

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**MICHAEL SAWICKI,**  
Appellant,

**CASE NO: E-11-225**

**v.**

**CITY OF MALDEN,**  
Respondent

Appellants' Attorneys:

Kevin J. Murphy, Esq.  
One Courthouse Lane  
Chelmsford, MA 01824

Respondent's Attorneys:

Kathryn M. Fallon, Esq.  
c/o Kathryn M. Fallon PC  
2 Haven St, Suite 207  
Reading, MA 01867

Commissioner:

Paul M. Stein

**DECISION ON MOTION FOR SUMMARY DECISION**

The Appellant appealed to the Civil Service Commission (Commission) seeking to be reinstated to his former position as a Police Officer with the City of Malden (Malden). Malden moved for Summary Decision on jurisdictional grounds. The Appellant opposed the motion. On January 9, 2012, the Commission held a hearing on the motion and, on February 22, 2012, received an additional Affidavit from the Appellant.

**FINDINGS OF FACT**

Giving appropriate weight to the documents and argument submitted by the parties, and inferences reasonably drawn therefrom, I find the following facts:

1. The Appellant, Michael Sawicki was employed as a Police Officer in the Malden Police Department (MPD) from September 11, 1988 until September 15, 2006. (*Malden Motion; Appellant's Opposition*)

2. On or about September 15, 2006, following a MPD Internal Affairs investigation of alleged misconduct by Officer Sawicki involving his receipt of payment for overtime that he did not work, Malden and Sawicki entered into a written Settlement Agreement. (*Malden Motion; Appellant's Opposition*)

3. Under the terms of the Settlement Agreement, Officer Sawicki agreed to resign his position with the MPD, to make restitution in the amount of \$5,287.90 and to waive any rights to claim a pension through the Malden Retirement Board. Malden agreed that it would not prosecute Officer Sawicki criminally or departmentally and agreed to cooperate in drafting an official MPD statement to be used in the event the MPD was requested to provide an employment reference. (*Malden Motion; Appellant's Opposition*)

4. On or about March 12, 2007, in connection with a pending application for employment with DynCorp International, Mr. Sawicki executed a "Waiver and Authorization to Release Information" addressed "To Whom It May Concern", which authorized DynCorp International to receive "any and all information you have concerning me, including, but not limited to records of internal investigations, work record. . . .Information of a confidential or privileged nature may be included." (*Malden Motion; Appellant's Opposition*)

5. On or about February 8, 2008, the parties agreed that the MPD would respond to inquiries from future prospective employers: "Michael Sawicki was employed as a patrol officer with the City of Malden Police Department from September 8, 1988 through September 15, 2006." (*Appellant's Opposition*)

6. In February 2008, Mr. Sawicki applied through an employment agency for a position with the City of Boston as a Weed & Seed Coordinator, a program administered

through the U.S. Department of Justice, and was interviewed at the DOJ. (*Appellant's Opposition*)

7. In March 2007, Mr. Sawicki received notice from the employment agency that his application for the Boston job would not be proceeding because of “an issue with his last employer that was relayed to one of our attys”. (*Appellant's Opposition*)

8. The source of the information which led to Mr. Sawicki's rejection for the Boston job was not specifically disclosed and is disputed. Malden's Human Resources Director and the MPD Captain of Internal Affairs deny any contact with any state or federal agency, any prospective employer or “any party” concerning Mr. Sawicki's employment, including specifically any prospective employment as a Weed & Seed Coordinator. (*Malden's Motion; Appellant's Opposition*)

9. Mr. Sawicki also claims that he was more recently rejected for a job in February by a prospective employer in Boston who told him “I can't go forward with you because of a previous problem with the Malden Police” and that “there are two articles [on Goggle] about you resigning from the police.” (*Appellant's Post-Hearing Affidavit*)

10. An Internet search by this Commissioner of “Michael Sawicki Malden” located two postings concerning Mr. Sawicki: “Officer involved with OT scam resigns”, [[www.wickedlocal.com/malden/news/x1082401753\(9/28/2006\)](http://www.wickedlocal.com/malden/news/x1082401753(9/28/2006))] and “Malden cop investigated for OT fraud” [[www.masscops.com/threads/o-t-fraud-malden.17092](http://www.masscops.com/threads/o-t-fraud-malden.17092) (8/26/2006)].

11. By “Memorandum of Decision and Order on Defendant's Motion for Summary Judgement”, dated December 14, 2010, the Middlesex Superior Court (Fishman, J), granted Malden's motion for Summary Judgment and dismissed a civil action brought by Mr. Sawicki seeking damages for breach of contract based on Malden's alleged violation

of the Separation Agreement for its purported unauthorized disclosures that resulted in his rejection for the Boston job of Weed & Seed Coordinator. (*Malden's Motion*)

## **CONCLUSION**

### **Summary**

Mr. Sawicki's appeals must be dismissed because he fails to state any basis on which the Commission could find a violation of any of his rights under civil service law. Whatever merit there may be to the Appellant's contention that Malden violated the terms of the Separation Agreement, the Commission lacks subject matter jurisdiction to interpret or enforce private contracts or to grant relief in the nature of rescission. The only basis in civil service law and rules upon which an employee who resigns his civil service position may seek to be reinstated is prescribed by G.L.c..31, 46. That process requires the assent of the appointing authority (i.e. Malden) and submission by the appointing authority of "the reasons why such reinstatement would be in the public interest" and the approval of those reasons by the Personnel Administrator of the Human Resources Division of the Commonwealth (HRD). None of these statutory requirements are present here.

