COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place – Room 503
Boston, MA 02108
(617) 727-2293

MERCEDES GRAVER,
Appellant

v.

Case No. D1-12-161

SPRINGFIELD HOUSING AUTHORITY,
Respondent

Appearance for Appellant:	Joseph L. DeLorey, Esq. AFSCME Council 93 8 Beacon Street Boston, MA 02108
Appearance for Springfield Housing Authority:	John P. Talbot, Jr., Esq. Sullivan, Hayes & Quinn One Monarch Place – Suite 1200 Springfield, MA 01144
Commissioner:	Cynthia A. Ittleman, Esq.[1]

DECISION ON RESPONDENT'S MOTION TO DISMISS

On May 7, 2012, Ms. Mercedes Graver (hereinafter "Ms. Graver" or "Appellant") filed a petition with the Civil Service Commission (hereinafter "Commission") pursuant to G.L. c. 31, § 43 and G.L. c. 121B, § 29, to appeal the decision of the Springfield Housing Authority (hereinafter "SHA" or "Respondent") to terminate her employment on April 10, 2012. A pre-hearing conference took place at the Springfield State Building on June 13, 2012. Also on June 13, 2012, the SHA filed a Motion to Dismiss alleging that the appeal to the Commission was filed more than ten days after the Appellant received written notice of SHA's decision to

[1] The Commission acknowledges the assistance of Law Clerk Beverly J. Baker, Esq., in the drafting of this decision.

terminate her employment and, as a result, is untimely under G.L. c. 31, § 43. On July 10, 2012, the Appellant filed a Memorandum in Opposition to the Respondent's Motion to Dismiss and in Support of her Application for Relief Under St. 1993, c. 310 (hereinafter "Opposition"). On August 3, 2012, SHA submitted a Rebuttal to Opposition to Motion to Dismiss (hereinafter "Rebuttal"). For the reasons stated herein, the Motion to Dismiss is granted.

Based on the Motion to Dismiss, Opposition, Rebuttal, and taking administrative notice of all matters filed in the case, including a multipage document that was submitted and consists of a letter and enclosures from Mr. DeLorey to Mr. Edward Srednicki at the Department of Labor Relations dated May 21, 2012 (hereinafter "DLR Doc."), as well as pertinent statutes, regulations, case law, policies, and rules, a preponderance of the evidence and reasonable inferences therefrom establishes:

1. Ms. Graver was employed by the SHA from June 5, 1998 until her termination on April 10, 2012. At the time of her termination, Ms. Graver's job title was Maintenance Aide. (Stipulated Fact)
2. During the course of her employment with the SHA, Ms. Graver has been trained and supervised in workplace standards and procedures. Most recently, in January and February of 2012, Ms. Graver attended staff meetings of her administrative district, at which her supervisors, Property Manager Celina Correa and Foreman José Torres, gave her and other staff instruction on the handling and completion of work orders. Ms. Graver was instructed that in performing work required by work orders from annual (preventative maintenance) inspections, she was required to first complete work orders generated from 2011 inspections and then proceed to those generated from 2012 inspections. Ms. Graver was afforded an opportunity to ask questions or request

clarification and gave no indication that she did not understand the straightforward and common-sense instructions from her supervisors. (Appellant Ex. A)

3. From December 2011 to February 2012, Ms. Graver completed and submitted to her supervisors numerous "Springfield Housing Authority Annual Inspection Work Order" forms. In these work order forms, Ms. Graver stated that she had worked on ninety-two items that were cited on the annual inspections list. Ms. Graver's work order forms contain, in her handwriting, the date upon which she supposedly worked on each item, the time she began and ended work on each item, the number of hours she spent on the work in quarter-hour increments, and the materials she used for each repair. (Appellant Ex. A)
4. On March 5 and March 7, 2012, in the course of performing inspections at the SHA Central Apartments to which Ms. Graver is assigned, Ms. Correa observed that of the ninety-two items that Ms. Graver claimed to have worked on, fifty-four items, constituting nearly nineteen hours of claimed work time, had not been worked on. (Appellant Ex. A)
5. When confronted with the discrepancies between the work that was done and the information on her work order forms by Ms. Correa on March 16, 2012, and later at a meeting on March 19, 2012, with her union representative present, Ms. Graver claimed that she had "misunderstood" or "been confused" about the work order system, although she did not provide specific examples of her misunderstanding. Ms. Graver also stated that she was "going to finish" the items covered in the work orders but that she got "called away" on emergency repairs. Ms. Graver did not provide any specific details

regarding these alleged emergency repairs, for which work orders would have been required.[2] (Appellant Ex. A)

