

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

MICHAEL J. BANAS,  
Appellant

v.

D-16-216

TOWN OF WEST SPRINGFIELD,  
Respondent

Appearance for Appellant:

Neil Rossman, Esq.  
Rossman & Rossman  
8 Essex Center Drive  
Peabody, MA 01960

Appearance for Respondent:

Kate R. O'Brien, Esq.  
Town of West Springfield  
26 Central Street  
West Springfield, MA 01089

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION TO DISMISS

1. G.L. c. 31, § 43 states in part:

“If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission or some disinterested person designated by the chairman of the commission.” (emphasis added)

2. Since June 10, 2003, the Civil Service Commission (Commission) has required that a \$50.00 filing fee accompany discipline appeals. (See 812 CMR 4.01 & St. 2002, c. 184, § 2, Line Item 1108-1011) The filing fee requirement is posted on the Commission’s website and included on the appeal forms, which are also posted on the Commission’s website. (<http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/csc/appeal-filing-fees.html> & <http://www.mass.gov/anf/hearings-and-appeals/civil-service-appeals-process/filing-your-appeal/civil-service-appeal-forms/>)

3. On August 17, 2006, the Commission issued a “Clarification of Commission Policies” stating

that appeals received without a fee would be returned to Appellant and/or their counsel. (See <http://www.mass.gov/anf/hearings-and-appeals/oversight-agencies/csc/clarification-of-commission-policies.html>)

4. On October 3, 2016, Michael Banas (Mr. Banas), who is a Police Captain in the City of West Springfield (City)'s Police Department, received notification from the City's Mayor (who is the Appointing Authority) that he was upholding the five (5)-day suspension issued against Mr. Banas by the City's Police Chief. (Appellant's Brief)
5. In order to file a timely appeal of this five (5)-day suspension with the Commission, Mr. Banas was required to file an appeal, with a \$50.00 filing fee, with the Commission within ten (10) business days (October 18, 2016).
6. For appeals received via mail, the Commission uses a postmark rule to determine date of filing. (See 801 CMR 1.01 (4) (b) and Falmouth v. Civ.Serv.Comm'n, 447 Mass. 814 (226)).
7. The Commission's address, which is posted on its website and its appeal forms is: Civil Service Commission, One Ashburton Place: Room 503; Boston, MA 02108. (emphasis added)
8. On October 11, 2016, an employee of the state's Human Resources Division (HRD), whose address is: Human Resources Division, One Ashburton Place: Room 301; Boston, MA 02108, received and signed for certified mail sent by counsel for Mr. Banas. (emphasis added) (Attachment 1 of Appellant's Brief)
9. The above-referenced certified mail was addressed to: Massachusetts Civil Service Commission; One Ashburton Place, Room 301; Boston, MA 02108. (emphasis added) (Attachment 1 of Appellant's Brief)
10. The certified mail received by HRD contained two (2) pages. The first page was a cover letter addressed to: Massachusetts Service Commission; One Ashburton Place; Room 301; Boston, MA 02108. The body of the cover letter stated that the Appellant was appealing the Mayor's five (5)-day suspension and requested "a hearing before a member of the commission ...". The second page of the correspondence was the Mayor's letter to Mr. Banas upholding the Police Chief's five (5)-day suspension. (Attachment 1 of Appellant's Brief)
11. Counsel for Mr. Banas acknowledges that he did not include a filing fee with the correspondence received by HRD on October 11, 2016.
12. On or about December 8, 2016, counsel for Mr. Banas contacted the Office Manager of the Commission to inquire about the above-referenced correspondence. (Page 2 of Appellant's Brief)
13. On or about December 15, 2016, the Commission's Office Manager informed counsel for Mr. Banas that the Commission had not received the above-referenced correspondence.

