COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

100 Cambridge St., Suite 200
Boston, MA 02114
(617) 979-1900

RANDOLPH BLAKE,
Appellant

v.

SPRINGFIELD FIRE DEPARTMENT,
Respondent

Case No.: E-22-039

DECISION

Pursuant to G.L. c. 31, §§ 2(b) and/or § 43, I assigned the above-captioned non-bypass equity appeal to the Civil Service Commission's General Counsel, attorney Robert L. Quinan, Jr., to serve as the Presiding Officer for initial adjudication on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), General Counsel Quinan filed, on July 25, 2023, the attached Tentative Decision with the Commission and the parties were given thirty days thereafter to provide written objections to the Commission. Referring also to another equity appeal the Appellant filed in 2021 (case no. E-21-120), and which is the subject of a separate Tentative Decision, the Appellant submitted objections on August 24, 2023, in the form of an "Opposition to Attorney Quinan's Proposed Decisions." The Respondent has not filed any reply.

After careful review and consideration, the Commission voted to affirm and adopt the attached Tentative Decision of the Presiding Officer, making this and the attached the Final Decision of the Commission in this case.

Given that the Appellant filed only one omnibus set of objections to the initial decisions in both this case and case no. E-21-120, the reader is referred to the Decision the Commission issues today in that earlier case for an explanation of the Commission's rationale for rejecting the Appellant's global objections. It suffices to reiterate here that the Appellant is not precluded from arguing other points made in his "Opposition" in the course of litigating his two remaining (disciplinary and promotional bypass) appeals pending before the Commission (case nos. D-22-117 and G2-23-063).

For the above-stated reasons, and those laid out in the attached Tentative Decision, the above-captioned non-bypass equity appeal filed the Appellant is denied and hereby ***dismissed***.

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein, and Tivnan, Commissioners) on October 5, 2023.

Civil Service Commission

/s/ Christopher C. Bowman
Christopher C. Bowman
Chair

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 to:
Randolph S. Blake (Appellant)
Maurice Cahillane, Esq. (for Respondent)

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RANDOLPH S. BLAKE,
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SPRINGFIELD FIRE DEPARTMENT,
Respondent

Appearance for Appellant: *Pro Se*
Randolph S. Blake

Appearance for Respondent: Maurice M. Cahillane, Esq.
Egan, Flanagan & Cohen, LLP
67 Market Street; P.O. Box 9035
Springfield, MA 01103

Adjudicator: Robert L. Quinan, Jr.

SUMMARY OF TENTATIVE DECISION

The assigned adjudicator recommends that the full Commission allow the Respondent's Motion to Dismiss the Appellant's non-bypass equity appeal as his non-selection was not a bypass and he is not an "aggrieved" person as defined by G.L. c. 31, § 2(b). The Appellant's claim that the Respondent is violating a municipal ordinance codifying residency requirements is more properly the subject of pending court proceedings. Issues relating to the fairness of the Respondent's promotional procedures should be deferred until they can be addressed more fully in the Appellant's pending promotional bypass appeal.

TENTATIVE DECISION ON RESPONDENT'S MOTION TO DISMISS

On March 10, 2022, the Appellant, Randolph S. Blake, filed a non-bypass equity appeal with the Civil Service Commission (Commission), contesting his non-selection for promotion to Fire Captain in the City of Springfield (City)'s Fire Department (the SFD) in 2021 or the first quarter of 2022. On April 12, 2022, I held a remote pre-hearing conference which was attended

by the Appellant, counsel for the City, the City's Fire Chief, and personnel from the City's Human Resources & Labor Relations Office. Unless otherwise noted, there appears to be no dispute as to the following:

A. The Appellant is a Lieutenant in the Springfield Fire Department.

B. On November 1, 2020, the Appellant took an HRD-administered promotional examination for Fire Captain.

C. On March 1, 2021, HRD established the eligible list of candidates for Fire Captain in the City of Springfield. The Appellant ranked #6 on the HRD list of candidates for promotion to that rank.

D. In mid-February of 2022, an interview panel—consisting of the SFD Fire Commissioner, Bernard Calvi; the SFD's Deputy Chief, Michael Hess; District Chief Tyrone Denson (who also serves as Director of the SFD's Emergency Management Division); District Chief Marcellin; the SFD's Chief Financial Officer and Director of Human Resources, Erica Floyd; and a representative from the City's Human Resources department—interviewed the Appellant and other candidates for promotion to Fire Captain.

