

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place, Room 503  
Boston, MA 02108

ROBERT BISHOP,  
Appellant

v.

D-10-133

DEPARTMENT OF STATE POLICE,  
Respondent

Appellant's Attorney:

Scott W. Dunlap  
Angoff, Goldman, Manning,  
Wanger, Hynes & Dunlap, P.C.  
100 River Ridge Drive, Suite 203  
Norwood, MA 02062

Respondent's Attorney:

Sean W. Farrell  
Massachusetts State Police  
470 Worcester Road  
Framingham, MA 01702

Commissioner:

Christopher C. Bowman

**DECISION ON RESPONDENT'S MOTION TO DISMISS  
AND APPELLANT'S OPPOSITION TO MOTION TO DISMISS**

The Appellant, Robert Bishop (hereinafter "Bishop" or "Appellant"), pursuant to G.L. c. 31, § 43, filed an appeal with the Civil Service Commission (hereinafter "Commission") on June 18, 2010 claiming that he was aggrieved by a decision of the Department of State Police (hereinafter "Department" or "Appointing Authority") to suspend him without pay for a hundred and twenty (120) days and to transfer him

permanently from his assigned duty station for ten (10) violations of various State Police Rules and Regulations.

A pre-hearing conference was conducted at the offices of the Commission on July 6, 2010. The Department filed a Motion to Dismiss (hereinafter “Department’s Motion”) on July 9, 2010, and the Appellant filed an Opposition to the Motion to Dismiss (hereinafter Appellant’s Motion”), on August 20, 2010. A hearing on the motions was held at the offices of the Commission on August 23, 2010. The motion hearing was digitally recorded.

The following facts appear to be undisputed:

1. The Appellant was employed as a State Trooper by the Department. He was last assigned to Troop F. (Department’s Motion)
2. Following an Internal Affairs Investigation, the Appellant was charged with the following eleven (11) violations of State Police Rules and Regulations stemming from the Appellant’s relationship and/or association with a female acquaintance allegedly involved in a prescription drug scheme in 2000-2001:

Charge 1: One specification of violation of Rule 5.2 (Unbecoming Conduct).  
Charge 2: One specification of violation of Rule 5.3 (General Conduct).  
Charge 3: One specification of violation of Rule 5.15 (Abuse of Position).  
Charge 4: Three specifications violation of Rule 5.4 (Conformance to Laws).  
Charge 5: One specification of violation of Rule 5.23 (Dissemination of Information).  
Charge 6: One specification of violation of Rule 5.18 (Payment of Debts).  
Charge 7: One specification of violation of Rule 5.8.2 (Unsatisfactory Performance).  
Charge 8: Two specifications of violations of rule 5.10.2 (Alcohol Beverages and Drugs). (Department’s Motion, Exhibit B)

3. The Appellant requested a hearing before the State Police Trial Board (hereinafter “Trial Board”) to address the charges. (Appellant’s Motion)

