

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION**  
100 Cambridge Street – Suite 200  
Boston, MA 02114  
617-979-1900

**DARIO MAZZOLA,**  
*Appellant*

**CASE NO. B2-23-074**

v.

**HUMAN RESOURCES DIVISION,**  
*Respondent*

Appearance for Appellant:

Dario Mazzola, Pro Se

Appearance for Respondent:

Michele M. Heffernan, Esq.  
General Counsel  
Human Resources Division  
100 Cambridge Street – Suite 600  
Boston, MA 02114

Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT’S MOTION TO DISMISS**

On June 14, 2023, the Appellant, Dario Mazzola, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L. c. 31, § 22, claiming:

The second section [Situational Judgment component] of this year’s promotional examination [for Fire Lieutenant] is unfair and unequal position for determining promotion. The answers are one or more persons point of view and are not correct as related to what it is like actually in a fire station or on a fire scene.

A remote pre-hearing conference was held on June 20, 2023. The Appellant did not appear for the pre-hearing conference. Pursuant to Procedural Order, on July 10, 2023, the Human Resources Division (HRD) filed a Motion to Dismiss the appeal on the grounds that the Appellant had not perfected his appeal rights because he had failed to file any request for a review of his answers to the Situational Judgment component or for a fair test review within the period following the administration of Fire Lieutenant’s promotional examination he took on March 25, 2023. The

Appellant was provided notice of the Motion to Dismiss and permitted to respond on or before July 17, 2023, but he filed no response.

### **APPLICABLE LEGAL STANDARD**

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

### **ANALYSIS**

The undisputed facts, viewed in a light most favorable to the Appellant, establish that, for the reasons stated in HRD’s Motion to Dismiss, the Appellant never filed any request for a fair test review of the Fire Lieutenant examination or for a review of the marking of any specific answers to the Situational Judgment component of the examination within the time prescribed by G.L. c. 31, § 22. Absent any such request for review and decision by HRD, the Commission is without jurisdiction to hear this appeal. The Appellant’s appeal must be dismissed for lack of jurisdiction.

### **CONCLUSION**

In sum, for the reasons stated herein, HRD’s Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Dario Mazzola, CSC No. B2-23-057, is ***dismissed***.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Dooley, Stein and Tivnan, Commissioners [McConney – Absent]) on July 27, 2023.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Dario Mazzola (Appellant)

Michele M. Heffernan, Esq. (for HRD)