

RECEIVED

2014 AUG 28 PM 1 39

NOTIFY

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

10

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 2013-02933

NOTICE SENT

8-2-14

AGG.

R.L.G.

M.B.+J.

R.E.M.

W.D.C.

L.C.C.+P.

S.C.P.

J.A.P.

(EEC)

WILLIAM LEEMAN and CHRISTOPHER PAGLIUCA,
Plaintiffs,

vs.

CITY OF HAVERHILL and MASSACHUSETTS CIVIL SERVICE
COMMISSION,

Defendants.

MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS FOR
JUDGMENT ON THE PLEADINGS

NOTICE RESENT

08-11-14

L.C.C.+P.

S.C.P.

J.A.P.

W.D.C.JR.

MASS.A.G.

R.L.G.JR.

UNHAND

08-11-14

M.B.+J.

The plaintiffs, William Leeman and Christopher Pagliuca, have appealed a July 11, 2013 decision of defendant Massachusetts Civil Service Commission ("Commission"), upholding a 10-day suspension of Lieutenant Leeman ("Leeman") and a five-day suspension of Officer Pagliuca ("Pagliuca") by defendant City of Haverhill (the "City") from the City's police department. The Court held a hearing on July 30, 2014, at which plaintiffs and the City were represented by counsel, and the Commission declined to appear on grounds that it considered itself to be a nominal party. For the below reasons, this Court DENIES plaintiffs' Motion for Judgment on the Pleadings (filing # 9), ALLOWS defendants' motion for judgment on the pleadings (part of filing # 10), and DISMISSES the appeal.

SUMMARY OF PROCEEDINGS BELOW

The City suspended Leeman for 10 days and suspended Pagliuca for five days from the Haverhill Police Department ("HPD") for violations of HPD Rule 130

(Departmental Reports), Rule 111 (Unsatisfactory Performance) and Canon of Police Ethics, Article X (Presentation of Evidence). The suspensions were based upon plaintiffs' response to an incident involving a retired lieutenant colonel of the Massachusetts State Police who was stopped driving while intoxicated after crashing into a utility pole in West Newbury, causing extensive damage, and continuing to drive into Haverhill.

On July 11, 2013, the Commission unanimously upheld the City's suspension of both officers, issuing a comprehensive and well-reasoned 25-page decision (the "Decision") that included 66 separate Findings of Fact, some of which involved multiple factual determinations, and an analysis of the relevant law. With regard to Pagliuca, the first Haverhill police officer on the scene, the Commission found that he ignored clear evidence that the retired lieutenant colonel was intoxicated, failed to conduct a field sobriety test or any other investigation, and wrote an untruthful and incomplete report. Decision at 19-20.¹ With regard to Leeman, the shift commander, the Commission found that he failed to direct the officers on the scene to conduct any investigation, failed to ensure that Pagliuca's report was accurate and complete, and discouraged a subordinate officer from correcting the report to make it more accurate and complete. Decision at 11-12, 21-22.

The Commission upheld the penalties that the City had imposed upon plaintiffs, considering other relevant cases and noting the lack of any evidence of bias or disparate treatment against the plaintiffs. Decision at 22-23.

¹ "Decision" refers to the Commission's ruling in this matter. "Plt. Br." refers to plaintiffs' brief submitted to this Court.

DISCUSSION

The Legal Standard

Pursuant to G.L. c. 30A, § 14(7), this Court may reverse, remand, or modify an agency decision only if the decision is “based on an error of law, unsupported by substantial evidence, unwarranted by facts found on the record as submitted, arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with law.”

Massachusetts Inst. of Tech. v. Department of Pub. Utils., 425 Mass. 856, 868 (1997).

Leeman and Pagliuca bear the burden of demonstrating the invalidity of the Commission’s decision. Merisme v. Board of Appeal on Motor Vehicle Liab. Policies and Bonds, 27 Mass. App. Ct. 470, 474 (1989). In reviewing an agency decision, the Court is required to “give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it” by statute. G.L. c. 30A, § 14(7) (1997); see Flint v. Commissioner of Pub. Welfare, 412 Mass. 416, 420 (1992); Seagram Distillers Co. v. Alcoholic Beverages Control Comm’n, 401 Mass. 713, 721 (1988). The reviewing court may not substitute its judgment for that of the agency. Southern Worcester County Regional Vocational Sch. v. Labor Relations Comm’n, 386 Mass. 414, 420-21 (1982), citing Olde Towne Liquor Store, Inc. v. Alcoholic Beverages Control Comm’n, 372 Mass. 152, 154 (1977).

