

The Commonwealth of Massachusetts
Commission Against Discrimination
One Ashburton Place, Boston, MA 02108
Phone: (617) 994-6000 Fax: (617) 994-6024

JUL 03 2013

- DISMISSAL and NOTIFICATION of RIGHTS -

To: Robert J Fiske

G.L.c. 4, § 7(26)(c)

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Case: Robert J Fiske v. Town of Tisbury

MCAD Docket Number: 12BEM02053

EEOC Number: 16C-2012-02189

Investigator: Sarah Biglow

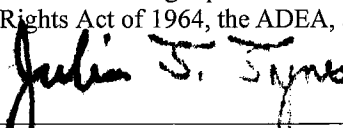
Your complaint has been dismissed for the following reasons:

- The facts alleged fail to state a claim under any of the statutes the Commission enforces.
- Respondent employs less than the required number of employees.
- Your complaint was not timely filed with the Commission, i.e. you waited too long after the date(s) of the alleged discrimination to file. Because it was filed outside the time limit prescribed by law, the Commission cannot investigate your allegations.
- You failed to provide requested information, failed or refused to appear or to be available for necessary interviews/conference, or otherwise refused to cooperate to the extent that the Commission has been unable to resolve your complaint. You have had more than 30 days in which to respond to our written request.
- The Commission's efforts to locate you have been unsuccessful. You have had at least 30 days in which to respond to a notice sent to your last known address.
- The Respondent has made a reasonable settlement, offering full relief for the harm you alleged. 30 days have expired since you received actual notice of this settlement offer.
- The Commission issues the following determination. Based upon the Commission's investigation, the Commission is unable to conclude that the information obtained establishes a violation of the statutes. This does not certify that the Respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this complaint.
- Other (briefly state)

- NOTICE of APPEAL -

If you wish to appeal the dismissal of your complaint and believe that the above stated reason for dismissal is incorrect, you may appeal to this Commission within 10 days after receipt of this notice. You or your attorney must make your appeal of the dismissal in writing to the appeals clerk of this Commission. **Attention: Nancy To.**

All employment complaints, where applicable, were filed by the MCAD with the Equal Employment Opportunity Commission. Our finding, which will be forwarded to its area office, JFK Federal Building, Boston, MA will be given substantial weight provided that such findings are in accordance with the requirements of Title VII of the Civil Rights Act of 1964, the ADEA, and/or the ADA, as amended.



Julian Tynes
Investigating Commissioner

Date

6-28-13

Cc:

Gareth W. Notis, Esq.
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Boston, MA 02210

Town of Tisbury
Head of Human Resources
PO Box 1239
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INVESTIGATIVE DISPOSITION

Case Name: Robert J Fiske v. Town of Tisbury
MCAD Docket No.: 12BEM02053
EEOC Docket No.: 16C-2012-02189
No. of Employees: 25+
Investigator: Sarah Biglow, Compliance Officer
Recommendation: **Lack of Probable Cause**

Introduction

On August 8, 2012, Complainant filed a charge against Respondent, alleging retaliation in violation of MGL c.151B section 4, paragraph 4 and Title VII of the Civil Rights Act of 1964.

Complainant's Allegations

Complainant was hired as a Patrolman in 1995 and last held the position of Sergeant. Complainant alleges in July 2008, a fellow officer approached him with a complaint of sexual harassment. Complainant alleges he informed this officer to report her allegations to the Chief of Police and the Town Administrator. Complainant alleges this officer was retaliated against and subsequently filed a complaint with the Commission in April 2009. Complainant alleges he was listed as a witness to her complaint.

Complainant alleges after this officer filed her complaint, he was subjected to additional scrutiny and his ability to supervise was questioned. Complainant alleges in January 2010, the Chief of Police attempted to discipline Complainant for insubordination. Complainant alleges he grieved the discipline but the grievance went unresolved. Complainant alleges in July 2011, he and two other officers answered a domestic violence call. Complainant alleges he was investigated for this incident and terminated on November 2, 2011.

Respondent's Position

Respondent denies Complainant's discrimination allegations.¹

¹ On September 10, 2012, the Respondent's Position Statement and Exhibits were placed under Protective Order, and made unavailable for public inspection. Since this Investigative Disposition may be subject to public records requests, the Respondent's Position has been omitted.

Summary of Investigation and Analysis

Retaliation

Complainant alleged Respondent retaliated against him for assisting in another officer's sexual harassment complaint. Specifically, Complainant alleged he was given a written reprimand in January 2010 and was terminated on November 4, 2011.

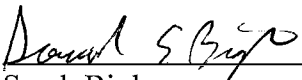
Respondent stated that it was not aware of Complainant being involved in the other officer's MCAD sexual harassment complaint. Even if Complainant did cooperate with an MCAD investigation Complainant failed to provide sufficient evidence to show that Respondent was aware of this cooperation or that Respondent retaliated against him based on notice of his cooperation. Additionally, Respondent stated that the only discipline Complainant received between when the other officer filed her complaint and Complainant's termination was a written reprimand which was rescinded in June 2010 after Acting Chief Hanavan was advised by a consultant to remove the discipline in an effort to cultivate a positive working relationship with Complainant.

Complainant and other officers were involved in an incident during July 2011, for which they were later disciplined. Respondent provided copies of its domestic violence and sexual assault policies which lay out how officers should respond in such situations which were in place at the time of the July 2011 incident. Investigation reveals sufficient evidence to support that Complainant violated department policy regarding response to domestic violence, including when children are involved. Respondent also provided a copy of the arbitration decision which upheld Respondent's termination action and found that Complainant's actions violated department policy.

Respondent provided legitimate reasons for Complainant's discipline and Complainant failed to show that any of the actions taken were either temporally or causally connected to any alleged protected conduct. Complainant fails to show that Respondent held retaliatory animus towards him. Therefore, a finding of lack of probable cause is recommended.

Conclusion

A finding of Lack of Probable Cause is recommended against Town of Tisbury for discrimination based on retaliation.



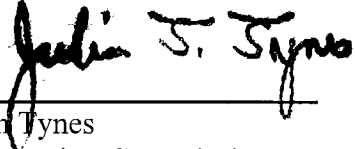
Sarah Biglow
Investigator



Lila Roberts
Enforcement Advisor

Disposition

Pursuant to section 5 of M.G.L. c. 151B of the Massachusetts General Laws, and in conformity with the foregoing findings, I have this day determined that a **Lack of Probable Cause** is being rendered on this case. Complainant will be afforded the opportunity to appeal this decision.



Julian Tynes
Investigating Commissioner

6/28/15

Date