

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

TIMOTHY CALLINAN,  
Appellant

v.

E-19-057

TOWN OF WINTHROP,  
Respondent

Appearance for Appellant:

*Pro Se*  
Timothy Callinan

Appearance for Respondent:

Howard Greenspan, Esq.  
200 Broadway  
Lynnfield, MA 01940

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL EFFECTIVE JULY 11, 2019

1. On June 4, 2018, three (3) Winthrop police officers (Timothy Callinan, Giulio Bonavita & Shawn McCarthy) 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 was enjoined from removing the police officer from her position as provisional sergeant until October 30, 2018.
6. Counsel for the police officers argued that the order was 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 police officers to contest the Superior Court order may be the Superior Court.
8. The Town submitted a motion to dismiss and the police officers submitted a reply / opposition.
9. On September 27, 2018, the Commission issued a decision (Callinan et al v. Winthrop, 31 MCSR 297 (2018)), dismissing the Appellants' appeals, concluding in part that: "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."
10. On March 14, 2019, the Appellant, Michael Callinan (Mr. Callinan), filed this subsequent appeal with the Commission, stating in part: "As of today, there still has been NO ACTION by the Town of Winthrop to promote from the eligible list which was created on May 2<sup>nd</sup>, 2018. The few weeks until expiration has now turned into several months. The EXPIRED relief that was deemed to be 'fairly limited'" has been the result of numerous adverse effects, including issued with the appeals process, candidate scoring complaints, and unfair prejudice toward examinees who have done nothing but abide by the laws of M.G.L., c. 31, which the Commission has primary jurisdiction over."
11. On April 2, 2019, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Callinan and counsel for the Town.
12. According to the parties, a new eligible list for Sergeant was established on April 1, 2019. Mr. Callinan is still ranked first on this revised eligible list.
13. According to the Town, a Certification will be generated from this eligible list to fill two (2) sergeant vacancies; the candidates will have ten (10) days to sign the Certification as willing

to accept appointment; and the Town will complete a review process to make promotional appointments from those candidates within the statutory 2N+1 formula.

For all of the above reasons, this appeal is *dismissed nisi*, to become effective July 11, 2019. In the event that the Town has not made promotional appointments on or before July 11, 2019, the Commission will consider a Motion to Revoke this Order of Dismissal Nisi, to be filed no later than July 11, 2019, seeking to reinstate the Appellant's appeal for further consideration. In the absence of a Motion to Revoke, the dismissal of this appeal shall become final for purposes of G.L.c. 31, § 44, on July 11, 2019.

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 April 11, 2019.

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:

Timothy Callinan (Appellant)  
Howard Greenspan, Esq. (for Respondent)