

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

CIVIL ACTION NO. 2179-CV-0318

REBECCA BOUTIN

v.

WESTFIELD FIRE COMMISSION AND  
MASSACHUSETTS CIVIL SERVICE COMMISSION,

CONSOLIDATED WITH:

CIVIL ACTION NO. 2179-CV-00673

WESTFIELD FIRE COMMISSION

v.

MASSACHUSETTS CIVIL SERVICE COMMISSION, REBECCA  
BOUTIN, DAVID KENNEDY and KYLE  
MILTIMORE,

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

JUN -7 2023

*[Signature]*  
CLERK OF COURTS

DECISION ON REBECCA BOUTIN, DAVID KENNEDY & KYLE MILTIMORE'S MOTION TO ENFORCE  
COMPLIANCE WITH THE CIVIL SERVICE COMMISSION ORDER

Before the court is Rebecca Boutin, David Kennedy and Kyle Miltimore's Motion to Enforce Compliance with the Civil Service Commission Order. For the following reasons, the court Denies this request.

Pertinent to the inquiry here, on May 21, 2021, the Civil Service Commission issued a decision and order involving the parties to the above consolidated actions. Thereafter, Rebecca Boutin, David Kennedy, Kyle Miltimore and the Westfield Fire Commission filed their respective petitions with the Superior Court for review of the decision under G.L. c 31 sec. 44.

In the context of litigating cross motion for judgment on the pleadings, Rebecca Boutin, David Kennedy and Kyle Miltimore also move for enforcement of the Civil Service Commission order asserting a willful non-compliance on the part of the Westfield Fire Commission. In response, the Westfield Fire Commission denied this allegation and affirmatively asserted that it has substantially complied with the order.

The court would note that G.L. c. 31, sec. 44, states, in pertinent part:

"The [Civil Service Commission] may institute appropriate proceedings in the superior court for enforcement of its final

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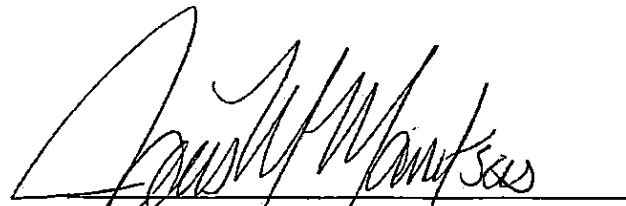
orders or decisions. Any party aggrieved by a final order or decision of the commission following a hearing pursuant to any section of this chapter or chapter thirty-one may institute proceedings for judicial review in the superior court . . . .”

The clear language of the statute limits enforcement of an order to the Commission. In contrast to the first sentence, the second sentence, concerning judicial review, allows “any party aggrieved” to seek review. Thus, a fair reading of the statute reveals that it does not bestow upon Rebecca Boutin, David Kennedy or Kyle Miltimore the right which they seek in their motion. Instead, proceeding for enforcement of a final order must be initiated by the Civil Service Commission.

A review of other enabling statutes reveal that the legislature has routinely limited those who are imparted with the power of enforcement. See, e.g., G.L. c. 151B, section 6 (MCAD); G.L. c. 150A, section 6(e) (Department of Labor Relations); G.L. c. 22, section 13A (Architectural Access Board). See also generally 1 LNP:G: Massachusetts Administrative Law & Practice section 3.08. Moreover, it is equally clear that the legislature, when it so desires, has no problem expressing the intention to authorize others, in addition to the administrative agency, with the right to seek enforcement. See G.L. c. 111, section 164 (“The supreme judicial or superior court, upon the application of the department [of public health] or of any party interested, may enforce the orders, rules and regulations of said department”).

Beyond this, even if this matter was properly before this court, which it is not, neither the motion nor the opposition is supported by affidavit or other documentary evidence, from which a factual finding of compliance or non-compliance could be made. A summary determination is not possible where there exists factual disputes unless the allegations are supported by affidavits or other supporting documents.

For all the foregoing reasons, the Motion to Enforce Compliance with the Civil Service Commission Order is **DENIED**.

  
James M. Manitsas  
Justice of the Superior Court

Dated: June 7, 2023