COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss. **Division of Administrative Law Appeals**

Thomas Howard,
Petitioner,

v.

Newburyport Retirement Board,
Respondent.

No. CR-23-0461

Dated: March 14, 2025

ORDER OF DISMISSAL

This is an appeal from a decision of the Newburyport Retirement Board (board) to adjust the amount of petitioner Thomas Howard's retirement allowance. The board explained in its decision that the adjustment resulted from an audit of the board's records by the Public Employee Retirement Administration Commission.

A December 2023 scheduling order submitted the matter on the papers. The board filed a responsive memorandum and eleven proposed exhibits in March 2024. Mr. Howard did not file a memorandum and exhibits by his May 2024 deadline.

In January 2025, the board moved to dismiss based on failure to prosecute.[1] Soon after that, First Magistrate Rooney issued an order by email setting a February 2025 deadline for Mr. Howard's response. The order also directed Mr. Howard to "show that he had good cause to not file a prehearing memorandum by the date ordered." Mr. Howard has filed no response.

Mr. Howard has repeatedly failed "to comply with orders" and to "respond to notices or correspondence." 801 C.M.R. § 1.01(7)(g)(2). By ignoring an order to show cause and failing to develop arguments or authorities in support of his appeal, Mr. Howard has also "otherwise indicate[d] an intention not to continue with the prosecution of [his] claim." *Id.* *See also Metro*

[1] The board also moved for summary decision. The current order moots that motion.

v. Newton Ret. Bd., No. CR-20-237, 2024 WL 5112217 (Contributory Ret. App. Bd. Nov. 18, 2024). Dismissal based on failure to prosecute is therefore appropriate. Adjudicative tribunals must focus their limited resources on the disputes that are actually being litigated. *See Bucchiere v. New England Tel. & Tel. Co.*, 396 Mass. 639, 641 (1986).

In view of the foregoing, it is hereby ORDERED that the motion to dismiss is ALLOWED and the appeal is DISMISSED.

Division of Administrative Law Appeals

/s/ Yakov Malkiel
Yakov Malkiel
Administrative Magistrate