6. In a letter from the SHA dated March 30, 2012, Ms. Graver was given notice that pursuant to G.L. c. 31, § 41 she was being placed on administrative leave, effective April 2, 2012, and that a hearing would be held on April 4, 2012. The letter stated that it enclosed a copy of G.L. c. 31, §§ 41-45. (DLR Doc. at 14-15)
7. On April 4, 2012, a hearing was held by the SHA pursuant to G.L. c. 31, § 41 and Chapter II(f) of the SHA Employee Handbook to consider the termination or other discipline of Ms. Graver. A representative from Ms. Graver's union, the American Federation of State, County and Municipal Employees Council 93 (hereinafter "AFSCME" or "Union"), was present for the hearing. (Appellant Ex. A)
8. At the hearing, Ms. Graver stated that "I really don't know why I handled it the way I did," and that she was overwhelmed and unable to perform her job due to both the requirements of her position and by difficult family circumstances at home, particularly the illness of her husband. (Appellant Ex. A)
9. The SHA Employee Handbook, section IV(c) sets forth the SHA's "Standards of Conduct" for employees. Section II(f)(2) provides that "certain types of misconduct are sufficiently serious that progressive disciplinary action is not appropriate. In cases of serious misconduct, immediate suspension or discharge may be necessary." The conduct set forth in this section includes "falsifying timesheets or timecards or any other acts of dishonesty affecting the SHA." (Appellant Ex. A)
10. By agreement of the parties, the hearing was held open until close of business on April 6, 2012, in order to allow Ms. Graver to present additional information. On the afternoon of

[2] There is no evidence to suggest that any such emergency work orders exist pertaining to this matter.

April 6, 2012, Ms. Kathy Hardy, Human Resources Manager at the SHA, entered into another agreement with the union representative that even though the hearing was closed, the time for the decision would be extended until close of business on April 11, 2012. The reason for this extension was to provide Ms. Graver the intervening weekend to consider her options and to notify the SHA as to whether she would choose to voluntarily resign from her position. (Appellant Ex. A)

11. On Monday, April 9, 2012, the Union representative informed the Human Resources Manager that Ms. Graver would not submit her resignation. (Appellant Ex. A)
12. In a letter dated April 10, 2012, Ms. Graver informed the SHA that she had a substance abuse problem and had checked herself into the Carlson Recovery Center in Springfield, Massachusetts, for treatment. (DLR Doc. at 25)
13. In a separate letter, also dated April 10, 2012, the SHA provided Ms. Graver with the Decision Following Disciplinary Hearing, which terminated her employment with the SHA. (Appellant Ex. A)
14. On or about April 19, 2012, Ms. Graver's Union filed a grievance contesting her termination. (Appellant Ex. B)
15. On or about May 2, 2012, counsel for the SHA advised Mr. David Thompson, local Union president, via email, that it was the position of the SHA that Ms. Graver's termination was not covered under the grievance process detailed in the contract and, therefore, would not afford her a Step II hearing. (Appellant Ex. C)
16. On May 7, 2012, the instant appeal was filed with the Commission. (Administrative Notice; Appellant Ex. E)

17. On or about May 21, 2012, the Union filed a charge of Prohibited Practice with the Massachusetts Department of Labor Relations alleging that the SHA violated G.L. c. 150E, §§ 10(a)(5) and, derivatively, 10(a)(1), by changing the longstanding practice of processing disciplinary matters though the grievance procedure and by failing to provide the Union with advance notice of its intent to discontinue this practice.[3] (Appellant Ex. F)

