

✓ 8/29

RECEIVED

NOTIFY

17

2016 AUG 31 AM 11 37

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

SUFFOLK, ss

SUPERIOR COURT
CV15-03723

Notice sent
8/29/2016
M. R. S.
Z., D. & B.
D. A. R.
J. M. B.

LUIS S. SPENCER

v.

CIVIL SERVICE COMMISSION & another¹

(sc)

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

Plaintiff Luis Spencer ("Spencer") brought this suit against the defendants, the Civil Service Commission ("Commission") and the Department of Correction ("DOC")(collectively "defendants"), seeking judicial review of the Commission's decision allowing the DOC's motion to dismiss Spencer's complaint. As a result, Spencer, the former Commissioner of the DOC, was not restored to his civil service position as Correction Officer II. This matter is before the Court on the parties' cross-motions for judgment on the pleadings. For the reasons discussed below, Spencer's motion is **DENIED** and the defendants' motion is **ALLOWED**.

BACKGROUND

The DOC hired Spencer as a Correction Officer in 1980. In 1992, Spencer received tenure in the position of Correctional Officer II. In 2011, Spencer was appointed Commissioner.

On July 22, 2014, following several high-profile failures of oversight, Andrea Cabral ("Cabral"), then Secretary of the Executive Officer Office of Public safety and Security, requested Spencer's resignation. On July 23, 2014, Spencer emailed a letter to Cabral asking that she accept his resignation as Commissioner and his request to revert back to his last uniformed position as Captain at the DOC. On July 24, 2014, Cabral told Spencer that his resignation needed to be unconditional, i.e.

¹ Department of Correction.

"with[out] strings attached," or he would be terminated. Cabral also said that she would consider his request. Following this conversation, Spencer agreed to resign unconditionally and sent Cabral an updated resignation letter. On July 28, 2014, Cabral notified Spencer that he would not be reinstated at the DOC as a Captain. On August 7, 2014, Spencer sent another request to Acting Assistant Deputy Commissioner Kelley Correia, asking to be reinstated to the position of Correction Officer II. This request was also denied.

Spencer then filed a complaint with the Commission, alleging that he had a right to be restored as a Correction Officer II pursuant to G.L. c. 30, § 46D ("Section 46D"). Section 46D states:

In every instance of a manager or employee so promoted . . . from a position in which at the time of promotion he shall have tenure by reason of section nine A of this chapter, **upon termination of his service in the position to which he was so promoted, the manager or employee shall, if he so requests, be restored to the position from which he shall have been promoted**, or to a position in the same state agency, without impairment of his civil service status or his tenure. . . however, **that if his service in the position to which he was promoted shall have been terminated for cause, his right to be restored shall be determined by the civil service commission**

G.L. c. 30, § 46D (emphasis added). On October 14, 2014, the DOC filed a motion to dismiss Spencer's complaint. On November 12, 2015, the Commission issued a decision allowing the DOC's motion to dismiss ("November Decision"). Specifically, the Commission argued that (1) Spencer's service was not "terminated" and thus he does not have the right to return to his former position and (2) the Commission does not have the authority to determine Spencer's right to be restored under the Section 46D because Spencer was not "terminated for cause;" rather, Spencer chose voluntarily to resign from the DOC. The Commission also looked to Massachusetts precedent regarding voluntary resignations and to the Commission's own interpretation of civil service laws, concluding that the concept of "termination" in Section 46D must be construed to preserve the distinction in civil service between involuntary termination and voluntary resignation. Taking Spencer's allegation that he

resigned under threat into account, the Commission found that Spencer's resignation was voluntary as a matter of law and Spencer was thus exempted from the protections of the statute.²

Spencer now seeks judicial review of the Commission's decision. He contends first that the Commission erred in its interpretation of "termination of service" and "terminated for cause" in Section 46D. Second, Spencer maintains that the Commission applied the incorrect standard for deciding a motion to dismiss. Instead of taking all of Spencer's allegations as true, Spencer argues that the Commission incorrectly applied a standard comparable to a summary judgment standard.³

DISCUSSION

The question before this Court is whether the Commission committed an error of law in its understanding and application of Section 46D. See Commerce Ins. Co. v. Comm'r of Ins., 447 Mass. 478, 481 (2006) (review must begin with the presumption of "substantial deference to a reasonable interpretation of a statute by the administrative agency."). Whether an employee who voluntarily resigns falls under the protection of Section 46D remains an issue of first impression, however, this Court *has* expressed skepticism in dicta that Section 46D would provide managers with a unilateral right to demand and reclaim earlier positions at their convenience. See Brady v. State Bd. of Ret., 2011 LEXIS 314, *10 (Mass. Super. 2011) (Kaplan, J.).⁴ In the case at bar, both sides argue that the other's interpretation of Section 46D would render the statute nonsensical. The Commission contends that the

² The Commission quickly dismissed Spencer's remaining arguments: G.L. c. 31 provides no independent basis for Commission jurisdiction, the Commission declined to exercise its discretionary equitable authority, and there is no specific precedent for allowing a DOC Commissioner to revert back to a uniform position. The Commission also determined that allowing the DOC's motion to dismiss was the equitable decision.

³ Additionally, Spencer argues that the Commission acted arbitrarily and capriciously and abused its discretion by demonstrating palpable bias towards Spencer and ignoring the DOC's past practices. The Court finds no need to address these arguments at this time.

