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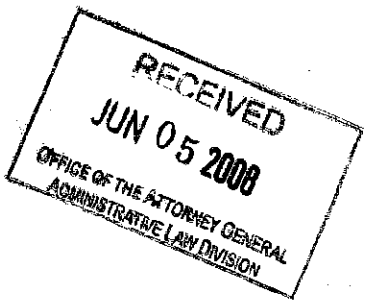
**Commonwealth of Massachusetts**

**Middlesex, ss.**

**Superior Court**
**Civil Action**
**No.05-2279**

**Gregory Ratta**

**Vs.**




**Massachusetts Civil Service Commission**
**Town of Watertown**

## Judgment of Dismissal

This action came on before the Court ( Zobel J.) presiding, upon motion of the plaintiff, Gregory Ratta for judgment on the pleadings and after hearing the Court having denied plaintiffs' motion orders the complaint be dismissed.

Therefore it is ORDERED and ADJUDGED:

That the decision rendered by the Civil Service Commission is in all respects Affirmed, and it is further ordered that complaint of the plaintiff Gregory Ratta is this day DISMISSED with prejudice.

By the Court ( Zobel J.)

Attest _____
Assistant Clerk

Dated: June 2, 2008

**Commonwealth of Massachusetts**
**County of Middlesex**
**The Superior Court**

Civil Docket **MICV2005-02279**

RE: Ratta v Civil Service Commission et al

TO: Juliana deHaan Rice, Esquire
Mass Atty General's Office
1 Ashburton Place
Room 2019
Boston, MA 02108-1698



## CLERK'S NOTICE

This is to notify you that in the above referenced case the Court's action on **06/03/2008**:

*RE: Plaintiff Gregory J. Ratta's MOTION for Judgment on pleadings (Rule 12), Plaintiff's Statement of Undisputed Facts In Support Of Plaintiff's MOTION for Judgment on pleadings, Affidavit of Attorney Howard B. Lenow reciting complaint with superior court rule 9A, Affidavit of Joseph S. Fair,Plaintiff's Memorandun of law in support of plaintiff's MOTION for Judgment on pleadings, Town Of Watertown's opposition to plaintiff's motion for judgment on the pleading, Town Of Watertown's memorandum in support of its opposition to plaintiff's motion for judgment on the pleading*

**is as follows:**

**Motion (P#13) DENIED. See memo and order issued this day. (Zobel, Justice) Dated: May 30, 2008. Notices mailed 6/3/2008**

Dated at Woburn, Massachusetts this 3rd day of June, 2008.

Michael A. Sullivan,
Clerk of the Courts

BY:

Mark Toomey
Assistant Clerk

Telephone: 781-939-2778

Copies mailed 06/03/2008



**Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130** -- cvdresult_2.wpd 3217259 motden bernjess

**Commonwealth of Massachusetts**
**County of Middlesex**
**The Superior Court**

CIVIL DOCKET#: **MICV2005-02279-K**

RE: Ratta v Civil Service Commission et al

TO: Juliana deHaan Rice, Esquire
Mass Atty General's Office
1 Ashburton Place
Room 2019
Boston, MA 02108-1698

**CLERK'S NOTICE**

**SEE ATTACHED COPIES.**

Dated at Woburn, Massachusetts this 3rd day of June, 2008.

Michael A. Sullivan,
Clerk of the Courts

BY: Mark Toomey
Assistant Clerk

Telephone: 781-939-2778

**Disabled individuals who need handicap accommodations should contact the Administrative Office of the Superior Court at (617) 788-8130**

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS

SUPERIOR COURT
CIVIL NO. 05-2279

GREGORY J. RATTA,
Plaintiff

v.

MEMORANDUM AND ORDER

MASSACHUSETTS CIVIL SERVICE
COMMISSION and
TOWN OF WATERTOWN
Defendants

MEMORANDUM

Plaintiff seeks review, G.L. c. 30A, § 14, of Defendant Massachusetts Civil Service Commission's ("the Commission's") dismissing Plaintiff's appeal of Defendant Town's ("the Town's") having discharged him (a tenured employee) from his position as a Skilled Craftsman.

The Court has examined and considered the full administrative record and a supplement thereto, has examined the parties' respective written submission, and has heard their respective oral presentations.

Facts

The Town has employed Plaintiff since 1987, first as a laborer, then (since 1991) as a Skilled Maintenance Craftsperson in the Town's Department of Public Works ("the DPW").

At all pertinent times, Plaintiff was assigned to duties involving two vehicles, the so-called everything or utility truck (also known as Truck 60), and the Sewer Vactor truck ("the Vactor Truck"). Two employees participated in this assignment, taking turns driving the vehicles. Proceeding in Truck 60, they would respond to calls concerning street problems (typically, dead animals, broken glass, dislodged manhole covers, and sewer backups).

If the difficulty involved a sewer backup, the men would drive Truck 60 back to the DPW yard and retrieve the Vactor Truck. Both trucks would then proceed to the work site, returning to the yard when the problem was solved. In any given week, the

crew would use the Vactor Truck from five to ten times. On those occasions, each man would have to drive one or another vehicle.

