

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

MARCUS CORSETTI,
Appellant

v.

**BOSTON POLICE
DEPARTMENT,**
Respondent

Case No.: G1-13-125

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission.

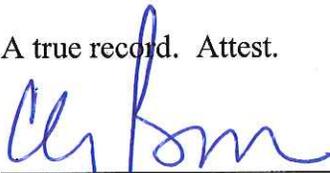
The Commission received and reviewed the Tentative Decision of the Magistrate dated November 5, 2013. No written objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the Appointing Authority to bypass the Appellant is affirmed and the Appellant's appeal is *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 9, 2014.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision.

Notice to:

Charles H. Cremens, Esq. (for Appellant)

Meryum Z. Khan, Esq. (for Respondent)

Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Marcus Corsetti,
Appellant

v.

Docket No. G1-13-125
DALA No. CS-13-381

Boston Police Department,
Respondent

Appearance for Appellant:

Charles H. Cremens, Esq.
19 Beacon Street
Boston, MA 02108

Appearance for Respondent:

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Administrative Magistrate:

Maria A. Imparato, Esq.

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COMMONWEALTH OF MASS
CIVIL SERVICE COMMISSION

SUMMARY OF TENTATIVE DECISION

The Boston Police Department has met its burden of demonstrating reasonable justification for the bypass of the Appellant for original appointment as a police officer based on omissions on his application for employment, and based on the volatile relationship he has with his twin brother.

TENTATIVE DECISION

Marcus Corsetti filed a timely appeal under M.G.L. c. 31, s. 2(b) of the decision of the Boston Police Department (BPD) to bypass him for original appointment to the position of police officer.

I held a hearing on July 19, 2013 at the office of the Division of Administrative Law Appeals, One Congress Street, 11th floor, Boston, Massachusetts.

I admitted documents into evidence. (Exs. 1 – 15.) I heard the testimony of two witnesses for the BPD: Detective Bryan River of the BPD Recruit Investigations Unit (RIU); and Sergeant Detective Norma Ayala, Commander of the RIU. Marcus Corsetti testified on his own behalf, and offered the testimony of Stephanie Burton, his mother. The hearing was digitally recorded. The record closed on September 6, 2013 with the filing of post-hearing briefs by both parties.

FINDINGS OF FACT

1. Marcus Corsetti scored 99 on a Civil Service examination in 2011. Certification #202869 was sent to the BPD on April 26, 2012 and June 28, 2012. By letter of January 14, 2013, the BPD notified Mr. Corsetti that he had been bypassed for original appointment to the position of police officer because of concerns about his truthfulness, concerns about his temper and self-control, and concerns about several entries on his criminal record.
(Ex. 2; Stipulated Facts.)
2. The hiring of Boston police officers begins when the BPD requests a certification list from the Civil Service Commission. The applicants on the list are asked to come in and sign if they are willing to accept employment. The applicants who sign are given a Student Officer Application to complete. When the applicant submits his application, he is interviewed by a Detective in the RIU. The Detective then completes a background investigation of the applicant that includes a Board of Probation (BOP) check, criminal history, driving history, police incident reports, gang affiliations, and interviews with employers, neighbors and references. The Detective prepares a summary of his findings

for the Commander of the RIU, and the applicant is passed on to the Round Table for review. The Round Table comprises the BPD Director of Human Resources, the Deputy Superintendent of Internal Affairs, the Commander of the RIU, and a representative of the BPD legal department. The Round Table members discuss the Detective's report and then decide whether an applicant will go to the next phase, or whether the applicant will be bypassed for appointment. (Testimony, Rivers, Ayala.)

3. The Student Officer Application states on its face, "False, misleading or withheld information will result in rejection of your application, dismissal from employment and removal from the Civil Service eligibility list." (Ex. 1, p. 1.)
4. Detective Rivers was assigned to do the background investigation of Mr. Corsetti. His investigation revealed areas of concern: 1) Mr. Corsetti failed to list an address from where he had been evicted where he lived during some parts of 2008 and 2009; 2) Mr. Corsetti failed to mention on his application that a civil judgment had been rendered against him; 3) a series of police incident reports suggested that Mr. Corsetti had a history of violence with respect to family members; and 4) there were several entries on Mr. Corsetti's criminal record. (Testimony, Rivers; Ex. 2.)
5. Mr. Corsetti was asked to list on his Student Officer Application all the addresses at which he had lived since his 16th birthday. Mr. Corsetti failed to list 175 High Street, Norwood, Massachusetts, an address at which he had lived for some months during 2008 and 2009. (Ex. 1, p. 2; Testimony, Rivers, Corsetti.)
6. Mr. Corsetti was asked on his Student Officer Application whether there had been any civil actions commenced against him in the previous seven years to which he answered "no." (Ex. 1, p. 20; Ex. 3, p. 5.) On May 18, 2009, the landlord of 175 High Street in

Norwood filed a complaint in Dedham District Court against Mr. Corsetti and his roommates for summary process and unpaid rent. (Ex. 14.) The landlord received a judgment against Mr. Corsetti for \$3,746.19 on July 20, 2009. (Ex. 13.) The judgment was vacated and the action was dismissed on September 3, 2009. (Ex. 15; Testimony, Rivers.)

