

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT

DOCKET NO. 1984CV2795E

MEDFORD HOUSING AUTHORITY,

Plaintiff

Vs.

MASSACHUSETTS CIVIL SERVICE
COMMISSION and BONNIE CURRAN,Defendants

WDB
8/19/20
JE
WDB
RLQ
OLS

MEMORANDUM OF DECISION AND ORDER
ON CROSS MOTIONS FOR JUDGMENT ON THE PLEADINGS

INTRODUCTION

The plaintiff Medford Housing Authority seeks judicial review, pursuant to G. L. c. 30A, §14, of an arbitration decision issued by the Civil Service Commission ordering the reinstatement of employee defendant Bonnie Curran who was terminated by the Medford Housing Authority on March 8, 2017. The Civil Service Commission held a hearing on September 19, 2017, September 26, 2017 and October 19, 2017, and on August 15, 2019 the hearing officer issued his decision, finding there was no just cause for the termination of Ms. Curran in violation of G. L. c. 31, § 41. The plaintiff filed its Complaint for Judicial Review on September 5, 2019, and the parties filed cross motions for judgment on the pleadings.¹ After hearing on August 5, 2020, and based upon the submissions of the parties, the plaintiff Medford

¹ The defendant Civil Service Commission waived oral argument and rested on its decision.

Housing Authority's motion for judgment on the pleadings is **DENIED** and the defendant Bonnie Curran's motion for judgment on the pleadings is **ALLOWED**.

FACTUAL BACKGROUND

The Medford Housing Authority ("MHA") is a municipal corporation established under G. L. c. 121B to serve low and moderate income, disabled and elderly individuals and families residing in the City of Medford, MA by providing them with safe and affordable rental housing. MHA is governed by a five-member board of commissioners ("Board"), which appoints an Executive Director to oversee approximately 40 employees who perform the day-to-day management, administrative and maintenance services necessary to operate eight MHA properties containing approximately 800 federally-subsidized and state-subsidized elderly, disabled, and family housing units, as well as supporting tenants placed in private rental units under the federal Section 8 voucher program and in private rental units receiving government subsidies. The defendant Bonnie Curran ("Curran") was employed at MHA as a Leased Housing Specialist/Section 8 Coordinator ("LHS") from May 14, 2003 until her termination on March 8, 2017. Her job duties included qualifying applicants for Section 8 vouchers entitling them to receive a subsidy for renting from qualified landlords, calculating the rent that landlords could charge, and establishing the subsidies according to applicable laws and regulations. She was required to interact frequently with applicants, tenants, landlords, and vendors. Throughout the majority of her tenure at MHA, the department in which Curran worked was staffed by three to five LHSs who reported to the Director of Leased Housing. As of March 8, 2017, the date of her termination, Curran had more years of service at MHA than anyone else in her department.

Prior to June, 2009 Curran reported to Director of Leased Housing Anne Petras and was not the subject of any disciplinary action. In June, 2009 the Board hired Robert Covelle

("Covelle") as the new Executive Director of MHA. Curran did not trust Covelle, whom she claims favored some applicants over others, hired his friends and family members, and disparaged her "without her knowledge".² Curran complained to Covelle and the Board about the perceived malfeasance. Ultimately, she filed complaints with state and federal authorities, leading to Covelle's involuntary resignation in 2012. Curran claims she declined a promotion offered to her by Covelle because she found the conditions of the offer to be unreasonable.³

Covelle appointed Kathy Mpelkas as Leased Housing Director and Sam Piri, a personal friend of his, to an LHS position. Approximately one year after Mpelkas' appointment she stepped down from her position which was then occupied by Piri, commencing in 2014. The first disciplinary action against Curran was a written warning issued by Mpelkas in February, 2011 after an argument between Curran and Mpelkas, Curran's supervisor. The written warning (Joint Exhibit 2, Administrative Record p. 326) states that Curran did not listen to her supervisor, demonstrated a lack of respect, and swore. The warning also states that the Executive Director, in response to the argument between Curran and Mpelkas, told the two to knock it off and take it into Mpelkas' office, as the behavior was causing people to leave the area. Curran was warned that further infractions would lead to more disciplinary action.

In August, 2011 a soundproof wall was erected around Curran's work area, replacing a short partition. Curran was told that the wall was intended to provide a private space where she could meet with applicants. Curran agreed to the construction of the wall, but claims she conditioned her assent upon the representation that it could be removed within an hour if she

² The hearing officer credited Curran's testimony that Covelle disparaged her without her knowledge, but does not explain how Curran knew of the disparagement if it was without her knowledge.

