

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

STEPHEN CORDA,
Appellant

v.

CITY OF WALTHAM,
Respondent

Case No.: G1-11-334

DECISION

The Civil Service Commission (Commission) voted at an executive session on November 1, 2012 to acknowledge receipt of: 1) the Recommended Decision of the Administrative Law Magistrate dated August 14, 2012; 2) the Appellant's Objections to the Recommended Decision; and 3) the Respondent's Response to the Appellant's Objections.

After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein.

We concur with the Magistrate that the City provided sound and sufficient reasons for bypassing the Appellant, including: a 2005 OUI charge and the circumstances surrounding that incident; a poor driving record; and a subpar performance on his interview.

We are troubled, however, by the Fire Chief's decision to appoint two other candidates who had similar charges, including one individual who was charged *twice* with OUI. In that case, the Fire Chief's own screening committee, which included a Fire Captain and two (2) Fire Lieutenants, recommended that the individual, whose father is employed by the Waltham Police Department, not be appointed as a firefighter. Chief Quinn overruled this sound and well-reasoned recommendation and appointed this individual as an "alternate".

While these concerns do not change our conclusion that the City provided valid reasons for bypassing the Appellant, which is the subject of the instant appeal, we remind the City, and Chief Quinn in particular, of the Commission's broad authority to investigate an Appointing Authority's hiring practices if they appear to be inconsistent with basic merit principles.

The Appellant's appeal is hereby ***dismissed***.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on November 1, 2012.

A true record. Attest.

A handwritten signature in blue ink, appearing to read "C. Bowman", is written over a horizontal line.

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)(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.

Notice to:

Michael J. McCarthy, Esq. (for Appellant)

Luke Stanton, Esq. (for Respondent)

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



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

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BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

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August 14, 2012

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Stephen Corda v. City of Waltham
DALA Docket No. CS-12-199
CSC Docket No. G1-11-334

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Sincerely,

Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Michael J. McCarthy, Esq.
Luke Stanton, Esq.

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CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Stephen S. Corda, Jr.,
Appellant

v.

Docket No. G1-11-334.
DALA No. CS-12-199

City of Waltham,
Respondent

Appearance for Appellant:

Michael J. McCarthy, Esq.
McCarthy Law Offices
15 Seaview Avenue
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Appearance for Respondent:

Luke Stanton, Esq.
City of Waltham Law Department
119 School Street
Waltham, MA 02451

Administrative Magistrate:

Maria A. Imparato, Esq.

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CIVIL SERVICE COMMISSION

SUMMARY OF RECOMMENDED DECISION

The Appointing Authority has met its burden of demonstrating reasonable justification for the bypass of the Appellant for appointment as a Waltham Firefighter based on a poor interview, veracity, morality and poor judgment issues, an unacceptable driving record and an incomplete application. The Appellant has not demonstrated that the reasons for his bypass were untrue, apply equally to the higher-ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons.

RECOMMENDED DECISION

Pursuant to M.G.L. c. 31, s. 2(b), the Appellant, Stephen S. Corda, Jr., has filed a timely appeal of the decision of the Respondent, City of Waltham (City), to bypass him for appointment to the position of Firefighter.

I held a hearing on May 4, 2012 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA.¹

I admitted seventeen (17) exhibits into evidence. (Exs. 1 – 17.)

Testifying on behalf of the City were Kristin Murphy, Waltham Director of Personnel; Captain Timothy Pratt of the Waltham Fire Department; and Waltham Fire Chief Michael Quinn. Stephen S. Corda, Jr., testified on his own behalf. There is one tape cassette of the hearing. The hearing was also digitally recorded.

The record closed on June 8, 2012 with the filing of post-hearing memoranda.

FINDINGS OF FACT

1. In January 2011, the City of Waltham (City) filed a Civil Service Requisition to hire nine (9) permanent full-time firefighters. (Ex. 1.)
2. In February 2011, an eligibility list was provided to the City. (Ex. 2.)
3. In March 2011, the City filed a second Civil Service Requisition for five (5) additional permanent full-time firefighters. (Ex. 3.)
4. On April 21, 2011, an eligibility list, certification number 203572, was provided to the City.

