

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1252

GERARD D. GRANDOIT

vs.

MILTON HOUSING AUTHORITY & another.<sup>1</sup>

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The plaintiff, Gerard D. Grandoit, filed a complaint with the Massachusetts Commission Against Discrimination (MCAD), alleging that the Milton Housing Authority (MHA) discriminated against him based on his national origin, age, sex, marital status, disability, race, and color in violation of G. L. c. 151B. He alleged that he sought emergency housing from the MHA and was initially placed on a priority waiting list for which he qualified. He alleged that as a result of intentional discrimination by MHA he was subsequently removed from that list and placed on a regular waiting list, and that, as a consequence, he was never provided housing by MHA. He alleged no facts supporting that allegation, except that he was unsatisfied by MHA's response when he asked for an explanation

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<sup>1</sup> Massachusetts Commission Against Discrimination.

of his removal from the priority waiting list, which might perhaps support an inference that whatever he was told was pretextual. Our record does not contain any further information about the nature of these two waiting lists, what the qualifications for placement on the priority list were, or whether the plaintiff was in fact eligible for this priority list at the outset and throughout the relevant time period.

After investigation, MCAD dismissed the complaint for lack of probable cause because it concluded that the plaintiff "presented no evidence that demonstrates a nexus between his protected classes" and the actions of MHA. The plaintiff timely appealed this investigative disposition within the agency, requesting a hearing pursuant to G. L. c. 151B, § 5, and 804 Code Mass. Regs. § 1.15(7)(d) (2008).<sup>2</sup> MCAD conducted this "preliminary hearing," and notified the plaintiff by letter that its dismissal of his complaint was affirmed.

The plaintiff filed this action seeking judicial review of MCAD's disposition of his complaint in the Suffolk County Superior Court. He named as defendants MCAD and MHA. In both the Superior Court and this court the plaintiff has proceeded pro se. His filings reflect misunderstandings about both procedure and applicable law that, unfortunately, are

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<sup>2</sup> The provision in effect at the relevant time. The current provision is 804 Code Mass. Regs. § 1.05(2)(c) (2020).

understandable, as he is a self-represented litigant without legal training.

Both MHA and MCAD filed motions to dismiss the plaintiff's action for judicial review in the Superior Court. This is of course an appropriate response to the filing of a complaint, even without filing an answer. See Mass. R. Civ. P. 12 (b), 365 Mass. 754 (1974) (listing motions that may be filed by defendant instead of filing answer). The Superior Court judge concluded that that court lacked jurisdiction to hear an appeal from an investigative determination and dismissal of a complaint by MCAD, and therefore dismissed the complaint. The plaintiff has appealed.

At the outset, MHA argues that the notice of appeal was filed late in this case and that we should dismiss the appeal; MCAD does not join in that argument. The record contains a copy of a notice of appeal dated March 21, 2018, which would have been timely. It was not docketed, and the copy is not date stamped, although another document that appears to be a cover letter for that notice of appeal is date stamped by the court on that same date.<sup>3</sup> For present purposes only we will assume the

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<sup>3</sup> Apparently after discovering that this notice of appeal was not docketed, the plaintiff sought leave to file a late notice of appeal. That motion was denied; although the plaintiff filed a notice of appeal from that order, he does not raise any argument in his briefing pertaining to that order and any such arguments are waived. Mass. R. A. P. 16 (a) (9) (A), as appearing in 481

notice of appeal was properly filed and the appeal is properly before us. Nonetheless, the Superior Court's judgment must be affirmed.

The motion judge correctly concluded that a decision by MCAD after a preliminary hearing to dismiss a complaint is not subject to judicial review. See Grandoit v. Massachusetts Comm'n Against Discrimination, 95 Mass. App. Ct. 603, 606 (2019). Contrary to the assertions by the plaintiff, this is not a mistake, or an error that has been mistakenly perpetuated. It is the way the system was designed by the Legislature. Indeed, the statute to which the plaintiff points, G. L. c. 151B, § 5, specifies that judicial review under G. L. c. 30A is not available for review of such a decision. And, as this court held last year, it is not reviewable by way of certiorari either. See Grandoit, supra at 607-608.

A determination by MCAD to dismiss a complaint means that it will not proceed to enforce the claim of discrimination brought in the complaint. That decision is not reviewable by any court. The fact that courts are without jurisdiction to review such decisions by MCAD does not, as the plaintiff suggests, contain exceptions or depend on what parties are named in the complaint for review. If the trial court lacks

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Mass. 1628 (2019). Ultimately, the plaintiff filed another notice of appeal that was docketed on February 27, 2019. That notice of appeal, of course, was untimely.

jurisdiction, it may not hear the case. And once MCAD has decided not to proceed, no court may review and reverse MCAD's decision.

Even though MCAD has declined to enforce a claim of discrimination against a defendant, in this case MHA, the individual who has filed the complaint with MCAD nonetheless has a separate and independent method available for enforcing the antidiscrimination law against that party. Having taken the required step of filing a complaint with MCAD, he or she is entitled to commence an action in the Superior, Probate, or Housing Court claiming unlawful discrimination at the end of ninety days after filing his complaint with the commission or within one year of the alleged action of discrimination. G. L. c. 151B, §§ 5, 9. The Superior Court judge thus made clear that the dismissal of the plaintiff's lawsuit seeking judicial review of MCAD's investigative determination and dismissal of his complaint was "without prejudice to any claim under G. L. c. 151B, § 9[, ] against [MHA]." This meant that the dismissal of

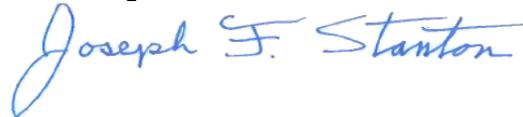
the complaint for judicial review left unaffected any right the plaintiff may have had under G. L. c. 151B, § 9, to himself sue MHA alleging that it discriminated against him.<sup>4</sup>

Because the Superior Court had no authority to review the MCAD determination, the judge properly dismissed this suit.<sup>5</sup>

Judgments affirmed.

Orders denying motions for extension of time to file a notice of appeal and for reconsideration affirmed.

By the Court (Meade, Rubin & Henry, JJ.<sup>6</sup>),



Clerk

Entered: June 29, 2020.

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<sup>4</sup> Of course any such suit would have to meet all applicable procedural requirements, including being filed before expiration of the statute of limitations. We express no opinion with respect to the propriety of any action the plaintiff might now bring against MHA.

<sup>5</sup> In light of our conclusions we need not reach the alternative argument put forward by the defendants that the complaint for judicial review in the Superior Court was untimely.

<sup>6</sup> The panelists are listed in order of seniority.