4. Beginning on May 4, 2010 the Trial Board held a four (4) day hearing. (Appellant's Motion)

5. On June 8, 2010 the Trial Board made the following findings:

Regarding Charge 1, Specification 1 – a violation of Article 5.2.1 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 1 – in that Trooper Bishop #0614, Massachusetts State Police Troop F, did on various dates in 2000 and 2001, associate with individuals he knew or should have known were engaged in criminal activities, not in the performance of his duty or upon official police business. This occurred when Trooper Bishop associated with [Ms. D and Ms. B] who were involved in an illegal prescription narcotics fraud scheme. Testimony was received that indicates Trooper Bishop attended court with [Ms. D] regarding her criminal case which dealt with abuse of prescription narcotics. This testimony was undisputed. Trooper Bishop continued to date [Ms. D] despite her criminal activity, and subsequently moved in with her. Trooper Bishop was well aware of [Ms. D] and her sister [Ms. B's] criminal activity. This action is in direct violation of Article 5.2.1. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 2, Specification 1 – a violation of Article 5.3 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 1 – in that Trooper Bishop #0614, Massachusetts State Police Troop F, did on various dates in 2000 and 2001, fail to maintain a level of conduct in his personal/business affairs which is in keeping with the highest standards of the law enforcement profession and in doing so caused the State Police to be brought into disrepute. This occurred when Trooper Bishop associated and lived with [Ms. D], who along with her sister, [Ms. B], were involved in an illegal prescription narcotics fraud scheme. Trooper Bishop became a target of the Drug Enforcement Agency as a result of his personal relationship with [Ms. D] and her sister, [Ms. B]. The DEA recorded telephone conversations of Trooper Bishop, which confirmed his knowledge of the prescription fraud scheme as well as his peripheral involvement. This action is in direct violation of Article 5.3. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 3, Specification 1 – a violation of Article 5.15.6 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 1 – in that Trooper Bishop #0614, Massachusetts State Police Troop F, did on various dates in 2000 to present, withhold information in order to impede or hinder an ongoing investigation, and/or to delay the start of such investigation. This occurred when Trooper Bishop failed to turn over, cooperate, or assist with an investigation associated with [Ms. D] and her sister, [Ms. B], who were involved in an illegal prescription narcotics scheme. Testimony was received indicating Trooper Bishop contacted Diversion Investigation Unit Investigator Trooper Kristen Peachey to set up a meeting to discuss the criminal conduct of [Ms. D] and her sister, [Ms. B]. He then never provided that information to Trooper Peachey. In addition, the Trial Board was provided with DEA written transcripts as well as audio of Trooper Bishop stating "No, I wouldn't say anything" in response to [Ms. D] asking him if he turned her in to authorities. Further evidence in the form of written transcripts and audio were provided in which [Ms. D] asks Trooper Bishop if he told anyone about him getting pills for her, to which Trooper Bishop responded "Oh God

No". These actions of Trooper Bishop are in direct violation of Article 5.15.6. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 4, Specification 1 – a violation of Article 5.4.3 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification I – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about January 14, 2003 until November 13, 2003, did fail to notify his duty assignment supervisor of a warrant for his arrest. This occurred when Trooper Bishop failed to notify his duty assignment supervisor of a Capias Warrant issued for his arrest on January 14, 2003. Written copies of the entire court file were admitted into evidence. Trooper Bishop had a Capias Warrant outstanding for his arrest for 10 months, from January 14, 2003 until November 13, 2003. This was the result of Trooper Bishop defaulting on a court ordered judgment. Trooper Bishop's own actions triggered the issuance of the warrant. Trooper Bishop never informed his supervisor of the warrant and in fact his supervisor was informed by a Constable seeking to serve the warrant. Trooper Bishop was in direct violation of Article 5.4.3. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 4, Specification 2 – a violation of Article 5.4.3 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 2 – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about February 7, 2008 failed to notify his duty assignment supervisor that he knew or should have known he was identified as a suspect in a criminal investigation. This occurred when Trooper Bishop failed to notify his duty assignment supervisor after being interviewed by the DEA and identified as a suspect in an illegal prescription narcotics/insurance fraud scheme. DEA Special Agent Todd Prough testified he informed Trooper Bishop while interviewing him at his house that he was a subject or target of a DEA investigation. Trooper Bishop never informed his supervisor of the DEA visit or of the fact he was identified as a suspect in their ongoing investigation. Trooper Bishop was in direct violation of Article 5.4.3. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 4, Specification 3 – a violation of Article 5.4.1 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 3 – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about various dates in 2000 and 2001, failed to conform to the laws of the United States and the law of Massachusetts. This occurred when Trooper Bishop obtained illegal prescription narcotics for his girlfriend [Ms. D]. [Ms. D] testified supporting this allegation. However, the actual audio of Trooper Bishop in which [Ms. D] asks Trooper Bishop if he told anyone about getting pills for her, to which Trooper Bishop responded "Oh God No". Trooper Bishop was in direct violation of Article 5.4.1. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 5, Specification 1 – a violation of Article 5.23.7 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification I – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about March 10, 2000 did conduct a "records inquiry" not on official police business. This occurred when Trooper Bishop made "CORI" records inquiry to wit a BOP check on [Mr. C] not on official police business. [Ms. D] alleged Trooper Bishop ran a check on her friend

