COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

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

MARC SAVAGE,
Appellant

v.

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Case No.: D-17-247

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. The Commission received and reviewed the written objections of the Appellant and the Respondent's responses to the Appellant's objections.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

As stated in the Tentative Decision and the parties' reply briefs:

1. The Springfield Fire Department suspended Captain Savage for one (1) day.
2. Captain Savage appealed the one (1)-day suspension to the Commission.
3. Prior to the final conclusion of the full hearing, the parties, both represented by counsel, executed a settlement agreement, reducing the one (1)-day suspension to a written warning.
4. Captain Savage has received and accepted payment for those wages associated with the now-rescinded one (1)-day suspension.
5. Retaining jurisdiction over this appeal is not warranted.

For all of the above reasons, the Appellant's appeal under Docket No. D-17-247 is ***dismissed***.

Civil Service Commission

/s/ Cynthia Ittleman
Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Camuso, Ittleman, Stein and Tivnan, Commissioners [Bowman, Chairman – Abstain][1]) on January 17, 2019.

Either party may file a motion for reconsideration within ten days of the receipt of this 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 this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:
Marc Savage (Appellant)
Marshall Moriarty, Esq. (for Appellant)
Maurice Cahillane, Esq. (for Respondent)
Edward McGrath, Esq. (Chief Administrative Magistrate, DALA)

[1] The Tentative Decision states that Commissioner Bowman recused himself from this matter. To ensure clarity, while Commissioner Bowman opted to ask DALA to hear this matter, he did not recuse himself. That notwithstanding, Commissioner Bowman opted to abstain from voting on whether to accept the Magistrate's Tentative Decision.

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss. **Division of Administrative Law Appeals**

Marc A. Savage,
Appellant

v. Docket No. D-17-247
DALA Docket No. CS-18-0151
DATED: September 21, 2018

City of Springfield,
Respondent

Appearance for Appellant:

Pro Se

Legal Advisor to Petitioner:

Marshall T. Moriarty, Esquire
Moriarty Law Offices
34 Mulberry Street
Springfield, MA 01105

Appearance for Appointing Authority:

Maurice Cahillane, Esquire
Egan, Flanagan, and Cohen, P.C.
67 Market Street
P.O. Box 9035
Springfield, MA 01102

Administrative Magistrate:

Judithann Burke

Summary of Recommended Decision

The parties executed a written, signed settlement agreement for purposes of resolving this matter on August 20, 2018. The City agreed to issue, and the Appellant agreed to accept, a written warning in lieu of the original a one-day suspension. The Appellant's subsequent requests to nullify the agreement and re-open the matter must be denied as neither the Administrative Magistrate nor the Civil Service Commission retains jurisdiction over this matter. It is recommended that the Civil Service Commission dismiss this appeal. *See Ernie B. Silva v. Department of Correction*, D-07-352 (Civil Service Commission August 28, 2008).

RECOMMENDED DECISION

Pursuant to G.L. c. 31,§§ 41 & 43, the Appellant, Marc A. Savage, had appealed from the August 15, 2017 decision of the Appointing Authority, City of Springfield, suspending him for a period of one (1) day without pay from his position as Fire Captain in the City of Springfield. The appeal was timely filed.

A pre-hearing conference was held at the offices of the Civil Service Commission on January 18, 2018. At or about that time Christopher Bowman, Chairman of the Civil Service Commission recused himself from the case and transferred the matter to the Division of Administrative Law Appeals.

On March 19, 2018, I held a pre-hearing conference in Room 320 at 436 Dwight Street, Springfield, MA. At that time, the Appellant was represented by Attorney Marshall Moriarty and the City of Springfield was represented by Attorney Maite Aponte Parsi. A pre-hearing filing schedule was established and a hearing date was set.

Testimony commenced on June 18, 2018 and continued on June 27, 2018 and July 23, 2018. During this phase of the process, the Appellant represented himself and conducted direct and cross examination of all of the witness. Attorney Moriarty was present to act as his legal advisor. The City of Springfield was represented by Attorney Maurice Cahillane.

A fourth day of testimony was scheduled for August 20, 2018. At that time, I held a settlement conference with the parties. The negotiations culminated in a handwritten agreement that was signed by the Appellant, Attorney Moriarty, Attorney Cahillane and Springfield Fire Commissioner Bernard Calvi. All parties retained a copy of the agreement. The original agreement was placed in the Civil Service file. (Attachment A.)