³ In support of the finding that Curran rejected an offer of promotion the hearing officer cited to four exhibits and the testimony of Curran. The exhibits referenced do not pertain to the offer of a promotion.

wanted. Curran found the wall impeded ventilation and resulted in a space too small for applicant meetings. In July, 2012, after the departure of Covelle, Curran asked the interim director Michael Pacios and Sam Piri to remove the wall. Pacios responded that there were no maintenance men available to remove it, and the removal was not a priority and should be dealt with by the next administration. Curran then initiated lengthy email correspondence intended to document an availability of maintenance workers she felt could be assigned to remove her wall, unfair treatment of her, and declining an offer for her to move to another space. (Joint Exhibits 21 and 22, Administrative Appendix pp. 525-528).

On March 30, 2012 Curran was suspended for one day based upon a complaint by a friend of a Section 8 applicant who was removed from the waiting list by Curran. Curran contends the removed applicant was later refused reinstatement after Curran consulted with her supervisor. On this same date, Curran received a second one-day suspension after a complaint by "FSS Participant and FSS Worker Sandy Reineker". (Joint Exhibit 9, Administrative Record p. 353). Curran felt the complaints against her were being solicited as part of "constructive harassment" and retaliation against her. (Joint Exhibit 9, Administrative Record p. 353).

In March, 2013 John Coddington was appointed as Executive Director of MHA. Approximately one year later, in March, 2014, Piri complained that Curran had failed to comply with his request that she run a particular report as to a prospective tenant. Curran told Piri that there was insufficient information to generate an accurate report, and she refused her supervisor's request. She received a five-day suspension and, due to prior disciplinary actions, she was told that this was a final warning.

In January, 2015 Curran complained to her new supervisor Kathy Fortier that she had been working extra hours to complete "critical work" without receiving overtime compensation.

She told Fortier that she would no longer work the extra hours without compensation, and following an inquiry to the U. S. Department of Labor, she provided Fortier with the information she received regarding payment of overtime wages. Fortier told Curran she should be able to complete her work within her regular hours, but subsequently MHA authorized up to five hours of overtime per week.

In July, 2015 Curran gave public testimony to the Massachusetts General Court, which testimony she repeated in April, 2017. The subject matter of her testimony pertained to proposed legislation about constructive discharges in the form of workplace bullying, mobbing, and harassment.

On February 10, 2016 Executive Director Coddington issued a third "final warning" to Curran, citing incidents of December 22, 2015 and January 14, 2016. On December 22, 2015 Curran walked out of a meeting with Fortier and went home sick. The incident was determined to be insubordination. Curran contested the disciplinary action, maintaining she was very sick and needed to go home and take medicine. On January 14, 2016 a tenant complained about Curran after she confronted him with evidence she believed established unreported/underreported income. Curran maintained she had similar problems with the same tenant in the past, with support from her supervisor who required the tenant to apologize to her. In this instance, she claims she received no support, and instead, was disciplined.

In September, 2016 Ann Marie Moglia ("Moglia") assumed the position of MHA Leased Housing Director, making her Curran's immediate supervisor. Moglia had worked at the MHA for over twenty years, and had specific ideas as to how the Leased Housing Department should operate. She implemented a policy curtailing overtime, and any overtime would require justification and prior authorization. She made other changes to procedures and forms. Curran

was critical of Moglia's changes and felt Moglia was not appropriately deferential to her suggestions as to how to implement changes. Curran made her feelings known at staff meetings. On November 22, 2016 and November 28, 2016 Curran worked past her scheduled quitting time without obtaining prior authorization. On November 30, 2016, Moglia issued Curran a written warning for violation of MHA policy regarding work hours.

In September, 2016 Coddington announced he would not be seeking renewal of his employment contract with MHA. In October, 2016 Dolores Ross ("Ross"), who had come to work at MHA from the Everett Housing Authority at the request of Coddington, announced that she would be leaving MHA to return to Everett Housing Authority. At her exit interview on November 16, 2016, Ross told Moglia she was leaving because of Curran, whom she described as mentally ill, sometimes on medication, and unpredictable. She reported an incident in September, 2016 when Curran said to her, "You know I wouldn't intentionally hurt you". She said the statement made her fearful of a physical attack by Curran. She also claimed to be aware of seven people who had left employment with MHA due to Curran. Ross also identified multiple other reasons for leaving her employment, including difficult applicants, unfamiliarity with the computer system, lack of supervision, the physical work environment, and job difficulty.

