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 COMMONWEALTH OF MASS
 CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

 SUPERIOR COURT
 CIVIL ACTION
 NO. 15-00351-B

RECEIVED

APR 11 2016

RYAN COSTA

MA Off. of Attorney General

vs.

Administrative Law Division

CIVIL SERVICE COMMISSION & others¹
MEMORANDUM OF DECISION AND ORDER ON THE PARTIES' CROSS-MOTIONS
FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

This matter is before the Court on the plaintiff Ryan Costa's ("Mr. Costa") request for judicial review of the Civil Service Commission's ("Commission") decision to dismiss his bypass appeal. Mr. Costa and the defendants, the Commission, Paul Dietl, in his official capacity as the personnel administrator ("personnel administrator") of the Commonwealth, and the City of Brockton ("City") (collectively "defendants"), have cross-moved for judgment on the pleadings. For the following reasons, the Court **DENIES** Mr. Costa's motion and **ALLOWS** the defendants' motion.

BACKGROUND

In 2013, the City hired twelve firefighters from a ranked certification list provided by the personnel administrator. Mr. Costa was an applicant on this list. In making its selections, the City bypassed Mr. Costa, who tied with two other candidates as 14th, and instead appointed six lower ranked candidates.

On December 12, 2013, the Fire Chief, Richard Francis, sent a letter to Mayor Linda Balzotti ("Mayor Balzotti") requesting that the City bypass Mr. Costa's name and listing the reasons for such a decision. Those reasons were as follows:

¹ Paul Dietl, in his official capacity as the personnel administrator of the Commonwealth, and the City of Brockton.

Notice sent 4.7.16

• GLO	• COB
- ASG	- KMF
• OMAG	
- RFR	

(20)

1. Mr. Costa failed to provide proper and sufficient residency documentation at the time of the interview for the relevant timeframe.
2. Residency documentation submitted by Mr. Costa for the first few months of the relevant timeframe had been previously ruled as insufficient by the Civil Service Commission, and residency documentation provided for time period immediately following was equally insufficient pursuant to the Human Resources Division *Residency Preference Claim & Employment Selection Location Worksheet* . . . Documentation provided by Mr. Costa indicated that during the relevant timeframe he lived with friends and then at an aunt's.
3. During the hiring process, the Department was made aware that on October 29, 2013, Mr. Costa was dismissed from the Municipal Police Training Academy for untruthfulness, and was subsequently terminated from his position as Student Police Officer with the City of Brockton on November 1, 2013.

In a letter signed by Mayor Balzotti and dated December 18, 2013, the City notified Mr. Costa of its decision to bypass him. The letter stated:

You have a right to appeal this determination by filing your appeal, in writing, within sixty calendar days of receipt of this notice; (sic) with the Civil Service Commission . . .

Mayor Balzotti also included a correspondence stating the reasons associated with the City's non-selection, which was essentially identical to the letter that the Fire Chief had written.

On October 15, 2014, nearly ten months after receiving the City's letter, Mr. Costa filed an appeal with the Commission. On January 22, 2015, the Commission dismissed the appeal as untimely. In its decision, the Commission stated the following:

[Mr. Costa]'s factual allegations are not enough to raise a right to relief above the speculative level, even assuming that they are true. The reason therefore is that the appeal is untimely. The bypass statute of limitations, established in the absence of a statutory one in G.L. c. 31, is sixty (60) days. As noted, above, G.L. c. 31, s. 2 invests the Commission with broad discretion in certain matters. Section 2(g) explicitly authorizes the Commission to 'adopt such rules of procedure as necessary for the conduct of its proceedings'. *Id.* The Commission enacted the sixty (60)-day statute of limitations for bypass appeals in the year 2000. Absent a statute of limitations, there would be no finality to appointing authorities' hiring processes as a practical matter and related evidence may be increasingly limited and/or of decreasing reliability the further in time the appeal is filed from the actions about which the appellant complains. Here, there is no dispute that [Mr. Costa] was informed by letter dated December 18, 2013 that the [City] had bypassed him. There is also no dispute that [Mr. Costa] did not file the instant appeal at the Commission until October 15, 2014, approximately ten (10) months after the letter was sent to him, or eight months after the statute of limitations. . . . In view of

the untimeliness of the appeal, the Commission need not address the remaining issues raised by the parties.

In a footnote, the Commission cited to its own rule, 801 CMR 1.01(6)(b), as the sixty-day statute of limitations that applied to Mr. Costa's bypass appeal.

Mr. Costa filed a complaint with the Court on February 6, 2015, seeking judicial review of the Commission's dismissal, pursuant to G.L. c. 31, § 44.

DISCUSSION

I. Standard of Review

General Laws c. 31, § 44 provides that a party aggrieved by a final order of the Civil Service Commission may institute judicial proceedings in the Superior Court. G.L. c. 31, § 44; Fernandes v. Attleboro Housing Authority, 470 Mass. 117, 123 (2014). A proceeding brought under G.L. c. 31, § 44 is governed, insofar as applicable, by the provisions of G.L. c. 30A, § 14. G.L. c. 31, § 44.

