

DOCKET NO. HHB-CV-16-5017984-S	:	SUPERIOR COURT
	:	
BRADSHAW SMITH	:	JUDICIAL DISTRICT
	:	OF NEW BRITAIN
VS.	:	
	:	
FREEDOM OF INFORMATION COMMISSION	:	
ET AL.	:	FEBRUARY 22, 2017

MEMORANDUM OF DECISION RE: MOTION TO DISMISS (#108)

The plaintiff, Bradshaw Smith, brought this appeal from an interlocutory ruling of a hearing officer for the defendant Freedom of Information Commission (commission). The plaintiff alleges that, at a hearing on a complaint he had filed, he “asked the hearing officer to recuse himself on the grounds that he could not be unbiased. The motion was arrogantly and obnoxiously denied.” The plaintiff thereafter brought this appeal, relying on General Statutes § 4-183 (b). That section provides: “A person may appeal a preliminary, procedural or intermediate agency ruling to the Superior Court if (1) it appears likely that the person will otherwise qualify under this chapter to appeal from the final agency action or ruling and (2) postponement of the appeal would result in an inadequate remedy.”

The commission moved to dismiss the appeal, asserting that the plaintiff failed to exhaust his administrative remedies. The plaintiff objected, arguing that § 4-183 (b) does not require exhaustion of remedies. The court heard argument on February 22, 2017.

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A motion to dismiss is properly used to test the court's subject matter jurisdiction. Practice Book § 10-30. "Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it." *Peters v. Dept. of Social Services*, 273 Conn. 434, 441, 870 A.2d 448 (2005). When a question of subject matter jurisdiction is raised, it must be adjudicated before the court can proceed any further. See *Baldwin Piano & Organ Co. v. Blake*, 186 Conn. 295, 297, 441 A.2d 183 (1982).

It is well established there is no absolute right of appeal to the courts from the decision of an administrative agency. *Middlebury v. Dept. of Environmental Protection*, 283 Conn. 156, 163, 927 A.2d 793 (2007). The Uniform Administrative Procedure Act, § 4-183, "grants the Superior Court jurisdiction over appeals of agency decisions only in certain limited and well-delineated circumstances." (Internal quotation marks omitted.) *Id.* As a general rule, an aggrieved party can appeal only from a final decision in a contested case under § 4-183 (a). However, § 4-183 (b) provides a limited exception to the requirement of a final decision. The question presented here, framed by the commission as an issue of exhaustion, is whether "postponement of the appeal would result in an inadequate remedy," as required by § 4-183 (b) (2).

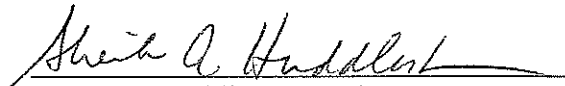
In *Doe v. Dept. of Public Health*, 52 Conn. App. 513, 519, 727 A.2d 260, cert. denied, 249 Conn. 908, 733 A.2d 225 (1999), the Appellate Court held that § 4-183 (b) "reflects the

principle that exhaustion of administrative remedies is required except in exceptional cases." It concluded that to satisfy § 4-183 (b) (2), a person appealing under § 4-183 (b) must show that the agency is incapable of providing an adequate remedy. In *Doe*, the Appellate Court affirmed the trial court's dismissal of the appeal, holding that the agency at issue in that case was "capable of providing an adequate remedy because completing the administrative proceedings could provide the plaintiff with complete vindication." *Id.*, 522.

In this case, as the commission points out, the commission's regulations provide that "a final decision shall not be adopted by the commission until a proposed final decision is served upon all of the parties, and until an opportunity has been afforded to each party adversely affected by the proposed final decision to file exceptions, to present briefs, and to make oral argument before the commission at a commission meeting." See Regs., Conn. State Agencies § 1-21j-40 (a). The commission argues that the plaintiff could have objected to the proposed final decision on the ground that the hearing officer improperly declined to recuse himself, and the commission could have ordered a new hearing before a different hearing officer if it found that there was merit to his claim. The court agrees. A commission procedure was available to the plaintiff to obtain review of the hearing officer's ruling declining to recuse himself. The plaintiff has not shown that the commission was incapable of providing him with relief. Accordingly, he has not satisfied the requirements of § 4-183 (b) as construed

by the Appellate Court in *Doe v. Dept. of Public Health*, supra, 52 Conn. App. 519-22. In the absence of statutory authority, the court lacks subject matter jurisdiction. Consequently, the motion to dismiss is granted.

BY THE COURT,


Sheila A. Huddleston, Judge