

*Noting*

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO. 10-0089-A

Brian Sweet

vs.

Civil Service Commission & another<sup>1</sup>

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF BRIAN SWEET'S  
MOTION FOR JUDGMENT ON THE PLEADINGS**

The plaintiff, State Trooper Brian Sweet ("Sweet"), has appealed the Civil Service Commission ("Commission") and Massachusetts Department of State Police's ("Department") decision to discipline Trooper Sweet under G. L. 30A, § 14(7)(g). This action is before the court on plaintiff's motion for judgment on the pleadings. For the reasons set forth below, plaintiff's motion must be **DENIED**.

*NOTE SUT  
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**BACKGROUND**

The following facts are drawn from the administrative record and reflect Commission's findings of fact as expressed in G. L. 30A, § 14. The court notes from the onset that it is required to defer to an administrative agency's fact-finding role, including the agency's right to draw reasonable inferences from the facts it has found. Smith Coll. v. Massachusetts Comm'n Against Discrimination, 376 Mass. 221, 224 (1978).

On March 12, 2007, Joel Santana ("Santana") filed a formal citizen complaint alleging that, on March 10, 2007, Trooper Brian Sweet kicked his vehicle, leaving a dent in the driver's side door. The Department assigned the investigation of this matter to Sergeant Richard Chase, who ultimately recommended that the complaint be "sustained." At some point during the

<sup>1</sup> Massachusetts Department of State Police.

investigation, Sergeant Chase told Trooper Justin Peledge that Trooper Sweet was not someone the State Police protected. A.R. p. 191. The Department then formally charged Trooper Sweet with “Unbecoming Conduct” in violation of Rule 5.2 of the Massachusetts State Police Rules & Regulations (“MSP Rules & Regulations”).

Given that Trooper Sweet admitted to kicking the car door, the issue in this case is whether he was justified in taking this action. Trooper Sweet claims that the scene was chaotic as 30 to 40 “low rider,” drag-racing cars were trying to elude police officers. Trooper Sweet alleges that, prior to the kick, Santana’s car was running and in reverse, endangering other troopers and civilians on the scene, and thus the kick was necessary to emphasize the importance of Santana complying with orders to stop the car. Santana contends that the kick was unnecessary because his car engine was turned off at the time it occurred.

On May 29, 2008, in accordance with G. L. c. 22C, §13, a State Police Trial Board, a component of the Department, convened to consider the Department’s charge against Trooper Sweet. After the Department prosecutor informed the Trial Board that Santana had no means of transportation to attend the hearing, Trooper Sweet’s attorney made a formal motion to dismiss the complaint with prejudice, which the Trial Board granted, stating that the complaint was dismissed.<sup>2</sup>

On June 2, 2008, Colonel Mark Delaney ordered that the Trial Board be reconvened. On August 26, 2008, the Trial Board reconvened a second time. After reviewing the evidence, the Trial Board found Trooper Sweet guilty of Unbecoming Conduct. On August 27, 2008, the

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<sup>2</sup> The interaction occurred as follows:

Trooper Sweet’s attorney: I’d like to make a formal motion to dismiss with prejudice. He had his opportunity to be here.

Trial Board: Dismissed.

Trooper Sweet’s attorney: Is my motion allowed?

Trial Board: Yes, it is. A.R. p. 63.

Colonel approved the Trial Board findings and imposed the recommended 15-day suspension. Trooper Sweet then filed an appeal with the Civil Service Commission ("Commission") pursuant to G. L. c. 22C, §13 and G. L. c. 31, §43. After conducting an evidentiary hearing, the Commission affirmed the suspension. The Commission stated, "[w]hile I do credit Trooper Peledge's testimony that he was told by a sergeant investigating this matter that Trooper Sweet is not someone that the State Police 'protects,' that does not change my conclusion regarding the appropriateness of the discipline imposed here." A.R. p. 217.

Plaintiff has appealed the Trial Board and Commission's decision pursuant to G. L. c. 30A, claiming that the second Trial Board hearing should not have taken place after the first was ostensibly dismissed with prejudice, challenging the biased nature of the investigation leading to the hearing, and alleging that the Commission lacked substantial evidence in making its ultimate determination.<sup>3</sup>

## DISCUSSION

### I. Trial Board' Authority To Dismiss Complaints

Plaintiff's argument that the second Trial Board hearing was invalid under principles of *res judicata* because the Trial Board dismissed the case during the first hearing fails because the Trial Board is not authorized to dismiss cases. The MSP Rules & Regulations spell out with particularity what authority the Trial Board holds and what procedures the board must follow when hearing a case. No regulation grants the Trial Board the power to dismiss a complaint. Instead, Rule 6.7.8 states that the Trial Board "*shall* enter a determination of 'Guilty' or 'Not Guilty' for each charge/specification." (Emphasis added.) MSP Rules & Regulations Rule 6.7.8.

