

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MAQUEILA BARBOSA,

Appellant

v.

Case No.: G1-17-192

**BOSTON POLICE
DEPARTMENT,**

Respondent

ORDER OF DISMISSAL

On September 26, 2017, the Appellant, Maqueila Barbosa (Ms. Barbosa), filed an appeal with the Civil Service Commission (Commission), contesting her non-selection by the Boston Police Department (BPD) for original appointment as a police officer.

On October 17, 2017, I held a pre-hearing conference which was attended by Ms. Barbosa and counsel for the BPD.

As part of the pre-hearing conference, relying on documentation provided by the BPD and the state's Human Resources Division (HRD), the parties agreed that Ms. Barbosa's name appeared on Certification No. 04515 and that she was tied in the 24th rank with other candidates, one of whom was appointed. Importantly, no candidate ranked below 24th was appointed from this Certification.

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), *rev'd in part on other grounds*, 323 F.3d 160 (1St Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable `bypass' has taken place in the parlance of... civil service")

Since no candidate ranked below Ms. Barbosa was appointed to the position of police officer, there was no bypass. For this reason, Ms. Barbosa's appeal under Docket No. G1-17-192 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on October 26, 2017.

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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Maqueila Barbosa (Appellant)

Katherine Hoffman, Esq. (for Respondent)