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COMMONWEALTH OF MASS  
CIVIL SERVICE COMMISSION COMMONWEALTH OF MASSACHUSETTS

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OFFICE OF THE ATTORNEY GENERAL  
ADMINISTRATIVE LAW DIVISION

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. SUCV2013-00639-D

*Wobey*

NOTICE SENT  
11.04.14  
M.E.S.  
MASS.A.G.  
R.B.R.  
C.K.  
J.K.  
R.F.D.  
J.G.D.

CRAIG ERICKSON,  
*Plaintiff*

vs.

CIVIL SERVICE COMMISSION, and TOWN OF ROCKLAND,  
*Defendants*

&

THOMAS HEANEY,  
*Intervenor*

*LAT*

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

Pursuant to G.L. c. 30A § 14, Mr. Craig Erickson, (hereinafter "plaintiff" or "Mr. Erickson") seeks judicial review of a final agency decision<sup>1</sup> issued by the Civil Service Commission (hereinafter "the Commission"). The Commission conducted an investigation, at the request of Mr. Erickson, against Mr. Thomas Heaney (hereinafter "intervenor" or "Mr. Heaney"), who had been recently appointed as a Captain in the Fire Department for the Town of Rockland (hereinafter "Rockland"); specifically, plaintiff alleged that Mr. Heaney was not in compliance with the residency requirement for the position<sup>2</sup>. Plaintiff now moves for judgment on the pleadings seeking the court to set aside the appointment of the intervenor to the position of Rockland Fire Captain. The Town of Rockland ("defendant") now cross moves for judgment on the pleadings. For the following reasons, plaintiff's Motion for Judgment on the Pleadings is **DENIED** and the defendant's Cross Motion for Judgment on the pleadings is **ALLOWED**.

<sup>1</sup> The Civil Service Commission filed a Response to Request for Investigation, which closed an administrative investigation requested by Mr. Craig Erickson against Mr. Thomas Heaney.

<sup>2</sup> G.L. c. 31, § 58.

## BACKGROUND

The following facts are taken from the administrative record.

On March 7, 2012, plaintiff, through counsel requested that the Commission review Mr. Heaney's application for promotion to Captain of Rockland's Fire Department. Plaintiff claimed that Mr. Heaney resided outside of the ten (10) mile residency limit for the position, which could invalidate Mr. Heaney's promotion.<sup>3</sup>

On March 15, 2012, the Commission sent a notice of a prehearing conference in the matter for the purposes of determining whether the Commission would conduct an investigation under G.L. c. 31, § 2(A).

On or about May 4, 2012, the Massachusetts Human Resources Division ("HRD") sent a letter to the Commission stating, "as a result of the delegation of civil service appointments and promotions, the approval process in this matter has been delegated to the Rockland Fire Department. ... HRD was not involved in the present matter, and the facts and issues do not appear to require our participation." Mr. Heaney intervened and the prehearing conference was held on May 8, 2012. After the prehearing, the Commission found:

"While Section 2(a) and Chapter 310 together provide the Commission with wide discretion to conduct investigations and order remedial actions based on its findings and conclusions, the issue here appears to fall squarely within the authority of the state's Human Resources Division (HRD), which serves as the Personnel Administrator. ... HRD since 2009, has delegated most responsibility for promotional appointments to Appointing Authorities to investigate matters relates to the residency requirement."

The Commission denied plaintiff's request for investigation and the appeal was dismissed with a future effective date of July 31, 2012. The Commission further tasked

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<sup>3</sup> Thomas Heaney holds his position as a permanent fire captain by virtue of taking and passing a civil service examination for the position, a statutory prerequisite to being promoted into the position. Craig Erickson is not eligible to be promoted into the position that Heaney occupies because he has neither taken nor passed the requisite examination.

the Rockland Fire Department with completing its review of the matter including any findings, conclusions and recommendations.

On June 12, 2012, via correspondence, the defendant, Town of Rockland (“defendant”), notified the Commission that it had concluded its review and that based on the evidence that was presented, as well as the absence of any evidence to the contrary, the intervenor did not violate the residency requirement. Following this decision, Mr. Erickson filed a Motion to Revoke with the Commission requesting that the Commission itself conduct an investigation into Mr. Heaney’s residency.

