

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK,ss.

CIVIL SERVICE COMMISSION

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

PAUL JOSEPH	E-08-228
STANLEY DEMESNIN	E-08-229
WILLIAM BRADLEY	E-08-230
DENNIS WHITE	E-08-231
WILLIAM WOODLEY	E-08-232
GAYLE CRAVEN	E-08-233

Appellants

v.

HUMAN RESOURCES DIVISION,
Respondent

ORDER OF DISMISSAL

Recent Procedural Background

On February 4, 2008 and June 12, 2008, the Civil Service Commission issued decisions in an action that are directly related to the instant appeals. (See Attached Decisions) The underlying issue regarded whether or not a 2002 promotional examination for the positions of lieutenant and captain in the Boston Police Department constituted a fair test.

As part of its February 4, 2008 decision, the Commission granted relief to certain Appellants in that appeal. Subsequent to the issuance of the decision on February 4, 2008, the Commission, in response to various motions and other correspondence from Appellants and other individuals, issued an Order of Clarification on June 12, 2008.

As part of the June 12, 2008 Order of Clarification, the Commission addressed the issue that is the subject of the instant appeals: whether or not the 2002 test-takers who never filed any appeal with the Commission should receive the same relief as the Appellants.

For the reasons cited in the attached Order of Clarification dated June 12, 2008, the Commission decided that all requests to expand the relief to individuals beyond those who actually filed individual appeals with the Commission in a timely manner were denied.

Instant Appeals

In their instant appeals, the six Appellants, including Appellant Paul Joseph¹, are raising the same issue referenced above, albeit through a different procedural path. Specifically, in a July 7, 2008 letter to the state's Human Resources Division (HRD), the six Appellant, pursuant to Chapter 310 of the Acts of 1993, ask HRD to grant them the same relief that the Civil Service Commission granted to certain Appellants in the February 4, 2008 and June 12, 2008 Commission decisions. Upon receiving no response from HRD, the Appellants then filed the instant appeals with the Civil Service Commission, apparently appealing HRD's "failure to act" under G.L. c. 31, § 2(b).

Conclusion

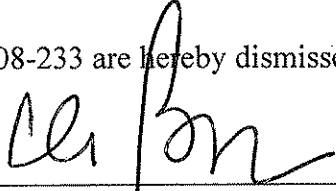
Pursuant to 801 CMR 1.01 (7) (g) (3), the presiding officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.

¹ One of the Appellants in the instant appeal, Paul M. Joseph, forwarded correspondence to the Commission and participated in a status conference regarding this matter prior to the issuance of the June 12, 2008 Order of Clarification. Also prior to the issuance of that order, Mr. Joseph retained the services of Attorney Galen Gilbert, who also forwarded correspondence to the Commission at the time.

The instant appeals should be dismissed for the following reasons. First, the Appellants have alleged that HRD failed to act by not granting them relief pursuant to Chapter 310 of the Acts of 1993. Chapter 310, however, only allows the Civil Service Commission to restore or protect the rights of an aggrieved person under Chapter 31.

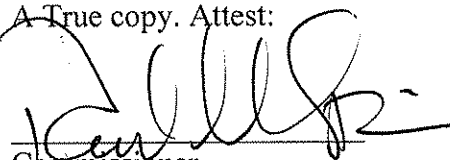
Moreover, the issue of whether the Appellants in the instant appeal should be granted the relief being sought (whether it be from HRD or the Commission) has already been addressed through prior Commission decisions, referenced above, and attached to this Order of Dismissal.

For these reasons, the Appellants' appeals under Docket Nos. E-08-228 – E-08-233 are hereby dismissed.



Christopher C. Bowman
Chairman

By a 4-1 vote of the Civil Service Commission (Bowman, Chairman; Marquis, Stein and Taylor, Commissioners [Henderson, Commissioner – No]) on September 25, 2008.

A True copy. Attest:


Commissioner

Pursuant to MGL c. 31 s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under MGL c. 30A s. 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

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