

The Commonwealth of Massachusetts

Decision mailed: 10/2/09
Civil Service Commission *CB*

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

MARK MANCUSO,
Appellant

v.

CITY OF WALTHAM,
Respondent

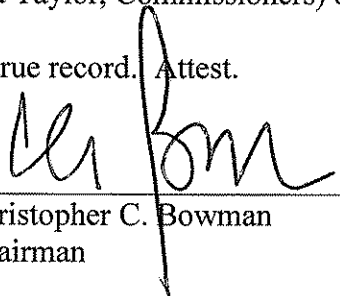
Case No.: D-08-76

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on October 1, 2009 to acknowledge receipt of the report of the Administrative Law Magistrate dated August 18, 2009. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. Respondent's Motion to Dismiss is *allowed*, and the Appellant's appeal is *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on October 1, 2009.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 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.

Notice to:

Charles Nesson, Esq. (for Appellant)
Bernadette D. Sewell, Esq. (for Appointing Authority)
Richard C. Heidlage, Esq. (DALA)



THE COMMONWEALTH OF MASSACHUSETTS
DIVISION OF ADMINISTRATIVE LAW APPEALS
98 NORTH WASHINGTON STREET, 4TH FLOOR
Boston, MA 02114

Tel: 617-727-7060
Fax: 617-727-7248

August 18, 2009

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

RECEIVED
2009 AUG 19 A 9:50
COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

Re: Mark Mancuso v. City of Waltham
DALA Docket No. CS-08-650

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,


Richard C. Heidlage
Acting Chief Administrative Magistrate

RCH/das

Enclosure

cc: Charles Nesson, Esq.
Bernadette D. Sewell, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Mark Mancuso,
Appellant

v.

Docket No. D-08-76
DALA Docket No. CS-08-650

City of Waltham,
Respondent

Appearance for Appellant:

Charles Nesson, Esq.
5 Hubbard Park Road
Cambridge, MA 02138

Appearance for Respondent:

Bernadette D. Sewell, Esq.
City of Waltham Law Department
119 School Street
Waltham, MA 02451

Administrative Magistrate:

Maria A. Imparato, Esq.

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CASE SUMMARY

This appeal should be dismissed because the Appellant did not file his appeal within ten days of receiving notice of suspension.

RECOMMENDED DECISION

Mark Mancuso filed an appeal under G. L. c. 31, s. 43 of the decision of the City of Waltham to suspend him for two days for failing to submit a completed report in a timely manner.

The City of Waltham filed on October 22, 2008 a Motion to Dismiss for Untimely Filing. I held a hearing on the Motion on October 22, 2008 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, 4th floor, Boston.

I declared the hearing public based on the written request of the Appellant.

I admitted three documents into evidence. (Exs. 1 – 3)¹

The Appellant testified on his own behalf. Both counsel offered argument on the record.

FINDINGS OF FACT

Based on the documents in evidence and the testimony of the Appellant I make the following findings of fact:

1. Mark Mancuso is employed by the City of Waltham Engineering Department as an Assistant Superintendent. (Exs. 2, 3)
2. By letter of March 6, 2008, Joan Lastovica, City Engineer and Director of the Engineering Department, imposed a two-day suspension on Mr. Mancuso for failing to comply with a required deadline for submittal of the MassDEP Public Water Supply Annual Statistical Report. (Ex. 3)
3. Mr. Mancuso was given the letter of suspension in hand on March 7, 2008. He signed the letter on that date acknowledging receipt of the letter. (Ex. 3, Testimony)
4. Mr. Mancuso filled out a Discipline Appeal Form for the Civil Service Commission on March 31, 2008 appealing the two-day suspension. The appeal was received by the Commission on April 2, 2008. (Ex. 2)

¹ Post hearing I marked the documents as follows: City of Waltham Motion to Dismiss, Ex. 1; Appellant's appeal to the Commission, 4/2/08, Ex. 2; Letter of suspension, 3/6/08, Ex. 3.

CONCLUSION AND RECOMMENDATION

I recommend that the Civil Service Commission dismiss this appeal because the Appellant did not file his appeal within ten days of receiving notice of suspension.

G. L. c. 31, s. 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 after receiving written notice of such decision, appeal in writing to the commission, he shall be given a hearing ... Saturdays, Sundays and legal holidays shall not be counted in the computation of any period of time specified in this section.

The Appellant was provided with notice of suspension on Friday, March 7, 2008, when he signed the document acknowledging receipt. The Appellant had ten days, exclusive of Saturdays, Sundays and legal holidays to file his appeal. The Appellant had until Monday, March 24, 2008 to file his appeal.

The Appellant did not fill out his appeal form until March 31, 2008. Assuming that he mailed his appeal on March 31, 2008, his appeal was 7 days late.

As the Supreme Judicial Court noted in the case of *Town of Falmouth v. Civil Service Commission & another*, 447 Mass. 814, 823 (2006), "... a litigant could initiate a proceeding with an untimely notice of appeal; such a proceeding would then be disposed of properly through a motion to dismiss."

I recommend that the Civil Service Commission grant the Motion to Dismiss filed by the City of Waltham because the Appellant failed to file his appeal within ten days of receiving notice of his suspension as required under G. L. c. 31, s. 43.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato
Administrative Magistrate

DATED: **AUG 18 2009**