(Page 2 of Appellant's Brief and Administrative Record – email communication between the Commission’s Office Manager and counsel for Mr. Banas)

14. On December 22, 2016, the Commission received the above-referenced correspondence (with a postmark date of December 20, 2016), along with a motion and affidavit seeking to “Docket a Section 43 Appeal Late”. (Page 2 of Appellant’s Brief and Administrative Record)
15. No filing fee was included with the correspondence received by the Commission on December 22, 2016 and postmarked December 20, 2016. (Page 2 of Appellant’s Brief)
16. The correspondence received by the Commission on December 22<sup>nd</sup> was stamped by the Commission’s Office Manager with a stamp that states:

“CIVIL SERVICE COMMISSION  
Incomplete Appeal  
NO FEE INCLUDED  
Received ... 12/22/16 by MD  
Date/ Time CSC Called Appellant regarding lack of fee: 12/22/16 10:45 A.M.”

(Administrative Record)

17. On December 27, 2016, the Commission received the \$50.00 filing fee from counsel for Mr. Banas, which was postmarked December 22, 2016. (Administrative Record)
18. The Commission docketed the appeal with an appeal filed date of December 22, 2016, the postmark date associated with the mailing of the filing fee. (Administrative Record)
19. On February 8, 2017, I held a pre-hearing conference at the Springfield State Building in Springfield, MA. Participating in the pre-hearing were: Mr. Banas, his counsel and counsel for the Town.
20. Prior to the pre-hearing conference, the Town submitted a Motion to Dismiss the Appellant’s Appeal for Lack of Jurisdiction. I heard oral argument from counsel for both parties and allowed counsel for Mr. Banas an additional ten (10) days for counsel for Mr. Banas to file a reply, which the Commission has received.

### *Parties’ Arguments*

The Town argues that the failure to file an appeal within the statutory time is jurisdictional, or akin to a statute of limitations, and cannot be improperly expanded by the Commission. Further, the Town argues that the appeal was not complete until the required filing fee was received by the Commission on December 22, 2016, well outside the statute of limitations.

In regard to the appeal being filed with HRD, instead of the Commission, the Town, citing various prior Commission decisions, argues that the Commission should not excuse the filing of

an appeal with HRD that should have been filed with the Commission, particularly given that the appeal filed with HRD contained no filing fee and was filed by counsel, given his frequent appearances before the Commission, is well aware of the filing requirements, including the Commission's mailing address and fee requirements.

Mr. Banas argues that, upon receipt, HRD should have forwarded the appeal to the Commission. Had that happened, Mr. Banas argues, the Commission would have called counsel for the Appellant, notified him of the lack of filing fee; and the filing fee would have been received (or postmarked) within the statutory ten (10)-day filing fee.

### *Analysis*

This is not the first appeal that Mr. Banas has filed with the Commission. In 2013, Mr. Banas, represented by the same counsel, filed a bypass appeal, which also has a filing deadline and a requirement to include a filing fee. (See Banas v. Town of West Springfield, G2-13-219 (2013))

Here, counsel for Mr. Banas: a) forwarded a disciplinary appeal to the wrong address; and b) failed to include a filing fee. Well after the statutory ten (10)-day filing deadline, counsel for Mr. Banas contacted the Commission to inquire about the status of the appeal and was told that the Commission had not received the correspondence.

It was not incumbent upon HRD, which often receives copies of civil service-related appeals, to forward the correspondence, which contained no filing fee, to the Commission. The responsibility to ensure that an appeal is filed timely, with the appropriate fee, falls squarely on the Appellant. Further, the argument that, had the appeal been properly addressed to the Commission, that the filing fee would have been received in a timely manner, is speculative.

The unfortunate reality for Mr. Banas is that his appeal, with a filing fee, was not forwarded to the Commission within the ten (10) business days required by the statute. For that reason, the Commission does not have jurisdiction to hear this appeal and the appeal is *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 16, 2017.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Neil Rossman, Esq. (for Appellant)

Kate O'Brien, Esq. (for Respondent)