

DOCKET NO. CV18-6044479-S : SUPERIOR COURT
: :
JOE MARKLEY & ROB SAMPSON : J.D. OF NEW BRITAIN
v. : :
: :
STATE ELECTIONS ENFORCEMENT : AT NEW BRITAIN
COMMISSION : JULY 12, 2018

OBJECTION TO MOTION TO DISMISS

Plaintiffs/Appellants Joe Markley and Rob Sampson hereby object to the Defendant State Elections Enforcement Commission's Motion to Dismiss, dated June 29, for lack of subject matter jurisdiction based upon timely filing of the appeal of the administrative decision within the time required by General Statutes § 4-183(c). The Plaintiffs have filed the attached Memorandum of Law, dated this same date, to clarify and support their objection.

Respectfully submitted,

Appellants:
JOE MARKLEY
ROB SAMPSON

BY: 

Michael Cronin
47 Woodridge Circle
West Hartford, CT 06107
Tel. 860-205-1383
Cronin47@yahoo.com

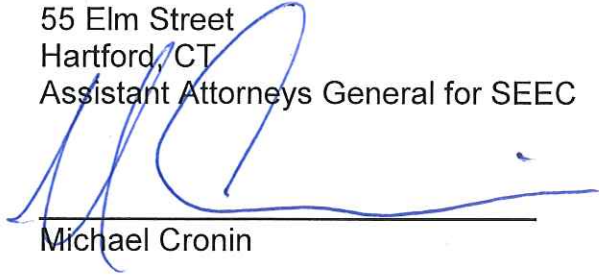
Allen Dickerson
Institute for Free Speech
124 S. West St., Suite 201
Alexandria, VA 22314
Attorneys for Plaintiffs/Appellant

A

CERTIFICATION

I hereby certify that a copy of this motion was e-mailed on this 12th day of July, 2018, to:

Maura Murphy Osborn
Michael Skold
55 Elm Street
Hartford, CT
Assistant Attorneys General for SEEC



Michael Cronin

07/12/2018

DOCKET NO. CV18-6044479-S : SUPERIOR COURT
 :
JOE MARKLEY & ROB SAMPSON : J.D. OF NEW BRITAIN
 v. :
 :
STATE ELECTIONS ENFORCEMENT : AT NEW BRITAIN
 COMMISSION : JULY 12, 2018

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' OBJECTION TO MOTION
TO DISMISS**

The Plaintiffs Joe Markley and Rob Sampson do hereby object to the Defendant State Elections Enforcement Commission's Motion to Dismiss. The Plaintiffs filed a timely appeal of the administrative decision within the time frame required by General Statutes § 4-183(c) (2).

FACTUAL BACKGROUND

Plaintiffs requested that the SEEC reconsider their decision dated February 14, 2018, filing the request on the very day the decision was rendered. The Defendant placed the request on the agenda for their meeting of March 14, which was canceled due to inclement weather. The Defendant then placed the request on the agenda for their meeting of March 21, which was again cancelled due to inclement weather. The Defendant then placed the request on the agenda for a special meeting on March 23, without notice to the Plaintiffs or their counsel of record. At that meeting, Defendant denied the request to reconsider. Pursuant to General Statutes § 4-183(c)(2), the Plaintiffs had forty-five days from the denial of their request for reconsideration, issued March 23 to appeal the agency decision. They filed on the forth-fifth day.

ARGUMENT

"When a trial court decides a jurisdictional question raised by a pretrial motion to dismiss on the basis of the complaint alone, it must consider the allegations of the complaint in their most favorable light." *Conboy v. State*, 292 Conn. 642, 651 (2009). In addition, it is clear that the administrative appeal in this case is based upon § 4-183(c)(2), including the time period in which to bring that claim.

Defendants seek to dismiss Plaintiff's appeal based upon the failure of the SEEC to "make the determination" of reconsideration within twenty-five days of the filing, as provided for in §4-181a(a)(1).

It bears mention that, under the Defendant's theory, all actions taken after its asserted twenty-five day deadline were, legally, a farce. Despite notice to Plaintiffs delaying a decision, and despite publically taking the position that it would discuss and consider plaintiff's objections to the decision, it in fact had no intention of doing so. Instead, it lulled Plaintiffs with the promise of good faith proceedings while simultaneously running down the clock for any appeal from its final decision. Such an outcome is manifestly contrary to justice. Thankfully, it is not what the law demands.

