

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

In the Matter of)	Case No. 23-008-S
)	(22-009-SU; PI-2023-04-13-014)
Brian Pomeroy)	

FINAL DECISION

Pursuant to 555 CMR 1.10(1), a Hearing Officer was assigned to 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 Brian Pomeroy (“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**. The Commission finds that the Respondent has been [REDACTED]
[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), (13); 555 CMR 1.10(4)(e).

By vote of the Commission on January 23, 2024.

In accordance with M.G.L. 30A, § 14, a party aggrieved by this decision 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 Appellant, or the Appellant’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: Brian Pomeroy, Respondent
 Timothy D. Hartnett, Esq., Commission Enforcement Counsel
 West Springfield Police Department, Agency

Date Issued: January 23, 2024

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PEACE OFFICER STANDARDS AND TRAINING COMMISSION**

In the Matter of)	Case No. 23-008-S
)	(PI-2023-04-13-014)
Brian Pomeroy)	

INITIAL DECISION

(M.G.L. c. 30A, § 11(8); 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). Brian Pomeroy (“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 Hearing Officer recommends that the Commission grant the Division’s Motion for Default and Final Decision (“Motion”), adopt this decision as final, and proceed to determine the discipline to be imposed against the Respondent.

II. Procedural History

1. The Division served the Respondent with an OTSC, dated June 29, 2023, by United Parcel Service (“UPS”) and addressed to the Respondent’s last known address. (Ex. B – OTSC Cover Letter; Ex. C – OTSC).
2. The UPS tracking information showed that the OTSC was delivered on June 30, 2023, at 6:06 p.m. to the Respondent’s last known address. (Ex. D – OTSC UPS Delivery Notification).

By operation of law, as established below, the Commission may presume that the Respondent received the OTSC and cover letter.

3. 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 21 days. (Exs. B and C). The OTSC stated that, if a responsive and timely answer was not filed, the Commission may act. (Ex. C). 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. C). The Respondent failed to file a responsive pleading to the OTSC in a timely manner. (Ex. E – Motion).

4. The Motion was sent by the Division to the Respondent by UPS on August 17, 2023, to the same last known address used for the OTSC, with delivery made at the garage. (Ex. F – Motion UPS Delivery Notification). By operation of law, the Commission may presume that the Respondent received the Motion.

5. The cover letter of the Motion, dated August 17, 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.

III. Allegations Contained in the OTSC

1. In July 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 police officer.

2. On April 13, 2023, 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 had engaged in conduct that may constitute a felony. M.G.L. c. 6E, §§ 8(c)(1)(ii); 10(a)(i).

3. [REDACTED]

4. On May 24, 2023, the Respondent's appointing agency, the West Springfield Police Department, provided the Commission with an investigative report prepared by the Massachusetts State Police, which had investigated the incidents in question.

IV. Legal Basis for Commission 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 to 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 chapter 30A; . . .

2. Pursuant to M.G.L. c. 6E, § 8(c)(1), "[t]he [D]ivision . . . shall initiate a preliminary inquiry into the conduct of a law enforcement officer if the [C]ommission receives a complaint, report or other credible evidence that is deemed sufficient by the [C]ommission that the law enforcement officer . . . committed a felony or misdemeanor. . . ."

3. Pursuant to M.G.L. c. 6E, § 1, a "conviction" includes "an admission to sufficient facts, a continuance without a finding or probation."

4. [REDACTED]

[REDACTED]

5. [REDACTED]

[REDACTED]

[REDACTED]

6. Pursuant to M.G.L. c. 6E, § 10(b)(i), “[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 been convicted of any misdemeanor.”

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 on the alleged misconduct.

V. 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, 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 scheduled hearing date would result in the entry of default”); 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 an 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 August 17, 2023, the Division moved for Default Judgment and Final Decision by serving the Motion, with exhibits B through D attached, by UPS with tracking information indicating delivery at the front door of the Respondent’s last known address. (Exs. E and F).

The notice provided by delivery of the OTSC and the Motion was sufficient. Under Massachusetts case law, there is a presumption that the addressee receives properly deposited mail. 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 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. Cf. Computone, Inc. v. Tocio, 44 Mass. App. Ct. 489, 493 (1998) (holding that provision of lease requiring notice by certified or registered mail was not violated by delivery through Federal Express, as that method likewise provided proof, and a means of resolving disputes, regarding delivery). The Hearing Officer may presume that the Respondent received the Motion that was sent through UPS and delivered to the front door of his last known address.

VI. Exhibits

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

Exhibit A: Executive Director Suspension Notice, dated December 6, 2022.

Exhibit B: OTSC Cover Letter, dated June 29, 2023.

Exhibit C: OTSC, dated June 29, 2023.

Exhibit D: OTSC UPS Delivery Notification, dated June 30, 2023.

Exhibit E: Motion for Default and Final Decision, dated August 17, 2023.

Exhibit F: Motion for Default UPS Delivery Notification, dated August 18, 2023.

The Hearing Officer 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(6).

VII. Discussion

Pursuant to M.G.L. c. 30A, § 10(2), agencies are specifically authorized to “make informal disposition of any adjudicatory proceeding . . . by default.” See Lawless, 466 Mass. at 1011 (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). Pursuant to 801 CMR 1.01(7)(a), a party may request to the Hearing 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 as its Final Decision and Order in this matter.

In University Hospital, 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 rule to "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. Id. (providing additional details). In the case before the Commission, the OTSC and the Motion (both sent by UPS 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). In addition, pursuant to M.G.L. c. 30A, § 14, judicial review of the entire proceeding is available to the Respondent. 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 Hearing Officer recommends that the Commission grant the Motion. See Lawless, 466 Mass. at 1011; University Hosp., 396 Mass. at 539; 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 Hearing Officer 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. 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).

VIII. Conclusion

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

against the Respondent to be supported, and determine the appropriate discipline. 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



Hon. Kenneth J. Fishman (Ret.)
Hearing Officer

Dated: December 5, 2023

Notice to: Brian Pomeroy, Respondent
Shaun Martinez, Esq., Commission Enforcement Counsel
West Springfield Police Department, Agency