On November 28, 2016, Moglia and Fortier met with Curran to discuss Ross's exit interview. They also discussed Curran's concerns that she was the victim of workplace harassment and bullying for her role as a whistleblower. Finally, Curran was questioned as to whether she was using MHA time and resources to record her daily exchanges with her coworkers. Curran asked for the opportunity to prepare a written response as to allegations pertaining to one work assignment and she was given two days to do so. She admitted making

the statement to Ross, but denied it was a threat. She admitted to making notes in her personal diary, but denied doing so on MHA time. She provided examples of ways in which she felt Moglia and Fortier were not supportive of her.

On December 9, 2016, Curran was summonsed into another meeting and given a copy of a memorandum dated December 8, 2016 authored by Fortier. The memorandum purported to memorialize the meeting of November 28, 2016, and concluded with the directive to “never again engage in any conduct or activity that could be construed as direct threats, or veiled threats”. She was instructed to refrain from a tone and language contrary to a professional, friendly work environment. The memorandum itemized Curran’s discipline history, and noted that while termination was appropriate, she would receive one last chance to maintain her employment with MHA. Curran asked for an opportunity to review the memorandum and provide a written response. She prepared a six-page, single space response dated December 12, 2016, vigorously disputing the allegations and reiterating her allegations of workplace harassment. She included an allegation that on January 14, 2016 she asked Coddington for assistance with an unruly tenant and during a meeting the following day he took her pen away from her as she was taking notes.

In her rebuttal memorandum Curran also predicted that coworker Kathy Rolli’s exit interview would also identify Curran as the reason for her departure. Rolli was hired as an LHS at MHA in August, 2015 after leaving the Reading Housing Authority due to budget cuts. She applied for the position of Leased Housing Director at MHA in 2016, but she did not get the promotion. In September, 2016 Rolli and Curran had a confrontation wherein Curran accused Rolli of treating applicants disrespectfully. Rolli said Curran’s allegations against her were unfounded. Fortier spoke with both Rolli and Curran and found neither party at fault. At her

exit interview on December 12, 2016, Rolli provided a list of reasons for leaving, including a new job with better pay and benefits, unrecognized need for overtime, an uncomfortable physical work environment, and difficult tenants. She also claimed to have looked for a new job because Curran had given her a hard time from the start of her employment. Rolli referred to Curran as a vicious and vile person. In her testimony at the hearing, Rolli declined to identify her place of employment for fear that Curran would show up at her workplace and harass her.

On January 5, 2017 Coddington, Fortier, and Moglia delivered a letter to Curran, advising her she was placed on administrative leave with pay, effective immediately. As the basis for the action, the letter listed a second employee identifying Curran as the reason for leaving employment at MHA, and referenced prior disciplinary actions with warnings.

PROCEDURAL HISTORY

At a meeting of the MHA Board on January 18, 2017 Curran submitted a written memorandum in support of her position that she was being wrongfully discharged. She offered to make herself available at a later time to answer questions, as she was then under too much stress. The Board designated Coddington to serve as hearing officer to conduct an appointing authority hearing regarding the possible termination of Curran. The hearing took place on February 14, 2017. The four hearing exhibits consisted of the charge letter, Curran's disciplinary record, and the written notes from the exit interviews of Ross and Rolli. Curran appeared and submitted a written statement signed under the pains and penalties of perjury and copies of materials she previously submitted at the meeting on January 18, 2017. There was no testimony. Curran requested the record remain open for her to submit an objection to Coddington serving as the hearing officer. She submitted a post-hearing statement on February

21, 2017, contending that only a partial Board was present at her hearing, and two of the three members present were on the Board when Curran had undertaken her whistleblower activities.

On March 3, 2017 Coddington issued his findings and recommendation, calling for the termination of Curran. He relied upon Curran's disciplinary record and the exit interviews of Ross and Rolli. He acknowledged Curran's allegations of harassment but did not credit them. At a special executive session of the Board on March 8, 2017 Coddington was questioned about Curran's past discipline and Curran spoke briefly, inquiring as to the procedures for appeal to the Civil Service Commission. The Board then conducted a vote, and it was decided, 4 – 0, to accept Coddington's recommendation and terminate Curran.