7. Detective Rivers located several police incident reports involving Mr. Corsetti and his identical twin brother Joseph Corsetti on the BOP data base. An incident report dated August 1, 2002 filed by Joseph Corsetti accused Mr. Corsetti of pushing Joseph down the stairs during an argument and then leaving the house. The narrative indicates, "Victim's mother, Stephanie Burton, witness, listed above, stated suspect is constantly cursing her and other family members and he is extremely violent. Ms. Burton said she will seek a restraining order against suspect." (Ex. 7.) No restraining order was issued. (Ex. 3, p. 5.)
8. An incident report dated May 1, 2004 indicates that Mr. Corsetti assaulted and battered a security guard at about 2:30 a.m. when the security guard asked him to move his car out of the middle of the street in front of his home in Roslindale. (Exs. 8, 9.)
9. On May 1, 2004, Mr. Corsetti was a seven-day boarding student at Worcester Academy. (Ex. 1, p. 9.) He was not aware of this report until he received his bypass letter. He went to the police station and asked how he could remove his name from the case and get his brother Joseph's name onto the report. He went to the courthouse and got a copy of the summons that names the defendant "Joseph M. Corsetti A/K/A Marcus Corsetti." Ms. Burton remembers that this incident involved Joseph, not Mr. Corsetti. Mr. Corsetti told Detective Rivers that this incident involved Joseph. (Ex. 10; Testimony, Corsetti, Burton, Rivers.)

10. In an incident report dated August 29, 2005, Ms. Burton stated to the police that a verbal argument between Mr. Corsetti and Joseph escalated into a physical confrontation “that resulted in the suspect-Marcus throwing a glass candle jar onto the floor. As both parents rushed to intercede they step on the glass shards and received lacerations to their feet. Suspect fled the home. Victim was advised of her 209A family abuse rights and will seek complaints and a restraining order in West Roxbury Court in the morning.” (Ex. 11.) No charges were filed and no restraining order was issued. (Testimony, Rivers; Ex. 3, p. 6.)
11. In an incident report dated November 27, 2005, Joseph accused Mr. Corsetti of throwing a handful of coins at Joseph’s car causing minor damage to the paint on the trunk. (Ex. 12.) No charges were filed. (Ex. 3, p. 6.) Mr. Corsetti denied the charges to Detective Rivers. (Testimony, Rivers, Corsetti.)
12. Mr. Corsetti and his twin brother have been adversaries since childhood. Joseph does not get along with people, he is jealous of his twin, and he has been a drug addict since age 15. Mr. Corsetti and his brother have argued every day of their lives. (Testimony, Corsetti, Burton.)
13. Mr. Corsetti’s criminal history demonstrates a charge of minor in possession of alcohol in November 2004. Mr. Corsetti paid a fine and the case was dismissed. (Ex. 3, p. 1; Ex. 4.)
14. Mr. Corsetti’s criminal history demonstrates charges in June 2003 of operating after suspended registration and a compulsory insurance violation, all of which charges were dismissed in August 2003. (Ex. 3, pp. 1-2; Ex. 4.)
15. The Round Table discussed Mr. Corsetti and decided to bypass him because he had omitted the 175 High Street address from his application, he omitted the judgment his landlord had received against him, and the police incident reports demonstrate that Mr.

Corsetti was the aggressor against his family. Mr. Corsetti's mother told the police he was violent. These events speak to Mr. Corsetti's truthfulness and indicate a propensity for violence. The fact that charges were not filed is not unusual in events that concern family members. (Testimony, Ayala.)

CONCLUSION AND RECOMMENDATION

The Civil Service Commission, under M.G.L. c. 31, s. 2(b), is required "to find whether, on the basis of the evidence before it, the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." *City of Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 303 (1997). Justified means "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rule of law." *Id.* at 304.

If the Commission finds by a preponderance of the evidence that there was just cause for an action against the Appellant, the Commission shall affirm the action of the Appointing Authority. *Town of Falmouth v. Civil Service Commission*, 61 Mass. App. Ct. 796, 800 (2004). The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision." *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

The fundamental purpose of the Civil Service commission is to guard against political considerations, favoritism, and bias in government hiring and promotion. The Commission is charged with ensuring that the system operates on "[b]asic merit principles." *City of Cambridge*, 43 Mass. App. Ct. at 304. "Basic merit principles" means, among other things, "assuring fair

treatment of all applicants and employees in all aspects of personnel administration” and protecting employees from “arbitrary and capricious actions.” M.G.L. c. 31, s. 1.