[Mr. C]. Internal Affairs ran a CORI records audit confirming Trooper Bishop ran [Mr. C] three times on March 10, 2000. This action is in direct violation of Article 5.23.7. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 6, Specification 1 – a violation of Article 5.18.2 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 1 – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about July 16, 2002 did fail to pay a just debt. This occurred when Trooper Bishop borrowed money from [Ms. CD and Mr. JD] on or about September 24, 2000 with the stipulation it would be paid back. On July 16, 2002, the court of competent jurisdiction issued an order for said debt to be paid. Trooper Bishop defaulted on his obligation and a Capias Warrant was issued for his arrest. Trooper Bishop went to court as a defendant and entered into a payment plan relative to a debt he owed. He defaulted on that debt and a Notice to Show Cause was issued. Trooper Bishop did not comply with said order and a warrant was issued for his arrest. This action is in direct violation of Article 5.18.2. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 7, Specification 1 – a violation of Article 5.8.2 of the Rules and Regulations for the governance of the Department of State Police<sup>3</sup> that establish the rules of conduct of members. Specification 1 - in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about various dates from 2000 to present, did fail to take appropriate action on the occasion of a crime, disorder, or other condition deserving State Police attention. This occurred when Trooper Bishop failed to take action upon learning [Ms. D] and her sister, [Ms. B], were involved in an illegal prescription narcotics scheme. Trooper Bishop was aware of [Ms. D and Ms. B's] activities as evidenced by the DEA recorded telephone conversations. Testimony was received indicating that Trooper Bishop attended court with [Ms. D] regarding her criminal case which dealt with abuse of prescription narcotics. Trooper Bishop continued to date [Ms. D] despite her criminal activity, and subsequently moved in with her. Trooper Bishop admitted entering [Ms. D] in various rehabilitation programs and visiting her there. Trooper Bishop was well aware of [Ms. D's] and her sister [Ms. B's] criminal activity and failed to take any action. This action is in direct violation of Article 5.8.2. As such we find Trooper Bishop guilty of this charge.

Regarding Charge 8, Specification 1 – a violation of Article 5.10.2 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification I – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about various dates in 2000 and 2001, did possess controlled substances not prescribed by a licensed medical practitioner for a legitimate purpose. This occurred when Trooper Bishop while living with [Ms. D], stored or kept illegally obtained prescription narcotics. Audio of Trooper Bishop responding to [Ms. D's] inquiry of whether he ever told anyone about his obtaining pills for her is compelling evidence. When asked by [Ms. D] if he ever told anybody that he got pills for her he replied "Oh God No". This action is in direct violation of Article 5.10.2. As such, we find Trooper Bishop guilty of this charge.

Regarding Charge 8, Specification 2 – a violation of Article 5.10.2 of the Rules and Regulations for the governance of the Department of State Police that establish the rules of conduct of members. Specification 2 – in that Trooper Robert J. Bishop #0614, Massachusetts State Police, Division of Field Services, Troop F, SP Logan, on or about

various dates in 2000 and 2001, did use controlled substances not prescribed by a licensed medical practitioner for a legitimate purpose. There was insufficient evidence offered to support a finding of Guilty, therefore, we find Trooper Bishop not guilty of this charge. (Department's Motion, Exhibit A)

6. The Trial Board found the Appellant guilty of ten (10) violations and recommended that the Department impose varying suspensions, the most severe being a one hundred and twenty (120) day suspension without pay. The Trial Board also recommended that the Department permanently transfer the Appellant from Troop F. (Department's Motion)
7. On June 9, 2010 Colonel Marian J. McGovern (hereinafter "McGovern"), Superintendent of the Department, accepted the Trial Board's recommendation and imposed the recommended transfer and suspensions, all to be served concurrently. The disciplinary suspensions, totaling a hundred and twenty (120) days without pay, were to begin on June 13, 2010. (Department's Motion)
8. The Appellant appealed the decision with the Commission on June 18, 2010. (Department's Motion)
9. On June 21, 2010 the Appellant voluntarily filed a retirement application with the Commonwealth's State Board of Retirement (hereinafter "Retirement Board"). On his application, the Appellant indicated that he wished to retire retroactively as of June 12, 2010. (Department's Motion)
10. The Retirement Board processed the Appellant's retirement application and retired the Appellant effective June 12, 2010, one day prior to the effective date of his discipline. (Department's Motion)
11. The Department granted the Appellant a General Discharge from the Department as of June 12, 2010. (Department's Motion)

### *Department's Argument*

The Department argues that the Commission lacks jurisdiction to hear this appeal because the Appellant is not an aggrieved person for purposes of G.L. c. 31, §§ 41, 43 and/or G.L. c. 22C, § 13. Since the Appellant voluntarily retired prior to the effective date of his discipline, he either “waived the issue of the validity of his suspension or rendered it moot”. Indorato v. Contributory Retirement Appeal Bd., 20 Mass. App. Ct. 935, 936 (1985). See also Commissioner of the Metropolitan District Comm’n v. Civil Serv. Comm’n, 25 Mass. App. Ct. 573, 576, n.6 (1988) (“an informed voluntary retirement may preclude an appeal.”)

