

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

In the Matter of)	Case No. 2023-004-S
)	(PI-2022-12-13-006)
Daniel Whitman)	

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 to the Commission, 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 Daniel Whitman has been [REDACTED]. 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 September 14, 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: Daniel Whitman, Respondent
Shaun Martinez, Esq., Commission Enforcement Counsel
Tyngsboro Police Department

Date Issued: September 14, 2023.

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PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 2023-004-S
)	(PI-2022-12-13-006)
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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). Daniel Whitman (“Respondent”) did not answer, appear, or defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). Nor did he respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, I recommend that the Commission finalize this initial decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and determine the discipline that should be imposed against the Respondent.

Procedural History

The Division served the Respondent with an OTSC, dated April 12, 2023, by United Parcel Service (“UPS”). (Ex. A – OTSC; Ex. B – OTSC Cover Letter). The UPS tracking information indicates that the OTSC was delivered on April 14, 2023, to the Respondent’s last known address.¹ (Ex. C – OTSC UPS Tracking). The UPS delivery notification indicates that

¹ The Division based this information on records from the Massachusetts Registry of Motor Vehicles and from a CLEAR search. CLEAR is a database, provided by Thomson Reuters, that collects information from various sources, including cell phone records, credit reporting agencies, motor vehicle registration information, and criminal history records, among other sources. The home address has been redacted because these papers may be subject to public disclosure.

the package was delivered at the front door at 1:03 pm. (Ex. C). 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 B). The OTSC stated that, if a responsive and timely answer were 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 was notified that the Commission may take these actions both by letter and by a separate page attached to the OTSC. The Respondent failed to file a responsive pleading to the OTSC in a timely manner. (Ex. D – Motion).

The Division sent the Motion to the Respondent by UPS on May 18, 2023, to the same last known address used for the OTSC, 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 dated May 18, 2023 and accompanying documents. I take administrative notice that the OTSC was attached as an exhibit to the Motion. The Respondent failed to respond to the Motion and the OTSC.

Allegations Contained in the OTSC

1. [REDACTED]
[REDACTED] : [REDACTED]
[REDACTED] ; [REDACTED], in

[REDACTED]; [REDACTED]
[REDACTED], [REDACTED] [REDACTED]
[REDACTED]; [REDACTED] [REDACTED]
[REDACTED], [REDACTED] [REDACTED]
[REDACTED], [REDACTED]
[REDACTED], [REDACTED]
[REDACTED], [REDACTED] ([REDACTED]). [REDACTED]
[REDACTED]

2. On December 2, 2022, the Respondent’s appointing agency, the Tyngsboro Police Department, submitted a final report to the Commission which found that the Respondent was [REDACTED] described above.

3. As of December 13, 2022, pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth, the Respondent was certified as a police officer.

4. On December 13, 2022, pursuant to 555 CMR 1.02(3)(b), the Commission directed the Division to open a preliminary inquiry to investigate the allegation that the Respondent was [REDACTED] 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 Suspension Notice).

Legal Basis for Commission Action

5. 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; . . .

6. 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.”

7. 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.

8. 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 of the alleged misconduct.

Notice

The Respondent was notified at his last known address both by the OTSC and a cover letter accompanying it that if he did not file an answer or otherwise respond to the allegations in the OTSC in a 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 18, 2023, the Division moved for Default Judgment and Final Decision. The Division served the Motion, with exhibits A and B attached, by UPS. Tracking information indicated 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, 240 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. I 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, I consider the Motion filed by the Division and the following exhibits:

- Exhibit A: OTSC, dated April 12, 2023.
- Exhibit B: OTSC Cover Letter, dated April 12, 2023.
- Exhibit C: OTSC UPS Delivery Notification, dated April 14, 2023.
- Exhibit D: Motion for Default and Final Decision, dated May 18, 2023.

Exhibit E: UPS Delivery Notification, dated May 19, 2023.

Exhibit F: Executive Director Notice of Suspension, dated March 6, 2023.

I take administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations. See M.G.L. c. 30A, § 11(6).

Discussion

Massachusetts General Laws c. 30A, § 10(2) specifically authorizes agencies to “make informal disposition of any adjudicatory proceeding . . . by default.” Pursuant to 801 CMR 1.01(7)(a), a party may request the Presiding Officer by motion to “issue any order or take any action not inconsistent with 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 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 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 present case, the OTSC and the Motion (both sent by UPS with 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. Therefore, the default process established by the Commission and followed in this proceeding is both legal and proper.

By reason of the Respondent’s default, and upon consideration of the Division’s Motion, I recommend that the Commission grant the Motion. See University Hosp., 396 Mass. at 539;

Productora e Importadora de Papel, S.A. de C.V. v. Fleming, 376 Mass. 826, 833-35 (1978). In addition, I recommend that the Commission 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. I recommend that the Commission make final this Initial Decision and its allegations of misconduct against the Respondent and determine the appropriate discipline. In accordance with the provisions of 555 CMR 1.10(4)(e)(2)(b), each of the parties has thirty (30) days to file written objections to the Initial Decision with the Commission.

SO ORDERED.

PEACE OFFICER STANDARDS AND TRAINING COMMISSION
Presiding Officer



Hon. Judith A. Cowin (Ret.)
Hearing Officer

Dated: July 21, 2023

Notice to: Daniel Whitman, Respondent
Shaun Martinez, Esq., Commission Enforcement Counsel
Tyngsboro Police Department