Application of the legal standard

Because plaintiffs have failed to submit a transcript of the proceedings below, they are barred under Superior Court Standing Order 1-96 from arguing that the Commission’s decision is not supported by substantial evidence, is arbitrary or capricious, or is an abuse of discretion. This Court must “rely exclusively on the contents

and analysis reflected in the hearing officer's decision." Covell v. Department of Social Services, 439 Mass. 766, 782 (2003). This Court can, however, "assess the logic of the [Commission's] analysis," *id.* at 782, and determine whether the Commission exceeded its constitutional or statutory authority, or made an error of law. See G. L. c. 30A, § 14. With or without a transcript, it is clear that the Commission's decision in this matter was justified, and that plaintiffs' arguments are completely without merit.

Plaintiffs first argue that the Commission made an error of law by accepting a "lay" view of probable cause instead of the Massachusetts legal standard. Plt. Br. at 18-21.² This argument ignores both the facts of the incident and plaintiffs' responsibilities as police officers. Pagliuca encountered a man at the side of a car, whom another police officer described as "legless" and either intoxicated or drunk. Pagliuca heard the man state that he had consumed a couple or three drinks that night. The man said to Pagliuca, "If this was the good old days, [you] would just let me go." Pagliuca admitted that he thought the man was intoxicated. See Decision at 6-7, 10-11, 14. It defies common sense to argue that Pagliuca had an insufficient basis to conduct a field sobriety test and do other investigation.

Plaintiffs next claim that HPD did not have jurisdiction or authority to make an arrest, citing various legal doctrines and actions at the scene by a West Newbury police officer. Plt. Br. at 22-25. At the July 30th hearing, the Court asked plaintiffs' counsel to explain why HPD officers did not have authority to investigate an apparent incident of drunk driving within the city limits of Haverhill. Not surprisingly, counsel had no cogent response, as none exists.

² Although plaintiffs did not seek leave of court to submit a brief exceeding 20 pages in length, the Court read the entire brief.

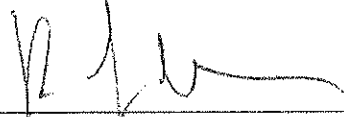
Plaintiffs' third claim is that the Commission abused its discretion, and acted arbitrarily and capriciously, by failing to consider certain HPD rules. Plt. Br. at 25-27. Plaintiffs waived their right to make these arguments by failing to submit a transcript of the proceedings below. Moreover, no principle of law required the Commission to consider every possibly relevant rule. The additional rules cited by plaintiffs do not in any way undermine the Commission's findings that plaintiffs violated HPD Rules 130 and 111, and Canons of Ethics, Article X.

Plaintiffs' final argument is that the Commission inexplicably upheld greater discipline in this case than it did in a 2011 incident involving other Haverhill police officers. Plt. Br. at 27-28. As the Commission noted, it should not encroach on reasonable disciplinary decisions imposed by police departments. See Decision at 22, citing Boston Police Department v. Collins, 48 Mass. App. Ct. 408, 412 (2000). Moreover, unlike the case relied on by plaintiffs, this case involved the preparation of a false and incomplete police report by one plaintiff, and the other plaintiff's directions to a subordinate officer not to correct it. As the Commission reasonably found, omitted details in the report make the report appear as though plaintiffs "tried to cover up their decision to give a pass to a retired Lieutenant Colonel of the State Police on an OUI charge. At the very least, the report reads like these Officers knew that they had not adequately performed their duties, which they did not, and were trying to cover up that fact by using this report." Decision at 22. This was a significant violation that, even standing alone, clearly warranted the discipline that the City imposed and the Commission affirmed.

CONCLUSION AND ORDER

For the above reasons, Plaintiffs' Motion for Judgment on the Pleadings (Filing # 9) is **DENIED**, defendants' motion for judgment on the pleadings (part of Filing # 10) is **ALLOWED**, and the appeal is **DISMISSED**.

Dated: August 7, 2014


Robert L. Ullmann
Justice of the Superior Court