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NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 16CV00748**

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BOSTON POLICE DEPARTMENT

FEB - 1 2018

vs.

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

CIVIL SERVICE COMMISSION & another¹

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

The plaintiff, Boston Police Department ("Plaintiff"), brought this action under G. L. c. 30A, § 14 and G. L. c. 31, § 44, seeking review of the Civil Service Commission's (the "Commission") final decision allowing the defendant, Sixto Merced ("Merced"), to appeal for a "fair test" review of the 2014 Boston Police Department Sergeant's Promotional Examination (the "Exam"). This matter is before the court on the Plaintiff's motion to reverse the Commission's order and deny Merced's appeal in whole. After hearing, and upon review and consideration, the Plaintiff's motion for judgment on the pleadings is **DENIED**.

Merced applied for a promotion to Sergeant and completed the Exam in 2014. On December 5, 2014, Merced filed an appeal with the Commission challenging the content of the Exam and its administration. The Plaintiff moved to dismiss Merced's appeal, arguing that the appeal was outside the statutory deadline for appeals referenced in G. L. c. 31, §§ 22-24. The Commission granted the Plaintiff's motion regarding the "marking" of the Exam, but allowed Merced's "fair test" challenge to proceed because it was content-based. The Plaintiff then filed a

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Administrative Law Division

¹ Sixto Merced

motion to reconsider, which the Commission denied. The court incorporates the remaining facts in the administrative record and thus will not recite them here.

“A party aggrieved by a final decision of the [C]ommission may seek judicial review pursuant to G. L. c. 31, § 44.” Andrews v. Civil Serv. Comm’n, 446 Mass. 611, 615 (2006). The court reviews the Commission’s decision to determine whether it violates any of the standards set forth in G. L. c. 30A, § 14(7). G. L. c. 31, § 44; Plymouth v. Civil Serv. Comm’n, 426 Mass. 1, 5 (1997). The court may reverse, modify, or remand an agency’s decision if it is based on an error of law or unlawful procedure, is arbitrary and capricious, or lacks substantial evidence to support the decision. G. L. 30A, § 14(7).

Under G. L. c. 21, § 22, a candidate must file their appeal “with the administrator no later than seven days after the due date of such examination.” The Plaintiff argues that the Commission exceeded its statutory authority when it denied the Plaintiff’s motion to dismiss Merced’s appeal for a “fair test” review because Merced appealed the decision more than seven days after the Exam. The Commission, however, maintains the discretionary power to allow a candidate to appeal, even if they fail to comply with the statutory requirements:

If the rights of any person acquired under the provision of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

Chapter 310 of the Acts and Resolves 1993.

While the Plaintiff informed Merced of his right to appeal the procedural and computational components of the Exam, the commission concludes that the plaintiff was not informed of his right to appeal the *content* of the Exam. The Commission acted within its discretion, and statutory authority, when it found that Merced, through no fault of his own, did

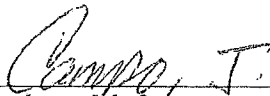
not receive notice of his right to appeal the Exam's *content* and took action to protect his right.

Accordingly the substantial evidence, therefore, supports the Commission's decision.

Based on the administrative record, the Commission acted within its authority to exercise its discretion that Merced did not have meaningful notice of his right to appeal the content of the Exam.

ORDER

For the foregoing reasons, it is therefore **ORDERED** that the Plaintiff's motion for judgment on the pleadings is **DENIED**.



Anthony M. Campo
Justice of the Superior Court

DATED: January 19, 2018