In an e-mail transmission to me dated August 22, 2018 the Appellant requested that, "in conjunction with your (my) approval of the agreement, for you (me) to review, also for your (my) approval, the employee written warning that the parties agreed to." The Petitioner also inquired as to the limitations of the agreement. (Attachment B.)

I responded to the Petitioner on August 22, 2018. I informed him that my approval of the voluntary agreement was unnecessary and that any approval of the written warning was not within my purview. I further indicated that the hearing had been de novo and the testimonial evidence was limited to that which was heard during the hearing, however the investigative report of Deputy Glenn Guyer remained was a documentary exhibit. I attached a copy of a Civil Service withdrawal form and noted that a withdrawal would be necessary in order to heed the intent of the parties that the agreement be kept confidential and not be open to possible scrutiny pursuant to the Public Records Laws. (Attachment C.)

In an email Transmission dated September 6, 2018, Attorney Moriarty indicated that the Appellant had authorized and directed him to request that the settlement agreed on "September 20, 2018" (*sic*) be declared null and void and without effect as no proposal had been presented to the Petitioner, and, therefore, there was no consideration on the part of the City of Springfield. Mr. Moriarty noted further that the Appellant had a "complete and warranted expectation that the warning be reviewed for accuracy and consistency with the spirit of the agreement before formally withdrawing his claims."

In an email transmission dated September 12, 2018, Attorney Cahillane informed me that the final resolution of the matter had not occurred because of "some confusion on his part as to exactly how the Appellant wants us to remove the suspension and replace it with a warning." (Attachment E.)

In an email transmission dated September 16, 2018, Attorney Moriarty indicated that his client had been "adamant and unwavering in his resolution to move forward due to the delay in resolving the content of the suggested written warning"…etc. He added that he and the Appellant were of the opinion that "the only method to truly resolve this matter of the one day suspension is to have the matter adjudicated by an independent third party." (Attachment F.)

Lastly, in an email transmission to me dated September 18, 2018, Attorney Cahillane indicated that both parties agreed to a resolution and that the City stands ready to comply with the agreement. (Attachment G.)

Conclusion and Recommended Ruling

There is no provision in the written agreement executed by the parties on August 20, 2018 that makes it contingent upon the review and approval by the Appellant and/or his legal advisors. There is no date specified in said agreement upon which the written warning must be executed. Rather, the agreement provides that the suspension be removed, the written warning be issued, and, that the written warning be removed from the Petitioner's personnel file no later than August 20, 2019. Further, the agreement provides that the written warning may not be grieved. However, mine is not to determine contract law provisions. Those issues must be litigated in the Superior Court.

I have construed the email entreaties by the Appellant's legal advisors to be motions to re-open the case, thus making the agreement null and void. I question the issuing of emails by the Appellant's legal advisors through the office para-legal when he represented himself throughout the actual hearing process. I further question the use of the email method to make such substantive and potentially dispositive requests when, on several prior occasions, the Appellant's legal team was specifically instructed to put matters of such import in writing and file through proper channels. Be all of that as it may, the requests to re-open the hearing and declare the agreement null and void should be denied.

In *Ernie B. Silva v. Department of Correction,* D-07-352 (Civil Service Commission August 28, 2008), Civil Service Commissioner Paul M. Stein noted that G.L. 31 § 41 limits the Commission's jurisdiction in discipline cases to appeals by tenured employees who have been "discharged, removed, suspended…laid off [or] transferred from their positions without their written consent." Commissioner Stein noted further that the Civil Service Commission

may dismiss any appeal brought before it on lack of jurisdiction or other proper grounds on its own motion or the motion of any party per 801 CMR 1.01970(g)(3).

In the present case, the discipline of the Appellant has been reduced below the Commission's original jurisdiction amount through the voluntary agreement of all of the parties on August 20, 2018. Retaining jurisdiction over this appeal is unwarranted. *Silva, supra.*

I recommended that the email requests to re-open the record in this case be denied and that the matter be dismissed because the case is otherwise moot.

DIVISION OF ADMINISTRATIVE LAW APPEALS,
BY:

Judithann Burke,
Administrative Magistrate

DATED: September 21, 2018