### **Applicable Legal Standard**

The Commission may, on motion or upon its own initiative dismiss an appeal at any time for lack of jurisdiction or for failure to state a claim upon which relief can be granted. 801 CMR 7.00(7)(g)(3). A motion for summary disposition of an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.00(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "viewing the evidence in the light most favorable to the non-

moving party”, the substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”, and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring evidentiary hearing. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249, (2008). See also Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36, (2008) (discussing standard for deciding motions to dismiss); cf. R.J.A. v. K.A.V., 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss)

#### Relevant Civil Service Law

G.L.c.31, §46 provides, in relevant part:

*“A permanent employee who becomes separated from his position may, with the approval of the administrator [HRD], be reinstated in the same or in another departmental unit in a position having the same title or a lower title in the same series, provided that the appointing authority submits to the administrator a written request for such approval which shall contain the reasons why such reinstatement would be in the public interest. No such request shall be approved if the person whose reinstatement is sought has been separated from such position for over five years and there is a suitable eligible list containing the names of two or more persons available for appointment or promotion to such position; provided however, that no such limitation shall apply to the reinstatement of persons whose qualifications for reinstatement to a former position have been determined pursuant to section eight of chapter thirty-two [concerning reinstatement of employees retired for disability]. If the administrator fails to approve the reinstatement of such person within thirty days after such request, the appointing authority or such person may make a written request for a hearing before the administrator, who shall hold such hearing forthwith and render his decision. Nothing herein shall affect the rights of persons to reinstatement under section thirty-nine [concerning reinstatement after layoff in a reduction in force].”*

Id. (*emphasis added*)

Malden correctly asserts that Section 46 authorizes the reinstatement of a former civil service employee only with the consent of the appointing authority and the prior approval of HRD as being in the “public interest”. Nothing in Section 46 allows an employee who has resigned from employment to appeal to the Commission for an order of “involuntary” reinstatement, without the consent of the appointing authority. Nor can the Commission usurp the authority of HRD which has the statutory duty to make an initial determination, after hearing if necessary, that such reinstatement would be in the public interest. cf. Ahern-Stalcup v. Civil Service Comm’n, 79 Mass.App.Ct. 210, 217 (2011) (“the decision whether to approve a transfer under [G.l.c.31] §40 is committed to the personnel administrator, not to forecasters of decisions the administrator never made. Neither the commission nor the city cite any authority for the proposition that the commission can base its decisions on what it assumes the personnel administrator would have done had the personnel administrator been given an opportunity to carry out his or her statutory responsibilities.”)

Malden also correctly asserts that Mr. Sawicki has no right to appeal to the Commission under G.L.c.31,§41-43 since he was not “discharged” from employment but resigned. See Williamson v. Department of Transitional Assistance, 22 MCSR 436 (2009); Sullivan v. City of Taunton, 22 MCSR 146 (2009); Ojeda v. City of Pittsfield, 22 MCSR 34 (2009); Liswell v. Registry of Motor Vehicles, 20 MCSR 355 (2007); Redfern v. Holyoke Public Schools, 20 MCSR 260 (2007); Crowell v. City of Woburn, 14 MCSR 167 (2001). See generally, Campbell v. City of Boston, 337 Mass. 676 (1958). Moreover, the ten-day limitations period to appeal from an unlawful discharge has long expired. Id.

In sum, Mr. Sawicki's appeal patently falls short of asserting any facts that could establish that his civil service rights have been infringed or that he has been aggrieved by any violation of civil service law or rules within the jurisdiction of the Commission. Thus, his appeal must be dismissed as a matter of law.

Mr. Sawicki argues strenuously that his appeal should not be summarily dismissed because he has raised genuine factual issues concerning the bona fides of Malden in adhering to its promise to keep mum about the circumstances surrounding his resignation from the MPD. He is certainly correct that the parties draw very different conclusions about how his other prospective employers came to learn about the nature of the conduct which led to his resignation. The Commission need not address the merits of this controversy, however, since they are irrelevant to the conclusion that the Commission has no authority under civil service law to decide that issue.

Moreover, even if the Commission were authorized to address the merits of Malden's alleged unauthorized disclosures, the Commission would be hard pressed to see how it could look favorably on his position. For example, by his own admission, Malden's alleged disclosures appear to have been in the public domain since August 2006. Even if Mr. Sawicki were not aware of the media reports at the time, he surely was on notice that something had been leaked no later than March 2008 when he was turned down for the Boston job. This episode was just weeks after Malden and Mr. Sawicki, with advice of counsel, had just reached an agreement by which Malden was to make only a specific one-sentence disclosure to such prospective employers. Yet Mr. Sawicki only came to the Commission with this appeal more than three years later, after his civil contract claims on the subject had been actually litigated in another forum and been dismissed on their

merits by the Middlesex Superior Court. Thus, under traditional rules of laches and estoppel, any appeal to the Commission's powers to grant equitable relief would face insurmountable odds.

In sum, for the reasons stated above, Malden's Motion for Summary Decision is granted and the appeal of the Appellant is hereby *dismissed*.

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell & Stein, Commissioners) on April 5, 2012

A True Record. Attest:

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Commissioner

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 the 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 a Civil Service Commission's final decision.

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:

Kevin J. Murphy, Esq.(for Appellant)

Kathryn M. Fallon, Esq. (for Malden)