

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

CIVIL SERVICE COMMISSION

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

ROBERT OWENS,
Appellant

v.

D1-07-211

BOSTON PUBLIC SCHOOLS,
Respondent

Appellant's Attorney:

Pro Se
Robert J. Owens, Sr.

[REDACTED]

Respondent's Attorney:

Brian Magner, Esq.
Deutsch / Williams
99 Summer Street
Boston, MA 02110
(617) 951-2300

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

Pursuant to G.L. c. 31, § 43, the Appellant, Robert J. Owens, Sr., (hereafter "Appellant" or "Owens") appealed his "forced resignation" from the Boston Public Schools (hereafter "the City" or "Appointing Authority"). A pre-hearing conference was held at the offices of the Civil Service Commission on August 27, 2007. As part of the pre-hearing conference, the Appellant submitted a 4-page written statement that was "intended to reflect the circumstances that resulted in [his] forced resignation or constructive discharge from [his] position as a custodian for the City of Boston". The

City filed a Motion to Dismiss the Appellant's appeal on September 5, 2007, reiterating the same issues discussed at the pre-hearing conference.

Factual Background

The Appellant was employed by the Boston Public Schools from 1984 until 2007, at which time he was serving as a senior building custodian. It appears that as a result of issues related to performance and insubordination, the Appellant received written notification from the Appointing Authority to attend a disciplinary hearing on or about April 2007.

On April 4, 2007, Mr. Owens, the Appointing Authority and the Appellant's union representative signed a Settlement and Release. As part of the Settlement and Release, the Appellant, in return for payment of \$4,000, voluntarily and irrevocably resigned from his employment with the Boston Public Schools effective April 10, 2007 and released the Appointing Authority from any and all claims associated with his employment. The Appellant submitted his resignation dated April 10, 2007 and received and cashed the \$4,000 payment from the Appointing Authority.

The above-referenced Settlement and Release contained a section entitled "ADEA Waiver and Revocation Period", which informed the Appellant that he had twenty-one (21) days to consider the Settlement and Release and seven (7) days to revoke the Settlement and Release after it had been signed. The Appellant never attempted to revoke the Settlement and Release. Further, the Settlement and Release, for which the Appointing Authority also agreed not to provide any negative employment references, states in relevant part that the Appellant "acknowledges that he carefully reviewed this

Settlement Agreement and Release and understands all of the terms of this Settlement Agreement and Release.”

Nearly two months after submitting his resignation, the Appellant filed the instant appeal with the Civil Service Commission on June 8, 2007. As part of the pre-hearing conference, the Appellant stated that he had an anxiety attack that caused him to sign the Settlement and Release on April 4, 2007 under duress. As of the pre-hearing conference, he had made not attempt to return the \$4,000 payment referenced in the Settlement and Release.

Conclusion

Pursuant to 801 CMR 1.01 (7)(g)(3) of the Standard Adjudicatory Rules of Practice and Procedure, the presiding officer “may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided.”

There is no dispute that the parties entered into a settlement agreement in which the Appellant, in exchange for \$4,000, agreed to resign his position as a senior custodian and release the Appointing Authority from any and all claims related to his employment. The Commission may not override this valid agreement between the Boston Public Schools and Mr. Owens to the detriment of the Boston Public Schools. City of Woburn v. Civil Service Commission, WL 33171010 (Mass. Super. 2000).

The instant appeal is distinguishable from Kenney v. Cambridge Housing Authority, 20 MCSR 160 (2007) in which the Commission determined that it would violate public policy for an incumbent civil service employee to waive his prospective civil service

rights for matters that had yet to even arise. In Kenney, the parties entered into a “last chance agreement” in which the employee was able to maintain his job with the understanding that any further misconduct would result in his termination, an agreement which is not uncommon. However, as part of that last chance agreement, the City required the Appellant, who was still employed as a civil service employee, to waive his prospective civil service rights, in addition to any right to seek arbitration, where any *future* action by the Appointing Authority would be without review. Several months later, the Appointing Authority, based solely on hearsay evidence, terminated the Appellant and argued that he had no right of appeal. The Commission determined that it was against public policy for an incumbent civil service employee to waive his appeal rights regarding events that had not yet occurred. The Commission encourages all parties to recognize the distinction between the instant appeal and Kenney.

Further, the instant appeal was filed approximately two months after the Appellant resigned, well beyond the 10-day statutory filing requirement for disciplinary appeals filed with the Commission.

On a final note, the Commission carefully reviewed all documents and statements in this case, including the four-page written statement submitted by the Appellant. In that statement, the Appellant references an incident where he purportedly saw racial comments written on a calendar in the workplace. While it appears unrelated to the instant appeal, the Appointing Authority, if it hasn’t already done so, should take all appropriate steps to investigate this allegation.

For all of the above reasons, the Appellant's appeal under Docket No. D1-07-211 is hereby *dismissed*.

Civil Service Commission

Donald R. Marquis
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Guerin, Henderson, Marquis and Taylor, Commissioners) on November 21, 2007.

A True copy. Attest:

Commissioner

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)(l), 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:
Robert J. Owens, Sr. (Appellant)
Brian Magner, Esq. (for Appointing Authority)