DOCKET NO. HHB-CV23-5035156-S		SUPERIOR COURT
RICHARD H. KOSINSKI Plaintiff		JUDICIAL DISTRICT OF NEW BRITAIN
v.	:	AT NEW BRITAIN
FREEDOM OF INFORMATION COMMISSION, ET AL., Defendants	: :	OCTOBER 7, 2024

MEMORANDUM OF DECISION

The plaintiff appeals[1] from a final decision of the freedom of information commission (FOIC) regarding a meeting of the board of mediation and arbitration (the board) involving the plaintiff.

The final decision of the FOIC, issued on November 15, 2023, approving the hearing officer's initial decision, may be summarized as follows:

1. [The board is a public agency.]

"2. By email dated January 25, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act in connection with a regular meeting of the respondent Connecticut State Board of Mediation and Arbitration ("SBMA") held on January 17, 2023. Specifically, the complainant alleged that:

(a) discussion of the complainant's potential referral for appointment as an alternate public member of the SBMA was improperly held in executive session, after the

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[1] The plaintiff has standing to appeal under General Statutes § 4-183 (a).

Electronic notice sent to counsel of record Richard Sponzo and Nicholas Sinarra. Hard copy mailed to Pl Kosinski at address on file. A. Jordanopoulos Ct Officer 10-7-24

complainant requested that it be discussed publicly at the January 17th meeting;

(b) the complainant was improperly denied the right to attend the remainder of the January 17th meeting after the SBMA exited its executive session; and

(c) the SBMA failed to timely post on their internet website the minutes for the January 17th meeting."

"3. It is found that the respondents held a regular meeting of the SBMA on January 17, 2023 and that such meeting was conducted solely by means of electronic equipment. It is also found that, prior to the January 17th regular meeting, the respondents notified the complainant that his application for appointment as an alternate public member of the SBMA would be considered at such meeting. It is further found that the complainant requested that his application be considered in open session and that the respondents provided the complainant with a remote link to attend the January 17th meeting, which was conducted solely through the use of Microsoft Teams."

"4. It is found that, while the Governor of Connecticut has full power over the appointment of alternate public members of the SBMA, the SBMA reviews applications and makes recommendations for appointment to the Governor."

"5. Section 1-225 (a), G.S., provides, in relevant part:

> [t]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public. The votes of each member of any such public agency upon any issue before such public agency shall be reduced to writing and made available for public inspection within forty-eight

hours and shall also be recorded in the minutes of the session at which taken. Not later than seven days after the date of the session to which such minutes refer, such minutes shall be available for public inspection and posted on such public agency's Internet web site, if available . . . Each public agency shall make, keep and maintain a record of the proceedings of its meetings."

"6. With regard to the allegation described in paragraph 2(a) above, § 1-200 (6) (A), G.S., provides, in relevant part:

'[e]xecutive sessions' means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) [d]iscussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting. . . ."

"7. At the hearing in this matter, the complainant testified that he joined the January 17th meeting via the Microsoft Teams link provided by the respondents but alleged that he was ordered to leave the meeting prior to a substantive discussion of his application. The complainant further testified that he 'did not hear anything, one way or the other,' regarding his application and whether it was discussed during the executive session."

"8. The respondents' witness, Director of the SBMA ("Director"), credibly testified, and it is found, that after the Chairman of the SBMA made an opening statement regarding his concerns about the FOI Act in relation to discussing the complainant's application publicly or in executive session, the respondents briefly discussed the complainant's application, during the

open session of the January 17th meeting. The Director also testified, and it is found, that the respondents then asked the complainant to leave the meeting in order to enter executive session to discuss another application for appointment to the SBMA. The Director further testified, and it is found, that no action was taken on the complainant's application at the January 17th meeting and that no discussion of the complainant's application occurred during the ensuing executive session."

"9. It is therefore concluded that the respondents did not violate § 1-200 (6) (A), G.S., as alleged in the complaint."

"10. With regard to the allegation described in paragraph 2(b), above, it is found that the respondents informed the complainant that he would be invited back into the January 17th meeting at the conclusion of the executive session. At the hearing, the Director admitted, and it is found, that the respondents failed to invite the complainant back into such meeting upon the conclusion of the executive session."

"11. It is found, however, that the SBMA took no action during the executive session, no business was taken up after the executive session, and that, upon exiting the executive session, the SBMA merely voted to adjourn the January 17th meeting."

"12. It is therefore concluded that, although it was inadvertent, by failing to invite the complainant back into the January 17th meeting at the conclusion of the executive session, the respondents committed a technical violation of § 1-225 (a), G.S."

"13. With regard to the allegation described in paragraph 2(c), above, the Director admitted, and it is found, that the minutes of the January 17th meeting were not posted until the

first few days of February 2023. It is therefore found that the earliest the January 17th meeting minutes could have been posted was February 1, 2023, which is fifteen (15) days subsequent to the January 17th meeting."

