

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

In the Matter of) Case No. PI-2023-11-16-002
)
James Festa)

FINAL DECISION

In accordance with 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 an Initial Decision and Order, and James Festa (“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”), § 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 . . .”), 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 Respondent is not fit for duty as an officer and is dangerous to the public. See M.G.L. c. 6E, § 10(a)(xvi). 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. 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).

* Pursuant to information received from the appointing agency, the Respondent resigned in October 2023 subsequent to the initiation of termination proceedings. See M.G.L. c. 6E, § 8(b)(4); 555 CMR 1.01(5).

By vote of the Commission on August 15, 2024.

In accordance with M.G.L. c. 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).



Hon. Margaret R. Hinkle (Ret.), Chair

Notice to: James Festa, Respondent
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Peabody Police Department, Appointing Agency
Collective Bargaining Unit
Essex County District Attorney's Office

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

In the Matter of

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Case No. PI-2023-11-16-002

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James Festa

)

INITIAL DECISION

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). James Festa (“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 April 10, 2024, addressed to the Respondent’s last known home address. Exhibits A, B.
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. Exhibit A. The OTSC stated that, if a responsive and timely answer was not filed, the Commission may act.

Exhibit 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.

Exhibit A.

3. The Motion was mailed by the Division to the Respondent by USPS Priority Mail on May 20, 2024, to the same last known address. Exhibits C, 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 July 1, 2021, the Respondent was automatically certified as a law enforcement officer pursuant to St. 2020, c. 253, § 102, an Act Relative to Justice, Equity and Accountability in Law Enforcement in the Commonwealth.

2. On July 1, 2022, the Respondent was recertified by the Commission's Division of Police Certification.

3. On November 16, 2023, the Commission directed its Division of Police Standards to open a preliminary inquiry to investigate allegations of misconduct against the Respondent. M.G.L. c. 6E, § 8(c); § 10(a), (b); [REDACTED] That same day, the Commission suspended the Respondent's certification as a police officer. Exhibit E.

4. On August 10, 2022 and while on duty for the Peabody Police Department ("PPD") and in full PPD uniform, the Respondent:

- i. received a radio call from PPD dispatch regarding a suspicious motor vehicle

operating within the area he was assigned to patrol at that time;

- ii. falsely reported to PPD dispatch that he was “en route” to the suspicious vehicle; and
- iii. instead of going to the location of the suspicious vehicle in Peabody, drove his PPD-issued cruiser to the house of an individual with whom he had a personal relationship, in Lynn, MA.

5. On August 10, 2022 and while on duty for the PPD and in full PPD uniform, the Respondent:

- i. refused to leave the individual’s home after she repeatedly told him to leave;
- ii. after being asked to leave the individual’s home, and with the intent to remain in the home against the individual’s expressed wishes, opened the basement window and entered the home without the individual’s permission; and
- iii. [REDACTED]

6. On August 10, 2022 and while on duty for the PPD and in full PPD uniform, the Respondent was untruthful to LPD officers who responded to the individual’s home when he told them that he and the individual were not arguing despite knowing that this statement was false and misleading.

7. On August 11, 2022, the PPD notified the Commission that it had opened an internal affairs investigation [REDACTED]

8. In relation to the Respondent’s conduct described in paragraphs 4 through 6 above, the PPD hired a third-party investigator who completed a report in which he recommended that the Respondent be terminated, sustained the allegations that the Respondent committed the conduct described in paragraphs 4 through 6 above, and concluded that the Respondent violated the

following (19) PPD Rules & Regulations:

- i. 6.6.2 Furnishing Assistance
- ii. 6.6.5 Departmental Communications
- iii. 6.6.8 Attention to Duty
- iv. 6.6.9 Devotion to Duty
- v. 6.6.10 Reporting for Duty
- vi. 6.6.18 Leaving the Community
- vii. 6.6.30 Truthfulness
- viii. 6.7.1 Conduct Unbecoming an Officer
- ix. [REDACTED]
- x. 6.7.3 Abuse of Department Property
- xi. 6.7.5 Use of Department Vehicles
- xii. 6.7.7 False Information on Records
- xiii. 6.7.10 Incompetence
- xiv. 6.7.16 Neglect of Duty
- xv. 6.7.20 Personal Business
- xvi. 7.12.5 Cruiser Patrol Officer (remains on beat):
- xvii. 7.12.14 Cruiser Patrol Officer (establishes a positive police presence)
- xviii. 6.7.17 Obedience to Laws
- xix. 4.0 Law Enforcement Code of Ethics

9. After receiving the third-party investigator report described in paragraph 8 above, the City of Peabody initiated termination proceedings against the Respondent.

10. Subsequent to the City's initiation of termination proceedings, on or about October 31, 2023, the Respondent resigned from his position at the PPD.

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 April 10, 2024.

Exhibit B: OTSC USPS Priority Mail tracking, dated April 12, 2024.

Exhibit C: Motion for Default and Final Decision, dated May 20, 2024.

Exhibit D: Motion for Default USPS Priority Mail tracking, dated May 21, 2024.

Exhibit E: Notice of Immediate Suspension, dated January 11, 2023.

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

2.

[REDACTED]

3.

[REDACTED]

4. Pursuant to M.G.L. c. 6E, § 10(a)(xvi), “[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 not fit for duty as an officer and the officer is dangerous to the public, as determined by the [C]ommission.”

5. Pursuant to M.G.L. c. 6E, § 10(b)(iv), “[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 . . . was suspended or terminated by their appointing agency for disciplinary reasons. . . .”

6. 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”).

7. 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 or one year has elapsed since the incident was reported to the Commission.

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. Bd. 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”); Univ. 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 May 20, 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. Exhibit C.

The Commission provided sufficient notice by delivering the OTSC and the Motion using

USPS Priority Mail. Massachusetts law presumes that the addressee receives properly deposited mail. See Espinal's Case, 98 Mass. App. Ct. 152, 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.”)); 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 Commission has afforded the Respondent 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 Hospital, 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. 396 Mass. at 538-39. 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. Exhibits A, C. 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; Univ. 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; Univ. 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. Kenneth J. Fishman (Ret.)
Hearing Officer

Dated: July 2, 2024

Notice to: James Festa, Respondent
Timothy D. Hartnett, Esq., Enforcement Counsel
Peabody Police Department, Agency
Collective Bargaining Unit