

**COMMONWEALTH OF MASSACHUSETTS  
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of	)	Case No. 23-005-S
	)	(PI-2023-02-16-001)
Ernest Fontaine	)	MPTC User ID No. 9999-8295

**FINAL DECISION**

Pursuant to 555 CMR 1.10(1), a Hearing Officer was assigned to conduct an adjudicatory proceeding regarding this matter on behalf of the Peace Officer Standards and Training Commission (“Commission”).

Pursuant to M.G.L. c. 30A, §§ 11(7) and (8) and 555 CMR 1.10(4)(e)(2), the Hearing Officer issued the attached Initial Decision and Order, and the parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Initial Decision of the Hearing Officer.

For the above reasons, the Motion for Default and Final Decision filed by the Division of Police Standards and the relief sought therein are hereby **granted**. The Commission finds that Respondent Ernest Fontaine has been [REDACTED]. The Commission also finds that the conduct to which the Respondent has admitted criminal responsibility renders him not fit for duty as a police officer and dangerous to the public. The Respondent’s certification is hereby revoked. The Executive Director shall take the necessary steps to publish the Respondent’s name in the National Decertification Index. This is the final decision of the Commission. M.G.L. c. 30A, §§ 11(8) and 13; 555 CMR 1.10(4)(e).

By vote of the Commission on October 24, 2023.

A party aggrieved by this decision may commence an appeal to the Superior Court within thirty (30) days in accordance with M.G.L. c. 30A, § 14, to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Appellant, or his attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice to: Ernest Fontaine, Respondent  
Shaun Martinez, Esq., Commission Enforcement Counsel  
Fitchburg State University

Date Issued: October 25, 2023.

**COMMONWEALTH OF MASSACHUSETTS  
PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of	)	Case No. 23-005-S
	)	(PI-2023-02-16-001)
Ernest Fontaine	)	

**INITIAL DECISION**

(M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e)(2))

Introduction

At issue in this matter is whether this proceeding brought by the Massachusetts Peace Officer Standards and Training Commission (“Commission”) should now terminate with a default decision in the Commission’s favor, pursuant to Massachusetts General Laws Chapter 30A, § 10(2), 801 CMR 1.01(7)(a), and 555 CMR 1.10(4). Ernest Fontaine (“Respondent”) did not answer, appear, and defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). He also did not respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, the Hearing Officer recommends that the Commission issue a decision to finalize this Initial Decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and proceed to determine what discipline should be imposed against the Respondent.

Procedural History

The Division served the Respondent with an OTSC, dated April 24, 2023, by United Parcel Service (UPS), and addressed to the Respondent’s updated home address. (Ex. A – OTSC; Ex. C – cover letter). The UPS tracking information showed that the OTSC was

delivered on April 25, 2023, to the Respondent's updated home address.\* (Ex. B – OTSC UPS Tracking).

The UPS delivery notification indicates that the package was delivered at the front door at 3:44 pm. (Ex. B). By operation of law, as established below, the Commission may presume that the Respondent received the OTSC and cover letter.

The OTSC and cover letter contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within twenty-one (21) days. (Exs. A and C). The OTSC stated that, if a responsive and timely answer was not filed, the Commission may act. (Ex. A). In particular, the Respondent was notified that the Commission would enter a Final Decision and Order that assumes the truth of the allegations in the OTSC and that the Commission may take action against the Respondent's certification, including granting, in full, the action contemplated in the OTSC. (Ex. A). The Respondent failed to file a responsive pleading to the OTSC in a timely manner. (Ex. D – Motion).

The Motion was sent by the Division to the Respondent by UPS on May 25, 2023, to the same last known address, with delivery at the front door. (Ex. E – Motion UPS Tracking). By operation of law, the Commission may presume that the Respondent received the Motion. The cover letter of the Motion, dated May 25, 2023, stated that the Motion was enclosed. The Commission takes administrative notice that the OTSC was attached as an exhibit to the Motion. The Respondent failed to respond to the Motion and the OTSC.

