

Notary

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Notice sent
5/04/2012
M. G.
I. J. A.

SUPERIOR COURT
CIVIL ACTION
No. 2011-1375A

MAX GARFUNKEL

(sc)

vs.

CIVIL SERVICE COMMISSION

2012 MAY 14 A.D.
PROCTER
OFFICE OF THE CLERK OF THE SUPERIOR COURT
CIVIL SERVICE COMMISSION

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS

The plaintiff seeks judicial review of a decision of the Civil Service Commission dismissing the plaintiff's appeal from the Department of Revenue's decision to bypass him for appointment to the position of EDP Systems Analyst III. The standards that govern judicial review of such a decision are well established, and are very narrow. Pursuant to G. L. c. 30A, § 14(7), this court may reverse, remand, or modify a decision of the Civil Service Commission only if "the substantial rights of any party may have been prejudiced" because the decision is based on an error of law or on unlawful procedure, arbitrary and capricious, or unwarranted by facts found by the agency based on substantial evidence. The plaintiff bears the burden of demonstrating the invalidity of the decision. *Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds*, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it" by statute. G. L. 30A, § 14(7); *Flint v. Commissioner of Pub. Welfare*, 412 Mass. 416, 420 (1992); *Seagram Distillers Co. v. Alcoholic Beverages Control Comm'n*, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for that of the agency. *Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm'n*,

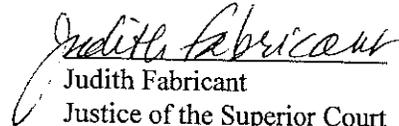
386 Mass. 414, 420-21 (1982), citing *Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm'n*, 372 Mass. 152, 154 (1977). Nor may a court reject an administrative agency's choice between two conflicting views, even if the court justifiably would have made a different choice had the matter been presented *de novo*. *Zoning Bd. of Appeals v. Housing Appeals Comm'n*, 385 Mass. 651, 657 (1982) (citations omitted).

Here, the Civil Service Commission determined that the Mr. Garfunkel was not aggrieved, within the meaning of the civil service law, by the employer's decision to by-pass him, because he did not meet the minimum entrance requirements (known as "MERS") established by the employer for the position. Mr. Garfunkel has not presented any challenge to that determination, which is dispositive of his claim. Since he himself did not meet the MERS, he could not have been appointed to the position. It follows that his substantial rights cannot have been prejudiced by the appointment of other candidates.

The heart of Mr. Garfunkel's complaint, it appears, is the undisputed fact that no civil service examination has ever been given for the position in issue. That circumstance may be unfortunate, but it is not a matter that either the Commission or the Court is empowered to remedy.

CONCLUSION AND ORDER

For the reasons stated, the plaintiff's Motion for Judgment on the Pleadings is **DENIED**.
Judgment shall enter affirming the decision of the Civil Service Commission.


Judith Fabricant
Justice of the Superior Court

May 2, 2012