he found it; and I also implied [sic] to him that I was a buyer for Specialty Auto Sales which the plate was registered to. And he told me that I was not and that I was misusing the plate.”<sup>10</sup> Appellant was just passing through that area at the time and stop to watch the race because he was a “car

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<sup>3</sup> Transcript at 4.

<sup>4</sup> Transcript at 5.

<sup>5</sup> Transcript at 5.

<sup>6</sup> Transcript at 6.

<sup>7</sup> Transcript at 6.

<sup>8</sup> Transcript at 7.

<sup>9</sup> Transcript at 7, 8.

<sup>10</sup> Transcript at 9, 10.

guy.”<sup>11</sup> He testified that he bought and sold cars for the auto sales company, and that the business was out of Indiana, but actually located in Massachusetts.<sup>12</sup> Appellant stated that he gave this information to the Officer, including the name of the company’s owner.<sup>13</sup> Appellant indicated that he was going to work on the car at his home and then take it to the shop the next morning.<sup>14</sup>

The Magistrate dismissed the violation for improper use of the plate, G.L. 1956 § 31-8-3, but found the Appellant in violation of operating with an unregistered plate, G.L. 1956 § 31-3-1. In his bench decision, he adopted the Officer’s testimony as his findings of fact, stated that the “vehicle was in fact operated by this motorist knowingly and it was unregistered”, and noted that “[T]here was no testimony that he didn’t know it wasn’t unregistered that would bring it within State v. Albanese.”<sup>15</sup>

Appellant filed a timely appeal with the Panel, which issued its decision sustaining the violation on August 20, 2012.

### **Standard of Review**

Judicial review of the RITT Appeals Panel’s decision by the District Court is authorized under G.L. 1956 § 8-8.2-3(d). The standard of review that the District Court must apply is set forth under G.L. 1956 § 31-41.1-9(d), which provides that:

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

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<sup>11</sup> Transcript at 10.

<sup>12</sup> Transcript 10, 11.

<sup>13</sup> Transcript at 11.

<sup>14</sup> Transcript at 12.

<sup>15</sup> Transcript at 13.

the substantial rights of the appellant have been prejudicial [sic] 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 of review is the same as is applied by the Appeals Panel, under G.L. 1956 § 31-41.1-8(f). Finally, it is also the standard of review under the state's Administrative Procedures Act (APA), G.L. 1956 § 42-35-15(g). 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.'" Guarino v. Dept. of Social Welfare, 122 RI 583, 584, 410 A.2d 425 (1980). The findings of the Panel will be upheld even though a reasonable mind might have reached a contrary result. *See* Cahoone v. Bd. of Review of the Dept. of Employment Security, 104 RI 503, 506-507, 246 A.2d 213, 215 (1968).

This Court must now review the entire record and determine if the Panel's decision was proper in view of the evidence and record submitted, within the standard set forth above.

#### **Issue**

The issue on appeal is whether the Appellant was operating the motor vehicle at a time when the vehicle was unregistered.

#### **Analysis**

Under G.L. 1956 § 31-3-1, "it is a civil violation for any person to operate, or for an owner knowingly to permit to be operated, upon any highway any vehicle of a type required

to be registered under this chapter.” As noted by the Panel, vehicles operated in conformance with the provisions of the chapters relating to manufacturers, transporters, dealers, lien holders, or non-residents are exempt from this requirement.<sup>16</sup> A necessary precondition to operating an unregistered vehicle with a dealer or transporter plate is that the plate itself be registered. The Panel noted that the Magistrate had adopted McQuinn’s testimony as his findings of fact and that he found the testimony to be credible and truthful. Appellant was operating a car that was unregistered at the time he was stopped, the transporter plate being utilized on the vehicle was unregistered, so “[t]herefore, Appellant was knowingly operating an unregistered vehicle....”<sup>17</sup>

There is no question that the Appellant knew he was driving the vehicle and that the vehicle was unregistered, as testified to by Officer McQuinn. However, did the Appellant know the vehicle was unregistered at the time of the stop? Upon review of the record, the answer is no, and, under Albanese v. Providence Police Department, 711 A.2d 651 (1998), the finding of violation is reversed.

