

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

JEFFREY A. TOBIAS,
Appellant

v.

CITY OF NEWTON,
Respondent

Case No.: D1-08-207

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on November 12, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated September 29, 2009 and October 2, 2009. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By a 3-1 vote of the Civil Service Commission (Bowman, Chairman; Marquis, and Stein Commissioners [Henderson, Commissioner – No; Taylor, Commissioner – Absent]) on November 12, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Neil Osborne (for Appellant)
Donnalyn Kahn, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

98 NORTH WASHINGTON STREET, 4TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
ACTING CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-727-7060
FAX: 617-727-7248

September 29, 2009

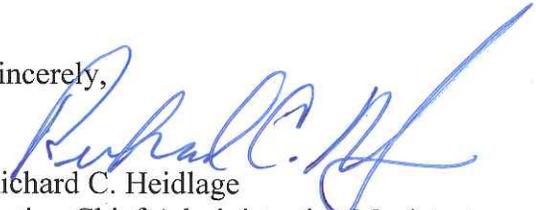
Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Jeffrey A. Tobias v. City of Newton
DALA Docket No. CS-09-146

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Neil Osborne, Esq.
Donnalyn Kahn, Esq.

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Jeffrey A. Tobias,
Appellant

v.

Docket No. D1-08-207
DALA No. CS-09-146

City of Newton,
Appointing Authority

Appearance for Appellant:

Neil Osborne, Esquire
Law Offices of Neil Osborne, P.C.
87 Summer Street, 3rd FL
Boston, MA 02110

Appearance for Appointing Authority:

Donnalynn Kahn, Esquire
City of Newton Law Department
1000 Commonwealth Avenue
Newton, MA 02459

Administrative Magistrate:

Judithann Burke

CASE SUMMARY

Appointing Authority demonstrated just cause in terminating fire fighter after he violated a Last Chance Agreement and was criminally charged with Attempted Murder.

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CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

Pursuant to G. L. c. 31 §. 41-45, the Appellant, Jeffrey A. Tobias, is appealing from the August 19, 2008 action of the Appointing Authority, City of Newton, discharging him from his position as fire fighter in the City of Newton. (Exhibit 9). The appeal was timely filed. (Exhibit 11). A Section 43 hearing was held on July 8, 2009 at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, Boston, MA.

At the hearing, fourteen (14) exhibits were marked. The Appointing Authority presented the testimony of the following witnesses: Dolores Hamilton, Director of Human Resources in the City of Newton; Steven A. Umina, Police Patrolman in the City of Newton; Daniel Nardelli, Police Patrolman in the City of Newton, and Michael Iarossi, Police Patrolman in the City of Newton. Both parties stated their arguments for the record. One (1) tape was made of the proceedings.

FINDINGS OF FACT

Based upon the testimony and documents submitted at the hearing in the above-entitled matter, I hereby render the following findings of fact:

1. The Petitioner, Jeffrey A. Tobias, d.o.b. 12-13-71, began employment as a fire fighter in the City of Newton in May 2002. (Stipulation).
2. On October 17, 2006, the Appellant entered into an agreement with the Appointing Authority wherein, in exchange for not being subject to the imposition of any discipline for charges of violating Section 107 of the Rules and Regulations of the Newton Fire Department-conduct reflecting adversely on the Newton Fire Department,

and violating Section 122 of the same rules and regulations-conduct unbecoming, he agreed ...?????. He was also criminally charged on October 16, 2006 with domestic assault and battery on his spouse?????. He was required to undergo an EAP evaluation and to participate in an EAP-recommended treatment program. He remained on paid administrative leave through October 27, 2006. (Hamilton Testimony and Exhibit 7).

3. On February 7, 2007, the Appellant was criminally charged with two counts of assault and battery, a charge of witness intimidation and a charge of assault and battery on a pregnant woman. (*Id.* and Exhibits 6 and 14).

4. On February 27, 2007, in lieu of findings from the Appointing Authority related to the aforementioned February, 2007 criminal charges and Sections 107 and 122 regulatory violations, the Appellant agreed to a "Last Chance Agreement." He was suspended without pay for six months and agreed that any violation of the terms of the agreement and any additional acts of violence or threats of violence or other incidents involving criminal charges would result in immediate termination pending a Civil Service hearing or grievance/arbitration. He was also ordered to attend a fitness-for-duty evaluation with Dr. Bruce Cedar from CMG Associates and to participate in any treatment plan recommended by Dr. Cedar. (*Id.*).