E. As of the date of the April 2022 pre-hearing conference, the Springfield Fire Commissioner had promoted only candidates who ranked higher than the Appellant on the Captain eligible list, proceeding down that list in rank order.

The Appellant's Contentions

At the April 22, 2022 pre-hearing conference, the Appellant did not dispute that he was not bypassed for appointment in 2021 or 2022; rather, he argued that the Commission should review whether the promotional process the SFD utilized was consistent with basic merit principles under

Chapter 31. Both at the pre-hearing conference and in his pre-hearing memorandum, the Appellant asserted that the interview process was overly subjective and marked by bias, political considerations, and unspecified "extraneous influences". During the pre-hearing conference, the Appellant declined to become more specific about facts or evidence supporting those allegations.

In general, the Appellant has claimed that promotional processes cannot be undertaken "incorrectly" or in some "improper manner" that disadvantages certain candidates on account of a protected characteristic.[1] As his prime example of error, the Appellant complains that the "decision-making process . . . was inadequately memorialized [i.e., interviews were not recorded]." Appeal form attachment at 2 & n.7. Although nothing in G.L. chapter 31 mandates the recording of promotional interviews, the Commission has often urged it as a best practice. The Appellant further argues that "the SFD Appointing Authority violated the 2n+1 process and interviewed only 5 candidates, instead of 7, for 3 permanent Lieutenant positions." *Appellant's Opposition to Respondent's Motion to Dismiss* at 4. The "2n+1 process," however, derives from the state Human Resources Division's *Personnel Administration Rules*—specifically, PAR .09(1), which merely states that "[w]hen names have been certified to an appointing authority . . . and the number of . . . promotional appointments actually to be made is n [e.g., 1, 2, or 3 promotions], the appointing authority may *appoint* only from among the first 2n + 1 persons named in the certification willing to accept appointment." (Emphasis supplied.) PAR .09 says nothing about how many candidates need to be *interviewed*—only that, in the case of three promotional slots to be filled, appointments must be made from among the top seven candidates.

The Appellant also contends that the City has not been enforcing a municipal residency requirement in conjunction with recent promotions to fire lieutenant, although that is the subject

[1] The Appellant identifies as African-American.

of a separate lawsuit in which the City contends that, under state law, relevant provisions in a collective bargaining agreement (CBA) supersede contrary provisions in a municipal ordinance. *See* G.L. c. 150E, § 7(d). More importantly, the Appellant is not a candidate for promotion to *lieutenant* (as he already holds that position) and thus he lacks standing to complain before this Commission about the application of either relevant CBA provisions or the municipal residency ordinance to lieutenant candidates.

The Appellant was, however, a candidate for promotion to Captain and will be among the candidates HRD deems eligible for promotion from this eligible list if a further vacancy occurs before it expires. He asserts that Springfield Fire Commissioner Bernard Calvi and Deputy Chief Michael Hess should not have participated in the February 2022 interviews of candidates seeking promotion to Fire Captain because the Appellant had some years earlier named Calvi as a defendant in a lawsuit concerning application of the municipal residency ordinance to promotional decisions and he has caused Deputy Chief Hess's deposition to be taken in connection therewith. The Appellant infers from G.L. c. 31, § 1 that *anyone* embroiled in adversarial litigation would have a conflict of interest, but he points to no applicable authority sustaining the proposition that a candidate can force an appointing authority to recuse him or herself from promotion decisions through the mere expedient of naming them as a defendant or deposing them in a lawsuit. The *Blanchette* decision cited by the Appellant[2] is not precedential authority; that case involved a fire chief who participated in promotional interviews notwithstanding the fact that he previously had been employed by one of the candidates for promotion—and eventually that chief personally selected his favored, lower-ranked candidate and bypassed the highest-ranked candidate on the

[2] The Appellant has cited *Blanchette v. City of Methuen*, 34 MCSR 431 (2021), in both his Pre-hearing Memorandum and subsequent filings.

certification (Blanchette) notwithstanding those past financial ties. This Appellant, however, was never bypassed for Captain prior to filing his March 2022 appeal with the Commission.

The City's Response

The Respondent contends that neither Commissioner Calvi nor Deputy Chief Hess faced any of the considerations that traditionally have caused a key employment decisionmaker (Calvi is the appointing authority after all) to recuse in similar circumstances. For example, these two senior fire officials have no personal financial interest in who gets selected for promotion to either lieutenant or captain. The Appellant does not allege that either official is related by blood, marriage, or other close personal ties to any candidate who was in contention for promotion.

