COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

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

RICARDO ALEXANDRE,
Appellant

v.

G1-06-147

BOSTON POLICE DEPARTMENT,
Respondent

Appellant's Attorney:

Pro Se
Ricardo Alexandre
[redacted]

Respondent's Attorney:

Tsuyoshi Fukuda, Esq.
Office of the Legal Advisor
Boston Police Department
One Schroeder Plaza
Boston, MA 02120
(617) 343-5034
Fukudat.bpd@boston.ma.us

Commissioner:

Christopher C. Bowman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Ricardo Alexandre (hereafter "Alexandre" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority" or "BPD"), bypassing him for original appointment to the position of police officer. A pre-hearing was held on September 18, 2006 and a full hearing was held on

May 2, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

FINDINGS OF FACT:

Ten (10) exhibits were entered into evidence at the hearing. The record was left open until May 4, 2007 for the Boston Police Department to produce a letter allegedly posted by the Appellant on the door of a victim which led to an investigation by the BPD. As of May 4, 2007, the BPD was unable to produce the document within the short timeframe. Based on ten (10) exhibits submitted at the hearing and the testimony of the following witnesses:

For the Appointing Authority:

- Robin Hunt, Human Resources Director, Boston Police Department;
- Sergeant Detective Norman Hill; Boston Police Department;

For the Appellant:

- Ricardo Alexandre, Appellant;

I make the following findings of fact:

1. The Appellant is a twenty-five (25) year old male from Roslindale. He graduated from Dorchester High School and received a Bachelors degree from UMASS Boston in criminal justice. (Testimony of Appellant; Exhibit 6)
2. The Appellant was married in July 2006 and has been employed as a loss prevention supervisor at the Marriot Copley Hotel in Boston for seven (7) years. (Testimony of Appellant; Exhibit 6)
3. The Appellant took an open examination for the position of police officer in 2005 (Stipulated Fact)

4. On December 12, 2005, the Appellant's name appeared on Certification 251241 for the position of full-time Haitian Creole-speaking police officer for the Boston Police Department. (Stipulated Fact)
5. The Boston Police Department filled three (3) Haitian Creole-speaking police officer positions from Certification 251241. A total of 84 candidates were selected as part of this overall hiring cycle. One (1) of the candidates selected for appointment was ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)
6. On May 1, 2006, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment and proffered the following reason: a civil restraining order was issued against the Appellant in September 2003 for an incident involving his former fiancée.[1] (Exhibit 1)
7. The above-referenced reason for bypass was discovered as part of a background investigation completed by the Boston Police Department of all potential applicants. (Testimony of Hunt and Hill)
8. All BPD recruit applications, including the background investigations, are reviewed by a "roundtable" consisting of several members including the Director of Human Resources for the Boston Police Department, and Sergeant Detective Norman Hill, Commander of the Recruit Investigations Unit. (Testimony of Hunt and Hill)
9. The roundtable team has the option of conducting an additional "discretionary interview" with an applicant if they determine that additional information or

[1] Exhibit 1identified the complainant regarding the 209A restraining order as the Appellant's former spouse. At the full hearing, it was clarified that the complainant was the Appellant's former fiancée.

clarification regarding the applicant is needed. The Appellant did not receive a discretionary interview. (Testimony of Hill)

September 15, 2003 Restraining Order

10. Exhibit 3 is copy of a September 15, 2003 Boston Police Department Incident Report regarding the Appellant's former fiancée (hereafter "former fiancée"). (Exhibit 3)
11. According to the above-referenced September 15, 2003 Incident Report, two Boston police officers responded to a call at about 1:12 A.M. from the former fiancée regarding a stalking complaint. Again according to the Incident Report, the former fiancée stated that, "at about 12:19 A.M…she arrived at her residence…and observed [the Appellant] parked in a black Ford Expedition…at the closed Citgo gas station at Blue Hill Avenue / Fayston Street…[The former fiancée] stated that [the Appellant] drove towards her as she walked to her house..and…drove away without incident…[The former fiancée] stated she observed the suspect from her kitchen window drive into the gas station again, stopped for about 30 seconds and drive off."
12. During his testimony before the Commission, the Appellant acknowledged that he was driving his automobile near Blue Hill Avenue and Fayston Street on the date in question, but disputed the above-referenced account of the former fiancée. Specifically, the Appellant stated that he was leaving a friend's house in that general area on the date in question and saw the former fiancée walking down the sidewalk while he was stopped at a stop sign. According to the Appellant, he did not know that the former fiancée lived in that neighborhood and he disputes that he

ever parked his automobile at the closed gas station which was located near the intersection in question. (Testimony of Appellant)