18. The May 21, 2012 letter to the Department of Labor Relations regarding the Prohibited Practice charge contained the affidavit of Ms. Martha Fila, a Staff Representative for AFSCME. In this affidavit, Ms. Fila states that "I have had several cases with the Housing authority that resulted in a grievance being filed for discipline." Ms. Fila also states that "[t]he most recent one was for a written warning to the President David Thompson that was processed to the step III level." Ms. Fila's affidavit also contains the following:

> During my assignment to the Springfield Housing Authority there have been 3 Executive directors I have worked with. Not at any time did any of them raise the issue of Article 7.5 and put the Union on notice that they would be changing the long standing practice of allowing discipline cases to be filed under Article 7 of the contract.

(DLR Doc. at 3)

19. The May 21, 2012 letter to the Department of Labor Relations also contained the affidavit of Mr. David Thompson, a maintenance mechanic with the SHA and local Union President. Mr. Thompson states that on May 2, 2012, he received an email from counsel for the SHA indicating that the SHA was taking the position that Ms. Graver's termination was not covered under the grievance process of the contract. In the affidavit,

[3] As far as the Commission is aware, this matter is currently still pending.

Mr. Thompson provides the following examples of discipline cases that were filed to step one and higher over the past several years:

- A Mechanic I received a five day suspension and filed at both step two and three and to arbitration in July 2003.
- A Mechanic I received both oral and written warnings and filed at step one in July 2009.
- Two Buildings and Grounds employees received suspensions and filed at step two in September 2009.
- A Plumber received a written warning and filed to step three in November 2009.
- A Mechanic II received a written warning and filed to step one in October 2009.

(DLR Doc. at 5)

20. None of the examples of discipline cases that were provided in Mr. Thompson's affidavit and were processed under the grievance procedure set forth in the collective bargaining agreement (hereinafter "CBA" or "Contract") involved the termination of an employee. (DLR Doc. at 5, Administrative Notice)

21. A portion of the CBA was also included with the May 21, 2012 letter to the Department of Labor Relations. Article 8 of the agreement is entitled "Grievance and Arbitration Procedures." Article 8, § 2 sets forth how grievances shall be processed:

> Step #1 After the incident giving rise to the grievance, the aggrieved employee and a Union Representative shall meet with the Supervisor for the Unit or Department Head, as appropriate for the employee's position, who shall attempt to resolve the matter.
>
> Step #2 If the grievance is not resolved at Step #1, the grievance shall be submitted in writing on an approved grievance form (Attachment D) to the supervising Assistant Executive Director. The supervising Assistant Executive Director shall respond in writing to the grievance. A copy of the written response will be given to the aggrieved employee and the Union representative present.
>
> Step #3 If the grievance is not resolved [at] Step #2, then the grievance shall be submitted to the Executive Director. After the Executive Director receives the grievance, he/she shall schedule a meeting to hear the grievance. The Executive Director shall respond in writing to the grievance. A copy of the

written response shall be given to the aggrieved employee and the Union representative.

Step #4 If the grievance is not resolved at Step #3, then the Union shall both notify the SHA in writing of its intent to arbitrate the grievance and also file a demand for arbitration with the American Arbitration Association. Expenses for the arbitrator's services shall be shared equally between the parties.

(DLA Doc. at 11)

22. Article 8, § 5 of the Contract sets forth:

> Exclusions: *Notwithstanding any provision of this Agreement any matter which is subject to the jurisdiction of the Civil Service Commission* or any Retirement Board established by Law or where the employee otherwise has statutory appeal rights, or any dispute relative to statutory wages *shall not be the subject of arbitration under this Agreement.*

(DLR Doc. at 12, emphasis added)

23. Article 8, § 6 of the CBA states:

> Grievances involving disciplinary action shall be processed beginning at the second (2^{nd}) step. If the case reaches arbitration, the Arbitrator shall have the power to direct a resolution of the grievance up to and including restoration of the job with all compensation and privileges that would have been due the employee.

