

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

_____)
 BOSTON POLICE COMMISSIONER)
 DENNIS WHITE,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF BOSTON AND)
 ACTING MAYOR KIM JANEY,)
)
 Defendants.)
 _____)

E-FILED 5/14/2021

Civil Action No. _____

COMMISSIONER DENNIS WHITE’S MOTION FOR TEMPORARY RESTRAINING ORDER
AND PRELIMINARY INJUNCTION

Plaintiff Boston Police Commissioner Dennis White (“White”), respectfully moves pursuant to Rule 65 of the Massachusetts Rules of Civil Procedure for a temporary restraining order and preliminary injunction, as requested in his Complaint and action to restrain and enjoin Defendants City of Boston and Acting City of Boston and Acting Mayor of Boston, Kim Janey (“Mayor Janey”) from unlawfully removing Mr. White from his position as Boston Police Commissioner (“Commissioner”) in violation of his rights under law. Commissioner White will suffer irreparable injury if the Court does not grant a temporary restraining order and preliminary injunction against Defendants. As grounds therefore, Commissioner White relies upon the facts and circumstances set forth in his Complaint, and the exhibits filed contemporaneously therewith, which are incorporated herein by reference.

Argument

Commissioner White should prevail on his request for injunctive relief as he has “(1) a likelihood of success on the merits; (2) [] irreparable harm will result from denial of the injunction; and (3) [] in light of [his] likelihood of success on the merits, the risk of irreparable harm to [him] outweighs the potential harm to [Defendants] in granting the injunction.” *Loyal Order of Moose, Inc. v. Board of Health of Yarmouth*, 439 Mass. 597, 601 (2003) (quotations and citation omitted).

First, Mr. White should prevail on its request for injunctive relief because he has a likelihood of success on the merits. Chapter 322, Section 7, of the Acts of 1962 (the “Removal Statute”) provides that the Mayor of Boston who seeks to remove the Commissioner must provide him due notice and a hearing and may only remove him for cause.

Acting Mayor Janey now seeks to remove Commissioner White, but has not provided him the process that he is entitled to by statute, and she lacks cause to remove him. Commissioner White has been put on administrative leave, however has not been afforded a hearing, nor has he received meaningful notice of the required hearing. Acting Mayor Janey notified him today in a telephone call at approximately 10:00 a.m. that she was terminating him and there would be a “hearing” today at 3:00 p.m. A hearing where the decision has already been made is not a hearing as required by the Removal Statute.

Additionally, Mr. White did nothing in his two days as Commissioner to warrant removal from his position. The Defendants are attempting to remove Mr. White based on allegations that are more than twenty years old, which were resolved in a court of law and known to the City of Boston and Boston Police Department for the last two decades and prior to White’s appointment as Commissioner. As such Defendants have no cause to remove Commissioner White.

Second, Mr. White will suffer irreparable Harm if the injunction is denied. The removal from his highly esteemed position as the Boston Police Commissioner will cause irreversible harm to his professional reputation and likely terminate his career as a veteran servant to the Commonwealth. It also will cause irreparable harm to the statutorily protected independence of the Commissioner of the Boston Police Department, who is protected by law from undue and inappropriate political interference from the City and Mayor.

The risk of that irreparable harm outweighs any potential harm to Defendants if the injunction is allowed. In determining whether to issue a requested injunction, the Court must also determine that “the harm to the plaintiffs resulting from the denial of the injunction [is] greater than the harm to the defendants if the injunction were granted.” *General Acc. Ins. Co. of Am. v. Bank of New England-West, N.A.*, 403 Mass. 473, 475-76 (1988). A court should do so by first by assessing the irreparable harm the moving party would suffer in the absence of a preliminary injunction, and then by “balanc[ing] this risk against any similar risk of irreparable harm which granting the injunction would create for the opposing party.” *Packaging Indust. Group, Inc.*, 380 Mass. at 617. In conducting this test, “[w]hat matters as to each party is not the raw amount of irreparable harm the party might conceivably suffer, but rather the risk of such harm in light of the party’s chance of success on the merits.” *Id.*

Here, the temporary restraining order and preliminary injunction simply forces the Defendants to abide by the statutory obligation to provide adequate notice, a hearing and have cause for removing Mr. White. Commissioner White has been on administrative leave for three months. The City will not be harmed by a short delay so that proper notice and a meaningful judicial hearing can be afforded to Commissioner White.

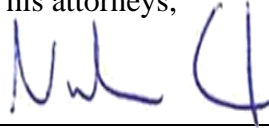
Conclusion

WHEREFORE, Commissioner White respectfully requests that the Court (i) grant this Motion and enter an order in the form of Commissioner White's Proposed Order; and (ii) grant such further relief as this Court deems just.

Respectfully submitted,

BOSTON POLICE COMMISSION DENNIS
WHITE,

By his attorneys,

A handwritten signature in blue ink, appearing to be 'NWC', is written over a horizontal line.

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