

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

In the Matter of)	Case No. 23-017-S
)	(PI-2023-04-13-013)
Michael Murphy)	

FINAL DECISION

In accordance with 555 CMR 1.10(1), a Hearing Officer was assigned to an adjudicatory proceeding regarding this matter on behalf of the Massachusetts 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 an Initial Decision and Order, and Michael Murphy (“Respondent”) 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 is hereby **granted**. See 555 CMR 1.10(4). The Respondent was afforded the opportunity for a full and fair hearing. See M.G.L. c. 30A, § 10 (providing that, “[i]n conducting adjudicatory proceedings,” “agencies shall afford all parties an opportunity for full and fair hearing,” and “[u]nless otherwise provided by any law, agencies may” “place on any party the responsibility of requesting a hearing if the agency notifies [the party] in writing of [the party’s] right to a hearing and of [the party’s] responsibility to request the hearing” and “make informal disposition of any adjudicatory proceeding by” “default” (emphasis added)), § 13 (providing that, “[e]xcept as otherwise provided in this section, no agency shall revoke or refuse to renew any license unless it has first afforded the licensee an opportunity for hearing in conformity with [§§ 10, 11, and 12],” but “[t]his section shall not apply” “[w]here the agency is required by any law to revoke, suspend or refuse to renew a license, as the case may be, without exercising any discretion in the matter, on the basis of a court conviction or judgment” or “[w]here the revocation, suspension or refusal to renew is based solely upon failure of the licensee to file timely reports, schedules, or applications . . .” (emphasis added)), incorporated by reference in M.G.L. c. 6E, § 10(f) and 555 CMR 1.10(4).

The Commission finds, by clear and convincing evidence, that the Respondent has been convicted of a felony. Cf. M.G.L. c. 6E, § 10(a) (“The [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 . . .”). Thus, 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. See M.G.L. c. 6E, §§ 10(g), 13(b).

This is the final decision of the Commission. M.G.L. c. 30A, § 11(8); 555 CMR 1.10(4)(e).

By vote of the Commission on May 22, 2024.

In accordance with M.G.L. 30A, § 14 and M.G.L. c. 6E, § 10(f), the Respondent may commence an appeal to the Superior Court within thirty (30) days to the extent allowed by law. After initiating proceedings for judicial review in Superior Court, the Respondent, or the Respondent's 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 manner prescribed by Mass. R. Civ. P. 4(d).

Notice to: Michael Murphy, Respondent
Timothy Hartnett, Esq., Commission Enforcement Counsel
Boston Police Department, Agency
Collective Bargaining Unit
Suffolk County District Attorney's Office

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

In the Matter of)	Case No. 23-017-S
)	(PI-2023-04-13-013)
Michael Murphy)	

INITIAL DECISION

(M.G.L. c. 6E, §§ 3(a), 10(a)(i); 555 CMR 1.10(4)(e)(2))

I. 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). Michael Murphy (“Respondent”) did not answer, appear, and defend the allegations of misconduct against him in the Order to Show Cause (“OTSC”). The Respondent also did not respond to mailings delivered to him by the Division of Police Standards (“Division”). For the reasons stated below, the undersigned recommends that the Commission adopt this Initial Decision as its Final Decision, grant the Division’s Motion for Default and Final Decision (“Motion”), and proceed to determine what discipline should be imposed against the Respondent.

II. Procedural History

1. The Division served the Respondent with an OTSC on December 6, 2023, addressed to the Respondent’s last known home address. (Exs. A – OTSC and B – OTSC United States Postal Service (“USPS”) tracking information).

2. The OTSC contained the allegations against the Respondent and notification of the obligation to file an answer or otherwise respond to the allegations within 21 days. (Ex. A). 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 if an answer to the allegations in the OTSC is not filed, the Commission may 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).

3. The Motion was mailed by the Division to the Respondent by USPS Priority Mail on March 22, 2024, to the same last known address. (Ex. D). The undersigned takes administrative notice that the OTSC was attached as an exhibit to the Motion.

4. By operation of law, the Commission may presume that the Respondent received both the OTSC and the Motion, as discussed below. The Respondent failed to respond to either the OTSC or the Motion.

III. Allegations Contained in the OTSC

1. On June 1, 2021, the Respondent pleaded guilty to one count of Conspiracy to Commit Theft Concerning Programs Receiving Federal Funds, in violation of 18 U.S.C. § 371, and one count of Aiding and Abetting Theft Concerning Programs Receiving Federal Funds, in violation of 18 U.S.C. §§ 2 and 666(a)(1)(A). Under federal law, these offenses are felonies. 18 U.S.C. § 3559.

2. On July 1, 2021, 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 law enforcement officer.

3. On April 13, 2023, the Commission directed the Division to open a preliminary inquiry to investigate the allegation that the Respondent had engaged in conduct that may constitute a felony. M.G.L. c. 6E, §§ 8(c); 10(a)(i); 555 CMR 1.02(3)(b).

