

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

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

TIMOTHY CALLINAN, GIULIO BONAVIDA &  
SHAWN McCARTHY,  
Appellants

v.

E-18-103 (Callinan)  
E-18-104 (Bonavita)  
E-18-105 (McCarthy)

TOWN OF WINTHROP,  
Respondent

Appearance for Appellants:

Jennifer N. Smith, Esq.  
Sandulli Grace, PC  
44 School Street  
Suite 1100  
Boston, MA 02108

Appearance for Respondent:

Howard Greenspan, Esq.  
200 Broadway  
Lynnfield, MA 01940

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

1. On June 4, 2018, the Appellants (Timothy Callinan, Giulio Bonavita & Shawn McCarthy) (Appellants), all police officers in the Town of Winthrop (Town)'s Police Department (Department), filed appeals with the Civil Service Commission (Commission) stating that “... a promotional list for the position of Sergeant has been certified for over thirty days with more than three names of persons eligible / willing to accept the appointment. The Town of Winthrop refuses to discontinue a Provisional Sergeant occupying a position for a Sergeant.”
2. On July 10, 2018, I held a pre-hearing conference which was attended by the Appellants, counsel for the Appellants and counsel for the Town.
3. As part of the pre-hearing conference, counsel for the Town stated that the position in question (provisional sergeant) is currently occupied by a Winthrop Police Officer who

recently was awarded just over \$2.0 million after a jury trial in Suffolk Superior Court related to a discrimination complaint.

4. Also, according to counsel for the Town, the police officer, after receiving the above-referenced judgment, filed a motion in Superior Court seeking, in part, to allow her time to take a make-up promotional examination for sergeant, which she did not take in April 2018. According to counsel for the Town, the police officer argued to the Court that she was unable to prepare for the examination due to her pending litigation.
5. The Town and the police officer subsequently entered into an agreement, that was accepted and ordered by the Court, in which the police officer was granted six (6) months exam preparation time and then allowed to take a make-up examination. In the interim, the Town is enjoined from removing the police officer from her position as provisional sergeant until October 30, 2018.
6. Counsel for the Appellants argued that the order is not consistent with the civil service law, which requires the rescission of a provisional promotion within 30 days of the establishment of an eligible list.
7. I advised all parties that the Commission was unlikely to take any action that is contrary to a Superior Court order and suggested that the proper venue, if any, for the Appellants to contest the Superior Court order may be the Superior Court.
8. Per agreement of the parties, the Town had thirty (30) days from the date of the pre-hearing to file a Motion to Dismiss and the Appellants had thirty (30) days thereafter to file an opposition, both of which have been received and reviewed by the Commission.

### *Analysis*

In their reply to the Town's Motion to Dismiss, the Appellants argued in part that: "The Superior Court did not have jurisdiction to grant the injunction; if [the police officer]'s trial prevented her from preparing for the examination and she desired a parallel examination and/or the continuation of her provisional appointment, she needed to raise those issues with the Civil Service Commission. She failed to do so and instead sought the intervention of the courts. This was improper because the Civil Service Commission exclusively has primary jurisdiction over this matter. Therefore the injunction ordered by the agreement and entered by the Superior Court is unenforceable and invalid."

I disagree. The Superior Court, acting in the context of discrimination litigation, ordered additional relief that it deemed reasonable and proper to a victim of discrimination. Importantly, that relief is fairly limited and set to expire within weeks. In that context, relief by the Commission is not warranted here.

## Conclusion

The Appellants' appeals are hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on September 27, 2018.

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:

Jennifer Smith, Esq. (for Appellants)

Howard Greenspan, Esq. (for Respondent)