

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 13 of 2013

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW PURSUANT TO ORDER  
GCR ORDER 53

BETWEEN:

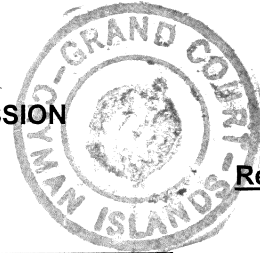
CELICIA ALLEY

Applicant

v

CIVIL SERVICE APPEALS COMMISSION

Respondent



**EX PARTE APPLICATION FOR LEAVE TO APPLY  
FOR JUDICIAL REVIEW**

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| To the Clerk of the Court, Law Courts, George Town, Grand Cayman                   |  |
| Name, address and description of Applicant   | Celicia Alley<br>c/o Stuarts Walker Hersant<br>4 <sup>th</sup> Floor, Cayman Financial Centre<br>36A Dr Roy's Drive<br>George Town, Grand Cayman   |
| Judgment, order, decision or other proceeding in respect of which relief is sought | The following Decisions of the Respondent which all arise from publication of the 'Decision Following Hearing' document on 18 October 2012 (" <b>the Decisions</b> ") (exhibited First Affidavit of Celicia Alley as <b>CA-1</b> ):-<br><br>(1) Refusal to reverse the finding of gross misconduct made by Kevin McCormac; |

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|  | <p>(2) Refusal to remove the finding of gross misconduct from the Applicant's record of employment;</p> <p>(3) Refusal to reinstate the Applicant to a position within Judicial Administration;</p> <p>(4) Refusal to reinstate the Applicant to a position within the Civil Service;</p> <p>(5) Refusal to order the payment of pension benefits; and</p> <p>(6) Refusal to order payment of the Applicant's legal expenses.</p> |
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**Relief Sought**

The Applicant seeks leave of the Court to permit the Judicial Review of the aforementioned Decisions of the Respondent and seeks the following relief:-

- (1) An Order of *Certiorari* to quash the Decisions of the Respondent;
- (2) An Order of *Mandamus* requiring the Respondent to order that:-
  - i. The finding of gross misconduct by Kevin McCormac be reversed and/or quashed;
  - ii. The finding of gross misconduct be removed from the Applicant's record of employment;
  - iii. The Applicant be reinstated to her former position in Judicial Administration and thereafter transferred to another civil service department and/or reinstated directly to another department within the civil service;
  - iv. Judicial Administration pay the Applicant's salary from the date of the Decisions to the present date;
  - v. Judicial Administration pay any outstanding pension contributions to the Applicant's pension provider after her suspension to the present date; and
  - vi. Judicial Administration pay the Applicant's legal costs.

- (3) In the alternative to paragraph (2), an Order of *Mandamus* requiring the Respondent to reconsider the Decisions;
- (4) An Order of *Mandamus* requiring the Respondent to publish guidelines as to the Orders they have imposed in the past and considerations that they will take into account when making Orders;
- (5) A Declaration that the Respondent has power and authority to order that the Applicant may be reinstated to any department in the civil service;
- (6) A Declaration that the Respondent was not entitled to draw conclusions and/or make findings in relation to the Applicant's alleged misbehaviour;
- (7) A Declaration that the Decisions were unreasonable and contrary to the principles of natural justice;
- (8) Such further and/or other relief as this Honourable Court thinks just; and
- (9) Costs

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### GROUNDS UPON WHICH RELIEF IS SOUGHT

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#### ***Introduction***

1. The Applicant, who worked as an Accounts Officer II for Judicial Administration, was suspended from her employment on 15 February 2012 pursuant to the Personnel Regulations, r.40 (**'the Regulations'**). Regulation 40 governs the procedure that must take place when an employee is suspended on suspicion of criminal activity.
2. An investigation was conducted and no criminal charges were brought against the Applicant, however, she was dismissed by Kevin McCormac on 27<sup>th</sup> June 2012 for gross misconduct pursuant to the Regulations, r.39. Regulation 39 provides for the dismissal of an employee if there is a finding of gross misconduct.

3. She appealed the decision to the Respondent and the appeal was heard on 26 September 2012. The appeal centred on the contention that the Applicant had been suspended pursuant to the Regulations, r.40 (suspected criminal activity), no criminal charges were brought against the Applicant and yet the Applicant was then dismissed pursuant to the Regulations, r.39.
4. The Respondents published a document entitled 'Decision Following Hearing' on 18 October 2012. At paragraph 51 the Respondent concluded that:-

*'For the reasons set out above, the Commission concludes that Ms. Alley has established that, in dismissing her on 27<sup>th</sup> June 2012 after a period of suspension, the Judicial Administration has acted in a manner inconsistent with Part VII of the Law namely:*

*51.1 that the correct procedure under Regulation 40 has not been followed, and*

*51.2 that the Chief Officer was not procedurally entitled to dismiss Ms Alley for gross misconduct under Regulation 39.'*

