

MAR 10 2010

THE ATTORNEY GENERAL  
ADMINISTRATIVE LAW DIVISION  
SUFFOLK, ss.

COMMONWEALTH OF MASSACHUSETTS

SUPERIOR COURT  
CIVIL ACTION NO. 2009-4978

BOSTON POLICE DEPARTMENT  
Plaintiff

v.

JILL KAVALESKI and  
MASSACHUSETTS CIVIL SERVICE  
COMMISSION  
Defendants

**PLAINTIFF, BOSTON POLICE DEPARTMENT'S, MOTION TO STAY  
ENFORCEMENT OF THE CIVIL SERVICE COMMISSION'S DECISION  
GRANTING DEFENDANT, JILL KAVALESKI, RELIEF**

Pursuant to Mass. R. Civ. P. 65 and G.L. c. 30A § 14(3), the Plaintiff, Boston Police Department, moves for this Honorable Court to stay enforcement of the Decision and Order issued by the Civil Service Commission in the underlying matter, *Kavaleski v. Boston Police Department*, Civil Service Docket No. G1-07-299. The Plaintiff further moves to enjoin the Commonwealth of Massachusetts Human Resources Division from placing Kavaleski's name at the top of any current certification and list and/or the next certification and list from which the next original appointment to the position of Police Officer shall be made. In support thereof, the Boston Police Department refers to the attached Memorandum of Law.

Notice Sent  
03.09.10

NIT

BPD

HL

L+L-R

RQ

AAG-1

(md)

2-25  
3-9-10  
3/2/10 Argued in open court  
3/9/10 Denied. See my written  
opinion issued today  
Justice

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT  
CIVIL ACTION #09-4978

*Notice sent*

*03.09.10*

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*(nd)*

BOSTON POLICE DEPARTMENT

V.

KAVALESKI AND THE CIVIL SERVICE COMMISSION

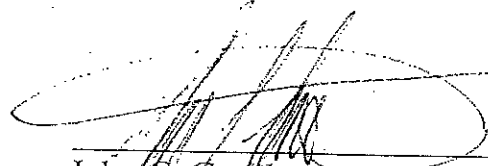
DECISION OF THE COURT  
DENYING THE PLAINTIFF'S MOTION FOR A STAY

The plaintiff's request for a stay was argued on March 2, 2010, and after reading all the relevant cases and reviewing the standard for granting a stay, the plaintiff's motion for a stay is Denied. I make this decision because I cannot make a preliminary determination regarding which side of this dispute has a likelihood of success on the merits. While Commissioner Henderson's decision is thorough and detailed and may well meet the substantial evidence test after a judge hears this case on the merits, the findings of the two mental health professionals that led to the disqualification of the defendant Kavaleski do seem to identify a psychological condition sufficiently severe to prevent her from performing the essential functions of a police officer. However, I cannot say today which argument will likely prevail when this case is heard on the merits.

Thus I think the legal and practical solution  
is to let the order of the Civil Service Commission stand and  
have Ms. Kavaleski independently evaluated should a new list of candidates  
be called for by the plaintiff.

In the meantime, I set the following expedited schedule for this dispute to be  
heard on the merits:

- (1) The Administrative Record Shall be Filed by April 9, 2010.
- (2) Plaintiff's Motion for Judgement on the Pleadings Shall be Filed  
by May 9, 2010.
- (3) Defendant's Cross-Motion for Judgement on the Pleadings  
Shall be Filed by June 9, 2010.
- (4) Oral argument on these Motions will be Heard on June 24, 2010,  
at 2pm in Courtroom 313.

  
John C. Cratsley  
Justice of the Superior Court

March 9, 2010

Notice sent  
03.09.10  
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