The Appellant, Stephen S. Corda, was in a five-way tie for first place on the eligibility list. (Ex. 4.)²

¹ The Division of Administrative Law Appeals moved to One Congress Street, 11th floor, Boston, MA 02114 on June 30, 2012.

² The Appellant tied for first place with [REDACTED] and [REDACTED], among others.

5. Captain Timothy Pratt and two Waltham fire lieutenants comprise the Waltham Fire Department hiring committee. The candidates for appointment were asked to come in and sign the eligibility list to indicate whether they were willing to accept an appointment. The Waltham Police Department performed a background check on each candidate who signed the list. The hiring committee gave a videotaped interview to each candidate. The hiring committee then gave its recommendations to Acting Fire Chief Michael Quinn.³ Chief Quinn viewed the videotaped interviews and made the final decisions on appointment. (Testimony, Pratt; Exs. 15, 16, 17, videotaped interviews.)
6. By letter of November 14, 2011, Chief Quinn notified the Commonwealth Human Resources Division that the Waltham Fire Department was exercising its right to bypass Mr. Corda for appointment based on a deficient and/or poor interview; veracity, morality and poor judgment issues; and failure to achieve a satisfactory background investigation because of an unacceptable driving record and an incomplete application. (Ex. 5.)
7. Captain Pratt felt that Mr. Corda's interview went poorly. Mr. Corda had trouble making eye contact, he played with his hands, and Captain Pratt felt the hiring committee had to draw the answers out of him. Chief Quinn felt that Mr. Corda was not able to give quick honest answers to the hiring committee's questions, and he thought that Mr. Corda did not take ownership of important things. (Testimony, Pratt; Quinn; Ex. 15, Corda interview.)
8. The issue of veracity, morality and poor judgment arose in the context of an operating under the influence (OUI) arrest of Mr. Corda in Natick on December 6, 2005. Mr. Corda lost control of his vehicle, struck a parked vehicle and then collided with a parking meter. Mr. Corda told the Natick police that a friend had been driving the car and had immediately fled

³ Chief Quinn became permanent in September 2011.

the scene. Mr. Corda refused to identify his "friend." Mr. Corda was placed under arrest for operating under the influence of alcohol, operating with an expired license, and marked lanes violation and was transported to the police station for booking. Mr. Corda was uncooperative in the booking process, was not able to follow instructions and argued with the Sergeant. Mr. Corda declined a breathalyzer. (Ex. 10, Narrative of Officer Keven P. Kelley.)

9. A witness to the accident told the Natick police that there was only one person in the vehicle, and that the operator of the vehicle asked the witness to "just tell the police that somebody else was driving if anyone asked." (Ex. 10, p. 2, Supplemental narrative for Sergeant Mark V. St. Hilaire.)
10. Mr. Corda never told the truth to the Natick police, but he admitted in court that he had been operating the vehicle. His case was continued without a finding. (Testimony, Corda.)
11. Chief Quinn determined that Mr. Corda had an unacceptable driving record. Mr. Corda had 15 motor vehicle violations resulting in 6 surchargeable incidents, four of which events resulted in license suspensions. His most recent driving infraction was a surchargeable accident on April 5, 2011. (Exs. 5; 6, p. 25; 7.)
12. Chief Quinn was troubled by the fact that Mr. Corda's application was incomplete. Mr. Corda did not provide transcripts from Bryant College, where he obtained credits towards a degree in accounting, nor did he provide a transcript from Massachusetts Bay Community College where he obtained credits towards a liberal arts degree. (Ex. 6, pp. 7-8.)
13. Chief Quinn was troubled by the fact that Mr. Corda was not sure at his interview whether he had filed his taxes because that is something his father does for him.⁴ Chief Quinn was

⁴ At hearing, Mr. Corda indicated that he had filed for an extension to file his taxes.

troubled by the fact that Mr. Corda took an EMT course, but did not pass the written exam.

(Testimony, Quinn.)