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\* To obtain the Respondent's updated home address, the Division ran a criminal background check through the Massachusetts Board of Probation and also conducted a CLEAR search. CLEAR is a Thomson Reuters database that collects information from various sources, including cell phone records, credit reporting agencies, motor vehicle registration information, and criminal history records, among other sources.

Allegations Contained in the OTSC

1. On July 31, 2021, the Respondent was automatically certified as a police officer pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.
2. On December 2, 2022, the Commission gave the Respondent notice of the suspension of his law enforcement officer certification pursuant to M.G.L. c. 6E, § 9(a)(1) and 555 CMR 1.08(1). (Ex. F– Executive Director Notice of Suspension).
3. On January 20, 2023, the Respondent admitted to sufficient facts to warrant a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
4. On February 13, 2023, the Respondent’s appointing agency, the Fitchburg State University Police Department, completed a final report which concluded that the Respondent had engaged in a criminal act and engaged in conduct unbecoming of an officer.
5. On February 16, 2023, pursuant to 555 CMR 1.02(3)(b), the Commission directed its Division to open a preliminary inquiry to investigate the allegation that the Respondent was convicted of one or more felonies, and therefore subject to mandatory revocation of his police certification. M.G.L. c. 6E, § 10(a)(i); 555 CMR 1.02(3)(b) (Ex. F – Executive Director Notice of Suspension).

Legal Basis for Commission Action

6. Pursuant to M.G.L. c. 6E. § 3(a):  
The [C]ommission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:  
(1) act as the primary civil enforcement agency for violations of [chapter 6E]; . . .  
(4) deny an application or limit, condition, restrict, revoke or suspend a certification, or fine a person certified for any cause that the commission deems reasonable; . . .

(23) restrict, suspend or revoke certifications issued under [chapter 6E]; (24) conduct adjudicatory proceedings in accordance with chapter 30A; . . . .

7. Pursuant to M.G.L. c. 6E, § 10(a)(i), “[t]he [C]ommission shall, after a hearing, revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that . . . the officer is convicted of a felony.”

8. Pursuant to M.G.L. c. 6E, § 10(b)(iii), “[t]he [C]ommission may, after a hearing, suspend or revoke an officer’s certification if the [C]ommission finds by clear and convincing evidence that the officer . . . has a pattern of unprofessional police conduct that [the] [C]ommission believes may escalate.”

9. Pursuant to M.G.L. c. 6E, § 10(g), the Commission shall publish any revocation order and findings and shall provide all revocation information to the National Decertification Index.

10. Pursuant to M.G.L. c. 6E, § 10(h), the Commission may institute a disciplinary hearing after an officer’s appointing agency has issued a final disposition on the alleged misconduct.

#### Notice

The Respondent was notified at his last known address both by the OTSC and by a cover letter accompanying it that if he did not file an answer or otherwise respond to the allegations in the OTSC in a responsive and timely manner, the Commission could enter a Final Decision and Order that assumes the truth of the allegations in the OTSC. In addition, the notice informed him that the Commission may take particular action against his certification, including granting in full the relief contemplated in the OTSC. See Lawless v. Bd. of Registration in Pharmacy, 466 Mass. 1010, 1010 n.1 (2013) (informing pharmacist that, upon default, “board could enter a final decision accepting as true the allegations contained in the show cause order”); see also University Hosp., Inc. v. Massachusetts Comm’n Against Discrimination, 396 Mass. 533, 539 (1986) (holding that default provision did not violate due process, as it “afford[ed] the

[R]espondent reasonable procedural safeguards for notice and opportunity to be heard”). Despite being afforded the opportunity to do so, the Respondent has failed to file an answer, request an adjudicatory hearing, or otherwise respond.