⁴ The relevant dicta is as follows: "The court has some question as to whether §46D gives a senior manager, such as a deputy superintendent, the right to demand that he be terminated from his senior management position and then restored to the civil service status that he last enjoyed some twenty years earlier. Another interpretation of this section might be that it provides protection to a civil servant who accepts a senior position and is later terminated, perhaps because a new secretary or commissioner is appointed as part of a new administration and wants his/her own management team, but does not offer the employee the right to demand demotion from senior management back to a civil service employee." See Brady, 2011 LEXIS 314 at 9-10.

plain text of the statute, legislative history, and the relationship between Section 46D and other civil service statutes support its interpretation of both “termination” and “terminated” in Section 46D, such that a manager must be terminated before he can either return to a former position or have the Commission determine his right to be restored to a former position. Alternatively, Spencer argues that the Commission *must* have implicit authority to enforce Section 46D whether or not there was termination for cause, as the Commission’s current interpretation would grant the Commission exclusive jurisdiction over a termination for cause, but no jurisdiction over a failure to reinstate based on something other than termination for cause.⁵ Moreover, Spencer argues that the Commission’s exclusive interpretation would go against the purpose of the statute.

This Court sees no reason to deviate from the Commission’s understanding of Section 46D. Not only is the Commission’s interpretation entitled to substantial deference, see Commerce Ins. Co., 447 Mass. at 481, but the plain text of the statute indicates that the Legislature drafted Section 46D with a limited objective in mind. See Brittle v. Boston, 439 Mass. 580, 594 (2003) (restrictive language of statute demonstrated that Legislature purposefully drafted statute with “narrow focus.”). Contrary to Spencer’s argument that Section 46D protects the right of anyone promoted to a management position to later return to an earlier civil service position, Section 46D explicitly differentiates between managers who are terminated and managers who are terminated with cause. While the statute allows a manager who has lost his management position without cause to return to an earlier position upon a mere request, the statute provides that a manager terminated for cause must have the Commission determine his right to return to an earlier position. See G.L. c. 30, § 46D. Given that Spencer voluntarily resigned as Commissioner, it is clear that Spencer falls into neither category of manager contemplated by the statute.

⁵ Spencer also argues that the Commission had authority under G.L. c. 31 to restore his position as Correction Officer II. Spencer erroneously claims that the DOC violated Chapter 31 because it violated Section 46D. Given that Spencer is not entitled to restoration under 46D, the Commission has no basis to hear the claim under Chapter 31.

Spencer contends further that the Commission committed an error of law by applying a summary judgment standard to the DOC's motion to dismiss, crediting the DOC's evidence when it should have drawn all reasonable inferences in favor of Spencer as the nonmoving party. This Court does not agree.

Pursuant to longstanding Commission precedent, the Commission may dismiss a claim for lack of jurisdiction or for failure to state a claim upon which relief can be granted "under the well-recognized standards for summary disposition as a matter of law." Leone v. Human Resources Division, 22 MCSR 437, slip op. at 7 (2009). See Tranfaglia v. Winthrop, CSC No. D1-14-83, slip op. at 4-5 (2015). Under a summary judgment standard, the Commission must view all facts in the light most favorable to the nonmoving party. See Sosik v. Albin Marine, Inc., 2003 LEXIS 160, *1 (Mass. Super. 2003) (Fishman, J.). Cf. Galiastro v. Mortgage Elec. Registration Sys., 467 Mass. 160, 164 (2014) (when considering a motion to dismiss, the court must accept as true all of the plaintiffs' well-pleaded allegations and the inferences drawn therefrom).

In the November Decision, the Commission credited the DOC's evidence and found that Spencer chose to resign, rather than fight to clear his name or rescind his resignation letter, in order to enhance his future pension. This particular finding of fact, however, is not inconsistent with Spencer's allegations viewed in the light most favorable to the nonmoving party. Even taking Spencer's allegation that he resigned under threat of termination as true, such a threat still does not rise to the level of "fraud, coercion, or duress" sufficient to render a resignation involuntary. Jones v. Wayland, 374 Mass. 249, 259 (1978). See Travers v. Fall River, 21 MCSR 182, slip op. at 4 (2008) ("The Appellate understood that the Appointing Authority intended to terminate him, and that information influenced decision to resign. However, the existence of a future intent to possibly terminate an

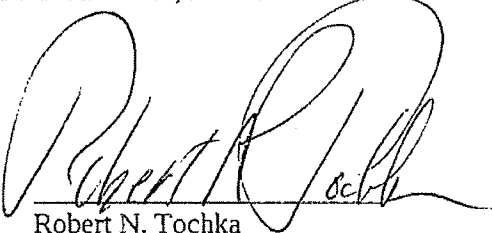
(sc)

employee does not constitute a termination for the purposes of obtaining relief under the civil service law.”).

For the reasons above, this Court affirms the Commission’s decision and finds in favor of the defendants.

ORDER

For the foregoing reasons, the plaintiff Luis Spencer’s motion for judgment on the pleadings is **DENIED**. The defendant Civil Service Commission and Department of Correction’s cross-motion for judgment on the pleadings is **ALLOWED** and the Commission’s November 12, 2015 decision is **AFFIRMED**.



Robert N. Tochka
Justice of the Superior Court

DATED: August 25 , 2016