

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

THOMAS FOSTER & 7 OTHERS,  
Appellant

v.

I-09-357

DEPARTMENT OF  
TRANSITIONAL ASSISTANCE,  
Respondent

Appellants' Attorney:

*Pro Se*

Respondent's Attorney:

Daniel LePage  
Assistant General Counsel  
Department of Transitional  
Assistance  
600 Washington St., 4<sup>th</sup> Floor  
Boston, MA 02111

Commissioner:

Christopher C. Bowman

**COMMISSION'S RESPONSE TO REQUEST FOR INVESTIGATION**

On September 4, 2009, the Appellants<sup>1</sup>, pursuant to the provisions of G.L. c. 31, § 2(a), filed a Request for Investigation with the Civil Service Commission (Commission) to determine if the Department of Transitional Assistance (DTA), was complying with the civil service law and rules regarding various provisional promotions. A pre-hearing conference was held at the offices of the Commission on September 29, 2009. At the same time, two of the Appellants (Foster, Mazur) submitted appeals to the Commission

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<sup>1</sup> Thomas Foster, John Sereda, Jesus Pena, Frances Varga, Sharon Beeler, Brett Mazur, Siden Seng, Debbie Tarlow.

pursuant to G.L. c. 31, § 2(b) regarding their non-selection for a provisional promotion. See CSC Case Nos. G2-09-360 & G2-09-361. In regard to Mr. Mazur's appeal (G2-09-361), the parties reached a settlement agreement and the Commission approved their joint request for relief. Mr. Foster's appeal (G2-09-360) proceeded to a full evidentiary hearing and the Commission issued a decision denying his appeal.

The Commission fully addressed the underlying issues regarding the Appellant's request for investigation in Case No. G2-09-360 and several other recent decisions related to provisional promotions. (See Heath v. DTA, G2-09-313; Pease v. DOR, G2-08-132; Poe v. DOR, G2-08-133; Garfunkel v. DOR, G2-08-118; Pollock and Medeiros v. DMR, G2-08-19 & G2-08-98. Specifically, the Commission, in those decisions, ordered that future provisional promotions (as opposed to provisional appointments) may only be granted to civil service employees.

In summary, what the Appellants are actually asking the Commission to do, as part of its Request for Investigation, is to review our own prior decisions and findings on the very same issues for which they now seek an investigation. When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." McCarthy v. Town of Oak Bluffs, 419 Mass. 227, 233 (1994) (quoting Restatement (Second) of Judgments § 27 (1982)).

We see no further matter to be investigated at this time as we have reviewed and decided on the matters before as part of previous decisions, including one in which Mr. Foster was the Appellant.

For these reasons, the Appellants' Request for Investigation under Docket No. I-09-357 is *denied*.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By a vote of the Commission (Bowman, Chairman; Henderson, Marquis and Stein, Commissioners [McDowell – not participating]) on November 4, 2010.

A true record. Attest:

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Notice:  
Thomas Foster (Appellant)  
John Sereda (Appellant)  
Jesus Pena (Appellant)  
Frances Varga (Appellant)  
Sharon Beeler (Appellant)  
Brett Mazur (Appellant)  
Siden Seng (Appellant)  
Debbie Tarlow (Appellant)  
Daniel LePage, Esq. (for Appointing Authority)  
John Marra, Esq. (HRD)