On May 25, 2023, the Division moved for Default Judgment and Final Decision by serving the Motion, with exhibits A through C attached, by UPS with tracking information indicating delivery at the front door of the Respondent’s last known address. (Exs. D and E). Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. Espinal’s Case, 98 Mass. App. Ct. 152, 156 (2020), citing Eveland v. Lawson, 5240 Mass. 99, 103 (1921) (“[t]he depositing of a letter in the post office, properly addressed, postage prepaid, to a person at his place of business or residence, is prima facie evidence that it was received in the ordinary course of mails”); see also Commonwealth v. Crosscup, 369 Mass. 228, 239 (1975) (“Proper mailing of a letter is ‘prima facie evidence’ in civil cases of its receipt by the addressee.”) (citations omitted)). Further, nothing in Chapter 6E prohibits the Division from relying on the certification that it mailed the Motion via UPS delivery. See Espinal’s Case, 98 Mass. App. Ct. at 157 (stating that “on other occasions when the Legislature intended to impose a requirement for notice by certified mail, return receipt requested, it has done so explicitly”). Sending a letter by UPS should be accorded the same weight as mailing of a letter. The Hearing Officer may presume that the Respondent received the Motion that was sent through UPS, postage paid, and delivered to the front door of his last known address.

#### Exhibits

In ruling on this matter, the Hearing Officer considers the Motion filed by the Division and the following exhibits:

Exhibit A: OTSC, dated April 24, 2023.

- Exhibit B: OTSC UPS Delivery Notification, dated April 25, 2023.
- Exhibit C: OTSC Cover Letter, dated April 24, 2023.
- Exhibit D: Motion for Default and Final Decision, dated May 25, 2023.
- Exhibit E: Motion UPS Delivery Notification, dated May 26, 2023.
- Exhibit F: Executive Director Notice of Suspension, dated December 2, 2022.

The Commission takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations.

#### Discussion

Pursuant to M.G.L. c. 30A, § 10(2), agencies are specifically authorized to “make informal disposition of any adjudicatory proceeding ... by default.” Pursuant to 801 CMR 1.01(7)(a), a party may request to the Presiding Officer by motion to “issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00.” (For the definition of relevant terms, see M.G.L. c. 30A, § 1(2) (defining “agency”) and M.G.L. c. 30A, § 1(3) (defining a “party” to an adjudicatory proceeding)). Thus, the Commission is empowered to enter a Default Judgment and issue a Final Decision and Order in this matter.

In University Hosp., 396 Mass. at 539, the Supreme Judicial Court ruled that the default process established by an agency must satisfy the requirements of due process. A default process would be upheld where it afforded reasonable procedural safeguards for notice of consequences of failure to answer, it afforded the opportunity to object, and judicial review of the entire proceeding was available. Id. In the case before the Commission, the OTSC and the Motion (both sent by UPS tracking) provided the Respondent with notice of the consequences of failing to appear or defend in this matter, as well as an opportunity to object. In addition, pursuant to

M.G.L. c. 30A, § 14, judicial review of the entire proceeding is available to the Respondent. Therefore, the default process established by the Commission is both legal and proper.

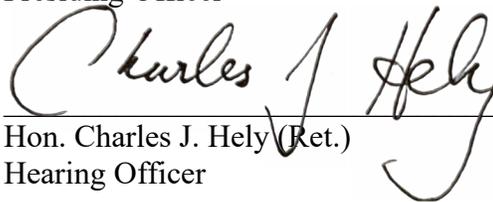
By reason of the Respondent's default, and upon consideration of the Division's Motion, the Commission should grant the Motion. See University Hosp., 396 Mass. at 539; Productora, 376 Mass. at 833-35. The Commission should find that the allegations in the OTSC and the violations of the statutes and regulations stated therein are deemed admitted and established. The Respondent was afforded an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10 and 11(1) and 801 CMR 1.01(4)(c).

Conclusion

The Division's Motion for Default and Final Decision should be granted for the reasons stated above. The Hearing Officer recommends that the Commission make final this Initial Decision and its allegations of misconduct against the Respondent and proceed to determine what discipline is appropriate. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), each of the parties has 30 days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

**PEACE OFFICER STANDARDS AND TRAINING COMMISSION**  
Presiding Officer

  
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Hon. Charles J. Hely (Ret.)  
Hearing Officer

Dated: July 25, 2023

Notice to: Ernest Fontaine, Respondent  
Shaun Martinez, Esq., Commission Enforcement Counsel  
Fitchburg State University