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<sup>3</sup> Plaintiff also claims that the Commission's disciplinary sanction, if justified, was unduly harsh. However, "it is 'well-settled that in reviewing the penalty imposed by an administrative body which is duly constituted to announce and enforce such penalties, neither a trial court nor an appellate court is free to substitute its own discretion as to the matter.'" Sugarman v. Board of Reg. in Med., 422 Mass. 338, 348 (1996), quoting Levy v. Board of Red. In Med., 378 Mass. 519, 529 (1979).

Given that the Trial Board must find a person specifically guilty or not guilty, it implicitly lacks the authority to dismiss a complaint as that option is not listed.<sup>4</sup>

Rule 6.7.8's statement that the Trial Board must, "by a majority vote and in writing . . . summarize the evidence, and make findings of fact" further demonstrates the particularity with which the MSP Rules & Regulations grant authority to the Trial Board. It also supports the interpretation that the Trial Board must hear the case, and thus may not dismiss a complaint since doing so would prevent the board from hearing the case.<sup>5</sup>

The MSP Rules & Regulations' sole mention of the dismissal of complaints grants the Colonel, not the Trial Board, the power to do so to in certain cases. Rule 6.9.6 states,

"[i]n the event the Trial Board finds a member not guilty, such a finding shall be final, conclusive, and binding on all parties. In the event the Trial Board finds a member guilty and the Colonel/Superintendent finds material error in the procedure, judgment, or disciplinary recommendation of a Trial Board, the *Colonel* may order a new Trial Board, or *direct that one or more charges against the accused be dismissed* or impose discipline in accordance with Rule 6.9.5 and 6.9.7." (Emphasis added.) MSP Rules & Regulations Rule 6.9.6.

Since the MSP Rules & Regulations explicitly state that the Colonel has such authority, the Trial Board does not have similar authority given the MSP Rules & Regulations' failure to grant the Trial Board such authority.

Because the Trial Board does not have independent power to dismiss a complaint—with or without prejudice—the Trial Board lacked authority to dismiss the case. Consequently, the civilian's complaint withstood such action and the second Trial Board hearing was valid.

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<sup>4</sup> Therefore, plaintiff's contention that the Colonel cannot reverse a Trial Board's decision to dismiss charges because the Colonel may only reverse a Trial Board's determination that a person is guilty is also undermined. Plaintiff's argument misinterprets the MSP Rules & Regulations' failure to address what actions the Colonel may take when a Trial Board dismisses charges; the Rules are silent on this issue, not because the Colonel cannot take action when a Trial Board dismisses charges, but because the Trial Board cannot dismiss complaints.

<sup>5</sup> Plaintiff's contention that the Trial Board can dismiss cases because G. L. c. 22C, §13 grants the Trial Board the general authority to try cases ignores the extensive procedural and substantive limits on such authority provided by the MSP Rules & Regulations.

## II. The Impact Of A Biased Investigation

Plaintiff's allegation that Sergeant Chase's investigation was inadequate and biased, even if true, does not invalidate the Trial Board's ultimate determination regarding Trooper Sweet's guilt and discipline. The only rule in the MSP Rules & Regulations that deals with bias, Rule 6.7.3, states that no *Trial Board member* "shall sit in on any . . . case in which his/her personal or official relations to either party or to counsel might properly raise a question of impartiality." The rule's focus on the neutrality of the Trial Board assumes that, so long as the Trial Board is neutral, the accused person will receive a fair hearing so long as other procedural requirements are met. The MSP Rules & Regulations require that the accused person have the opportunity to be represented by an attorney, present evidence, call witnesses, and cross-examine opposing witnesses. MSP Rules & Regulation Rule 6.7.7. Given that these procedural guarantees allowed Trooper Sweet to present evidence counter to that gathered in Sergeant Chase's investigation, Trooper Sweet's hearing was fair and neutral and thus any biased investigation did not cause him prejudice. The *de novo* hearing before the Commission further limited the investigation's role in the ultimate determination on the matter.

Plaintiff's allegation that the Commission was biased against him must also fail. Plaintiff argues that the Commission exhibited its bias in its decision, which stated that Sergeant Chase's statement that Trooper Sweet is not someone that the State Police "protects" did not "change [the Commission's] conclusion regarding the appropriateness of the discipline imposed here." Such a statement does not demonstrate bias; it simply acknowledges that, even if the investigation had been biased, it did not render the ultimate decision biased or invalid.