14. The hiring committee recommended three candidates for hire: [REDACTED]

Jeffrey H. MacDonald and Ronald J. Gautreau. Jeffrey H. MacDonald was tied with Mr. Corda on the eligibility list. William MacDonald and Ronald J. Gautreau ranked below Mr. Corda on the eligibility list. (Exs. 4, 9.)

15. [REDACTED] had an OUI in 2006 that was continued without a finding. [REDACTED] is the son of a Waltham firefighter. [REDACTED] was Chief Quinn's top pick because he was already performing as a firefighter in Lincoln; he had already completed the Massachusetts Fire Academy; he was already certified as a Firefighter I and II; he was a state certified EMT; he had previous call firefighting experience; he was a licensed plumber; he gave a strong interview; and he was born and raised in Waltham so he knew the City. (Ex. 9; Testimony, Quinn.) [REDACTED] was hired.

16. Jeffrey MacDonald was tied with Mr. Corda on the eligibility list. Jeffrey MacDonald was hired. (Ex. 4.)

17. Ronald Gautreau was recommended for hire because he had a degree from Northeastern, he was a state certified EMT, and he was SCUBA certified, so had familiarity with breathing apparatus. (Ex. 9.) Mr. Gautreau was hired.

18. The hiring committee recommended two candidates as alternates: Daniel F. Veducchio and Sean P. McGurrin. Both Mr. Veducchio and Mr. McGurrin ranked below Mr. Corda on the eligibility list. (Ex. 4.)

19. Mr. Veducchio was a journeyman electrician with more than 12 years of experience, and he gave a good interview. Mr. Veducchio also risked his personal safety when he went to the aid

of a Waltham police officer to help him take down a suspect. (Ex. 9.) Mr. Veducchio was hired. (Testimony, Quinn.)

20. Mr. McGurrin was recommended based on a strong interview, an untarnished personal history and an excellent background investigation report. (Ex. 9.) Mr. McGurrin was hired.

21. The hiring committee recommended bypass of [REDACTED] because he had two OUIs on his driving record. Chief Quinn changed [REDACTED] to an alternate. [REDACTED] father is with the Waltham Police Department. [REDACTED] tied with Mr. Corda on the eligibility list. [REDACTED] was hired. (Exs. 4, 9, 13, 14; Testimony, Quinn.)

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 rules 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).

If a city is unwilling to bear the risk of hiring a specific candidate, “[a]bsent proof that the city acted unreasonably ... the commission is bound to defer to the city’s exercise of its judgment.” *City of Beverly v. Civil Service Commission*, 78 Mass. App. Ct. 182, 190-191 (2010).

Selection from a group of tied candidates is not a bypass. *Dalrymple v. Town of Winthrop*, G2-05-338, 2. 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 higher-ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other, impermissible reasons. *Borelli v. MBTA*, G-1160, 1 MCSR 6, and cases cited; *Lyons v. Hull Fire Department*, G-1866.

Where an Appellant has lied to the police, “[s]uch behavior raises legitimate concerns on whether the Appellant is suitable for the position as police officer.” *Cruceta v. Boston Police Department*, G1-11-29, 10 (2012).

I conclude that the City had reasonable justification for bypassing Steven S. Corda, Jr. for appointment as a Waltham firefighter, based on a poor interview; veracity, morality and poor judgment issues; and failure to achieve a satisfactory background investigation because of an unacceptable driving record and an incomplete application.

The Appellant argues that the proffered reasons for his bypass are untrue (poor interview, being less than truthful regarding involvement in an OUI accident, failure to achieve a satisfactory background check); or are a pretext (two candidates who were hired had OUIs on their respective driving records).

Poor Interview

I reviewed all of the firefighter interviews conducted by the hiring committee and conclude that the opinion of the hiring committee and Chief Quinn that the Appellant gave a poor interview is not untrue. The Appellant did not fare well in comparison to the hired candidates who did maintain eye contact, were more relaxed and exhibited confidence when answering the questions of the hiring committee.

