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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

NOTIFY

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION
NO. 12-2655G

NOTICE SENT

09.30.14

C. & O.

C. G.

MASS. A.G.

K. G. H.

C. L. + P.

T. D. N.

MICHAEL GONSALVES

v.

(LAT)

CIVIL SERVICE COMMISSION and
TOWN OF FALMOUTH

DECISION ON PLAINTIFF'S MOTION

FOR DECISION ON THE PLEADINGS

This is an appeal from a decision of the Civil Service Commission (CSC) affirming a decision by the Town of Falmouth to discharge the plaintiff, Michael Gonsalves, who had been a Falmouth Police Officer for nearly twenty years at the time of his suspension and discharge. The discharge was based on evidence of several incidents which the Town, and eventually the CSC, found demonstrated Gonsalves poor decision-making and, more importantly, untruthfulness. Gonsalves argues that his discharge was, in truth, motivated by racial animus and in retaliation for a complaint he made to the MCAD for a failure to promote him.

The standards governing this action are those set forth in

G.L. c. 30A, § 14. The plaintiff's appeal is premised on his argument that, by refusing to issue all of the witness subpoenas which he asked the CSC to issue, his racial bias/retaliation defense was effectively gutted. He asks that the matter be remanded for rehearing with a full complement of witnesses.

After hearing argument, reviewing the briefs of the parties and reviewing the Administrative Record (AR) including Commissioner Paul Stein's Decision, the plaintiff's motion is DENIED and the decision to terminate Gonsalves is affirmed. As a preliminary matter, the evidence believed by Commissioner Stein constituted strong evidence of misconduct, certainly "substantial evidence", supporting the termination decision. Commissioner Stein found that the plaintiff was "not a credible witness". See para. 55 of the Decision at pp. 21-23; A.R. pp. 311-313. Moreover, the defense of racial bias and a retaliatory motive for discharge was argued and considered. See pp. 17-18 of the Decision and A.R. pp. 307-308. Commissioner Stein rejected it, finding that none of the disciplining authorities were aware of the plaintiff's MCAD filing until after the disciplinary proceedings were well underway.

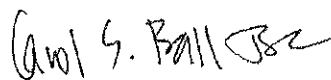
As for the plaintiff's specific objection to the CSC's failure to authorize all requested subpoenas, it is clear that the plaintiff failed to examine relevant witnesses who did testify with regard to racially discriminatory motivation and no

offer of proof was made then, or now, as to what the unsubpoenaed witnesses would have said. In short, the plaintiff has not demonstrated how he was prejudiced by the CSC's decision with regard to his subpoena requests.

The Superior Court is required to defer to agency decision-making, particularly decisions regarding its own procedural rules, in circumstances such as this. There is nothing about this situation to suggest that the CSC abused its discretion here. As noted by Commissioner Stein, this is a sad situation given the plaintiff's long and often distinguished career. Nevertheless, the facts and law dictate denial of the plaintiff's motion and affirmance of the Town of Falmouth and the Civil Service Commission's decision to terminate the plaintiff's employment.

The plaintiff's motion is DENIED. Judgment shall enter in favor of the defendants.

By the court,



Carol S. Ball
Justice of the Superior Court

Date: September 29, 2014