Bypass cases are decided based on a preponderance of the evidence. A “preponderance of the evidence test required the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315 (1991).

If an appointing authority is unwilling to bear the risks of hiring a candidate, absent proof that the appointing authority acted unreasonably, the Commission is bound to defer to the appointing authority’s exercise of its judgment. *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 190-191 (2010).

In order to prevail in a bypass case, the Appellant must demonstrate that the reasons offered by the Appointing Authority were untrue, apply equally to the bypassed and the selected candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons. *Borelli v. MBTA*, 1 MSCR 6.

I conclude that the BPD had reasonable justification for bypassing Marcus Corsetti for original appointment as a police officer based on his failure to include his prior address at 175 High Street in Norwood on his application, his failure to report that his landlord had brought a summary process action and won a civil judgment against him for unpaid rent, and the police incident reports that suggest that he has a propensity for violence against his family.

At hearing, the Appellant testified that he did not list his address at 175 High Street because he did not remember that he lived there. His answer strains credulity. The Appellant remembered that the landlord would come into his apartment and open his bedroom door while

the Appellant was sleeping. He remembered that the downstairs tenant had six children that were noisy. He remembered that the downstairs tenant had a washer and dryer connected to the Appellant's electricity and water. He remembered that the apartment had many code violations. The BPD is particularly concerned with the truthfulness of its police officer. Its application warns applicants that false, misleading or withheld information will result in rejection of the application. The Appellant's failure to list 175 High Street on his application could reasonably be regarded as a deliberate attempt to mislead and provides justification to uphold the bypass.

The Appellant testified at hearing that he did not report on his application that there had ever been any civil actions commenced against him in the previous seven years because he thought he was involved in a summary process action that was dismissed so there was no judgment against him. He did not understand that an eviction is a civil action.

The Appellant's answer on his application was untruthful. He was not asked whether anyone had obtained a judgment against him. He was asked whether any civil actions had been commenced against him. He certainly knew that the landlord had commenced an action to collect unpaid rent and obtained a judgment against the Appellant, even though the judgment was eventually vacated. This withholding of information may reasonably be regarded as a deliberate attempt to mislead and provides justification to uphold the bypass. See Modig v. Worcester Police Dep't., 21 MCSR 78 (2008)(bypass for original appointment as a police officer upheld for multiple reasons including an inaccurate answer on a personal history questionnaire); Escobar v. Boston Police Dep't., 21 MCSR 168 (2008)(bypass for original appointment as a police officer upheld because applicant lied about his residential address on a previous application for appointment to the Winthrop police department); Moran v. Town of Auburn, 23 MCSR 233 (2010)(bypass for original appointment as a police officer upheld for multiple

reasons including being untruthful on employment application); *Konamah v. City of Lowell*, 25 MCSR 73 (2012), (bypass for original appointment as a police officer upheld because employment application included many omissions); and *Moga v. Town of Wakefield*, 24 MCSR 156 (2011)(bypass for original appointment as a police officer upheld where application had numerous omissions.)

The police reports may reasonably be regarded as demonstrating the Appellant's propensity for using violence against family members. The Appellant testified credibly that it was Joseph, not he, who was involved in the assault and battery of the security guard on May 1, 2004, when the Appellant was a boarding student at Worcester Academy. The Appellant testified credibly that he never threw coins at Joseph's car, resulting in damage to the car's trunk. The incidents of August 1, 2002 and August 29, 2005, however, demonstrate the violent relationship between the Appellant and his twin brother. Both the Appellant and Joseph are currently living at home with their parents.

The volatile nature of the Appellant's relationship with his brother provides a reason to uphold his bypass. "Police officers must comport themselves in accordance with the laws that they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct." *Police Commissioner of Boston v. Civil Service Commission*, 22 Mass. App. Ct. 364, 371 (1986.); See *Monagle v. Medford Police Dep't.*, 23 MCSR 267 (2010)(bypass for original appointment as a police officer upheld where applicant had a past pattern of aggressive behavior in confrontational situations.)

The reasons for the bypass of the Appellant were more probably than not sound and sufficient. There is no evidence that the reasons for the bypass were untrue, apply equally to the

selected and the bypassed candidate, are incapable of substantiation or are a pretext for other impermissible reasons. I recommend that the Appellant's appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato
Administrative Magistrate

Dated:

NOV - 5 2013