

COMMONWEALTH OF MASSACHUSETTS

Essex, ss.

Trial Court of the Commonwealth
The Superior Court
Docket No.: 1477CV0081 D

John O'Leary,
Plaintiff

vs.

Civil Service Commission and
the City of Salem,
Defendants

FINDINGS, RULINGS AND ORDER :

This matter comes before the Court pursuant to G.L. Ch. 30A, the *administrative procedures act*, so called. It is brought by the plaintiff, formerly a member of the City of Salem's Fire Department, in seeking judicial review of the defendant, Civil Service Commission's decision rendered pursuant to G.L. Ch. 43, upholding his termination by the city as a member of the fire department.

The plaintiff was terminated from his municipal position by the city after a disciplinary hearing on August 30, 2012.

The city appears to have taken action to terminate the plaintiff based upon charges stemming from alleged diversions by the plaintiff and for his personal use of certain funds raised and maintained by the city's firefighters' union for certain community and charitable purposes.

On December 19, 2013, after hearing, the Civil Service Commission issued a unanimous decision upholding the plaintiff's termination by the City of Salem.

The parties have filed cross motions seeking judgment on the pleadings and have been heard by the Court upon those cross motions.

The defendants have urged that since the Court does not review this matter *de novo*, and is required to give the agency's findings and decision significant deference, that their motion seeking summary judgment ought to be allowed and the cross motion brought by the plaintiff ought to be denied.

The Civil Service Commission issued its decision after four (4) days of hearings, during which

ten (10) witnesses were heard and some forty five (45) exhibits were entered into evidence.

The Commission determined that in at least six (6) instances the plaintiff misappropriated funds entrusted to him by the firefighter's union for civic and charitable purposes.

The Commission determined that in at least five (5) instances the plaintiff was untruthful about the disposition of those funds entrusted to him.

The plaintiff alleges bias on the part chairman of the Civil Service Commission in hearing his case. He alleges the unavailability of exculpatory evidence available for his appeal due to non cooperation by union personnel.

Finally, the plaintiff contends that the discipline meted out to him by the city in this matter (termination) is disproportionate, arbitrary and capricious based upon the record of misconduct engaged in by the plaintiff and found by the Commission.

In reviewing this matter pursuant to G.L. Ch. 30A, this Court finds that there has been sufficient evidence considered by the Commission to support its decision to affirm the city's action and that the evidence establishes substantial misconduct on the part of the plaintiff on at least eleven (11) occasions while serving a member of the city's fire department. The claim of exculpatory evidence not produced at hearing consisting of "thank you cards and note" does not avail the plaintiff of relief based upon the record before the Court.

Upon the record now before this Court, finding is made that the plaintiff has failed to establish bias on the part of the Civil Service Commission chairman in this matter. Adverse findings of fact made against a party by a hearings officer without more cannot sustain an actionable claim of bias against the hearings officer.

As to the issue of the degree of sanction imposed upon the plaintiff by the city and upheld by the Commission, again since the sanction imposed falls within the range of what can be imposed by the city upon determination of conduct such as this, the Court lacks authority to set the same aside absent a finding upon judicial review that the sanction violates one of the seven (7) explicit grounds constituting prejudice as set out under the statute. The plaintiff has failed to establish such prejudice in his case.

ORDER :

After hearing and full consideration of the parties' submissions, the motion of the defendants city of Salem and Civil Service Commission seeking summary judgment in this matter will be ALLOWED and the plaintiff's cross motion seeking summary judgment is DENIED, with prejudice.

-three-

Judgement of dismissal of the plaintiff's complaint shall now be recorded upon the docket by the Clerk Magistrate and, notice shall be provided to the parties.

By the Court:

Hon. Robert A. Cornetta,
Justice

December 30, 2015