4. The Respondent’s sentencing is set for June 27, 2024.

IV. Exhibits

In ruling on this matter, the undersigned has considered the Motion filed by the Division and the following exhibits:

- Exhibit A: OTSC, with a certificate of service, dated December 6, 2023.
- Exhibit B: OTSC USPS Priority Mail tracking, dated December 9, 2023.
- Exhibit C: Notice of Immediate Suspension, dated January 19, 2023.
- Exhibit D: Motion for Default and Final Decision, dated March 22, 2024.
- Exhibit E: Motion for Default USPS Priority Mail tracking, dated March 23, 2024.

The undersigned takes administrative notice of all papers filed in this case, as well as Chapter 6E and Commission regulations. See M.G.L. c. 30A, § 11(5).

V. Legal Basis for Commission Disciplinary Action

1. 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 [C]ommission deems reasonable; . . .
(23) restrict, suspend or revoke certifications issued under [Chapter 6E]; [and]
(24) conduct adjudicatory proceedings in accordance with [C]hapter 30A; . . .
2. Under M.G.L. c. 6E, § 1, a “conviction” is “an adjudication of a criminal matter resulting in any outcome except wherein the matter is dismissed or the accused is found to be not guilty, including, but not limited, to an adjudication of guilt with or without the imposition of a sentence, a plea of guilty, a plea of nolo contendere, an admission to sufficient facts, a continuance without a finding or probation” for purposes of the sections of M.G.L. c. 6E cited herein.
3. 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.”

4. 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 (“NDI”).

VI. Notice

The Respondent was notified at his last known address by the OTSC 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. These advisories were sufficient to place him on notice of the consequences of any default. See Lawless v. Board of Registration in Pharmacy, 466 Mass. 1010, 1010 n.1, 1011 (2013) (concluding that pharmacist had “ample notice,” where he was informed that “failure to appear at any hearing would result in entry of default and that, in the event of default, the 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 respondent 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 March 22, 2024, the Division moved for a default judgment and final decision and served the Motion, with exhibits A and B attached, by USPS Priority Mail with tracking

information to the Respondent's last known address, as indicated by a CLEAR search conducted by the Division. (Ex. D (describing the nature of a CLEAR search)).

The Commission provided sufficient notice by delivering the OTSC and the Motion using USPS Priority Mail. Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. See Espinal's Case, 98 Mass. App. Ct. 152-53, 156 (2020), citing Eveland v. Lawson, 240 Mass. 99, 103 (1921) ("The 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 required the Division to take any additional steps or prohibits the Division from relying on the certification that it mailed the Motion via USPS Priority Mail 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"). The undersigned may presume that the Respondent received the Motion that was sent through USPS Priority Mail at his last known address.

VII. Discussion

Pursuant to 801 CMR 1.01(7)(a), a party may request through a motion that a Hearing Officer "issue any order or take any action not inconsistent with [the] law or 801 CMR 1.00." One such action is recommending the entry of a final judgment of default where a respondent has failed to appear. Under M.G.L. c. 30A, § 10(2), an agency is specifically authorized to "make informal disposition of any adjudicatory proceeding . . . by default." Lawless, 466 Mass. at 1011-12 (affirming that agency "ha[d] authority, in an appropriate circumstance, to dispose of an

adjudicatory proceeding by default,” citing M.G.L. c. 30A, § 10; and concluding that agency’s decision to do so was not shown to be improper, where the party failed to appear after the first day of hearing). That step is warranted here. The Respondent was afforded an opportunity for a full and fair hearing as required by M.G.L. c. 30A, §§ 10, 11(1) and 801 CMR 1.01(4)(c).

In University Hosp., 396 Mass. at 538-39, the Supreme Judicial Court rejected the notion that due process standards were violated by an agency rule that provided sanctions for a party’s default upon receiving interrogatories. The court found the provisions of the agency rule “afford . . . reasonable procedural safeguards for notice and an opportunity to be heard,” noting that a respondent is given clear notice of the consequences, and has opportunities to object, to obtain an extension of time, to petition for a default to be vacated, and to seek judicial review of the entire proceedings. In the case before the Commission, the OTSC and the Motion (both sent by USPS with tracking) provided the Respondent with notice of the consequences of a failure to appear or defend in this matter, as well as an opportunity to object. The Respondent could have sought more time to respond under 801 CMR 1.01(4)(e), (7)(a). Therefore, the entry of a default judgment by the Commission is both legal and proper.

By reason of the Respondent’s default, and upon consideration of the Division’s Motion, the undersigned recommends that the Commission grant the Motion. See Lawless, 466 Mass. at 1010-12 & n.1; University Hosp., 396 Mass. at 538-39; Productora e Importadora de Papel, S.A. de C.V. v. Fleming, 376 Mass. 826, 833-35 (1978) (recognizing that a default establishes the truth of factual allegations). In addition, the undersigned recommends 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. See Lawless, 466 Mass. at 1010-12 & n.1; University Hosp., 396 Mass. at 534, 538-39; Productora e Importadora de Papel, 376 Mass. at 833-35.

VIII. Conclusion

The Division's Motion should be granted for the reasons stated above. The undersigned recommends that the Commission find the allegations to be supported, make this Initial Decision final, 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



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

Dated: April 18, 2024

Notice to: Michael Murphy, Respondent
Timothy D. Hartnett, Esq., Enforcement Counsel
Boston Police Department, Agency
Collective Bargaining Unit