(SEAL)

COMMONWEALTH OF MASSACHUSETTS

19

PLYMOUTH, ss.

SUPERIOR COURT
NO. 1883CV00466

TOWN OF ROCKLAND,
Plaintiff

vs.

MASSACHUSETTS CIVIL SERVICE COMMISSION & another,[1]
Defendant

MEMORANDUM OF DECISION AND ORDER ON MOTION FOR JUDGMENT ON THE PLEADINGS

Plaintiff Town of Rockland ("Town") brings this action appealing a decision of the defendant, Massachusetts Civil Service Commission ("Commission"). This matter is before the Court on Plaintiff's motion for judgment on the pleadings pursuant to Mass. R. Civ. P. 12(c). For the reasons discussed below, Plaintiff's motion is **denied**.

BACKGROUND

The following facts are taken from the administrative record. On April 27, 2017, the Town, through the Rockland Fire Department, hand-delivered a notice of suspension to defendant-intervenor Craig Erickson, indicating that Erickson was going to be suspended for thirty days for making untruthful statements during the course of a Rockland Fire Department investigation and disciplinary hearing. Under G.L. c. 31, § 43, Erickson had ten business days to file an appeal of the suspension with the Commission. The ten business days expired on May 11, 2017.

Erickson filed an appeal, which the Commission received by mail on May 16, 2017. There was no postmark on the envelope Erickson's appeal arrived in. A pre-hearing conference

[1] Craig Erickson, defendant-intervenor.

was scheduled for May 23, 2017. At the pre-hearing conference, the Town asserted their belief that Erickson's appeal had not been timely filed, and, on May 25, 2017, the Town filed a motion to dismiss Erickson's appeal on those grounds.

A full hearing on Erickson's appeal was held on July 13, 2017, before Commission Chairman Bowman. Prior to the full hearing, Bowman heard the Town's motion to dismiss the appeal. Bowman explained that, when an appeal is received via mail, the postmark date is used to determine whether the appeal was timely filed. Bowman further explained that, if there is no postmark on the appeal, "general rules in terms of how long you give for mail processing . . . [is] generally three to four business days." After explaining the applicable rules for determining the timeliness of a filing, Bowman stated that he needed to determine if there was any evidence that Erickson mailed his appeal on the fourth business day, May 11, 2017. While the motion to dismiss was being heard, Erickson provided sworn testimony that he mailed his appeal on May 8, 2017. Despite Erickson's testimony that he mailed the appeal on May 8, Bowman determined that the appeal was mailed on May 11. Bowman then applied the Commission's "internal mail handling rule" that allows three to four business days for mail to arrive. Applying such a rule, Bowman concluded that Erickson's appeal was timely filed and denied the Town's motion to dismiss the appeal. On March 29, 2018, the Commission issued a decision overturning Erickson's suspension.

DISCUSSION

It is undisputed that, pursuant to G.L. c. 31, § 43, Erickson had ten business days to file his appeal and that the tenth business day was May 11, 2017. It is also undisputed that the Commission received Erickson's appeal, by mail, without a postmark, on May 16, 2017. Although Erickson's appeal arrived without a postmark, after the hearing on the Town's motion

to dismiss, the Commission, using its "internal mail handling rule," concluded that Erickson mailed his appeal on May 11, 2017, in conformance with the ten-day requirement. The Town argues that, because Erickson's appeal arrived without a postmark, it must be deemed "filed" on the date the Commission received it, in this case May 16, 2017. Consequently, the Town contends that the appeal was untimely, and the Commission did not have jurisdiction to hear the appeal.

The court's review of the decision of an administrative agency is limited to the administrative record. G.L. c. 30A, § 14. The party appealing the administrative decision bears the burden of showing that the agency's decision is invalid. Merisme v. Board of Appeals on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an administrative agency's decision under G.L. c. 30A, § 14, the court does not substitute its judgment for that of the agency. See Connolly v. Suffolk County Sheriff's Dept., 62 Mass. App. Ct. 187, 192 (2004), citing Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm'n, 401 Mass. 526, 529 (1988).

At issue is the date on which Erickson's appeal should be deemed "filed," as "Section 43 does not specify any particular act required to perfect an appeal." Town of Falmouth v. Civil Serv. Comm'n, 447 Mass 814, 819 (2006). In Town of Falmouth v. Civil Service Commission, the Commission received an appeal from an aggrieved employee by mail after the ten-day statutory period had expired. Id. at 816. The Town and the Commission interpreted the statute differently, with the Town arguing the appeal was untimely and the Commission, using its "postmark rule," finding that the appeal was timely filed. Id. at 817-818. Finding both readings to be equally plausible, the SJC deferred to the Commission's reasonable interpretation, noting

that "[a] state administrative agency in Massachusetts has considerable leeway in interpreting a statute it is charged with enforcing." Id. at 819-821.

An "agency's interpretation of its own regulation and statutory mandate will be disturbed on review only if the interpretation is patently wrong, unreasonable, arbitrary, whimsical, or capricious." Brookline v. Commissioner of the Dept. of Envtl. Quality Eng'g., 398 Mass. 404, 410 (1986). Under G.L. c. 30A, the court must give due weight to the agency's experience, technical competence, specialized knowledge, and statutorily conferred discretion. Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992). In this case, the Commission's interpretation of its own regulations and statutory mandate allowing for the use of its "internal mail handling rule" was "not patently wrong, unreasonable, arbitrary, whimsical, or capricious . . . ." Falmouth, 447 Mass. at 822. The Commission properly retained jurisdiction over Erickson's appeal. See id. at 827.

ORDER

For the foregoing reasons, the Town's motion for judgment on the pleadings is **denied**.

Gregg J. Pasquale
Justice of the Superior Court

Dated: April 3rd, 2019

Entered and
notices mailed
4/18/19
cc:
JC
RQ
MS

A TRUE COPY ATTEST
Clerk of Courts