In Albanese, the Defendant, who was charged with violating G.L. 1956 §§ 31-3-1 and 31-47-9, testified that he “had no knowledge whatsoever that the vehicle was not properly registered and was not insured when he was test driving it.” Albanese, at 652. The trial judge found that Albanese had violated both statutes; the Appeals Panel sustained the violations; and Supreme Court quashed the decision, noting in footnote number one of its brief decision that “[b]oth statutes upon which the charges against Albanese are based

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<sup>16</sup> Appeals Panel Decision at 4.

<sup>17</sup> Appeals Panel Decision at 5.

require that Albanese “knowingly” committed the prohibited conduct, and require the state to prove that knowledge by clear and convincing evidence.” Albanese, at 652.

In this matter, the Magistrate did indeed adopt the Officer’s testimony as his findings of fact, although he also took note of some of the Appellant’s testimony.

I don’t think that this operator, Louis DePina, was drag racing necessarily. But he was there, by his own admission, watching it; and I’m willing to accept that as being truthful as well. But he was there, and he was in a vehicle that wasn’t registered, and he was operating it.

He said he’s a car guy; he’s in the car business. He didn’t make any, you know, he was operating this vehicle. *There was no testimony that he didn’t know it wasn’t unregistered that would bring it within State vs. Albanese.* [sic] <sup>18</sup>

In actuality, when asked by Counsel what Appellant told the Officer at the time of the stop, Appellant testified (as noted previously in this decision): “I located the registration for the plate inside the vehicle, told him where it was, he found it; and I also implied [sic] to him that I was a buyer for Specialty Auto Sales which the plate was registered to.”<sup>19</sup> He also stated that he told the officer who the owner of the company was “and everything.”<sup>20</sup> As such, the testimony of the Appellant was that he believed the plate was registered.

Officer McQuinn’s testimony at the hearing focused on his attempts to ascertain if the plate was registered and whether it was being used for business or for ‘normal’ activity. His testimony regarding documentation in the vehicle was that “[T]here was no paperwork to support that it was used ... to be transported from Indiana or any other state.”<sup>21</sup> and that

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<sup>18</sup> Transcript at 13; italics added by Court.

<sup>19</sup> Transcript at 9, 10.

<sup>20</sup> Transcript at 11.

<sup>21</sup> Transcript at 5, 6.

“[T]here was no supporting documentation for the plate.”<sup>22</sup> When asked by defense counsel about any discussions between Appellant and the Officer regarding the vehicle itself or the registration of the vehicle, the Officer stated the following:

I do not recall what conversation you’re referring to. I do not know.<sup>23</sup>

I do not recall where he said he got the transport plate from, but he said that he was using it for normal vehicle activity.<sup>24</sup>

After the passage of time from the stop itself in November 2011 to the time of the hearing four months later, the Officer understandably could not recall what Appellant may have stated regarding the registration itself or the origin of the plate. The only testimony of the Appellant that can be seen as being contradictory to the Officer’s is that the Appellant indicated to the officer where the registration was and that the Officer found it, while the Officer said that there was no supporting documentation. It is unclear whether, in making that statement, the Officer is referring to documentation to support that the vehicle was being used for business purposes at the time, as was the focus of his only other mention of documentation, or whether he was referring to any registration documentation at all.

In other words, there was no testimony by Officer McQuinn supporting the element of knowledge—that the Appellant knew that the transporter plate was not registered at the time of his operation of the car. There was, however, testimony by the Appellant that he was not the owner of the plate and that the plate was in order, at least as far as he knew. The Supreme Court’s decision in Albanese does in fact apply to the circumstances in this case.

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<sup>22</sup> Transcript at 7.

<sup>23</sup> Transcript at 7.

<sup>24</sup> Transcript at 8.

### **Conclusion**

After a careful review of the record and the applicable law, this Court finds that an error of law was made when a violation of G.L. § 31-3-1 was found and subsequently sustained. This Court therefore grants the appeal of Mr. DePina and reverses the finding of the honorable Panel and Magistrate, as there was no reliable, probative and substantial evidence on the record that the Appellant had knowledge that the vehicle plate was not registered appropriately by the company. The finding of violation is therefore vacated.