

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION
One Ashburton Place: Room 503
Boston, MA 02108
(617) 979-1900

ERNEST BELL,
Appellant

v.

E-21-007

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Kenneth H. Anderson, Esq.
Anderson, Goldman, Tobin & Pasciucco
50 Redfield Street, Suite 201
Boston, MA 02122

Appearance for Respondent:

Aileen C. Bartlett, Esq.
Assistant City Solicitor
Law Department
Brockton City Hall
45 School Street
Brockton, MA 02301

Commissioner:

Christopher C. Bowman

DECISION

On November 4, 2021, the Civil Service Commission (Commission) issued a [“Decision on Respondent’s Motion for Summary Decision”](#) (November 4th Decision), which: a) dismissed the Appellant’s appeal with a future effective date; and b) ordered the City of Brockton (City) to conduct an investigation regarding allegations raised by the Appellant as part of his appeal to the Commission. The Appellant, a Brockton police officer, alleged that he was encouraged by three members of the Police Department’s command staff to consider offering cash payments to a police sergeant (Sgt. A) who was out on disability to encourage him to retire prior to the

expiration of a civil service eligible list for police sergeant upon which the Appellant was then ranked first, after a series of prior promotions. The Appellant also alleged there was a long history of this type of so-called pay-to-play shenanigans in the City's Police Department.

On January 27, 2022, the City submitted an investigative report completed in response to the Commission's November 4th decision and the Appellant submitted a reply on February 8, 2022. I have carefully reviewed the entirety of the investigation report including any addenda as well as the Appellant's reply. For the reasons stated below, I see no reason to revoke the dismissal of the Appellant's appeal, but I recommend that the Commission's investigation remain open at this time.

Importantly, as noted in the Commission's November 4th decision, the Appellant did not allege, as part of his appeal to the Commission, that Sgt. A asked him for money in exchange for retiring prior to the expiration of the police sergeant eligible list upon which the Appellant was ranked first at the time. Nor did the Appellant make that allegation as part of the City's follow-up investigation or in the reply that was submitted to the Commission on his behalf. Also, as noted in the Commission's November 4th decision, a series of unrefuted documents submitted by the City appears to show, overwhelmingly, that Sgt. A's retirement date was tied more to bona fide medical issues, including his surgery date and his treating physician's desire to wait a period of time post-surgery prior to rendering any final medical opinion regarding Sgt. A's fitness for duty, rather than being tied to the date upon which a new eligible list was established. In short, even when viewing the facts most favorable to the Appellant, his failure to be promoted from the eligible list before it expired was not the result of any so-called "pay-to-play" scheme. Thus, the Appellant cannot show that he is an aggrieved person who should be granted relief by the Commission.

That turns to whether any member of the Department encouraged the Appellant to engage in such untoward behavior and/or whether there is any evidence of pay-to-play activities in the past. The Department's investigation, which has indicia of being result-driven and tainted by personal animus against the Appellant based on his allegations, does not sufficiently answer those questions. For that reason, I recommend that the Commission not close the investigation at this time, but, rather, issue further orders and take those actions necessary to provide a fair and impartial review of the serious allegations raised here.

Conclusion

For all of the above reasons, the Appellant's appeal under Docket No. E-21-007 is hereby **dismissed**; the Commission's investigation under G.L. c. 31, §§ 2(a), 72 & 73 remains open subject to further orders of the Commission under Case Tracking No. I-22-061.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners [Camuso – Absent]) on April 21, 2022.

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)(l), 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:

Ken Anderson, Esq. (for Appellant)
Aileen Bartlett, Esq. (for Respondent)