In support of its argument, the Department cites Spadafora v. Civil Serv. Comm’n, 53 Mass. App. Ct. 1107 (2001). In this case, the Appeals Court ruled that the Appellant’s Civil Service appeal was moot because he had retired while his reclassification appeal was pending at the Commission. The Appeals Court determined that the Appellant no longer had any personal stake in the outcome of the case. Accordingly, the Appellant’s retirement rendered the appeal moot. See also Jones v. Wayland, 374 Mass. 249, 260 (1978) (voluntary resignation operated to terminate benefits under G.L. c. 41, 111F in same fashion as retirement); Blake v. Massachusetts Parole Bd., 369 Mass. 701, 703 (1976) (“litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome.”)

The Department contends that in previous Civil Service cases the Commission determined that it lacked jurisdiction over appeals where State Police employees, having been found guilty by a Trial Board and subject to discipline, retired prior to the effective date of discipline. In Grover v. Department of State Police, 21 MCSR 153 (2008), for

example, the Commission ruled that it lacked jurisdiction over an appeal filed by a State Trooper who voluntarily retired immediately following the issuance of discipline, and thus never served any part of it. “Since the Appellant’s retirement immediately followed the discipline issued by the Department, said discipline had no effect. The Appellant never served any part of it, and thus does not meet the conditions as mandated by § 41 ... [w]herefore for the above referenced reasons, the Commission lacks jurisdiction over this appeal.” Id. In Gray v. Civil Serv. Comm’n, 21 MCSR 332 (2008), the Commission ruled that a State Police Captain who was tried for various violations of Department Rules and Regulations, and who was subject to discipline, but whose effective retirement date preceded the effective date of discipline was not an “aggrieved person” for purposes of § 41. In dismissing the appeal, the Commission stated that “[w]e find that the effective date of the Appellant’s retirement made any discipline issued by the Department a nullity. The Appellant was never ‘suspended for a period of more than five days.’ For Civil Service purposes, the discipline is considered moot because the Appellant has already retired, or retired almost simultaneously to the issuance of the suspension. Therefore, the Appellant could not have been aggrieved by an action of the Appointing Authority.” Id.

The Department argues that in the instant case, the Appellant voluntarily retired effective June 12, 2010, pre-dating the commencement of his disciplinary suspension. By so retiring, the Appellant knowingly waived all of the rights and benefits associated with his employment with the Department, including any appeal rights under G.L. c. 22C, § 13 and/or G.L. c. 31, §§ 41-45. The Appellant is not an aggrieved party and his retirement has, in effect, rendered his appeal moot. See Ford v. Brookline, D-05-46 (June 14, 2007) (“the Appellant’s [retroactive] retirement predated his termination. Therefore,



the retroactive effect of the Appellant's retirement eliminates any harm done to his employment status, thus the Appellant is no longer aggrieved for purposes of pursuing an appeal before the Commission. Therefore, the Commission lacks jurisdiction to hear this appeal.")

### *Appellant's Argument*

The Appellant rejects the Department's argument that the Appellant is not an aggrieved person. In its Motion to Dismiss, the Department cites Commissioner of the Metropolitan District Comm'n v. Civil Serv. Comm'n 25 Mass. App. Ct. 573 (1988) as authority that the Appellant has waived his right of appeal. However, a crucial element required to determine whether an employee has waived appellate rights, according to the Appellant, is that the employee's voluntary retirement be "informed".

In the case at hand, the Appellant appeared at the State Board of Retirement nine (9) days into his suspension without pay. Based upon the advice of a retirement counselor, the Appellant's effective date of retirement was backdated to June 12, 2010. During his discussions with the retirement counselor, the issue of appellate rights was not a topic. The Appellant had no experience with the Commonwealth's retirement process, nor did he have any reason to believe that his actions at the State Board of Retirement, or a date selected on his retirement application, could have ramifications on an appeal pending before a different agency of the Commonwealth. The Appellant argues that under no conditions could his retirement be considered "informed" and therefore, this appeal should not be dismissed.

