

STATE OF RHODE ISLAND
PROVIDENCE, SC

SUPERIOR COURT

MARC D. LAVIK,	:
	:
Plaintiff,	:
	:
v.	:
	:
DIVISION OF MOTOR VEHICLES,	:
DEPARTMENT OF REVENUE,	:
STATE OF RHODE ISLAND,	:
	:
Defendant.	:

C.A. No. PC 11-

COMPLAINT

Parties and Jurisdiction

1. Plaintiff Marc D. Lavik (“Plaintiff”) is a Rhode Island resident with a residence at 300 Lambert Lind Highway # 201, in the City of Warwick, in the County of Kent, in the State of Rhode Island.

2. Defendant Division of Motor Vehicles, Department of Revenue, State of Rhode Island (“Defendant”) is a governmental body subject to the rulemaking provisions of the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1, *et seq.* The Defendant is responsible for the licensing of motor vehicle operators and the issuance, suspension and reinstatement of drivers’ licenses pursuant to Title 31 of the Rhode Island General Laws. The Defendant is headquartered at 600 New London Avenue in the City of Cranston, in the County of Providence, in the State of Rhode Island.

3. This Court has declaratory judgment jurisdiction over this matter pursuant to R.I. General Laws § 9-30-1 and § 42-35-7. This Court has equity jurisdiction over this matter pursuant to R.I. Gen. Laws § 8-2-13.

Facts Common to All Counts

4. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 3 of this Complaint as if fully set forth herein.
5. In 2005, Plaintiff owed back taxes to the Rhode Island Division of Taxation. His driver's license and motor vehicle registration were suspended.
6. From 2005 to 2010 the Plaintiff, an SSDI recipient, relied upon public transportation due to lack of a valid license and registration.
7. In April of 2010, he finished paying all taxes, fees, penalties and interest that were due to the Rhode Island Division of Taxation.
8. Plaintiff obtained a letter of good standing from the Division of Taxation, presented it to the Defendant, and requested reinstatement of his driver's license.
9. Pursuant to R.I. Gen. Laws § 31-3-6.1(e), Defendant was required to reinstate Plaintiff's driver's license within five (5) business days of receiving the certificate of good standing.
10. The Defendant denied his request for reinstatement, stating that his license will not be reinstated because it had been expired for in excess of three years.
11. The Defendant referred the Plaintiff to a rule on its website found at <http://www.dmv.ri.gov/licenses/reinstatement/> which states that: "If your license has expired for a period of three years or more during the time of a suspension, a written exam and road test is required to obtain a new license."
12. This rule is legally invalid. The Defendant did not comply with the rulemaking procedures required by R.I. Gen. Laws § 42-35-3 when it adopted this rule. The Defendant provided no advance notice and conducted no hearing on the rule prior to adopting it.

13. Upon information and belief, the Defendant's rule-making file does not contain evidence or information about the rule's consideration or adoption in accordance with § 42-35-3, as required by R.I. Gen. Laws § 42-35-2.2.

14. Upon information and belief, the Defendant did not file a certified copy of the rule with the Rhode Island Secretary of State's Office as required by R.I. Gen. Laws § 42-35-4(a).

15. The Defendant also failed to certify to the Secretary of State that the rule was in compliance with the rulemaking procedures of R.I. Gen. Laws § 42-35-3, as required by R.I. Gen. Laws § 42-35-4(a).

16. For the foregoing reasons, pursuant to R.I. Gen. Laws § 42-35-4(b), the rule has never taken legal effect.

17. The Plaintiff is prejudiced by the Defendant's noncompliance with R.I. Gen. Laws § 42-35-3. He continues without a driver's license due to this invalid rule and the Defendant's reliance upon it.

COUNT ONE – DECLARATORY JUDGMENT

18. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.

19. There exists an active and continuing controversy as to the Plaintiff's right to reinstatement of his driver's license from the Defendant, and the validity of the Defendant's rule.

20. Plaintiff has been erroneously deprived of his license by the Defendant as a result of the Defendant's invalid rule.

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

(1) That this Court grant declaratory judgment that the rule is invalid.

(2) That this Court award Plaintiff's attorney's fees and other litigation costs under the Equal Access to Justice Act, R.I. Gen. Laws § 42-92-1 *et seq.*; and

(3) That this Court grant such other relief as it deems just and proper.

COUNT TWO – INJUNCTIVE RELIEF

21. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint as if fully set forth herein.

22. Plaintiff suffers irreparable harm as a result of Defendant's invalid rule.

23. Plaintiff has no adequate remedy at law.

24. The burden upon the Defendant by the requested injunction is exceeded by the burden upon the Plaintiff in the absence of the requested injunction.

25. The requested injunction does no harm to the public interest.

WHEREFORE, Plaintiff prays that this Court will grant the following relief:

(1) That this Court enjoin the Defendant to reinstate the Plaintiff's driver's license;

(2) That this Court award Plaintiff's attorney's fees and other litigation costs under the Equal Access to Justice Act, R.I. Gen. Laws § 42-92-1 *et seq.*; and

(3) That this Court grant such other relief as it deems just and proper.

Plaintiff,
MARK D. LAVIK,
By his attorneys,

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