On August 13, 2012, the Commission convened a Motion Hearing to hear: (1) plaintiff’s Motion to Revoke and (2) objections or comments from the Rockland Fire Department, the intervenor, and HRD. After the hearing, the Commission scheduled a full hearing for January 16, 2013. The hearing was limited to the taking of sworn testimony and accepting documentation regarding whether the intervenor as of January 16, 2013 was in compliance with the residency requirement as stated in G.L. c. 31, § 58.

On January 16, 2013, following the full hearing, the Commission rendered a formal “Response to Request for Investigation” (hereinafter “Response”). The Response concluded that the intervenor resided within ten (10) miles of the Rockland Town Limit and is thus in compliance with G.L. c. 31, § 58. The Commission closed its investigation.

The plaintiff now asks this Court to set aside the appointment of the intervenor to the position of Rockland Fire Captain.

## DISCUSSION

### **I. Standard of Review**

The decision of an administrative agency may be overturned only when the Court determines that the decision is based on an error of law, on an unlawful procedure, is

arbitrary and capricious, is unwarranted by facts found by the agency, or not supported by substantial evidence. See G.L. c. 30A, § 14(7). Substantial evidence is “such evidence as a reasonable mind might accept as adequate to support a conclusion.” G.L. c. 30A, § 1; see Lycurgus v. Dir. of the Div. of Emp’t Sec., 391 Mass 623, 627-628 (1984). The court must also give deference to the agency’s experience and expertise. G.L. c. 30A § 14 (7); see DiLoreto v. Fireman’s Fund Ins. Co., 383 Mass 243, 248-249 (1981) (explaining that administrative agencies have expertise in establishing presumptions and determining relative degrees of fault).

Judicial review is limited to the administrative record. G.L. c. 30A § 14(5). The agency is the sole judge of the weight given to the evidence before it. Guarino v. Dir. of the Div. of Emp’t Sec., 393 Mass 89, 92-93 (1984). Where an agency’s decision is based on substantial evidence, the court will not substitute its views as to the facts. Cherubino v. Bd. of Registration Chiropractors, 403 Mass 350, 354 (1988). Further, the “court may not displace an administrative board’s choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*.” Labor Relations Comm’n v. University Hosp., Inc., 359 Mass 516, 521 (1971). The party challenging an agency’s ruling bears the burden of demonstrating its invalidity. Faith Assembly of God v. State Bldg. Code Comm’n, 11 Mass. App. Ct. 333, 334 (1981).

## **II. The Civil Service Commission’s Decision Pursuant to G.L. c. 31, § 58 is Not Arbitrary or Capricious.**

Plaintiff argues that the Commission’s decision to limit the admissible evidence to sworn testimony and documents regarding the Mr. Heaney’s compliance with the

residency requirement in G.L. c. 31, § 58<sup>4</sup> *as of the date of the full hearing* on the matter is arbitrary or capricious. The court disagrees.

An agency's decision is arbitrary or capricious when "it lacks any rational explanation that reasonable persons might support." G.L. c. 31A, § 14(7); see City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997). Here, the decision limiting the scope of the investigation into the intervenor's residency as of the time

of the full hearing did not lack rational explanation. It was not made on a whim, but after careful consideration by the entire Commission.<sup>5</sup> This is evidenced by the fact that the full hearing took place within nine (9) months of the intervenor's promotional appointment to permanent Captain. See G.L. c. 31, § 58. (The statute provides a nine (9) month grace period to allow compliance with the residency requirement). Past compliance with the residency requirement is immaterial.

Moreover, the Commission acted within the bounds of G.L. c. 31, § 2(a), which provides:

In addition to its other powers and duties, the commission shall have the following powers and duties: (a) To conduct investigation at its discretion on upon written request of the governor, the executive counsel, the general court or either of its branches, the administrator, an aggrieved person, or by ten persons registered to vote in the commonwealth.

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<sup>4</sup> G.L. c. 31, § 58 provides in relevant part, "any person who receives an appointment to the police force or fire force of a city or town shall within nine (9) months *after* his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten (10) miles of the perimeter of such city or town."

<sup>5</sup> The administrative record demonstrates that the Chairman of the Commission made the following explanation at the time of the full hearing: "the decision is made not just unilaterally by me, but after discussing it with all of the members of the commission." "[The Commission's] position is that we have the discretion to decide the scope of our investigation and what we do or do not investigate and the courts have told us that. That's how we read the statute, and that's how at least two superior court judges have told us that we have the discretion to conduct an investigation or no investigation at all."