(DLR Doc. at 12)

24. Article 8, § 8 of the CBA involves discharge and contains the following:

> The SHA shall not discipline or discharge an employee without specific written reason and cause. If, in any case, the SHA believes that there is just cause for discharge, the employee involved may be suspended pending discharge. The employee and a Union Steward will be notified in writing that the employee has been suspended and is subject to discharge. The Union shall have the right to take up the suspension and the discharge as a grievance at the second (2^{nd}) step of the grievance procedure, and the matter shall be handled in accordance with the grievance procedure through the arbitration step if deemed necessary.

(DLR Doc. at 13)

25. On or about May 24, 2012, the Union filed for arbitration with the American Arbitration Association (hereinafter "AAA"). (Appellant Ex. D)
26. On or about June 8, 2012, the SHA, through counsel, filed an Answer to Demand for Arbitration with the AAA. In this letter, the SHA denies that it violated the collective bargaining agreement in the termination of Ms. Graver and claims that AFSCME's demand for arbitration in this matter violates the plain language of the current contract. The letter also states: "[t]he proper jurisdiction of this matter is before the Civil Service Commission, as an appeal is currently pending." (Appellant Ex. G)
27. On or about July 10, 2012, AFSCME filed its response to the SHA's Answer to Demand for Arbitration with the AAA. (Appellant Ex. H)

DISCUSSION

The Legal Standard for Consideration of a Motion to Dismiss

The United States Supreme Court has held that in order to survive a motion to dismiss, the non-moving party must plead only enough facts to state a claim to relief that is plausible on its face. *See Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 547 (2007). Thus, the non-moving party must plead enough facts to raise a reasonable expectation that discovery will reveal evidence in support of the allegations. *See id.* at 545. Similarly, the Massachusetts Supreme Judicial Court has held that an adjudicator cannot grant a motion to dismiss if the non-moving party's factual allegations are enough to raise a right to relief above the speculative level based on the assumption that all the allegations in the appeal are true, even if doubtful in fact. *See Iannacchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008). The Standard Adjudicatory Rules of Practice and Procedure (hereinafter "Rules") govern administrative adjudication. 801 CMR 1.01, *et seq*. However, Commission policy provides that when such rules conflict with G.L. c.

31, the latter shall prevail; there appears to be no such conflict here. The Rules indicate that the Commission may dismiss an appeal for lack of jurisdiction or in the event the appeal fails to state a claim upon which relief can be granted. 801 CMR 1.01(7)(g)(3).

Applicable Civil Service Statutes

Massachusetts G.L. c. 121B, § 29 states, in pertinent part:

> No employee of any housing authority . . . who has held his office or position . . . for a total period of five years of uninterrupted service, shall be *involuntarily separated* therefrom except subject to and in accordance with the provisions of sections forty-one to forty-five, inclusive, of said chapter thirty-one to the same extent as if said office or position were classified under said chapter.

(Emphasis added).

Massachusetts G.L. c. 31, § 41 sets forth, *inter alia,* the mandatory procedures that must be followed when discharging a tenured employee for just cause. Pursuant to G.L. c. 31, § 41, prior to taking any action against such an employee, the appointing authority must provide a written notice to said employee, stating the action contemplated, the specific reason(s) for such action, along with a copy of G.L. c. 31, §§ 41-45, and shall provide the employee a full hearing concerning such reason(s) before the appointing authority. With few exceptions, such an employee must be given at least three days' notice of the time and place of such a hearing. G.L. c. 31, § 41. Following a hearing, if it is the decision of the appointing authority that there was just cause for an action taken against a person, such person may appeal to the Commission as provided in G.L. c. 31, § 43. G.L. c. 31, § 41. Massachusetts G.L. c. 31, § 43 provides, in pertinent part: "If a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, within ten days[4] after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing before a member of the commission . . . ."

[4] "Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section." G.L. c. 31, § 43.

According to this section, "if the commission determines that such appeal has been previously resolved or litigated with respect to such person, in accordance with the provision of section eight of chapter one hundred and fifty E, or is presently being resolved in accordance with such section, the commission shall forthwith dismiss such appeal." G.L. c. 31, § 43. The statute also states:

> If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee, by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority.

