TOWN OF STOUGHTON
10 PEARL STREET
STOUGHTON, MA 02072
BOARD OF SELECTMEN

July 26, 2017

Press Release

I am very pleased with the Court's decision today. It unequivocally vindicates the actions of the majority of the Board. I feel that I and the other members of the majority have consistently done what we felt was in the best interests of this Town and what was within our lawful authority under the Charter and the laws of the Commonwealth. Although two members of the Board have sought to undermine us and vilify us and have attempted to use the press and social media to foster dysfunction, confusion and fear in Town Hall, I hope that this decision will allow Town government to go back to work without interruption or division and allow Town Hall and the Board to continue to do its best to serve the people of Stoughton.

Very truly yours,

David J. Brown

Chairman

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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 17-0880

MICHAEL J. HARTMAN

vs.

TOWN OF STOUGHTON, et al.

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR A PRELIMINARY INJUNCTION

Plaintiff Michael J. Hartman brings suit against the Town of Stoughton and the members of its board of Selectmen (collectively, the "Town"), alleging that he was not validly terminated from his positon as Stoughton Town Manager and has been wrongfully prevented from performing his duties. Before the Court is Hartman's motion for a preliminary injunction, seeking to restrain and enjoin the Town from preventing Hartman from performing his duties as Town Manager unless and until he is dismissed from that position in accordance with Article 4, §C4-1, of the Town Charter.

In consideration of the parties' memoranda of law and oral arguments, and for the reasons that follow, Hartman's motion for a preliminary injunction is **DENIED**.

FACTS

The following relevant facts are alleged by Hartman or revealed in the records submitted by the parties, concerning which there appears to be no dispute.

By an employment agreement dated October 30, 2012, Hartman was engaged or a three-year period to serve as Town Manager for the Town. By a subsequent employment agreement dated April 1, 2014 ("the 2014 Agreement"), Hartman's employment as Town Manager was extended until June 30, 2017.

Section 3 of the 2014 Agreement set forth Hartman's term of employment as running from July 1, 2014 to June 30, 2017. Section 1 of the 2014 Agreement stated:

> The Town Manager agrees to continue employment until June 30, 2017 ... unless termination or resignation is effected as provided in Section 14 below. Should the Town fail to notify the Town Manager that the agreement will not be extended within six (6) months of the expiration of the Agreement, then the Agreement shall continue in full force and effect for another one (1) year term and all compensation and benefits shall remain in effect.

Section 14 of the 2014 Agreement, entitled "Termination," outlined the steps that Hartman agreed to follow to resign his position, but added "[n]otwithstanding any provision of this Agreement, the Town Manager shall serve at the will of the Board of Selectman and may be discharged from his employment in accordance with Section C4-1 of the Town Charter of Stoughton." In the event Hartman was discharged by the Town without cause, the Town was obligated to pay him six months' salary.

Article 4, §C4-1, of the Town Charter, states:

> The Town Manager shall serve at the will of the Selectman except that a vote of a majority, plus one, of the full membership of Selectmen shall be required to discharge him. In the event of a discharge, he may request a public hearing at which hearing the Selectmen must set forth their reasons for discharging him and he may respond to those reasons if he desires.

On December 15, 2016, more than six months before the 2014 Agreement was to expire on June 30, 2017, the Selectman notified Hartman by letter that the 2014 Agreement would not be extended beyond June 30, 2017 ("December 2016 Notice"). The December 2016 Notice expressly added that, "[c]onsequently, please note that your employment with the Town will terminate on that date, unless sooner terminated by you or the Town in accordance with the Employment Agreement." Nothing in the letter suggested that Hartman was discharged, with or without cause. Indeed, the December 2016 Notice was the result of a meeting of the Board of

Selectmen held on December 15, 2016 at which time the Selectmen voted 3-1 not to renew the 2014 Agreement. The Selectmen did not vote to discharge Hartman at that meeting.

Hartman was not terminated pursuant to the 2014 Agreement or Section C4-1 of the Town Charter.

DISCUSSION

"A party seeking a preliminary injunction must show that success is likely on the merits; irreparable harm will result from denial of the injunction; and the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party." Doe v. Superintendent of Schools of Weston, 461 Mass. 159, 164 (2011), citing Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-17 (1980). Where a plaintiff seeks to enjoin government action, the court must also weigh whether the relief adversely affects the public. Commonwealth v. Mass. CRINC, 392 Mass. 79, 89 (1984).

Hartman cannot show a likelihood of success on the merits and is therefore not entitled to a preliminary injunction. It is undisputed that Hartman was notified that his employment as Town Manager pursuant to the 2014 Agreement would not be extended beyond June 30, 2017. It is also undisputed that the Town treated Hartman's employment as having ended on that date. Hartman's complaint is that in addition to the December 2016 Notice, the Town was required also to vote to terminate him. Nothing in the 2014 Agreement required the Town to take that step.

Under Section 1 of the 2014 Agreement, Hartman was employed until June 30, 2017, unless his employment was either terminated under Section 14, by his own resignation or by a discharge with or without cause by the Town, or was allowed to expire under Section 1, so long as notice was provided. The plain terms of the 2014 Agreement made clear that termination or expiration were separate, alternative methods of ending Hartman's employment. Under Section

14, termination required a vote pursuant to the Town Charter followed by a public hearing. Under Section 1, expiration required notice to be provided to Hartman six months before his employment expired on June 30, 2017. Nothing in the 2014 Agreement required the Selectman to follow both of these paths to ending Hartman's employment, and the law recognizes that dismissal from employment is distinct from non-renewal of an employment agreement. See, e.g., Downing v. City of Lowell, 50 Mass. App. Ct. 779, 782-783 (2001) ("A dismissal is not the same as a nonrenewal of a contract ... Each alternative triggers its own distinct procedural safeguards: for nonrenewal, notice is required, and for dismissal, just cause and arbitration") (citation omitted). To accept Hartman's argument that the Town had to follow both mechanisms would not only require the Court to re-write the 2014 Agreement, it would also require it to find that Hartman was entitled to some form of tenure to his job, a conclusion expressly contradicted by the 2014 Agreement and Town Charter, both of which state that Hartman served at the "will" of the Selectmen. Further, doing so would impose an unjustified and significant expense on the Town: were discharge required in the case of non-renewal, the Town would be obligated to pay severance under Section 14. The 2014 Agreement did not impose that burden on the Town. Accordingly, Hartman has not shown a likelihood of success on the merits.

Even had Hartman shown that he had a strong claim, his motion would have failed because he has not shown any risk of irreparable harm, as he has a fully adequate remedy at law for damages. Hartman's argument that he will personally suffer irreparable harm is simply untenable, as is his claim that the Town will suffer irreparably. Importantly, the Town, which speaks for itself in this case, does not make the latter claim. On the contrary, the Town has already engaged another to serve as Town Manager and opposes Hartman's claim to the position. The interest of the public are thus represented by the Town, and weigh heavily against Hartman's

motion. As the Selectman properly notified Hartman that his employment would terminate on June 30, 2017, the Town properly proceeded on its understanding that Hartman's tenure as Town Manager ended on that date and installed another Town Manager. Nothing shown by the plaintiff justifies the Court in overriding the Town's choice as to its management.

ORDER

Hartman's motion for a preliminary injunction is **DENIED**.

SO ORDERED.

MICHAEL D. RICCIUTI
Justice of the Superior Court

Date: July 26, 2017