Curran took a timely appeal to the Civil Service Commission. A hearing took place on September 19, 2017, September 26, 2017, and October 19, 2017. Thirty-nine exhibits were entered into evidence, and the following people testified:

Kathy Fortier, MHA Assistant Director

Ann Marie Moglia, MHA Leased Housing Director

Delores Ross, former MHA Leased Housing Specialist

Kathy Rolli, former MHA Leased Housing Specialist

John Coddington, former MHA Executor Director

Kathy Mpelkas, MHA Leased Housing Specialist

Sam Piri, MHA Leased Housing Specialist

Bonnie Curran, Appellant

Lorraine McGrath, former MHA employee

Following the hearing and acceptance of written submissions by the parties, the Civil Service Commission hearing officer vacated the decision of the Board and ordered the Board reinstate Curran to her position.

MHA filed its Complaint for Judicial Review with this court on September 5, 2019.

Cross motions for judgment on the pleadings are now before this court. The plaintiff is seeking reversal of arbitrator's decision, and the defendant seeks affirmation of that decision.

STANDARD OF REVIEW

A tenured civil service employee cannot be discharged except for "just cause". G. L. c. 31, § 41; c. 121B, § 29. Just cause" has been defined as "substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service." *Boston Police Dept. v. Collins*, 48 Mass. App. Ct. 408, 411 (1986) (internal quotations omitted). Under G. L. c. 31, § 43, a person aggrieved by a decision of the appointing authority to terminate the employment of a tenured employee may appeal to the Commission. *City of Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727 (2003).

The commission conducts a de novo review of the facts. See *Falmouth v. Civil Serv. Commn.*, 447 Mass. 814, 823 (2006). "The commission must determine whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision. *New Bedford Airport Comm'n v. Civil Serv. Comm'n*, 2016 Mass. App. Unpub. LEXIS 597, 13, 89 Mass. App. Ct. 1127 (2016), citing *Falmouth v. Civil Serv. Commn.*, 447 Mass. 814, 824 (2006), quoting from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). "In performing this function, the question is not whether the commission would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable

justification for the action taken by the appointing authority.” *New Bedford Airport Comm’n v. Civil Serv. Comm’n*, 2016 Mass. App. Unpub. LEXIS 597, 13, 89 Mass. App. Ct. 1127 (2016), citing *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-728 (2003).

On further appeal to the superior court, “(t)he judge (has) the limited task of examining whether there was substantial evidence in support of the commission’s decision. It (is) not for the court to substitute its judgment on questions of fact or exercise of discretion.” *McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473, 476 (1995), citing *Southern Worcester County Regional Sch. Dist. V. Labor Relations Commn.*, 386 Mass. 414, 420-421 (1982). “G. L. c. 31, § 2(b) requires the commission to determine, on the basis of the evidence before it, whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority.” *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006). “Reasonable justification in this context means done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law.” *Brackett v. Civil Serv. Comm’n*, 447 Mass. 233, 241 (2006) (citations omitted). “In reviewing the commission’s action under G. L. c. 30A, § 14(7), it (is) not open to the Superior Court judge to substitute (its) judgment for that of the commission.” *Id.* at page 241. “The judge’s task (is) limited to determining whether the commission’s decision was supported by substantial evidence.” *Id.* at page 241. “Further, a judge is required to give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it.” *Id.* at pages 241-242. “This standard of review is highly deferential to the agency on questions of fact and reasonable inferences drawn therefrom.” *Id.* at pages 241-242.

