

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT  
DOCKET NO. 2079CV00247

HAMPDEN COUNTY  
SUPERIOR COURT  
FILED

MARC SAVAGE

vs.

DEC 27 2022

MASSACHUSETTS CIVIL SERVICE COMMISSION & another<sup>1</sup>

  
CLERK OF COURTS

**MEMORANDUM OF DECISION AND ORDER ON CROSS-MOTIONS  
FOR JUDGMENT ON THE PLEADINGS**

**I. Introduction**

The plaintiff, Marc Savage (Savage), appeals from decision of the Massachusetts Civil Service Commission (CSC) dismissing his appeal relating to a promotional examination. The case is before the court on cross motions for judgment for the pleadings. After reviewing the record and hearing argument, the court **DENIES** Savage's motion and **ALLOWS** the motions of the CSC and the City of Springfield.

**II. Background**

The following facts are taken from the administrative record, with some matters reserved for the legal analysis.

On May 19, 2018, the City, through the Massachusetts Human Resources Division (HRD),<sup>2</sup> announced a June 18, 2018, promotional examination for the position of deputy fire chief. District fire chiefs who applied by June 4, 2018, were eligible to take the test. Because only three district fire chiefs applied to take the test by the deadline, the HRD opened the examination to the next lower title, which was fire captain. See G. L. c. 31, § 59 (examination to

<sup>1</sup>City of Springfield and Massachusetts Human Resources Division.

<sup>2</sup> The HRD handles civil service for most municipalities in Massachusetts, including Springfield.

be opened to next lower titles in succession if fewer than four individuals apply to take a promotional examination). Although the examination was open to Savage, who was a fire captain at the time, he did not apply. The expansion of the pool generated a sufficient number of applicants, and the test took place as scheduled on June 18, 2019. Two applicants passed the examination and were eligible for promotion.

On October 15, 2019, Savage appealed to the CSC on the ground that captains had not been given sufficient notice of the examination. After briefing, the CSC dismissed Savage's appeal as untimely. After unsuccessfully seeking reconsideration by the CSC, Savage filed this action.

### **III. Discussion**

Any party aggrieved by a decision of the CSC may obtain judicial review in this court. "The reviewing court is . . . therefore, bound to accept the findings of fact of the commission's hearing officer, if supported by substantial evidence." *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 728 (2003). The court may not make new factual determinations or different credibility choices. *Id.* at 733. The question on judicial review is whether, on the facts found by the CSC, the action of the CSC was legally tenable. *Id.*

Here, the issue is whether Savage's appeal to the CSC was timely. Savage concedes that his appeal did not meet either of the possible time limits for appeal to the CSC. Rather, Savage argues that the CSC discriminated against him based on his race by holding him to the 30-day deadline when it failed hold Joseph Conant, who is white, to the same deadline. Savage's comparison of his appeal with Conant's situation's argument misses the mark.

The situation Savage points to involving former Springfield Fire Commissioner Joseph Conant was not an appeal of a decision to the CSC. Rather, after Savage was one of only two

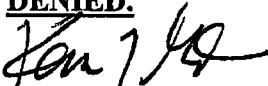
individuals to take a promotional examination in 2014, Conant notified the HRD that the examination was given without having the requisite four or more applicants. As a result, the HRD revoked the results of the examination. It was Savage who then appealed the HRD's action to the CSC. See *Savage v. Human Resources Division & Springfield Fire Department*, Civil Service Commission Docket B2-14-154, attached as Exhibit A to the Memorandum of the Civil Service Commission.

In short, even if Savage could raise the issue of discrimination without first complaining to the Massachusetts Commission Against Discrimination,<sup>3</sup> his claim lacks merit and the CSC properly dismissed his appeal.

**ORDER**

For the foregoing reasons, it is hereby **ORDERED** that:

- (1) the Civil Service Commission's Motion for Judgment on the Pleadings is **ALLOWED**;
- (2) the City of Springfield's Motion for Judgment on the Pleadings is **ALLOWED**; and
- (3) Marc Savage's Motion for Judgment on the Pleadings is **DENIED**.

  
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Karen L. Goodwin  
Justice of the Superior Court

**Dated:** December 27, 2022

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<sup>3</sup>Generally, complaints of discrimination cannot be pursued in court until first brought to the MCAD. G. L. c. 151B, § 5. The court, however, does not rest its decision on the plaintiff's apparent failure to exhaust administrative remedies because the issue was not raised by the parties.