Veracity, Morality and Poor Judgment Issues

The Appellant lied to the Natick police in December 2005 after an OUI accident. The Appellant told the police that it was a friend, not he, who was driving at the time of the accident. The Appellant asked a disinterested witness at the scene to lie to the police for him. Although it is untrue that the Appellant was less than truthful during the hiring process about the incident, it is true that he maintained his lie to the Natick police until he went to court on the OUI charge and pleaded to sufficient facts.

The Appellant argues that two of the hired candidates, [REDACTED] and [REDACTED] also have OUIs on their respective driving records. [REDACTED] tied with the Appellant on the list, so his hire is not a bypass.

[REDACTED] had an OUI in 2006 that was continued without a finding. A review of the police report of his arrest indicates that during the field sobriety tests [REDACTED] admitted that he was drunk and should not have been driving. This is in contrast to the behavior of the Appellant who lied to the police.

The Appellant argues that there is an inconsistency between the police report of [REDACTED] arrest, and a statement [REDACTED] prepared in August 2011 about the incident. (Compare, Exs. 11 and 12.) The Appellant argues that [REDACTED] told the

police his last drink was "20 minutes ago," but in his statement of August 2011, he indicated that he had slept for several hours before driving.

In view of the fact that the police report indicates that the person who alerted the police to [REDACTED] drunk driving indicated that [REDACTED] left the hotel parking lot in possession of a bottle of beer, [REDACTED] statement to the police that his last drink was "20 minutes ago" may well be true. In any event, according to Chief Quinn, he never saw Exhibit 11. Furthermore, [REDACTED] appears to be a superior candidate to the Appellant because [REDACTED] was then a working firefighter for the Lincoln Fire Department; he had completed the Fire Academy; he was already certified as a Firefighter I and II; he was a certified EMT; he had call firefighting experience and gave a strong interview. There is therefore no basis on which to conclude that the bypass of the Appellant in favor of [REDACTED] was a pretext, despite the fact that [REDACTED] father is a Waltham firefighter.

The fact that the Appellant lied to the Natick police and asked a witness to lie for him is sufficient reason to bypass the Appellant for appointment. As the Commission noted in the *Cruceta* case, above, lying to the police raises legitimate concerns about whether an Appellant is suitable for the position of police officer. So, too, does lying to the police raise legitimate concerns about whether an Appellant is suitable for the position of firefighter.

Failure to Achieve a Satisfactory Background Investigation

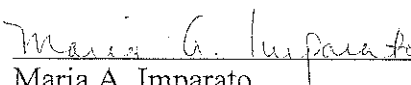
A review of the Appellant's driving record revealed 15 motor vehicle violations resulting in 6 surchargeable incidents, four of which events resulted in license suspensions. The most recent driving infraction was a surchargeable accident on April 5, 2011.

The Appellant argues that [REDACTED] and Daniel Veducchio also had poor driving records. A review of the driving records of [REDACTED] and Mr. Veducchio demonstrates that the Appellant's driving record is far more concerning. Although Mr. [REDACTED] has 20 entries on his driving record, 15 entries are related to the OUI incident in 2006. The last infraction of speeding occurred on December 31, 2006. Although Mr. Veducchio has 16 entries on his driving record, he was deemed to be "not responsible" in all but 4 incidents, the last of which occurred in July 2005. (See, Ex. 14.)

The Appellant failed to provide a complete application because he was unable to provide college transcripts. The Appellant had not completed his 2010 taxes at the time of his background investigation and was in the process of filing for an extension. Regardless of the reasons, the Appellant's application was incomplete.

I conclude that the Appellant has not demonstrated that the reasons offered by the Appointing Authority for his bypass were untrue, apply equally to the higher-ranking, bypassed candidates, are incapable of substantiation or are a pretext for other impermissible reasons. I conclude that the Appointing Authority has met its burden of demonstrating reasonable justification for its bypass of the Appellant for the position of Waltham firefighter. I recommend that the Appellant's appeal be dismissed.

DIVISION OF ADMINISTRATIVE LAW APPEALS



Maria A. Imperato
Administrative Magistrate

DATED: **AUG 14 2012**