

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

In the Matter of) Case No. 23-018-SU (SU-2023-06-12-001)
) MPTC User ID No. 9997-1036
Steven Stalzer)

ORDER OF THE SINGLE COMMISSIONER
(Pursuant to M.G.L. c. 30A, § 11(8); 555 CMR 1.09(6)(d))

On July 6, 2023, the Petitioner Steven Stalzer came before me, a single commissioner of the Peace Officer Standards and Training Commission, pursuant to M.G.L. c. 6E, § 9(d) and 555 CMR 1.09, requesting a stay of the mandatory suspension of his law enforcement officer certification by the Commission. The Chair of the Commission assigned me as the single commissioner to preside over the remote hearing, in accordance with 555 CMR 1.09(4).¹ The Commission recorded the hearing, and a copy of the recording can be made available upon request.²

The parties offered into evidence a total of five joint exhibits, Exhibits A-E, and no witnesses testified for either party. James R. McMahon, III, Esq. represented the Petitioner, and Timothy D. Hartnett, Esq. served as Enforcement Counsel on behalf of the Commission. The findings of fact and conclusions of law in this decision are based on consideration of all pleadings filed in the case, the parties' pre-hearing memoranda, and the exhibits; taking administrative notice of pertinent rules, statutes, regulations, and policies; and drawing reasonable inferences from the credible evidence.

On June 12, 2023, the Executive Director, pursuant to a delegation of authority by the Commission, and on its behalf, immediately imposed the suspension of the Petitioner's certification after receiving records from Concord District Court (Criminal Docket No. 2347CR000515) in Concord, Massachusetts, that the Petitioner was charged with a felony. See M.G.L. c. 6E, § 9(a)(1) ("The [C]ommission shall immediately suspend the certification of any officer who is arrested, charged or indicted for a felony."); 555 CMR 1.08(1) ("[A] certified copy of the charge or indictment, shall be sufficient evidence for immediate [C]ommission action pursuant to 555 CMR 1.08"). [REDACTED]. See [REDACTED]; M.G.L. c. 274, § 1 (defining felonies). The Petitioner timely filed a request for a hearing before a single commissioner on June 16, 2023. See M.G.L. c. 6E, § 9(d) (within five days of the date of the notice of the suspension); accord 555 CMR 1.09(2). Thereafter, he offered evidence showing that the felony charge was

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR 1.01 (formal rules), generally apply to adjudications before the single commissioner, with Chapter 6E or any Commission rules taking precedence. 555 CMR 1.09(6).

² If there is a judicial appeal of this decision, the appellant in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he wishes to challenge the decision as unsupported by the substantial evidence, arbitrary or capricious, or an abuse of discretion. See Mass. Super. Ct. Standing Order 1-96. If such an appeal is filed, the Commission can provide the recording to the appellant to transcribe the hearing.

dismissed for lack of prosecution on June 22, 2023.

The single commissioner must affirm the mandatory suspension of the officer's certification, unless the single commissioner determines, by a preponderance of the evidence, that the suspension is not warranted. See 555 CMR 1.09(6)(a) (outlining the standard of proof). "By a preponderance of the evidence means that the trier of fact had to conclude that it was more probable than not [that the proposition occurred]" See Continental Assur. Co. v. Diorio-Volungis, 51 Mass. App. Ct. 403, 408 n.9 (2001) (citations omitted); see also Craven v. State Ethics Comm'n, 390 Mass. 191, 200 (1983) ("Proof by a preponderance of the evidence is the standard generally applicable to administrative proceedings."). If the single commissioner determines that the suspension imposed by the Commission is not warranted, the single commissioner must stay the suspension of certification. 555 CMR 1.09(6)(a).

The language of the regulations expressly provides that the single commissioner is only authorized to "stay" the mandatory suspension. Accordingly, "[a] suspension order of the [C]ommission issued pursuant to [Section 9(a)(1)] shall continue in effect until issuance of the final decision of the [C]ommission or until revoked by the [C]ommission." M.G.L. c. 6E, § 9(a)(5); accord 555 CMR 1.08(4).

Here, the Petitioner contends as reasons in support of his Request to Stay his Mandatory Suspension, that he was not guilty of the felonies and that the dismissal of his felony charges after the imposition of the mandatory suspension of his certification requires that his mandatory suspension be stayed. The Petitioner, however, does not dispute that he was charged with one or more felonies immediately prior to the imposition of his mandatory suspension, and further, the Petitioner does not dispute that when his mandatory suspension was imposed by the Commission, it was properly imposed in accordance with M.G.L. c. 6E, § 9(a)(1) and 555 CMR 1.08. These facts, which provided the basis for the suspension, remain undisturbed and undisputed.

I hereby find that the imposition of the suspension by the Commission was mandatory. The suspension was thus warranted at the time the suspension was imposed, and it will continue to be warranted until the occurrence of one of the events referenced in M.G.L. c. 6E, § 9(a)(5) and 555 CMR 1.08(4). That is dispositive of the only issue before me under the prevailing statute and the regulations set forth herein. If, for example, evidence had been presented that the Commission misread the criminal charges against the Petitioner as being felonies when in fact they were misdemeanors, and then imposed the mandatory suspension based upon its misinterpretation of the charges, then a single commissioner would have the authority to stay the suspension because the basis for the mandatory suspension was improper. However, because the imposition of the mandatory suspension was warranted when it was imposed and remains warranted, I have no authority to stay the suspension.

Pursuant to 555 CMR 1.08(4), "[a]ny suspension issued by the [C]ommission pursuant to 555 CMR 1.08 shall continue in effect until issuance of the final decision of the [C]ommission or until the suspension is revoked by the [C]ommission." Since the suspension was issued mandatorily on behalf the full Commission in accordance with the statute, a single commissioner has no authority to reverse an action taken on behalf of the Commission. Accordingly, the

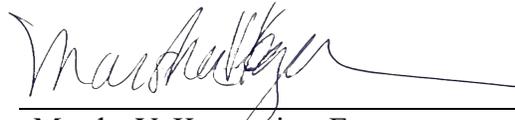
Petitioner has not met his burden of proving the mandatory suspension of his certification unwarranted. Therefore, the suspension cannot be stayed.

It is hereby ORDERED, for the reasons stated above that:

- (a) The Petitioner's request for a stay of the mandatory suspension of his certification is hereby **denied**;
- (b) The suspension imposed by the Executive Director on June 12, 2023, on behalf of the full Commission, shall remain in effect until issuance of the final decision of the Commission or until revoked by the Commission; and
- (c) The Executive Director shall publish the Petitioner's name in the list of suspended officers unless the suspension of the Petitioner's certification is either revoked by the full Commission pursuant to a request by the Petitioner or revoked by a final decision of the full Commission, whichever comes first.

This is the final decision of the Single Commissioner. M.G.L. c. 30A, § 11(8); 555 CMR 1.09(6)(d).

By the Single Commissioner:



Marsha V. Kazarosian, Esq.
Commissioner and Secretary of the Commission

Dated: July 11, 2023

A party aggrieved by this Order may commence an appeal to the Superior Court within thirty days in accordance with M.G.L. c. 30A, § 14. 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: James R. McMahon, III, Esq., Counsel for the Petitioner
Timothy D. Hartnett, Esq., Commission Enforcement Counsel
Acton Police Department, the Petitioner's Employing Agency