"14. Consequently, it is concluded that the respondents violated § 1-225 (a), G.S., by failing to timely file the minutes of the January 17th meeting."

"15. After consideration of the entire record in this case, the Commission in its discretion declines to consider the imposition of a civil penalty against the respondents."

"The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's director of education and communications to schedule training on the FOI Act.

2. Henceforth, the respondents shall strictly comply with the open meeting and minutes provisions of § 1-225 (a), G.S."

The plaintiff's administrative appeal from the final decision must be reviewed under the following standard:

> "The standard of review applicable to agency decisions under the UAPA is well established. 'Our review of an agency's factual determination is constrained by . . . § 4-183 (j), which mandates that a court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. . . . [I]t is [not] the function of the trial court [or] of this court to retry the case. . . . An agency's

factual determination must be sustained if it is reasonably supported by substantial evidence in the record taken as a whole. . . . Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . This substantial evidence standard is highly deferential and permits less judicial scrutiny than a clearly erroneous or weight of the evidence standard of review.' (Internal quotation marks omitted.) *Board of Education* v. *Commission on Human Rights and Opportunities*, 266 Conn. 492, 504-504, 832 A.2d 660 (2003.)"

"Even with respect to conclusions of law, '[t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of it discretion. . . . [Thus] [c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts.' (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 318-19, 258 A.3d 1 (2021)."

Commissioner of Mental Health and Addiction Services v. *FOIC*, 347 Conn. 675, 688 (2023); *Town of Greenwich* v. *FOIC*, 226 Conn. App. 40, 55 (2024).[2]

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[2] The plaintiff argues that because the board in its answer admitted paragraphs 10-12 of his complaint, the board has endorsed his position in his appeal. However, the answer, while relevant, cannot overrule the substantial evidence as found in the record.

The plaintiff's first claim is that the FOIC's final decision errs in that it finds no violation of § 1-200 (6) (A) or § 1-206 (a), the executive session proceeding. The plaintiff alleges that he asked to be present when his application was considered; therefore, the board was acting in violation of § 1-206 (a). However, as the hearing officer found, and as the record indicates, there was a convening of an executive session, but the executive director and the board took no action in executive session.[3] There was thus no violation of FOIA.

With regard to the provisions of § 1-225 (a), the final decision concludes that there was, at the meeting, a "technical violation" in that the executive director should have invited the plaintiff back into the meeting. The record shows that after the board left the meeting in executive session, it immediately adjourned without the presence of the plaintiff. The final decision was correct, based on the record.

The final decision also found the board at fault for failing to transcribe the meeting of the board at issue, § 1-225a (b). The final decision cautioned the board not to violate the FOIA in the future.

The plaintiff questions why the two violations found in the final decision did not result in the voiding of any action taken by the board. The hearing officer has, however, the authority to

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[3] The plaintiff argues that the final decision should have specified the evidence in detail on which the hearing officer relied. There was sufficient evidence, however, for the hearing officer's reliance on the executive director's testimony. See final decision, paragraph 8. The court defers to the judgment of the hearing officer on the credibility of the executive director of the board. *Cadlerock Properties Joint Venture, L.P.* v. *Commissioner of Environmental Protection*, 253 Conn. 661, 676 (2000).

deny the "null and void" sanction, § 1-206 (b) (2). Cf. *Town of Lebanon* v. *Wayland*, Superior Court, judicial district of New London, 39 Conn. Supp. 56, 62 (1983).

The plaintiff also argues that the FOIC hearing officer was biased against him. He bases his contention on certain evidentiary rulings of the hearing officer relating to admissibility and hearsay. He also alleges that the hearing officer ignored some issues. See plaintiff's reply brief, pages 4-10.

Prejudice, however, does not arise from an adverse ruling by a hearing officer.

> "We begin with certain established principles. 'The applicable due process standards for disqualification of administrative adjudicators do not rise to the heights of those prescribed for judicial disqualification. . . . The mere appearance of bias that might disqualify a judge will not disqualify an arbitrator. . . . Moreover, there is a presumption that administrative board members acting in an adjudicative capacity are not biased. . . . To overcome the presumption, the plaintiff . . . must demonstrate actual bias, rather than mere potential bias, of the board members challenged, unless the circumstances indicate a probability of such bias too high to be constitutionally tolerable. . . . The plaintiff has the burden of establishing a disqualifying interest.' (Citations omitted; internal quotation marks omitted.)"

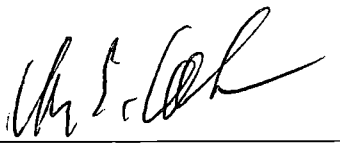
Moraski v. Connecticut Board of Examiners of Embalmers and Funeral Directors, 291 Conn. 242, 262 (2009).

The record does not support a finding that the rulings of the hearing officer, while subject

to question by the plaintiff, were "intolerable." The plaintiff has not met his burden.

The appeal, based on the above, is therefore dismissed.

So Ordered.



Henry S. Cohn, JTR