Furthermore, the Appellant contends that he was denied an Honorable Discharge, despite thirty (30) years of public service. The Appellant argues that receiving a General

Discharge rather than an Honorable Discharge limits his ability to seek employment in a security/law enforcement position. Therefore, the Appellant argues, he maintains a personal stake in the instant appeal. Should this appeal proceed, and should the Commission make different assessments of witness credibility, or consider evidence irrationally and inexplicably excluded from the Trial Board proceedings, the Commission may find that the Department lacked just cause for the discipline. This would ultimately necessitate a reclassification of the Appellant's discharge to Honorable.

The Appellant contends that Grover v. Department of State Police, 21 MCSR 153 (2008), where the Commission determined that it lacked jurisdiction over an appeal filed by a State Trooper who voluntarily retired immediately following the issuance of discipline and who never served any part of it, is not applicable in this case, as the Appellant in that case received an Honorable Discharge from the State Police.

Finally, the Appellant argues that had his retirement application taken effect on June 21, 2010, the date on which he appeared before the State Board of Retirement to file his retirement application, rather than accepting counsel from an employee of the State Board of Retirement and agreeing to have it take effect retroactively, all arguments for dismissal proffered by the Department would be dissolved. According to the Appellant, there is a strong public policy mandating that whenever possible, disputes should be decided based upon the merits, and not based upon a technical flaw, such as the one the Department seeks to exploit presently. Therefore, the Appellant argues, the balance of harm is in his favor, as his future employability and reputation within the law enforcement community have unnecessarily been tarnished, and he should be allowed to proceed with his appeal.

### *Conclusion*

The party moving for summary disposition of an appeal before the Commission pursuant to 801 C.M.R. 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the movant has presented substantial and credible evidence that the opponent has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and that the non-moving party has not produced sufficient “specific facts” to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Bd., 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, 887 N.E.2d 244, 250 (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, 881 N.E.2d 778, 786-87 (2008).

G.L. c. 31, § 41 provides that a tenured civil service employee, “Except for just cause . . . shall not be discharged, removed, suspended for a period of more than five days, laid off, transferred from his position without his written consent . . . lowered in rank or compensation without his written consent, nor his position be abolished.” The Commission, pursuant to § 43, has jurisdiction to hear and decide appeals of any person aggrieved by a decision of an Appointing Authority made pursuant to § 41.

The threshold decision to be made in order for the Commission to have jurisdiction to hear this appeal is to determine whether the Appellant is a “person aggrieved”, pursuant to § 41. We find that the Appellant’s retirement made any discipline issued by the Department a nullity. The Appellant was never “suspended for a period of more than five days”. For Civil Service purposes, the discipline is moot as the Appellant has already retired, or at the very least, retired simultaneous to the issuance of the suspension.

Therefore, the Appellant could not have been aggrieved by an action of the Appointing Authority. See Grover v. Dep't of State Police, 21 MCSR 153 (2008); See also Gray v. Civil Serv. Comm'n, 21 MCSR 332 (2008); and Ford v. Brookline, D-05-46 (June 14, 2007).

The Appellant had the option to remain employed by the Department and serve his suspension while simultaneously pursuing an appeal. He did not do so. There is no evidence that he was coerced in any way into making the decision to retire instead. Compare Commissioner of the Metropolitan District Comm'n v. Civil Serv. Comm'n, 25 Mass. App. Ct. 573, 576 (1988) (Where the Appellant's retirement was not deemed voluntary because he "relied on misinformation provided by his employer. Such a decision cannot be considered an informed choice or a voluntary retirement."). In the present case, the Department did not deliberately mislead the Appellant or influence his decision to retire in any way. Further, the Appellant was not under duress when he chose the desired effective date of his retirement. At the time, he was aware of the Department's disciplinary decision against him and was free to consult with counsel prior to selecting an effective date that preceded the imposition of the discipline. He chose not to do so.

Finally, the Commission has no jurisdiction to hear an appeal related to the Department's decision to classify the Appellant's discharge as a "general" as opposed to "honorable" discharge, regardless of the effective date of his retirement.

The Commission finds that, since the Appellant is not an "aggrieved party" in accordance with G.L. c. 31, § 41, the Commission lacks jurisdiction over this appeal.

Therefore, for all of the reasons stated herein, the Department's Motion to Dismiss is allowed and the appeal on Docket No. D-10-133 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell, and Stein, Commissioners) on October 21, 2010.

A true Copy. Attest:

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Commissioner  
Civil Service Commission

Either party may file a motion for reconsideration within ten days of the receipt of this 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 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:  
Scott W. Dunlap, Esq. (for Appellant)  
Sean W. Farrell, Esq. (for Respondent)