The Commission construes this statutory language to grant it considerable discretion in whether, and in what manner and to what extent, it may elect to conduct any investigation of matters concerning civil service law and rules. See, e.g., Whitehouse v. Town of Wareham, 25 MCSR 438 (2012); Richards v. Dept of Transitional Assistance, 24 MCSR 315 (2011). See also, O'Neill v. City of Lowell, 21 MSCR 683 (2008), *aff'd sub nom O'Neill v. Civil Service Comm'n*, MICV2009-00391 (Sup. Ct. 2009) (Chernoff, J.) (“The statute gives the Commission the power to initiate an investigation upon request... but does not require it to do so.”) *aff'd*, 78 Mass. App. Ct. 1127 (2011) (1:28 Decision).

Based on the Commission’s analysis of the specific facts of this case, the Commission determined that the extent of their investigation should be limited to the intervenor’s residency as of the date of the full hearing rather than to his residency at time of appointment. This decision, just as the decision as to whether or not to conduct an investigation at all, is at the discretion of the Commission. G.L. c. 31, §§ 1 *et. seq.*

The Commission provided thoughtful consideration to the plaintiff’s position that the investigation should date back to the time of the appointment. As the Chairman of the commission explained,

“[i]t was a unanimous decision of the Commission where the investigation should or should not go.... We’re taking a look at if in the future we get allegations of this, what we will take a look at. Three years ago someone didn’t live or didn’t meet the ten (10) mile requirement. Just how far are we going to go? We think this is an appropriate review.

The Commission was justifiably concerned about the potential effect of the investigation and/or unseating potentially hundreds of police and firefighters who may or may not have been residing within the ten (10) mile residency limit at any given point in time. Given

this concern, the Commission justifiably limited its inquiry as to the residency of the intervenor at the time of the hearing in accordance with its broad discretion.

Furthermore, in reviewing the Commission's decision, this Court may not substitute its judgment for that of the Commission. Thomas v. Civil Service Comm'n, 48 Mass. App. Ct. 446, 451 (2000). Rather, this Court is required to give "due weight to the experience, technical competence and not only to the commissions experience, technical competence, and specialized knowledge ... but also to the discretionary authority conferred upon it." G. L. c. 30A, §14; School Comm. of Brockton v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 490 (1997). Here, pursuant to its broad powers, the Commission determined that its present inquiry was to be limited to the intervenor's residency as of the date of the full hearing. This Court cannot and will not substitute its judgment for that of the Commission.

### **III. The Civil Service Commission Did Not Abuse Its Discretion.**

Plaintiff argues that the Commission abused its discretion by limiting the testimony and documentation that may be considered during the investigation. The Court disagrees.

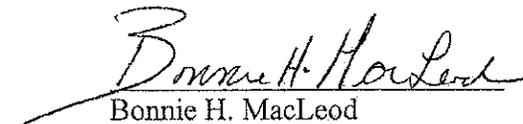
G.L. c. 31 § 2(a) states that the Commission has the power to "conduct investigations at its discretion...". G.L. c. 31, § 2(a). As previously stated, the Commission has complete discretion regarding whether and to what extent it investigates civil service employees and actions of appointing authorities. See G.L. c. 31 § 72. ("The commission[...] may investigate all or part of the official and labor services, the work, duties, and compensation of the persons employed in such services, the number of persons employed in such services and the titles, ratings, and methods of promotion in such services.")

Here, the Commission limited the scope of its investigation to the state of affairs at the time of the hearing. This limitation excluded any evidence relating to the intervenor's past residency status. This decision fell squarely within the scope of the Commission's broad discretionary authority.

Where an agency has been granted board discretionary authority, the Court must review for abuse of discretion "measured by the arbitrary and capricious test." Mayor of Revere v. Civil Service Comm'n, 31 Mass. App. Ct. 315, 321-322 (1991). As discussed above, this Court finds the Commission's decision to be neither arbitrary nor capricious. Therefore, its decision to limit the testimony and documentation which may be considered during the investigation was not an abuse of discretion.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that plaintiff's Motion for Judgment on the Pleadings be **DENIED**. The Town of Rockland's Cross Motion for Judgment on the Pleadings is **ALLOWED**. Judgment shall enter affirming the decision of the Commission. Each party will bear their own attorney's fees and costs.

  
Bonnie H. MacLeod  
Justice of the Superior Court

Dated: November 3, 2014