13. Exhibit 2 is a copy of a 209A Abuse Prevention Order issued by the Roxbury District Court against the Appellant; the complainant is the Appellant's former fiancée. (Exhibit 2)

14. The above-referenced Abuse Prevention Order was initially entered on September 15, 2003 at 11:30 A.M., approximately 10 hours after the former fiancée first called the Boston Police Department regarding the stalking complaint against the Appellant. The Appellant, who was not present when this initial order entered, was ordered not to abuse or contact the former fiancée at her home or workplace in addition to surrendering any firearms. (Exhibit 2)

15. At approximately 2:45 P.M. on September 21, 2003, six (6) days after the above-referenced Abuse Prevention Order was issued, the former fiancée walked into a district police station and reported that the Appellant had violated the terms of the September 15, 2003 Abuse Prevention Order. Specifically, according to a Boston Police Department Incident Report, the former fiancée told police that she discovered a letter from the Appellant on the windshield of her automobile, which was parked in front of her house. (Exhibit 4)

16. The Appellant acknowledged during his testimony before the Commission that he did leave a letter on the former fiancée's car windshield on September 21, 2003, but he insisted that he had not been served with a copy of the above-referenced Abuse Prevention Order and was not aware of its existence. According to the Appellant, the letter was in regard to bills that they "accrued as a couple…we still had bills; I

wanted to get that clear out of the way…we had a cell phone together; utility bills that we had; I think we still had one utility bill that had an outstanding balance." (Testimony of Appellant) No documents were entered as exhibits regarding proof of service related to the September 15, 2003 Abuse Prevention Order.

17. Asked by this Commissioner how he knew where the former fiancée's car would be parked in light of his previous testimony stating he was unaware of where the former fiancée lived, the Appellant stated that he just "looked over and saw it (the car) over there" on his way to work. (Testimony of Appellant)
18. The Appellant testified before the Commission that after he left the letter on the former fiancée's car windshield at approximately 2:30 P.M. on September 21, 2003, he went to work at the Marriot Copley in downtown Boston. (Testimony of Appellant)
19. The Appellant testified that after leaving the note on the former fiancée's car windshield on September 21, 2003, he was contacted "the next day" (September 22, 2003) by a detective from the Boston Police Department "sometime between 10:00 A.M. and 12:00 Noon". The Appellant testified that the detective asked him if he was aware of the above-referenced Abuse Prevention Order to which the Appellant replied in the negative. Again according to the Appellant, the detective then verbally notified him about the Abuse Prevention Order issued on September 15, 2003 and ordered the Appellant not to have any further contact with the former fiancée. (Testimony of Appellant)
20. Exhibit 5 is a Boston Police Department Incident report dated September 22, 2003, the same day the Appellant acknowledges that he was notified by a Boston police

detective not to have any contact with the former fiancée. (Exhibit 5 and Testimony of Appellant)

21. According to the above-referenced September 22, 2003 Incident Report, the former fiancée walked into the District 2 police station at approximately 7:31 P.M. and stated that the Appellant had once again violated the Abuse Prevention Order in question by leaving another letter, this time on her apartment door, sometime between 3:00 and 5:00 P.M. that day. (Exhibit 5) As referenced above, the Appellant acknowledges that he had been informed about the Abuse Prevention Order sometime between 10:00 A.M. and 12:00 P.M. earlier that day (September 22, 2003) by a Boston police detective. (Testimony of Appellant)
22. The above-referenced September 22, 2003 Incident Report indicates that the letter, which was allegedly left on the former fiancée's apartment door between 3:00 and 5:00 P.M. that day, was "copied and held as evidence." (Exhibit 5) The Appointing Authority did not submit a copy of this letter as an exhibit and the record was left open for them to determine if it could be obtained and submitted to the Commission and included as part of the record. The Appointing Authority was unable to produce the letter as of the issuance of this decision (May 10, 2007).
23. This Commissioner read the September 22, 2003 Incident report out loud at the hearing and then asked the Appellant, "On 9/22/03, did you leave a letter on the door of [the former fiancée]?" to which the Appellant replied, "I don't recall that…I did remember putting a letter on her car, but I don't remember actually leaving a letter at the doorstep of the house." (Testimony of Appellant)