Nothing about the litigation playing out in court should have any bearing on this appeal pending before the Commission, the Respondent contends. It so happens, though, that as the promotional process was underway in early 2022, the Appellant *unsuccessfully* moved to block promotions from the Captain's certification in the course of litigating his civil rights claims against Fire Commissioner Calvi and other city defendants.[3]

The Respondent sums up:

> The allegation that Appellant was aggrieved by the interview process is a bare allegation made without substance. Appellant does not point to any violation of merit principles or to any recognized reason for equitable relief. He was not bypassed and again, in this case, presents no reason why he in particular was aggrieved. Appellant disagrees with the selection of those who conducted the interviews. Nothing in his rejection references a violation of any section of Chapter 31 and none of his objections show any particular bias toward him in particular.

Due to the Appellant's lack of specificity regarding alleged violations of the civil service law and the undisputed fact that no bypass had occurred by that point, I provided the City with 30

[3] I take administrative notice that the Appellant's motion for a temporary restraining order was denied by federal Magistrate Judge Robertson on February 18, 2022. *Savage et al. v. City of Springfield et al.*, C.A. no. 3:18-cv-30164 (docket item 142).

days to file a motion to dismiss and the Appellant with 30 days thereafter to file an opposition. The City submitted a motion to dismiss on or about May 11, 2022, and the Appellant filed an opposition thereto on or about June 20, 2022.

Subsequent Developments

On August 12, 2022, the Appellant filed a disciplinary appeal with the Commission alleging that the SFD lacked just cause to impose a four-day suspension due to disciplinary charges Commissioner Calvi had sustained earlier that month. *See* docket no. D-22-117. On June 23, 2023, Commissioner Angela C. McConney and I completed two days of full evidentiary hearings into this disciplinary matter. Receipt of post-hearing briefs is anticipated in September 2023.

On May 13, 2023, the Appellant filed a promotional appointment bypass appeal after receipt of a bypass letter issued by Commissioner Calvi on or about April 28, 2023. That letter addressed to the Appellant stated that "a pattern of well-documented disciplinary actions taken against you in your role as a Fire Lieutenant . . . disqualifies you for promotion to Fire Captain." As noted above, the Appellant continues to pursue an appeal relative to his recent disciplinary history. Additionally, the Appellant once again has argued to this Commission in his 2023 filing that the SFD's promotional (and, in particular, interview) process was fatally flawed, to his detriment. Commissioner McConney has scheduled a de novo evidentiary hearing into this matter, to commence on September 22, 2023.

Summary Decision Standard

When a Respondent before the Commission is of the opinion there is no genuine issue of disputed material fact relating to the Appellant's stated claim, no viable ground of appeal on the facts stated, and the Respondent is entitled to prevail as a matter of law, this party may move, with or without supporting affidavits, either to dismiss the entire appeal or for summary decision on a particular claim. 801 CMR 1.01(7)(h). Such motions are decided under the well-recognized

standards for summary disposition as a matter of law—i.e., "viewing the evidence in the light most favorable to the non-moving party," the substantial and credible evidence established that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case," and has not rebutted this evidence by "plausibly suggesting" the existence of "specific facts" to raise "above the speculative level" the existence of a material factual dispute requiring an evidentiary hearing. *See, e.g., Nigro v. City of Everett,* 30 MCSR 277 (2017); *Lydon v. Massachusetts Parole Bd.,* 18 MCSR 216 (2005). *Accord Milliken & Co., v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles,* 71 Mass. App. Ct. 240, 249 (2008). *See also Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); *cf. R.J.A. v. K.A.V.*, 406 Mass. 698 (1990) (factual issues bearing on plaintiff's standing required denial of motion to dismiss).

Applicable Civil Service Law

Section 2(b) of G.L. c. 31 authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the state's Human Resources Division (HRD) or, in certain cases, by appointing authorities to whom HRD has delegated its authority,[4] and which actions have abridged their rights under civil service laws. This statute, however, expressly conditions the right to pursue such an appeal here as follows:

> *No person shall be deemed to be aggrieved . . . unless such person has made* ***specific*** *allegations* in writing that a decision, action, or failure to act on the part of the administrator [HRD] was in violation of this chapter, the rules or basic merit principles promulgated thereunder *and said allegations* ***shall show*** *that such person's rights were abridged, denied, or prejudiced in such a manner as to cause* ***actual harm*** *to the person's employment status*.