Consequently, Sergeant Chase's bias, if any, while inappropriate and unprofessional, does not invalidate the Commission's final determination.

### III. Substantial Evidence Regarding Trial Board and Commission's Credibility Determinations

Plaintiff's final argument, that this court should set aside or modify the Commission's ruling under G. L. c. 30A, §14 because its findings lacked substantial evidence, also fails.

Substantial evidence is evidence that "a reasonable mind might accept as adequate to support a conclusion." D'Amour v. Board of Registration in Dentistry, 409 Mass. 572, 581 (1991) [internal quotations omitted.]. When determining whether substantial evidence supported the agency's action, the reviewing court must "give due weight to the experience, technical competence, and specialized knowledge of the agency." G. L. c. 30A, §14(7). The reviewing court may not substitute its judgment for that of the agency, "even though the court would justifiably have made a different choice had the matter been before it *de novo*." Southern Worcester County Reg. Vocational School Dist. v. Labor Relations Comm'n, 386 Mass. 414, 420 (1982).

The Commission found that "the Appellant violated Article 5.2 of the rules by conducting himself in a manner that brought the State Police into disrepute and reflected discredit upon himself when he kicked the private citizen's vehicle with no viable excuse." Supplemental A.R. p. 213. In support of this finding, the Commission pointed to Trooper Peledge's testimony that two cars, including Santana's, had complied with his order to turn off their engines prior to Trooper Sweet's kick, the fact that Trooper Peledge had not heard or otherwise noticed Santana's car reversing when he stood 10-15 feet away from it, Santana's testimony that he complied with Trooper Peledge's order prior to Officer Sweet's kick, Trooper Sweet's threat to arrest Santana if he "raise[d] a stink" after Santana complained to Trooper Peledge about the kick, and Trooper Peledge's past anger management issues. A.R. p. 212-213.

In determining whether Trooper Sweet was justified in kicking Santana's car door, the Trial Board had to make credibility determinations given the "he said, he said" nature of the evidence. "[I]t is for the agency, not the reviewing court, to weigh credibility of witnesses and resolve factual disputes involving contradictory testimony." Duggan v. Board of Reg. in Nursing, 456 Mass. 666, 674 (2010), quoting Cobble v. Department of Social Services, 430 Mass. 385, 393 n. 8 (1999). Reviewing courts are not empowered "to make a *de novo* determination of the facts, to make different credibility choices, or to draw different inferences from the facts found by the [agency]." RicMer Properties, Inc. v. Board of Health of Revere, 59 Mass. App. Ct. 173, 180 (2003), quoting Pyramid Co. of Hadley v. Architectural Barriers Bd., 403 Mass. 126, 130 (1988).

This Court therefore defers to the Commission's determination that Santana "offered the most plausible explanation regarding the most relevant events and his testimony rang true . . ." and that Trooper Sweet had "fabricated almost every detail related to his encounter with the private citizen." A.R. 209, 212. While this finding is vulnerable in that Trooper Peledge did not clearly state that he saw Santana comply with his orders as the Commission stated, the Commission heard sufficient circumstantial evidence to allow it to draw its conclusion.<sup>6</sup> Given that Trooper Peledge stated that he felt comfortable standing with his back to Santana's car, the Commission could have inferred that the car engine was off. Trooper Peledge's inability to hear or otherwise notice Santana's car reversing from 10-15 feet away (or the glow of reverse lights) also lends support to the finding that Santana was not reversing at the time. Supplemental A.R. p. 175.

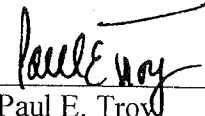
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<sup>6</sup> Trooper Peledge stated that he saw the car behind Santana's comply (Supplemental A.R. p. 154), was unsure whether Santana's car was running when he stood behind it (Supplemental A.R. p. 186), but felt comfortable getting between Santana's car and another car (Supplemental A.R. p. 177).

The Commission therefore had sufficient evidence to make its credibility determinations. Whether a reviewing judge might have evaluated these facts differently is not in issue since it is not for this court to substitute its judgment for that of the Commission. See Southern Worcester County Reg Vocational School Dist., 386 Mass. at 420. Furthermore this court defers to the Commission's experience in dealing with these types of cases, which gives it more expertise in evaluating police officer action in exigent circumstances.

**ORDER**

For the foregoing reasons, plaintiff's motion for judgment on the pleadings is **DENIED** and judgment shall enter for the defendants.

  
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Paul E. Troy  
Justice of the Superior Court

Date: March 22, 2011