“Courts inquire into an arbitration award only to determine if the arbitrator has exceeded the scope of his authority, or decided the matter based on ‘fraud, arbitrary conduct, or procedural irregularity in the hearings.’” *Massachusetts Highway Dep’t v. AFSCME, Council 93*, 420 Mass. 13, 15(1995), citing *Plymouth-Carver Regional Sch. Dist. V. J. Farmer & Co.*, 407 Mass. 1006, 1007, 553 N.E.2d 1284 (1990), quoting *Marino v. Tagaris*, 395 Mass. 397, 400, 480 N.E.2d 286 (1985). “Even a grossly erroneous decision is binding in the absence of fraud.” *Trustees of Boston & Maine Corp. v. Massachusetts Bay Transp. Authority*, 363 Mass. 386, 390 (1973) (citation omitted). “Where the parties have “received what they agreed to take, the honest judgment of the arbitrator as to a matter referred to him” (*Phaneuf v. Corey*, 190 Mass. 237, 247), the law is clear that the award is binding, and thus free from judicial interference, in the absence of fraud.” *Trustees of Boston & Maine Corp. v. Massachusetts Bay Transp. Authority*, 363 Mass. 386, 390 – 391 (1973), citing *Carter, Moore & Co., Inc. v. Donahue*, 345 Mass. 672, 676. CF. *Greene v. Mari & Sons Flooring Co., Inc.*, 362 Mass. 560, 563. “Arbitration, it is clear, may not ‘award relief of a nature which offends public policy or which directs or requires a result contrary to express statutory provision’ (citation omitted), or otherwise transcends the limits of the contract of which the agreement to arbitrate is but a part.” *Plymouth-Carver Regional School Dist. v. J. Farmer & Co.*, 407 Mass. 1006, 1007, 553 N.E.2d 1284 (1990), citing *Lawrence v. Falzarano*, 380 Mass. 18, 28 (1980)

DECISION

The case law is clear that this court may not substitute its judgment for that of the arbitrator. It is not for this court to compare the decision of the appointed authority with the decision of the arbitrator and choose the one it prefers. See *McIsaac v. Civil Serv. Comm’n*, 38 Mass. App. Ct. 473, 476 (1995), citing *Southern Worcester County Regional Sch. Dist. V. Labor*

Relations Commn., 386 Mass. 414, 420-421 (1982). The scope of review is limited to a determination of whether there was substantial evidence in support of the commission's decision. See *Id.*

Curran's disciplinary history at the MHA and her interactions with co-workers and clients were well-documented. Former MHA employees Rolli and Ross reportedly identified Curran as the reason for leaving their jobs, and they so testified at the hearing. What occurred and when were undisputed, however, the motivations of the involved parties and the reasons for their actions were hotly disputed and subject to interpretation based upon credibility.

The arbitrator was required to determine whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision. See *New Bedford Airport Comm'n v. Civil Serv. Comm'n*, 2016 Mass. App. Unpub. LEXIS 597, 13, 89 Mass. App. Ct. 1127 (2016), citing *Falmouth v. Civil Serv. Commn.*, 447 Mass. 814, 824 (2006), quoting from *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). The commission conducts a de novo review of the facts. See *Falmouth v. Civil Serv. Commn.*, 447 Mass. 814, 823 (2006) "Where the resolution of a factual dispute turns on the credibility of the witnesses, . . . the parties' intentions must be deduced from their testimony." *Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 421 (2005) It fell to the arbitrator in conducting a de novo review of the facts to assess the credibility of the witnesses, an exercise necessary to finding the relevant facts. Where the arbitrator had the opportunity to hear testimony from witnesses, providing an opportunity to assess credibility, deference is required to determinations of credibility. See *Zoning Bd. Of Appeals of Wellesly v. Housing Appeals Comm'n.*, 385 Mass. 651, 657, 433 N.E.2d 873 (1982) In the arbitration hearing Curran testified that her co-workers and

supervisors maintained a campaign of harassment against her based upon her whistleblower activities against a former executive director of the MHA. She claimed that she was a helpful, supportive co-worker whose actions were always in the furtherance of the mission of MHA, even though she might be "rough around the edges" at times. She denied ever threatening any of her co-workers, and claimed a good relationship with former employee Ross and a difficult relationship with former employee Rolli because of Rolli's unprofessional behavior. The arbitrator was empowered, if not required, to assess Curran's credibility and weigh her version of events against the version offered on behalf of MHA. He did so, and credited Curran's story over that of the MHA witnesses.

Acceptance of Curran's testimony and disbelief of the testimony of Ross, Rolli, and other witnesses called on behalf of MHA resulted in substantial evidence to support the arbitrator's reinstatement of Curran. Substantial evidence means such evidence as a reasonable mind might accept as adequate to support a conclusion. See G. L. c. 30A, 1(6). The arbitrator found that Ross and Rolli had many alternative reasons for leaving MHA, and did not leave because of Curran. He also found that discipline against Curran resulted from personal animosity based upon her self-professed whistleblowing activities, and not her conduct. The facts found by the arbitrator, even if they are not the facts this court would have found, can only be weighed for a determination as to whether they constitute substantial evidence. The findings of the arbitrator are sufficient to constitute substantial evidence, and thus this court is without authority to vacate his decision.

