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COMMONWEALTH OF MASSACHUSETTS

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SUPERIOR COURT
ACTION NO. 13-02245H

COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

BRIAN SWEET
Plaintiff

v.

MASSACHUSETTS CIVIL SERVICE COMMISSION
and DEPARTMENT OF STATE POLICE
Defendants

**MEMORANDUM OF DECISION AND ORDER ON
DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

The Court having reviewed the parties' submissions, and following a hearing addressed to the matters raised therein, the Defendants' Motion for Partial Summary Judgment is **DENIED WITHOUT PREJUDICE**. Pursuant to Mass. R. Civ. P. 56(f), the parties are hereby afforded leave to conduct discovery in respect to the single issue of whether and to what extent a State Trooper's non-possession of a valid firearms license constitutes an adequate and independent ground for the Defendant State of Police's refusal to reinstate Mr. Sweet to his position of employment, as ordered by the Civil Service Commission.

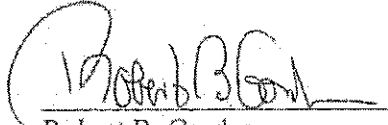
Although the Court recognizes that the Civil Service Commission lacks the jurisdictional authority to reinstate Mr. Sweet's firearms license, said authority conferred exclusively upon

Massachusetts courts pursuant to G.L. c. 140, Sec. 131¹. Mr. Sweet may nevertheless seek to challenge his lack of firearms licensure as a ground for the Defendant Police Department's refusal to reinstate him to active employment as a State Trooper. Discovery to which the Plaintiff has not yet had access may reveal that the Defendant does, in fact, permit Troopers to work in one capacity or another without a valid firearms license, thereby nullifying the cited rule as a proper basis for the denial of Mr. Sweet's reinstatement. The Plaintiff's potential ability to demonstrate this may properly support his civil claims in this case. Accordingly, the Defendants' Motion for Partial Summary Judgment is **DENIED WITHOUT PREJUDICE**, in accordance with Mass. R. Civ. P. 56(f). The Defendants are directed, following receipt of requests under Mass. R. Civ. P. 33 and 34, to provide the Plaintiff with appropriate discovery addressed to the issue identified herein, and are hereby granted leave to re-file their dispositive motion at any time within the

¹By the same token, the Department of Police's purported failure to raise the lack of firearms licensure as a ground for upholding its disciplinary termination of Mr. Sweet before the Civil Service Commission would not appear to divest the courts of their authority to order the reinstatement of Mr. Sweet's license or preclude this Court from upholding the decision of the Department not to reinstate Mr. Sweet to active duty on this ground. Proceedings before the Civil Service Commission were addressed to a different issue, and entailed the application of a different legal standard; so the substance and results of these proceedings cannot dictate the disposition of an action that turns on the consequences of Mr. Sweet's non-possession of a valid firearms license (even if the reasons for such non-possession source to the determinations of the Commission in these proceedings).

deadlines of the Tracking Order should they determine the facts so warrant.²

SO ORDERED


Robert B. Gordon
Justice of the Superior Court

April 8, 2014

²As a final observation, the Court notes that the legitimacy of the Police Department's license revocation in this case is already the subject of an independent civil challenge in the District Court. It would be inappropriate and unfair to preempt the District Court's disposition of this challenge through allowance of a Motion for Partial Summary Judgment now; and a stay of the present proceeding may be the wisest course pending resolution of such challenge by the Court with proper jurisdiction over it.

Entered: 4/9/14