G.L. c. 31, §43.

Chapter 310 of the Acts of 1993 sets forth:

> If the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

The Respondent's Argument

The SHA claims that Ms. Graver's termination procedure was conducted in compliance with G.L. c. 31, §§ 41-45. It is the SHA's position that Ms. Graver's appeal with the Commission is untimely, as it was filed on May 7, 2012, well after the ten day requirement, and, as a result, the appeal should be dismissed. The SHA points out that the Appellant does not claim that she did not know this matter is under the jurisdiction of the Commission, but rather that her choice to initially pursue the matter though the grievance procedure should excuse her

late filing. It is the SHA's view that this does not rise to the level of "no fault" for purposes of St. 1993, c. 310. In response to the Appellant's argument that the SHA has a past practice of allowing cases which were subject to the Commission to be processed through the grievance procedure, the SHA notes that none of the circumstances cited by the Appellant involved an involuntary separation; warnings and suspensions are not covered by G.L. c. 121B, § 29.

Appellant's Argument

Ms. Graver claims that neither the individual employees nor the Union had been put on notice that grievances related to suspensions or terminations were not subject to the grievance procedure of the collective bargaining agreement. The Appellant argues that, because "her rights have been prejudiced through no fault of her own," the Commission should exercise its discretion under the provisions of St. 1993, c. 310, and fashion a remedy granting the Appellant a hearing. Despite the fact that the Union filed a demand for arbitration of this matter, it is the Appellant's position that this matter is not presently being resolved through the grievance process because the SHA has taken the position that the matter is not subject to arbitration and is instead governed by G.L. c. 31, §§ 41-45. The Appellant also contends that because the SHA has taken the position that the Commission has proper jurisdiction, if the SHA were to prevail at this stage, the merits will never be reached and the matter of the just cause of Ms. Graver's termination will not be resolved by arbitration. The Appellant further argues that the SHA's course of conduct regarding the procedure for grievances concerning matters that the Appellant alleges fall under the jurisdiction of the Commission is a material fact that is in dispute and, therefore, summary dismissal would not be proper.

Analysis

The Commission's jurisdiction to hear appeals of employment terminations is derived by statute. According to G.L. c. 31, § 43, "a person aggrieved by a decision of an appointing authority made pursuant to section forty-one shall, *within ten days after receiving written notice of such decision*, appeal in writing to the commission" (Emphasis added). As an employee of the SHA since 1998, Ms. Graver may not be involuntarily discharged from her position except subject to and in accordance with the provisions of G.L. c. 31, §§ 41-45. G.L. c. 121B, § 29. Therefore, pursuant to G.L. c. 31, § 43, Ms. Graver had ten days after receiving the SHA's notice that it was terminating her from employment to appeal in writing to the Commission. Ms. Graver was notified of her termination in a letter from the SHA dated April 10, 2012. The instant appeal was filed with the Commission on May 7, 2012. Even allowing additional time for Ms. Graver to actually receive the letter, and excluding weekends and legal holidays as required, Ms. Graver's appeal was not filed within the ten days required by G.L. c. 31, § 43. As a result, her appeal is untimely.

The Appellant argues that the SHA's position that her termination is not subject to the grievance procedure marks a departure from prior practice of the grievance process without notice. This argument is unpersuasive. G.L. c. 121B, § 29 sets forth the requirement that no employee of any housing authority who has held his or her position for a period of five years of uninterrupted service shall be involuntarily separated except subject to and in accordance with the provisions of G.L. c. 31, §§ 41-45. Following a hearing before the appointing authority pursuant to G.L. c. 31, § 41, any person aggrieved by the decision of an appointing authority is given ten days after receiving writing notice of such a decision to appeal to the Commission in writing. G.L. c. 31, § 43. Furthermore, Art. 8, § 5 of the CBA, a copy of which was submitted

into evidence by the Appellant, specifically excludes "any matter which is subject to the jurisdiction of the Civil Service Commission," notwithstanding any language to the contrary in the agreement. In addition, none of the examples of past discipline cases subject to the grievance procedures provided by the Appellant involved involuntary terminations. Only those employees with a total of five years of uninterrupted service who are involuntarily separated fall within the jurisdiction of the Commission; all other cases of discipline would be processed through the grievance and arbitration procedure set forth in the CBA. Thus, the purported change of grievance procedure by SHA is of no consequence. Furthermore, the Appellant was advised by the SHA of the application of G.L. c. 31, §§ 41-45 in the written notice informing the Appellant of her SHA hearing. In addition, there is no evidence that the SHA has processed grievances related to matters that were properly within the jurisdiction of the Commission in the past.