On May 9, 2001, as part of the Town's drug and alcohol testing policy, Defendant submitted a blood sample, which yielded a positive result. After being placed on paid administrative leave, he received a disciplinary hearing, which resulted in a 60-day suspension without pay. A subsequent arbitration upheld the penalty.

Six months later, on November 17, 2001, Plaintiff was arrested in Belmont, charged with speeding and operating under the influence of alcohol. After Plaintiff invoked his right to decline a breathalyzer test, his operator's license was automatically suspended for 120 days, but the police issued a temporary license, effective immediately, and valid for 15 days. A computer malfunction at the Belmont Police Station, however, prevented his receiving that license until November 18, 2001. Thus his right to operate expired no later than December 3, 2001.

Thereafter, Plaintiff pleaded guilty to "sufficient facts" regarding operating under the influence.

On December 5, 2001, having heard "rumors" about the loss of license, the DPW superintendent (Plaintiff's ultimate boss) asked him: "Do you have a license?" Plaintiff replied: "Yes. Maybe not at the end of the week."

Plaintiff's temporary license having expired on December 3 (at the latest), this response was false.

On December 10, 2001, Plaintiff's immediate supervisor asked him whether he was properly licensed to operate a motor vehicle. Upon Plaintiff's answering that he was not, the supervisor sent him home. On December 18, 2001, the Town placed Plaintiff on administrative leave.

After notice and hearing, a designated hearing officer recommended Plaintiff's discharge; accordingly, the Town terminated Plaintiff's employment, effective January 29, 2002.

Plaintiff's request for re-employment--as a laborer--was denied on the ground that the Town did not employ anyone in the position of laborer: no vacancies bearing that job description existed in the DPW. Thus the Town was unable to offer Plaintiff a position

(a) for which he was qualified, and (b) which would not require his operating a motor vehicle.

Plaintiff appealed the Town's decision to the Commission, which after a full hearing made detailed findings of fact, thoroughly analyzed the matter, and upheld the Town's action.

Law

When considering the propriety of an administrative body's action, a court exercises a limited scope of review.

The court may not superimpose its view of the facts on the administrative decision; still less may it determine the facts de novo. So long as the decision below rests on substantial evidence and reveals neither arbitrariness, nor caprice, abuse of discretion, nor illegality, the court must stay its hand, G.L. c. 30A, § 14.

Equally important, the burden of demonstrating error below rests entirely upon the complaining party--i.e., Plaintiff here, see, Merisme v. Board of Appeals on Motor Vehicle Liability, Policies & Bonds, 27 Mass.App.Ct. 470, 474 (1989). The reviewing court must "give due weight to the experience, technical competence, and specialized knowledge of the agency, as well as to the discretionary authority conferred upon it," G.L. c. 30A, § 14. The standard of review changes, depending on whether the reviewing court is considering a question of fact, as opposed to a question of law, see, Raytheon Co. v. Director of Division of Employment Security, 364 Mass. 593, 595 (1974). An agency finding of fact must stand unless unsupported by substantial evidence; a question of law, can be judicially reviewed de novo, Raytheon Co. v. Director of Division of Employment Security, supra, at 595-596.

Applied to Plaintiff's case, these principles require that he demonstrate a lack of "just cause" to discharge him "Just cause" means "substantial misconduct which adversely affects the public interest by impairing the efficiency of public service," Boston Police Department v. Collins, 48 Mass.App.Ct. 408, 411 (2000). More precisely, the Court's task is to determine whether Plaintiff has demonstrated (a) that the Town failed to establish by a preponderance of the evidence at the Commission hearing that just cause existed for discharge; or (b) that the Commission itself issued a decision which was constitutionally defective; exceeded its statutory authority or jurisdiction; rested on an

error of law or unlawful procedure; lacked substantial evidentiary underpinning; was arbitrary or capricious; arose from an abuse of discretion; or otherwise violated the law.

Recalling that the discharge scenario unfolded only six months after Plaintiff had failed a drug test, this Court cannot conclude that the Commission's decision was arbitrary or capricious or without just cause, see, Boston Police Department v. Collins, supra, at 411.

Plaintiff contends that because two other employees with OUI conviction were not discharged but received "accommodations [sic] and permitted to work" either during the period of license suspension or on a last-chance basis, the Town has demonstrated an improper bias against him. The short answer here is that no Massachusetts appellate authority supports this argument.

Absent a showing of motivation akin to selective prosecution--of which the record is bare--Plaintiff cannot, by pointing to other, retained employees, avoid the Town's well-grounded decision to terminate him.

In sum, because the Town's original decision was in no way legally inappropriate, and because the Commission's decision was based on substantial evidence, was constitutionally correct, and was not otherwise defective, Defendant is entitled to judgment.

ORDER

Accordingly, it is Ordered, that Plaintiff's Motion for Judgment on the Pleadings be, and the same hereby is, Denied; and it is,

Further Ordered, that the Commission's decision be, and the same hereby is, in all respects, Affirmed; and it is,

Further Ordered, that judgment enter forthwith: Complaint Dismissed.

Hiller B. Zobel
Associate Justice,
Superior Court

Dated: May 30, 2006