Defendant's reliance on § 4-181a(a)(1) is faulty in three distinct ways.

First, § 4-181a(a)(1) begins, "*Unless otherwise provided by law...*", which very clearly contemplates that if other statutes set forth a different time frame, that other section overrides the baseline set out in § 4-181a(a)(1). Defendant's reliance on its own failure to act within twenty-five days of the request to reconsider ignores the fact that § 4-183(c)(2) *otherwise provides* a time frame for appeal from the Defendant's denial of reconsideration. And because the Defendant in fact took up, voted upon, and formally denied reconsideration, it is subsection (c)(2) which controls.

Second, if reliance on § 4-181a(a)(1) is the controlling factor, twenty-five days is the controlling time frame for the Defendant to "decide whether to reconsider" the decision – that is, to decide whether it will consider that option, not what the result of that reconsideration will be. As is common in all forms of litigation, reconsideration can lead to affirmation as well as reversal.

Under § 4-181a(a)(1), there is only a constructive dismissal where the agency "fail[s]...to make that determination". But that is not what happened here. Instead, the Defendant placed the request on an agenda for a meeting initially scheduled for March 14. Consequently, the Defendant had made the "determination" that it would take up the Plaintiff's request for reconsideration. Of course, it had not yet reached a final decision – which did not occur until March 23. But this affirmative action by the Defendant contradicts its attempt to claim that its inaction, in the middle of ongoing proceedings that continued past its now-asserted deadline, somehow constructively ended its reconsideration of its prior, preliminary ruling.

Finally, the appeal is properly brought under § 4-183(c)(2) and was served within the forty-five day time period required under that section. The affirmative action at the Defendant meeting on March 23 was the formal and official denial of the request for reconsideration. It was upon that decision that all administrative remedies were exhausted. *See* § 4-183(c)(2) applying the section only to parties who have exhausted administrative remedies. If the Defendant had voted at that meeting to reconsider its decision, the administrative proceedings would have continued. Under the Defendant claim in motion for dismissal, such an affirmative vote at that meeting would have been null and void as the request would already have been deemed denied. The meeting itself rendered moot any rationale for claiming the expiration of twenty-five days after submission for request for reconsideration effectively dismissed that request and triggered the time frame within which the administrative appeal should have been filed.

The courts have agreed. “In *Citizens Against Overhead Power Line Construction v. Connecticut Siting Council*, 139 Conn App 574 565(2012), we observed that § 4–183(c) “clearly lists four distinct scenarios and provides that a plaintiff shall appeal within whichever time frame is applicable and occurs latest.’ In the present case, a motion for reconsideration was filed by the plaintiff, and denied by the commission. Therefore, § 4–183(c)(2) was the applicable subdivision of the statute, and it provides that an appeal must be filed ‘within forty-five days after the agency denies a petition for reconsideration of the final decision pursuant to subdivision (1) of subsection (a) of section 4-181a.’” *Emerick v. Freedom of Information Commission*, 156 Conn App 232, 238 (2015).

The Defendant’s affirmative consideration of a request for reconsideration at the meeting of March 23 was the final action by the commission, and the denial of the request at that time is the triggering event for timely filing of any appeal under § 4-183(c)((2). That time frame provided for forty-five days in which to file this appeal, a standard the Plaintiffs complied with.

In the current instance, where competing statutory time frames are not clear as to providing a bright line rule for dismissal, the allegations in the original complaint must be given deference, and the affirmative consideration by the defendant of the request for reconsideration becomes the dispositive act in initiating the period in which to file an appeal.

CONCLUSION

For the foregoing reasons, the Court must not dismiss this timely filed administrative appeal based upon lack of subject matter jurisdiction.

Appellants:
JOE MARKLEY
ROB SAMPSON

BY: 

Michael Cronin
47 Woodridge Circle
West Hartford, CT 06107
Tel. 860-205-1383
Cronin47@yahoo.com

Allen Dickerson
Institute for Free Speech
124 S. West St., Suite 201
Alexandria, VA 22314
Attorneys for Plaintiffs/Appellant

CERTIFICATION

I hereby certify that a copy of this motion was e-mailed on this 12th day of July, 2018, to:

Maura Murphy Osborn
Michael Skold
55 Elm Street
Hartford, CT
Assistant Attorneys General for SEEC



Michael Cronin

07/12/2018