

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-592

VINCENT DURANTE

vs.

BOARD OF APPEAL ON MOTOR VEHICLE LIABILITY POLICIES AND BONDS &
another.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Vincent Durante appeals from a Superior Court judgment affirming a decision of the Board of Appeal on Motor Vehicle Liability Policies and Bonds (board) to uphold a surcharge imposed by Durante's insurer following an automobile accident. As found by the board, Durante proceeded through a stop sign when it was not safe to do so and collided with another automobile that was approaching the intersection from Durante's left. The automobile to the left had no stop sign and, thus, the right of way. Based on these facts, the board concluded that Durante was more than fifty percent at fault for the accident, and the Superior Court judge agreed. We affirm.

¹ Government Employees Insurance Company.

Discussion. The scope of our review is narrow. We review the trial judge's decision de novo for errors of law. See Nercessian v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds, 46 Mass. App. Ct. 766, 775 (1999). However, unless there is no basis in fact to support the judge's decision, our review does not "extend to examining the weight of the evidence to determine whether the [judge's] decision -- either upon its own findings of fact or those of the board adopted by the [judge] -- was justified." Id.

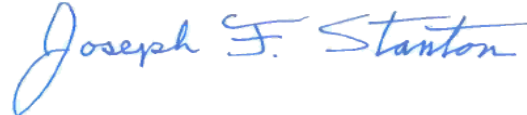
Durante's primary argument on appeal is that, aside from improper hearsay in the form of a police report and an insurance report, there is no basis in fact to conclude that he was more than fifty percent at fault for the accident. Both the police report and the insurance report state that Durante collided with an automobile that was approaching the intersection from Durante's left. Durante, however, testified before the board, and contends on appeal, that he was in fact rear-ended by an automobile that was traveling behind him.

Durante's arguments regarding the hearsay evidence are unavailing. The standard rules of evidence do not apply in adjudicatory proceedings before the board, and a decision of the board may hinge on hearsay evidence so long as that evidence has "certain 'indicia of reliability and probative value.'" Merisme v. Board of Appeal on Motor Vehicle Liab. Policies & Bonds, 27

Mass. App. Ct. 470, 475 (1989), quoting Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 530 (1988). Here, the police report, insurance surcharge report, testimony by the insurance company's representative, and the citation were corroborated by photographs showing the damage to both of the automobiles, Durante's testimony, and Durante's surcharge appeal form (which included a narrative by Durante). We discern no error in the consideration of this evidence.²

Judgment affirmed.

By the Court (Kinder,
Neyman & Wendlandt, JJ.³),



Clerk

Entered: December 3, 2019.

² Other arguments made by Durante have not been overlooked, but are unavailing and do not warrant further discussion. See Commonwealth v. Domanski, 332 Mass. 66, 78 (1954).

³ The panelists are listed in order of seniority.