[4] Section 2(c) of G.L. c. 31 states that "all references [in Section 2(b)] to the administrator shall be taken to mean the local appointing authority or its designated representative" and, thus, this Appellant must show here, *inter alia*, that Springfield's Fire Commissioner violated some provision of Chapter 31 or the state Personnel Administration Rules.

Id. (*emphases* added). The phrase "basic merit principles" refers to a fundamental tenet of civil service law. Section 1 of G.L. c. 31 defines basic merit principles as

> ... (a) recruiting, selecting and *advancing of employees on the basis of their relative ability, knowledge and skills* including open consideration of qualified applicants for initial appointment; (b) providing of equitable and adequate compensation for all employees; (c) providing of training and development for employees, as needed, to assure the advancement and high quality performance of such employees; (d) retaining of employees on the basis of adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected; (e) *assuring fair treatment of all applicants and employees* in all aspects of personnel administration without regard to political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion and with proper regard for privacy, basic rights outlined in this chapter and constitutional rights as citizens, and; (f) assuring that all employees are protected against coercion for political purposes, and are *protected from arbitrary and capricious actions*.

Id. (*emphases* added).

Chapter 310 of the Acts of 1993 prescribes the discretionary authority granted to the Commission to remediate a violation of civil service law:

> *If the rights of any person* acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder *have been prejudiced through no fault of his own, the civil service commission may take such action as will restore or protect such rights* notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

Id. (*emphases* added). See *Thomas v. Civ. Serv. Comm'n*, 48 Mass. App. Ct. 446 (2000).

The fundamental mission of Massachusetts civil service law is to enforce "basic merit principles" described in Chapter 31, which command, among other things, "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App.

Ct. 632, 635 (1995), *rev. den.*, 423 Mass.1106 (1996). "A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support." *City of Cambridge v. Civil Serv. Comm'n*, 43 Mass. App. Ct. 300, 303 (1997) (internal citations omitted).

Analysis

The Appellant's claim under consideration in *this* 2022 non-bypass equity appeal must be defined by his filings under this docket no.: E-22-039. I have carefully scrutinized the contentions the Appellant presented at the April 2022 pre-hearing conference and the arguments he outlines in his written submissions. For reasons elaborated upon below, the Appellant cannot show in connection with his 2022 claim that he is an aggrieved person under G.L. c. 31, § 2(b).

The circumstances presented in this appeal are quite different from those that the Commission found in *Alston v. Town of Brookline*, 32 MCSR 37 (2019), aff'd sub nom. *Town of Brookline v. Alston*, 487 Mass. 278 (2021). The *Alston* appeal, cited by the Appellant, involved the discharge of a tenured firefighter after he failed to return to work following years of suffering from multiple incidents of harassment and retaliation at the hands of his fellow firefighters and superior officers that made it impossible for him to return to duty.

Here, the record shows that the Fire Commissioner did not appoint any candidate ranked below the Appellant on the 2021-2022 promotional certification. Rather, after conducting interviews, Commissioner Calvi promoted other candidates who ranked *above* the Appellant for the position of Fire Captain. Thus, as a matter of law, the City correctly asserts that the Appellant's non-selection is not a bypass and the City is not required to provide written reasons for his non-selection and he does not have a statutory right of appeal to the Commission for a de novo review of the "reasonable justification" for the reasons for selecting other candidates ranked higher on the certification. *See Dole v. Town of Reading*, 35 MCSR 137 (2022); *see also Servello v. Department*

of Correction (Order of Dismissal), 28 MCSR 252 (2015) (dismissing an appeal because no candidates ranked below the Appellant were selected for promotion).

The Appellant is not a person "aggrieved" within the meaning of G.L. c. 31, § 2(b). Most importantly, he did not establish in his 2022 filings that he suffered "actual harm to [his] employment status" as a result of the promotional processes employed by the Springfield Fire Department last year (or the year before). In general, a person may be aggrieved "if he suffers some infringement of his legal rights." *Planning Bd. v. Hingham Campus*, 438 Mass. 364, 368-369 (2003) (and cases cited). Here, the Appellant failed to adduce evidence lifting his claim that the appointing authority's promotional processes or actions violated basic merit principles (or any other specific provision of Chapter 31) above the speculative level.[5] Additionally, a candidate in the Appellant's shoes (i.e., someone who has *not* been bypassed) must present evidence establishing that his or her claimed injury is special and different from others who might also have been interested in promotion but were either not considered or rebuffed, *see id.*, and the Appellant falls short on this score as well. In short, the Appellant's submissions show that his March 2022 § 2(b) appeal must be dismissed because they do not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662,