The Appellant urges the Commission to exercise its discretion and grant her relief under St. 1993, c. 310, stating "[h]er rights have been prejudiced through no fault of her own." In *United Steelworkers of America v. Commonwealth Emp't Relations Bd.,* the union appealed from a decision of the board that the union violated its duty of fair representation. 74 Mass.App.Ct. 656 (2009). The background of this Massachusetts Appeals Court decision involved the termination of a public works employee. *Id.* at 658-59. The employee's union representative allowed the deadline to file for arbitration to expire, not realizing that the ten day time period to appeal with the Commission had also passed. *Id.* at 660. By the time the employee appealed to the Commission, the deadline had expired. *Id.* Despite the fact that the employee had relied on erroneous advice, his appeal was dismissed as untimely. *Id.* Ultimately, the Massachusetts Appeals Court affirmed the board's decision. *Id.* at 665. In the case at hand, the Appellant's choice to initially pursue grievance does not save her late filing with the Commission. Because

the Appellant did not file her appeal within the ten day period following her receipt of the SHA's decision to terminate her, as required pursuant to G.L. c. 31, § 43, her appeal is untimely and must be dismissed.

CONCLUSION

Based on the facts and the law provided herein, the appeal is untimely. Therefore, the SHA's Motion to Dismiss is hereby ***granted*** and the appeal is ***dismissed.***

Civil Service Commission

_____
Cynthia A. Ittleman, Esq.
Commissioner

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman [no]; Ittleman [yes], Marquis [no], McDowell [yes], and Stein [yes], Commissioners) on January 10, 2013.

A true record. Attest:

_____
Commissioner

OPINION OF COMMISSIONER STEIN CONCURRING IN RESULT

While I am obliged to concur in the decision to dismiss this appeal for lack of jurisdiction, I believe it bears notice that this result is one example of the unfortunate, and perhaps unintended, consequence of the complex statutory interplay that has evolved over time to govern public employment rights in the Commonwealth. I expect that the legislative intent in providing collective bargaining rights under Chapter 150E was meant to supplement, not diminish, the individual rights of certain public housing authority employees under Chapter 121B to enforce the protections afforded under the Civil Service Law, Chapter 31. There is certainly some force to the argument put forth by the Appellant's collective bargaining representative that, even if a housing authority employees termination is not arbitrable, it should be subject to good faith step

grievance under the CBA up to, but short of arbitration, and the SHA's interpretation of the applicable CBA should be viewed as a violation of the collective bargaining law. There is also some logic to the point that, if a matter potentially can be resolved through the pursuit of collective bargaining grievance rights, it makes little sense, from a practical standpoint, to require an immediate appeal to be filed with this Commission while such process is on-going, and for this Commission to be devoting its limited resources to individual appeals that could become moot through parallel collective bargaining resolution.

Unfortunately, however, the current statutory framework provides otherwise. The jurisdiction of the Commission to hear individual appeals predates the establishment of public employee collective bargaining rights, and – save for the proviso that commencement of arbitration will divest this Commission of jurisdiction – Chapter 31 appeals were left to remain on an entirely independent track from collective bargaining grievance proceedings. As much as deferring appeals pending pursuit of collective bargaining grievance rights would seem to make sense, I must agree that the plain meaning of Chapter 31, Section 43, as presently written, requires that an appeal to the Commission must be taken within ten days of the appointing authority's termination decision.

Paul M. Stein,
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice:
Joseph L. DeLorey, Esq. (for the Appellant)
John P. Talbot, Jr., Esq. (for the Respondent)