

[Cite as *Rivers v. Ohio Bur. of Motor Vehicles*, 2005-Ohio-7089.]

IN THE COURT OF CLAIMS OF OHIO

DERRICK L. RIVERS :
Plaintiff :
v. : CASE NO. 2005-06872-AD
BUREAU OF MOTOR VEHICLES : MEMORANDUM DECISION
Defendant :
: : : : : : : : : : : : : : : :

FINDINGS OF FACT

{¶ 1} 1) Plaintiff, Derrick Rivers, filed a complaint against defendant, Bureau of Motor Vehicles ("BMV"), alleging defendant's personnel negligently recorded his driver's license as suspended. Plaintiff further alleged that due to the improper recording of his driving status he was arrested and his vehicle was impounded. Plaintiff seeks damages in the amount of \$159.16 for towing and impound fees, plus \$1,840.84 for "pain and suffering" associated with being arrested. Plaintiff related he has experienced physical problems such as insomnia, headaches, nausea, and diarrhea from being incarcerated. The filing fee was paid.

{¶ 2} 2) Defendant admitted error in recording plaintiff's driving status. However, defendant denied having any knowledge regarding plaintiff's damage claim for towing and impound fees. Furthermore, defendant denied any liability for plaintiff's damage claim concerning emotional stress from being incarcerated. Plaintiff did not provide any documentation of damages other than his own assertion.

CONCLUSIONS OF LAW

{¶ 3} A plaintiff may recover resulting monetary damages, when plaintiff proves, by a preponderance of the evidence, defendant erroneously listed plaintiff's driver's license as suspended.

Ankney v. Bureau of Motor Vehicles (1998), 97-11045-AD; *Serbanescu v. Bureau of Motor Vehicles* (1994), 93-15038-AD; *Black v. Bureau of Motor Vehicles* (1996), 95-01441-AD. In the instant action, plaintiff has proven, by a preponderance of the evidence, that his driver's license was improperly suspended by defendant. *McGee v. Ohio Bureau of Motor Vehicles* (1997), 97-03999-AD.

{¶ 4} Emotional distress, embarrassment and humiliation are recognized elements of damages and, thus, compensable by this court. *Ankney, Id.*; *Hodge v. Ohio Bureau of Motor Vehicles* (1999), 99-08475-AD; *Goldsmith v. Bureau of Motor Vehicles* (2000), 99-13444-AD; *Snedeker v. Ohio Bureau of Motor Vehicles* (2000), 2000-08133-AD; *Miller v. Ohio Bureau of Motor Vehicles* (2001), 2001-09427-AD; *Bumpus v. Bureau of Motor Vehicles*, 2004-01117-AD, 2004-Ohio-4589.

{¶ 5} Defendant is liable to plaintiff for damages plaintiff can prove resulted from defendant's failure to provide correct information. *Partlow v. Bureau of Motor Vehicles* (1997), 97-07820-AD. The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42. Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. Of Ohio* (1995), 102 Ohio App. 3d 782. Defendant is liable to plaintiff for his towing expenses, impound fees, and emotional distress, which the trier of fact has calculated at \$250.00. Defendant is also liable to plaintiff for the 25.00 filing fee, pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

DERRICK L. RIVERS	:	
Plaintiff	:	
v.	:	CASE NO. 2005-06872-AD
BUREAU OF MOTOR VEHICLES	:	<u>ENTRY OF ADMINISTRATIVE</u>
Defendant	:	<u>DETERMINATION</u>
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Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$275.00, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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Plaintiff, Pro se

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For Defendant

RDK/laa
11/29
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