24. I find that the Appellant's testimony that he doesn't remember whether he left a second letter for the former fiancée, after being notified about the Abuse Prevention Order by a Boston police detective earlier in the day, is not credible. His equivocation on this point stood in sharp contrast to his detailed and certain recollection of events that occurred only hours earlier. Further, on cross examination, the Appellant acknowledged that the bills in question, to which the Appellant attributes the need to write a letter to the former fiancée, were actually in the former fiancée's name and the Appellant was not obligated to pay them. Finally, his testimony is directly contradicted by the Boston Police Department Incident Report completed the same day. (Testimony, Demeanor of Appellant)
25. The documents submitted as evidence by the Appellant, including a purported email exchange between the Appellant and the former fiancée, were not helpful to his case. Specifically, the vitriolic email exchange in August 2003 only reaffirms that any contact with the former fiancée by the Appellant would be a serious error in judgment, regardless of whether an Abuse Prevention Order existed or not. (Exhibits 7, 8 and 9)
26. On September 29, 2003, after a hearing which the Appellant and the former fiancée attended, the Abuse Prevention Order was extended to November 3, 2003. On November 3, 2003, at a further hearing attended by the Appellant, the Abuse Prevention Order was extended for one year. (Exhibit 2)

Decision to Bypass

27. Mr. Hill testified that the BPD reviews applications on a case-by-case basis and considers the "recency" and "severity" of the underlying incidents and/or charges. (Testimony of Hill)
28. Sergeant Detective Hill testified that he personally reviewed the incident reports and Abuse Prevention Order which formed the basis of the roundtable's decision to bypass the Appellant. Mr. Hill testified that he and other members of the roundtable were concerned that the Appellant twice violated a restraining order, "making it a criminal offense". Mr. Hill further testified that this was of particular concern for reasons related to potential liability as well as the fact that the Appellant was seeking a position in which he would be issued a firearm; asked to enforce civil restraining orders; and confront life-or-death decisions on a daily basis. Mr. Hill testified that the roundtable determined that the Appellant's behavior was "unreasonable and conduct not becoming a police officer". (Testimony of Hill)
29. On June 7, 2006, the state's Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
30. The Appellant filed a timely appeal with the Civil Service Commission regarding HRD's decision. (Stipulated Fact)

CONCLUSION:

The role of the Civil Service Commission is to determine "whether 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, 304 (1997). Reasonable justification means the

Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield *v.* Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service *v.* Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A "preponderance of the evidence test requires the Commission to determine whether, on the 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). G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. 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). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

Mr. Alexandre is a life-long resident of Boston. He attended Dorchester High School and received a Bachelors degree in criminal justice from UMASS Boston. He was married in July 2006 and has been employed for seven (7) years as a security supervisor at a hotel in downtown Boston.

I don't doubt the Appellant's sincere desire to serve the City of Boston as a police officer. Unfortunately, however, the Appellant's background provides the City of Boston with reasonable justification for bypassing him for employment as a police officer. In 2003, the Appellant was admittedly involved in a rocky ending to his relationship with his former fiancée. At some point after the relationship ended, the former fiancée obtained an Abuse Prevention Order against the Appellant and twice notified police that the Appellant violated that order.

The Appellant's testimony before the Commission regarding the alleged incidents surrounding his interactions with the former fiancée was not credible and was contradicted by at least one Boston Police Department Incident report. Moreover, the Appellant was given the opportunity on two occasions to oppose the issuance of this Abuse Prevention Order and, on each occasion, the Court ordered the Order extended, once for thirty (30) days and then for one (1) year.

After considering all the testimony and evidence in the record, I conclude that the Boston Police Department had sound and sufficient reasons for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-147 is hereby ***dismissed***.

Civil Service Commission

_____
Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on May 10, 2007.

A true record. Attest:

_____
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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

Notice:
Ricardo Alexandre (Appellant)
Tsuyoshi Fukuda, Esq. (for Appointing Authority)
John Marra, Esq. (HRD)