[5] Even at the outset of proceedings, it was the Appellant's obligation to submit a written statement of allegations "possess[ing] enough heft to 'sho[w] that [he] is entitled to relief.'" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 557 (2007). *See* G.L. c. 31, § 2(b). "A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (citations and internal quotation marks omitted). *Accord Kennedy v. Commonwealth*, 92 Mass. App. Ct. 644, 648, *rev. denied*, 479 Mass. 1107 (2018) ("a plaintiff's obligation to provide the grounds of his entitle[ment] to relief requires more than labels and conclusions …. Factual allegations must be enough to raise a right to relief above the speculative level …. What is required at the pleading stage are factual allegations plausibly suggesting (not merely consistent with) an entitlement to relief").

129 S. Ct. 1937, 1949 (2009).[6]

Here, unlike other cases the Commission has investigated, this record lacks the kind of credible evidence to imply that the selection of candidates other than the Appellant in 2021 or 2022 was tainted by clearly unlawful bias or favoritism on the part of the appointing authority. Rather, the Appellant vaguely alludes to the 2022 interview process being too subjective, somehow marked by "extraneous influences," and insufficiently transparent.[7] While those issues could well be appropriate for further review as part of the Appellant's 2023 bypass appeal, they do not, standing alone, justify further proceedings by the Commission under this docket number when no bypass had occurred in the relevant time period. Rather than merely alleging that the SFD

[6] "A claim has facial plausibility when [an appellant] pleads factual content that allows the [tribunal] to draw the reasonable inference that the [respondent] is liable for the misconduct alleged. . . . Where a complaint pleads facts that are 'merely consistent with' a [respondent]'s liability, it stops short of the line between possibility and plausibility of 'entitlement to relief.'") *Ashcroft v. Iqbal*, 129 S. Ct. at 1949 (citations omitted). Compare *Shugrue v. Department of Correction*, 28 MCSR 82 (2015) (declining to investigate Department of Correction's provisional promotion of another to Captain pursuant to a process allegedly "flawed, political, and . . . like[ ] a 'dog and pony show'") with *In Re: 2010/2011 Review and Selection of Firefighters in the City of Springfield*, 24 MCSR 627 (2011) (investigation into hiring spearheaded by Deputy Fire Chief which resulted in his son's appointment and required reconsideration of numerous candidates through a new hiring cycle conducted by outsiders not connected with the Springfield Fire Department); *In Re: 2011 Review and Selection of Permanent Intermittent Police Officers by the Town of Oxford*, CSC No. 1-11-280 (2011) (investigation of alleged nepotism in hiring Selectman's relatives required reconsideration of all 19 candidates through an new independent process); *Dumont v. City of Methuen*, 22 MCSR 391 (2009), *findings and orders after investigation*, CSC No. I-09-290 (2011) (rescinding hiring process and reconsideration of all candidates after Police Chief had participated in selection of her niece).

[7] To the extent the Appellant additionally claims that the SFD's February 2022 "promotion and interview process [was] marked by racial biases, undue subjectivity and influence, [or] a lack of objectivity," *Appellant's Opposition to Respondent's Motion to Dismiss* at 2, I note that the Appellant has produced insufficient factual matter that, if credited, would "state a claim [for] relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The Appellant offers *no* particulars in this regard whatsoever and, indeed, he himself affirmed that two African-American District Chiefs served on the interview panel. *Appellant's Pre-hearing Memorandum* at 2.

"interview process [was] rife with political considerations, motivations, and biases," *App. Opp. to Resp. Mtn to Dismiss* at 6, the Appellant was obliged to become much more concrete through detailed factual allegations that "show" that his "rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to [his] employment status." G.L. c. 31, § 2 (emphasis supplied).[8] This he has not done.[9] Moreover, nothing in the Appellant's three submissions to the Commission under this docket number point to a violation of the SFD's internal policies and procedures.