5. At approximately 8:00 PM on June 27, 2008, Newton Police officers responded to a 911 call at the Appellant's address on a report of domestic violence. When they arrived, they observed a female inside the home who was crying and upset. She had a large dark red mark on the right side of her neck. She was gasping for breath. She identified herself as the Appellant's roommate and ex-fiancée. She indicated that he

had become upset when he arrived home and found her drinking. The Appellant had stated, "you fucking cunt, don't jeopardize my kids and wife." The woman stated that she fell to the floor and the Appellant began to strangle her. He was also shaking her violently. Then he dragged her throughout the apartment and she sustained numerous bumps and scrapes on her legs. She pleaded with him not to kill her and he eventually released her. She fled from the apartment and hid for some time before she called the police. She remained fearful that the Appellant would harm her if she provided any information to the police. The woman was having trouble breathing and was taken to St. Elizabeth's Hospital by paramedics. (Hamilton, Umina, Nardelli and Iarossi Testimony and Exhibits 1, 2 and 5).

6. A warrant was issued for the Appellant. He turned himself into the police the next day. (Exhibits 3 and 4).

7. On June 27, 2008, the Appellant was criminally charged with Attempted Murder. (Exhibit 8).

8. On July 7, 2008, the Appointing Authority notified the Petitioner that in addition to the criminal charge, he was also being charged with a violation of Section 107 of the Newton Fire Department Rules and Regulations-conduct reflecting adversely on the fire department; and two violations of Section 122 of the same rules and regulations-conduct unbecoming and conduct detrimental to good order. (Exhibit 8).

9. The Appellant did not appear at the August 19, 2008 Appointing Authority hearing on his termination. His union representative and his attorney appeared on his behalf. He was terminated after the close of evidence. (Exhibit 9).

10. The Appellant filed a timely appeal. (Exhibit 11).

CONCLUSION AND RECOMMENDED DECISION

The Appointing Authority has proven by more than a preponderance of the evidence that the Appellant violated the last chance agreement. Accordingly, the Appointing Authority had just cause to terminate the Appellant from his position of Fire Fighter in the City of Newton.

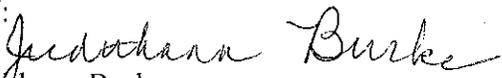
The Appellant was involved in three instances of domestic violence in less than two years. He was given two generous opportunities to seek counseling while minimal or no discipline was imposed. He willingly signed the "Last Chance Agreement" in February 2007. However, a little more than a year later, he was involved in the most serious of all of the domestic incidents and he was also charged with the most serious of all the criminal charges he had incurred: Attempted Murder. Notwithstanding the lack of evidence in the record that any of the criminal charges ever resulted in actual criminal convictions, the Appellant's behavior stands alone as indicative of an alarming pattern of violent behavior by a fire fighter who has repeatedly ignored the criminal laws of the Commonwealth and the Rules and Regulations of the Newton Fire Department.

Fire fighters necessarily enter the homes of the citizens of Newton to carry out their duties. They are entrusted with the safety and well being of men, women and children of all ages at all times of the day and night. The Appellant has repeatedly proven himself unworthy of that public trust, and he is no longer an appropriate candidate in whom to place the responsibility for public safety.

Accordingly, I recommend that the Civil Service Commission affirm the decision of the City of Newton terminating the Appellant's employment as a Newton Fire Fighter.

Division of Administrative Law Appeals:

BY:


Judithann Burke
Administrative Magistrate

DATED: *9-29-09*

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

www.mass.gov/dala

Tel: 617-727-7060
Fax: 617-727-7248

October 2, 2009

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place, RM 503
Boston, MA 02108

Neil Osborne, Esquire
Law Offices of Neil Osborne, P.C.
87 Summer Street, 3rd FL
Boston, MA 02110

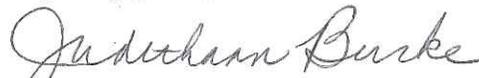
Donnalynn Kahn, Esquire
City of Newton Law Department
1000 Commonwealth Avenue
Newton, MA 02459

Re: *Jeffrey A. Tobias v. City of Newton*, D-08-207, CS-09-146

Dear Mr. Chairman, Mr. Osborne and Ms. Kahn:

Enclosed please find the corrected copies of pages 2 & 3 of the above numbered Recommended Decision that was issued September 29, 2009. Please accept my apologies for any confusion related to the error in the original document.

Very truly yours,



Judithann Burke
Administrative Magistrate

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

RECOMMENDED DECISION

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