5. The Applicant denied, and continues to deny, any allegation of wrongdoing and/or any misconduct on her part. She vehemently denies any misconduct and maintain that she was not given an opportunity to defend herself against the allegations. At paragraph 50.4 the Respondent concluded that:-

*'We note that Mr McCormac relies on the transparency of the procedure in support of his position, however, in the Commission's view, the approach taken by the Judicial Administration did not comply with even the basic requirements of transparency to which Ms Alley was entitled, and which are mandated in sub-Regulation (1) of Regulation 40.'*

6. Despite having made findings adverse to Judicial Administration the Respondent refused to reinstate the Applicant to her former position and order that she be transferred to a different department, refused to reinstate directly to an alternative department within the civil service, refused to reverse the finding of gross negligence, refused to order that the finding of gross negligence be removed from the Applicant's record of employment and refused to make any order in relation to her pension entitlement and legal costs.
7. In essence the Respondents made a finding that the Applicant had been unlawfully dismissed and yet refused to make any Orders that sought to remedy the unlawful dismissal. It is the Applicant's contention that the Respondent's should have restored the Applicant to the same/similar position had the unlawful dismissal not taken place.

8. The only orders that the Respondent made were that Judicial Administration were to pay the Applicant her salary in full from her last payment until the date of the decision (18 October 2012) and that the Applicant be awarded 2 months salary.
9. The effect of the Respondent's Orders is that the Applicant, **who has been unlawfully dismissed**, has been left bereft of employment and with an adverse finding on her employment record, which effectively means that it will be highly unlikely that she will be able to find employment.

#### **Grounds Upon Which The Relief Is Sought**

10. The Respondent was not lawfully entitled to reach the said Decisions and, in so doing, erred in law and in fact, acted unfairly and procedurally improperly. Further, the said Decisions were unreasonable in all the circumstances.

#### ***Errors of Fact***

11. The Respondent wrongly found that:-
  - i) The Respondent's conduct was contrary to the Code of Conduct for Public Servants (paragraph 50.5);
  - ii) the Applicant's conduct was cause for concern (paragraph 50.6);
  - iii) the Applicant was a '*less than fully satisfactory employee*' (paragraph 50.6.5);  
and
  - iv) this was a case which factually did not merit the payment of the Applicant's legal fees.

#### ***Errors of Law and Illegality***

12. In reaching their Decisions and/or making Orders, the Respondent:-
  - i) Acted outside their jurisdiction and/or statutory power in that they:-
    - Made factual determinations on the Applicant's behaviour that influenced the Orders that they made; and

- Took matters into account that were irrelevant and inappropriate to consider when determining what orders to make (paragraph 56).

ii) Were ignorant of their legal powers and/or authority in that they:-

- Did not re-instate the Applicant to Judicial Administration (paragraph 55);
- Did not re-instate the Applicant to Judicial Administration and order that she be transferred to another department (paragraph 55);
- Did not order that the Applicant be re-instated to a different civil service department (paragraph 58); and
- Did not order payment of the Applicant's legal fees.

### ***Procedural Impropriety***

13. Further, or in the alternative, the Respondent acted in a procedurally improper manner and/or in breach of the principles of Natural Justice in that:-

- the Applicant did not have an opportunity to address the Respondent on the appropriate remedies before the Orders were made;
- the Respondent failed to offer guidance as to the type of Orders they are empowered to make and the matters that will be taken into account when considering how to exercise their discretion in making Orders; and
- the Respondent effectively held a hearing holding the Applicant to account for alleged misconduct which the Applicant did not have to answer at that time.

### ***Unreasonableness***

14. Further, or in the alternative, the said Decisions of the Respondent were unreasonable in that having found that the Applicant was unlawfully dismissed the Respondents should have:

- restored to the Applicant to the same/similar position that she was in before the unlawful dismissal;
- expunged her employment record of the finding of gross misconduct;
- re-instated her to a department within the civil service;
- ordered that her pension contribution be paid; and
- ordered that her legal fees be paid for a successful appeal

**Conclusion**

15. This application is made at the earliest opportunity and within the time limited imposed by Order 53, rule 4(1) of the Grand Court Rules.
16. The Applicant will rely upon the Affidavit of Celicia Alley sworn on 15 January 2013.
17. Further, the Applicant reserves her right to amend and/or supplement these Grounds in due course as permitted by Order 53, rule 6(2) of the Grand Court Rules, if required or if so ordered by this Honourable Court.

Dated this 16<sup>th</sup> day of January 2013

*Stuarts Walker Hersant*

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**STUARTS WALKER HERSANT**  
**Attorneys-At-Law for the Applicant**

This *Ex Parte* Application for Leave to Apply for Judicial Review is filed by Stuarts Walker Hersant, Attorneys-at-Law on behalf of the Applicant whose address for service is P.O. Box 2510, 4th Floor Cayman Financial Centre, Dr. Roy's Drive, George Town, Grand Cayman KY1-1104, Cayman Islands Ref: **PM/5526**