General Laws c. 30A, § 14 authorizes the court to set aside an agency decision where the substantial rights of a party may have been prejudiced because the agency decision is "[i]n violation of constitutional provisions; . . . [i]n excess of the statutory authority or jurisdiction of the agency; . . . [b]ased upon an error of law; or . . . [m]ade upon unlawful procedure; . . . [u]nsupported by substantial evidence; . . . [a]rbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." G.L. c. 30A, § 14(7). Nevertheless, courts must give due weight to the "experience, technical competence, [] specialized knowledge . . . [and] the discretionary authority conferred upon [an agency]." *Id.* Courts maintain the longstanding belief that "a state administrative agency in Massachusetts has considerable leeway in interpreting a statute it is charged with enforcing." Town of Falmouth v. Civil Serv. Comm'n, 447 Mass. 814, 821 (2006), quoting Nuclear Metals, Inc. v. Low-Level Radioactive Waste Mgt. Bd., 412 Mass.

196, 211 (1995) (internal quotations and modifications omitted). Therefore, where more than one equally plausible reading of statutory language exists, courts defer to the agency's reasonable interpretation. Town of Falmouth, 447 Mass. at 821.

II. Commission's Time Limit on Bypass Appeals

In the present case, Mr. Costa argues that the Commission exceeded the scope of its authority by imposing a sixty-day time limit on bypass appeals. He contends that the absence of a statute of limitations in the General Laws creates a right to appeal without any temporal limit; a right that the Commission has no authority to confiscate.²

General Laws c. 31, § 2(g) confers on the Commission the power “[t]o adopt such rules of procedure as necessary for the conduct of its proceedings.” G.L. c. 31, § 2(g). Further, the Commission “has the authority to promulgate regulations giving effect to [this] legislative mandate[.]” Mass. Fed’n of Teachers v. Board of Educ., 436 Mass. 763, 773 (2002). See also Purity Supreme, Inc. v. Attorney Gen., 380 Mass. 762, 770 (1980) (the scope of an agency’s authority to promulgate regulations is “shaped by [the] organic statute taken as a whole and need not necessarily be traced to specific words.”). The Commission stated that it enacted the sixty-day time limitation because “absent a statute of limitations, there would be no finality to appointing authorities’ hiring processes as a practical matter and related evidence may be increasingly limited and/or of decreasing reliability the further in time the appeal.” The Commission’s sixty-day time limit on bypass appeals is a reasonable exercise of its powers. See Consolidated Cigar Corp. v. Department of Public Health, 372 Mass. 844, 855 (1977) (court “must apply all rational presumptions in favor of the validity of the administrative action and not

² Mr. Costa also briefly argues that the Commission’s rule is not a proper, published rule. This argument fails. In order for the Commission to enact a rule, G.L. c. 31, § 3 requires that the Commission file the rule with the Massachusetts Secretary of State, in accordance with G.L. c. 30A, § 5. General Laws c. 30A, § 5, however, does not require that an agency publish a rule in order for it to become effective.

declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate”).

This conclusion is further supported by the fact that the rule has been in effect, without issue, for more than fifteen years. See Town of Falmouth, 447 Mass. at 820 n.8 (deferring to the Commission’s reasonable interpretation of G.L. c. 31, § 2(g) where the Commission’s postmark rule concerning timeliness of appeals remained in effect for twenty-five years without legislative objection). Accordingly, in light of the discretionary authority conferred upon agencies generally, as well as the leeway that courts must provide to the Commission’s interpretations of G.L. c. 31, the Commission did not exceed the scope of its authority by imposing its own statute of limitations on Mr. Costa’s appeal. See Town of Falmouth, 447 Mass. at 821; Mass. Fed’n of Teachers, 436 Mass. at 773; Consolidated Cigar Corp., 372 Mass. at 855.

III. Delegation of Personnel Administrator’s Approving Authority

Mr. Costa further argues that the Court should set aside the Commission’s decision because the personnel administrator did not approve the reasons supporting Mr. Costa’s bypass. He contends that the bypass is not effective since the personnel administrator unlawfully delegated his approval responsibility to the City. General Laws c. 31, § 27 states that a bypass is “effective only when [a written statement of reasoning for the bypass] has been received by the [personnel administrator.]” G.L. c. 31, § 27.

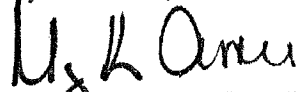
The Commission chose not to reach this issue in light of the untimeliness of Mr. Costa’s appeal and because such questions of interpretation are more appropriately left to the courts. In September of 2015, the Massachusetts Supreme Judicial Court issued Malloch v. Hanover, 472 Mass. 783 (2015), and Sherman v. Randolph, 472 Mass. 802 (2015), which interpreted G.L. c. 31, § 27 as providing the personnel administrator with the authority to delegate its function.

Accordingly, it was acceptable for the City, in place of the personnel administrator, to receive and approve of the appointing authority's reasons to bypass Mr. Costa. Therefore, Mr. Costa's delegation argument has no merit. See G.L. c. 30A, § 14(7).

ORDER

For the above reasons, it is hereby **ORDERED** that the plaintiff Ryan Costa's motion for judgment on the pleadings is **DENIED** and the defendants Civil Service Commission, Paul Dietl, and the City of Brockton's cross-motion for judgment on the pleadings is **ALLOWED**. Final judgment shall enter affirming the Civil Service Commission's decision.

By the Court,

A handwritten signature in black ink, appearing to read "Mary R. Ames", written over a horizontal line.

Mary R. Ames
Justice of the Superior Court

Date: April 4, 2016