

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

FRANK MASCIARELLI, III,
Appellant

v.

CITY OF MARLBOROUGH,
Respondent

Docket No. D-05-254

DECISION

Procedural Background

Pursuant to G.L. c. 31, § 43, the Appellant, Frank Masciarelli, III (hereafter “Appellant”), filed this appeal on July 13, 2005 with the Civil Service Commission (hereafter “Commission”) claiming an action by the Respondent, City of Marlborough as Appointing Authority (hereafter “City”), terminating his employment as a Police Officer in the Marlborough Police Department on July 5, 2005 was without just cause. The appeal was timely filed. Concurrent with the filing of this appeal, the Appellant also filed a Motion to Stay Proceedings “until such time as the appeal of certain criminal matters have been perfected and decided.” At a Pre-Hearing Conference regarding this matter held on August 24, 2006, the Appellant’s Motion to Stay Proceedings was denied by the Commission. The appeal was marked to be scheduled for a Full Hearing on a date to be determined by the Commission. The City indicated that a Motion to Dismiss the appeal

based on the Appellant's felony conviction may be filed but none has been received by the Commission as of this date.

Factual Background

On May 19, 2005, the Appellant was convicted of certain offenses in the Westborough District Court. Among the convictions were two counts of Open and Gross Lewdness which are felony offenses according to G.L. c. 272, § 16. The convictions, upon a bench trial verdict and guilty plea, are presently on appeal. Following the conclusion of the matters in the District Court, the City began proceedings on four internal affairs investigations that culminated with the Appellant's termination on July 5, 2005. One of those investigations was predicated on the underlying offenses which resulted in the convictions. The three other investigations concerned answers made on employment applications to other police departments, a rehiring application to Marlborough and statements made to the Massachusetts Human Resources Division Civil Service Unit to obtain residential hiring preference.

The Appellant, in his Motion to Stay Proceedings, asserted that "he must complete his criminal appeal of the felony conviction to reestablish himself as a suitable person to hold the position of police officer" and that "[u]pon the successful completion of his appeal, he will be able to request action on his petition by the Civil service Commission."

Conclusion

Pursuant to 801 CMR 1.00 7 (g) (3), the “Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter . . . “ The Appellant was convicted of a felony on May 19, 2005. G.L. c. 41, § 96A states, in its entirety, “No person who has been convicted of any felony shall be appointed as a police officer of a city, town or district.” The statute is obvious and unambiguous that a convicted felon may not be a police officer. It is clear that the Appellant is now statutorily disqualified from continuing to hold his position as a police officer because of his felony conviction. Therefore, the Commission lacks jurisdiction to hear his appeal from termination at this time. The Commission, however, is also mindful that the Appellant’s felony conviction is currently being considered by the Appeals Court.

For all the reasons set forth herein, the Commission ***dismisses the appeal on Docket No. D-05-254 without prejudice*** and further orders that:

The time period pursuant to G.L. c. 30A, § 14(1) for a party to file a Motion for Reconsideration and the time period pursuant to G.L. c. 30A, § 14 generally for a party to seek judicial review of this Decision are hereby tolled until the Appellant has received a decision on his felony conviction appeal from the Appeals Court. In the event that the Appellant is successful in appealing his felony conviction, the Commission will accept and consider a Motion for Reconsideration seeking to reinstate the Appellant’s appeal under docket number D-05-254 for further consideration of that appeal.

Civil Service Commission

John J. Guerin, Jr.
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Taylor, Guerin and Marquis, Commissioners) on September 20, 2007.

A true copy. Attest:

Commissioner

Notice to:

Neil S. Tassel, Esq.
Nicholas Anastasopoulos, Esq.