Although the Appellant also claims that the City is failing to enforce its municipal residency requirement, with a resultant adverse impact on his promotional prospects, this issue remains central to litigation earlier-filed and still-pending in both state[10] and federal courts.[11]

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[8] *See also* the Personnel Administration Rules, which have the force of law, and specifically PAR .24(1)(a)(ii): "[T]he appellant must, by [written] allegations, *clearly show* that a right or rights under M.G.L. c. 31 was or were *clearly* abridged, denied, or prejudiced due to the aforesaid action, failure to act, or decision in such a manner as to cause *actual harm* to the appellant's employment status; said allegations must make *specific* reference to the provision of law [within G.L. c. 31], rule, or basic merit principle which was violated." (Emphasis supplied).

[9] "Conclusory allegations as to official duties or potential future conflicts will not do; '[i]t requires clear allegations of specific facts to state a case for any relief, or to show that any real controversy exists, based upon abuse of . . . official discretion'". *Penal Insts. Comm'r for Suffolk County v. Commissioner of Correction*, 382 Mass. 527, 531 (1981), quoting *Poremba v. Springfield*, 354 Mass. 432, 434 (1968). Likewise, "bald assertions, unsubstantiated conclusions, conclusory allegations of law, legal conclusions masquerading as factual conclusions, a few conclusory legal terms, unwarranted inferences, periphrastic circumlocutions, and outright vituperation carry no weight" when assessing whether the submissions supporting a claim of appeal survive a motion to dismiss. Instead, "well-pleaded facts" are what is required. Pleading Standards, 43 Mass. Practice § 4:3 at n.28 (3d ed. 2021).

[10] I take administrative notice of the fact that the docket in *Savage, et al. v. City of Springfield, et al.*, Hampden Super. Ct. Civ. Action no. 1679CV00364, contravenes the Appellant's claim that "Respondents are now in contempt of a Judicial Order requiring them to finally enforce residency [requirements]." *App. Opp. to Resp. Mtn to Dismiss* at 12. The Respondents in fact have denied all such allegations (*see* docket paper no. 99) and, as of the date of this recommended decision, the Superior Court has not concluded otherwise.

[11] I also take administrative notice of the Appellant's concession in a submission dated March 3, 2022, in his parallel civil service appeal docketed as CSC no. E-21-120, that "it is the Court's

Moreover, there is nothing within General Laws chapter 31 that obliges the Commission to devote its resources to policing application of municipal residency rules[12] even if the matter were not already the subject of intensive judicial scrutiny.[13]

Conclusion

For all of the above reasons, I recommend that the Appellant's 2022 non-bypass equity appeal filed pursuant to G.L. c. 31, § 2(b) be *dismissed*. Nothing stated herein, however, should be construed as prejudging the merits of the Appellant's separate 2023 promotional bypass appeal.

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responsibility to resolve any disputes, controversies and 'alleviate further uncertainty and insecurity by all the parties, as well as City employees with respect to their rights and obligations to [sic] the residency ordinance.'" Appellant's *Supplemental and Recent Evidence* at 4 (emphasis added) (citing to *Savage, et al. v. City of Springfield, et al.*, Hampden Super. Ct. Civ. Action no. 1679CV00364).

[12] The only thing G.L. c. 31 has to say about residency, at all relevant to this case, may be found in section 58: "No applicant for examination for original appointment to the police force or fire force of a city or town shall be required by rule or otherwise to be a resident of such city or town at the time of filing application for such examination; provided, however, that notwithstanding the provisions of any general or special law to the contrary, any person who receives an appointment to the police force or fire force of a city or town shall within nine months after his appointment establish his residence within such city or town or at any other place in the commonwealth that is within ten miles of the perimeter of such city or town; provided, however, that a city or town may increase the 10 mile residency limit under a collective bargaining agreement negotiated under chapter 150E." *See also* G.L. c. 48, § 58E: "In any city or town which accepts this section, applicants for positions in and members of the regular fire department of said city or town may reside outside said city or town; provided, they reside within the commonwealth and within ten miles of the limits of said city or town." Neither of these state statutes furnishes any grounds on which the Appellant's 2022 appeal may proceed before this Commission.

[13] If a court of competent jurisdiction ultimately were to determine that one or more of the candidates in contention with the Appellant for promotion to Captain in 2021 or 2022 should have been disqualified due to noncompliance with the City's residency requirement, that court would have ample authority to order remedial measures commensurate with those this Commission could deploy. There is no reason why this Commission should attempt to duplicate the efforts already underway in court to resolve the residency qualification issue.

For the Civil Service Commission:

/s/ Robert Quinan, Jr.
Robert L. Quinan, Jr.
General Counsel

Notice to:
Randolph S. Blake (Appellant)
Maurice M. Cahillane, Esq. (for Respondent)