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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK ss.
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MA Off. of Attorney General
Administrative Law Division

SUPERIOR COURT
CIVIL ACTION
NO. 15-02841

STEVEN FUREY & others¹

vs.

TOWN OF LYNNFIELD & others²

MEMORANDUM OF DECISION AND ORDER ON DEFENDANTS'
MOTION TO DISMISS FOR LACK OF SUBJECT MATTER JURISDICTION

INTRODUCTION

The plaintiffs, Steven Furey ("Furey"), Martin Katz ("Katz"), and Michael Walsh ("Walsh," or collectively, "plaintiffs"), brought this action against the defendants, Town of Lynnfield, David Nelson ("Nelson"), Philip Crawford ("Crawford"), William Gustus ("Gustus"), Thomas Terranova ("Terranova") and the Civil Service Commission ("the Commission," or collectively, "defendants") arising out of the termination of their employment by a vote of the Lynnfield Board of Selectmen. Presently before the Court is the defendants' motion to dismiss for lack of subject matter jurisdiction. Specifically, the defendants contend that the plaintiffs' complaint was untimely because it was filed more than thirty days after the issuance of the Commission's decision, in violation of G.L. c. 31, § 44 and G.L. c. 30A, § 14. For the following reasons, the defendants' motion to dismiss is ALLOWED.

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¹ Martin Katz and Michael Walsh.

² David Nelson, Philip Crawford, William Gustus, Thomas Terranova, and the Civil Service Commission.

BACKGROUND

The allegations in the complaint set forth the following: On June 17, 2013, the Lynnfield Board of Selectmen voted to regionalize the provision of gas, plumbing, and electrical inspection services. As a consequence, the Selectmen voted to terminate the employment of Katz, the Gas Inspector, and Furey, the Electrical Inspector. Katz had held the position of Gas Inspector since July 1970, and Furey had held the position of Electrical Inspector since May 1983.

On February 3, 2014, Katz filed an appeal of his termination with the Civil Service Commission. In July 2014, the Commission held a hearing, at which Furey appeared and moved to intervene in the appeal. Furey then filed his own appeal, and Furey and Katz together filed a third action with the Commission, in the nature of a request for investigation pursuant to G.L. c. 31, § 2(b).

On August 7, 2015, the Commission issued adverse decisions on the individual appeals of Katz and Furey. On September 21, 2015, Katz and Furey filed an eleven-count complaint in Federal District Court for the District of Massachusetts, and shortly thereafter, the District Court granted the Commission's motion to remand the case to this Court.

DISCUSSION

Under Massachusetts law, a matter may be dismissed due to a lack of subject matter jurisdiction. See Mass. R. Civ. P. 12(b)(1). A question of subject matter jurisdiction can be raised by the court, or a party, at any time. *ROPT Ltd. Pshp. v. Katin*, 431 Mass. 601, 607 (2000); *Nature Church v. Board of Assessors*, 384 Mass. 811, 812 (1981).

General Laws c. 31, § 44 governs judicial review of Civil Service Commission decisions, and states that “[a]ny party aggrieved by a final order or decision of the Commission . . . may institute proceedings for judicial review in the Superior Court within thirty days after receipt of such order or decision.” Section 44 also notes that these proceedings in Superior Court shall be governed by the provisions of the Administrative Procedure Act, G.L. c. 30A, § 14. Under G.L. c. 30A, § 14(1), “[p]roceedings for judicial review of an agency decision . . . shall . . . be commenced in the court within thirty days after receipt of notice of the final decision of the agency.” Thus, under both the Commission’s own judicial review statute and the Administrative Procedure Act, an aggrieved party must institute proceedings within thirty days of the Commission’s final decision.

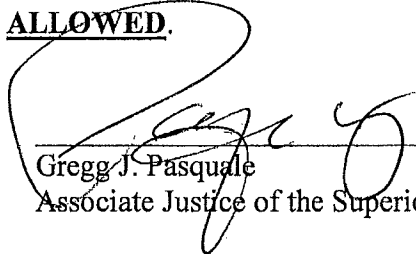
The plaintiffs rely on Bielawski v. Personnel Adm’r of the Div. Of Personnel Admin., 422 Mass. 459 (1996), for the proposition that the thirty-day filing requirement under G.L. c. 30A, § 14 does not apply to decisions of the Commission. This reliance is misplaced. In Bielawski, the court notes that, “*at the time the plaintiff filed his complaint*,” the definition of ‘Agency’ under the Administrative Procedure Act “does not include . . . the Civil Service Commission.” 422 Mass. at 463-464, quoting G.L. c. 30, § 1(2) (emphasis added). Critically, however, the court acknowledged that, “[i]n 1992, the Legislature amended [G.L. c. 31, § 44] to provide for judicial review of all final decisions by the Commission in the Superior Court.” Bielawski, 422 Mass. at 463 n. 10. The plaintiff in Bielawski filed his amended complaint in 1991, prior to the Legislature’s amendment of the statute. Thus, the court’s discussion of the definition of agency, on which the plaintiffs’ argument in the present case relies, involves only the pre-1992

iteration of G.L. c. 31, § 44. Consequently, decisions of the Commission are, in fact, governed by G.L. c. 30A, § 14, and the thirty-day filing requirement applies for judicial review of such decisions.

Because it was filed forty-five days after receipt of the Commission's final decision, the plaintiffs' complaint was untimely. Accordingly, this Court lacks subject matter jurisdiction.

ORDER

For the foregoing reasons, it is hereby **ORDERED** that the Defendants' motion to dismiss for lack of subject matter jurisdiction is **ALLOWED**.



Gregg J. Pasquale
Associate Justice of the Superior Court

Dated: September 30th, 2016