MHA's reliance on *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300 (1997) is misplaced. In that matter, a superior court judge vacated the Civil Service Commission's reversal of the city's decision to bypass a candidate for the police force based

upon a history of perjury in a district court criminal matter. When she was twenty years old, the candidate lied in court, taking responsibility for the illegal firing of a gun within 500 feet of a building when the crime was actually committed by her boyfriend. She later returned to court, admitted to her perjury, and her record was sealed. When she was eligible for hire as a police officer, city officials decided to bypass her due to her history of dishonesty. She appealed to the Civil Service Commission, and after hearing, the arbitrator reversed the decision, deciding that her negative history was remote, and she had since sufficiently redeemed herself. Upon further appeal to the superior court, the arbitrator's decision was upheld, the court finding the commission had applied the proper standard of review, and its conclusion was supported by substantial evidence. The city sought further review, and the appeals court reversed the superior court decision, reinstating the decision of the city to bypass the candidate.

The City of Cambridge matter is distinguishable from the present matter because the all of the facts found, including those based upon credibility, were identical as to both decisions, the one made by the city and the one made by the arbitrator. The only difference between the two decisions was the ultimate determination, based solely upon the judgment of the decision-maker. The appeals court found that when “(m)easured in terms of an adequate reason, supported by credible – it was undisputed – evidence, and application of common sense, the decision of the city and the Administrator to bypass Langston was justified, and hence, not subject to correction by the commission.” *Id.* at page 305. In Curran's case, however, the arbitrator found different facts than those found by the Board, based on his assessment of credibility. He did not simply substitute his judgment for that of the appointing authority. Rather, he found that Rolli and Ross did not leave their positions at MHA due to Curran. He found that disciplinary actions taken against Curran were motivated solely by her history as a whistleblower, and not because of

misconduct on her part. The arbitrator's judgment was applied to different facts, the facts as he found them after conducting the de novo review of the facts he was required to perform.

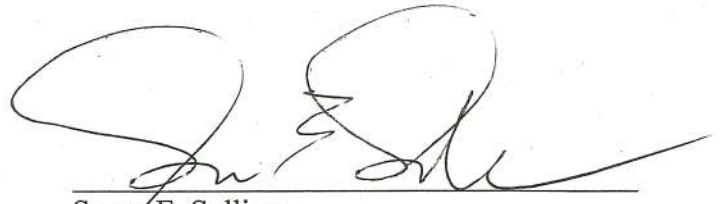
This matter is more closely aligned with, and thus governed by, *Boston Police Department v. Civil Service Commission*, 483 Mass. 461 (2019). Without dwelling on the particular facts of the case, in that matter the Supreme Judicial Court ("SJC") found there to be credibility issues with witnesses upon whom the Boston Police Department relied in bypassing a candidate for promotion due to a failed drug screen. The Department relied upon an expert who vouched for the efficacy of the drug test, and rejected the officer's claim that he did not use cocaine. At the Civil Service Commission hearing, the arbitrator did not credit the Department's expert, but did credit the testimony of the officer. The SJC reversed the decision of the superior court judge and reinstated the decision of the Commission, as the Commission was entitled to determine credibility in the process of finding the facts, and then determine, based upon the facts found by it, whether the Department demonstrated, by a preponderance of the evidence, that the Candidate had, in fact, committed the bad act that gave rise to the bypass.

As discussed above, the arbitrator who heard Curran's appeal believed Curran, and did not believe Ross and Rolli, the former MHA employees who claimed to have left their jobs to get away from Curran. He did not believe Curran had threatened her co-workers and acted disrespectfully toward her superiors so as to warrant multiple disciplinary measures. He did not believe MHA employees who denied harassment of Curran. The arbitrator was entitled and empowered to find the facts, including credibility assessments, and when he did so he did not find by a preponderance of the evidence just cause for the termination of Curran by MHA.

CONCLUSION

Based upon the written submissions of the parties and oral argument, for the foregoing reasons, the plaintiff Medford Housing Authority's motion for judgment on the pleadings is **DENIED** and the defendant Bonnie Curran's motion for judgment on the pleadings is **ALLOWED**.

Date: August 19, 2020

A handwritten signature in black ink, appearing to read 'Susan E. Sullivan', written over a horizontal line.

Susan E. Sullivan
Associate Justice of the Superior Court