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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 10-00086-G

Notice sent
6/29/2012
T. M. B.
B. LAW OFFS.
D. H.
H. LAW G.
G. T.
B. S.

BRIAN SWEET
vs.

CIVIL SERVICE COMMISSION & another¹

RULING ON APPELLANT'S MOTION TO MODIFY RECORD

(sc)

Plaintiff Brian Sweet sought G. L. c. 30A, § 14(7) review of defendant Civil Service Commission's decision to partially uphold the Massachusetts Department of State Police's ("Department") discipline of Sweet. Sweet's motion for judgment on the pleadings was denied and the Commission's order was affirmed. He has appealed.

He returns to this court seeking to expand the record. Sweet seeks to expand the record with a document that purports to instruct state police officers that they may seek the suspension of a license *or registration* via an immediate threat complaint. His motion is **DENIED**, for the following reasons.

On May 9, 2007, Sweet, a Massachusetts state trooper, pulled over a motorcycle driven by Stephen Whalen on Route 93 South in Medford and cited Whalen for excessively high handlebars, an unlawful helmet, and an exhaust system that was too loud. He warned Whalen that he would not "beat" this citation and that he would file for a hearing before the Registry of Motor Vehicles to revoke his *registration*.

A few days after the stop, Sweet sent an immediate threat form for loss of *license* to the RMV along with an incident report. On June 11, 2007, the RMV held a hearing with Whalen

¹ Massachusetts Department of State Police

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and determined there was no “immediate threat” necessitating revocation of his registration.

Whalen registered a complaint about Sweet.

Following an investigation of Whalen’s complaint, the Department Trial Board (“Board”) convened and held a full hearing. In a decision dated August 3, 2009, the Trial Board found Sweet violated Massachusetts State Police Rules and Regulations (“MSPRR”) Article 5.8.2 because he “demonstrated a lack of knowledge of the application of laws required to be enforced, as well as a lack of proper procedure.” Specifically, the Board determined that Sweet had submitted the immediate threat form inappropriately and suggested there was insufficient evidence that Whalen was an immediate threat.

Sweet filed an appeal with the Commission. There was a testimony at both the Department Trial Board and before the Commission as to whether filing an immediate threat complaint was the procedurally proper method to seek suspension of an operator’s *registration*.

The Commission determined after the hearing, that Sweet, believing that Whalen was a member of a Medford motorcycle club, had filed the form in order to retaliate against the club for their harassment of him. Whether the correct form was used played no part in the Commissioner’s decision.

Now, the appellant seeks to expand the record with a March 2012 training document that purports to instruct state police officers that they may seek the suspension of a license *or registration* via an immediate threat complaint.

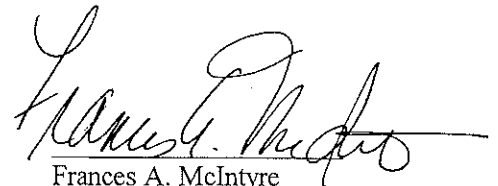
The March training document is entirely irrelevant to these proceedings. The Commissioner was not critical of Sweet’s procedural route in seeking the suspension but his retaliatory motivation.

This court was persuaded that there was substantial evidence that supported the Commissioner's finding that Sweet's motive was retaliatory when he sought to have the Registry suspend Whalen's registration. The procedural route chosen by Sweet was of no consequence to this court in affirming the Commission's decision.

Moreover, expansion of the record a year after this court rendered a decision would confuse the issues. The issue is Sweet's motivation in reporting Whalen to the Registry, of which there was considerable evidence. The paperwork he utilized is completely irrelevant to his motivation. For this court to expand the record to include the proper procedure for a state trooper to seek registration suspension of a motorist would do no more than muddy the waters.

The Motion to Modify the Record is **DENIED**.

So ordered:



Frances A. McIntyre
Justice of the Superior Court

Dated: June 28, 2012