COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION

SUFFOLK, ss.

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

VLADIMER J. DAMAS,
Appellant

CASE NO. G1-16-121

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:	Vladimer J. Damas, Pro Se
Appearance for Respondent:	Nicole I. Taub, Esq. Katherine Hoffman, Esq. Office of the Legal Advisor Boston Police Department One Schroeder Plaza Boston MA 02120
Commissioner:	Paul M. Stein

DECISION ON RESPONDENT'S MOTION TO DISMISS

The Appellant, Vladmir J. Damas, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his non-selection by the Boston Police Department (BPD) for appointment to the position of a full-time BPD Police Officer. At the pre-hearing conference before the Commission on August 9, 2016, the BPD filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the Appellant was not bypassed and that the appeal was untimely. The Massachusetts Human Resources Division (HRD) submitted a letter with documentation concerning the Appellant's civil service examination history. Pursuant to the Commission's Procedural Order, the Motion to Dismiss was denied, without prejudice, subject to supplementation to explain the BPD's criteria used to select candidates hired from the Appellant's "tie group". On October 21, 2016, the BPD filed a Supplemental Motion to Dismiss, together with an Affidavit of BPD Superintendent Kevin Buckley. The Appellant submitted two additional letters in opposition to the BPD's Motion and Supplemental Motion, respectively.

FINDINGS OF FACT

Based on the submissions of the parties, I find the following material facts are not disputed:

1. The Appellant, Vladimir J. Damas, is an African-American male who resides in Dorchester, MA. He is currently employed as a Correction Officer with the Massachusetts Department of Correction (DOC), a position he has held for approximately five years. His DOC employment has involved law enforcement training and experience, including the handling of chemical agents and weapons, as well as de-escalation and use of force tactics. (*Appellant's November 15, 2016 letter*)

2. Mr. Damas took and passed the civil service examination for municipal police officer (with a score of 98) administered on June 15, 2013 by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list established on November 1, 2013. He also passed the municipal police officer examination on two other occasions.*(Administrative Notice [HRD Letter on File]; Stipulated Facts; Appellant's November 15, 2016 letter)*

3. On April 27, 2015, HRD issued Certification #02742 to the BPD for appointment of new BPD police officers. Mr. Damas's name was listed on the Certification in the 50rd tie group, along with 175 other candidates with the same examination score. Eventually, BPD made 71 appointments from the Certification, including 15 candidates whose names appeared on the Certification in the 50th tie group. (*Administrative Notice [HRD Letter on File]; Stipulated Facts; Appellant's Letter dated October 3, 2016 & July 28, 2016 Bay State Banner Article attached)*

4. By letter dated December 10, 2015, BPD notified Mr. Damas:

> "At this time you have not been appointed as you were in a group of applicants who were all tied with the same score and you were one of the applicants not selected."

(*Claim of Appeal [December 10, 2015 BPD Letter]; Stipulated Facts*)

5. On July 13, 2016, Mr. Damas filed this appeal. (*Claim of Appeal*)

6. In his initial opposition letter, Mr. Damas questioned whether the method used by the BPD to select which candidates from his tie group would be offered employment violated basic merit principles because it appeared to have been influenced by nepotism. In particular, Mr. Damas referred to an article published by the *Bay State Banner* on July 28, 2016, in which it was reported that a BPD official had said that "three of the 15 recruits hired from among those who were tied at the bottom of the applicant list were related to BPD command staff." (*Appellant's Letter dated October 3, 2016 & July 28, 2016 Bay State Banner Article attached)*

7. Mr. Damas also stated that his candidacy was prejudiced because he had previously appealed to the Commission from his non-selection in a prior hiring cycle in which the BPD sent him a "bypass letter" informing him that BPD had "significant concerns with the charges filed against him" stemming from a 2008 incident in which he was arrested by the BPD, as well as a 2005 incident in Randolph. He appealed to the Commission, but no one ranked below Mr. Damas was hired in that prior cycle and the bypass letter had been sent in error as there was no bypass over which the Commission had jurisdiction. Accordingly, the Commission dismissed that appeal. (*Appellant's Letter dated October 3, 2016; Administrative Notice [Order of Dismissal, Damas v. Boston Police Dep't, CSC No. G10-14-86]*)

8. In support of its Supplemental Motion to Dismiss, the BPD submitted a sworn affidavit of BPD Superintendent Kevin Buckley, a thirty-four year veteran of the BPD, who has served as the Chief of Staff to the BPD Police Commissioner since March 2014. Superintendent Buckley's affidavit attests, among other things, to the following facts concerning the criteria that the BPD used to select candidates within Mr. Damas's 50th tie-group:

> "The Department selected recruits for appointment among the 50th tie group based on the following criteria: employment history with the Department, prior law enforcement

> experience, recommendations from sworn and civilian members of the Department, and the Police Commissioner's personal knowledge of a recruit's background and credentials."
>
> "The Department considered an applicant's employment history with the Department as the Department already had an established employer/employee relationship with the applicant and, as a result, the Department was aware of the applicant's background and work product. In addition, as a result of their former employment with the Department, these applicants possessed an increased understanding of the duties and responsibilities of police officers."
>
> "Likewise, the Department considered recommendations from sworn and civilian members of the Department and the Police Commissioner's personal knowledge of a recruit's qualifications because the Department already possessed information about the applicant's background and qualifications and believed those credentials would contribute to the Department."
>
> "The Department considered prior law enforcement experience because these applicants had demonstrated an interest in the law enforcement field and were aware of the duties and responsibilities of law enforcement officers from their past work experiences. In applying this criteria, the Department selected candidates with a diverse range of law enforcement experience, thus bringing a range of training and experience from previous law enforcement positions to the Department."

(*BPD Supplemental Motion To Dismiss, Buckley Aff't, ¶¶8 through 11*)

9. Superintendent Buckley also attested that, since "the number of applicants possessing the established selection criteria within the 50th tie group exceeded the number of open vacancies, the Department was not able to extend offers to all qualified applicants." (*BPD Supplemental Motion To Dismiss, Buckley Aff't, ¶12*)

10. Superintendent Buckley specifically attested that, contrary to what had been reported in the *Bay State Banner:*

> "None of the applicants selected from the 50th tie group were related to members of the Department's Command Staff. Four (4) of the applicants selected were related to a member of the Department. These four (4) applicants were not hired because of their familial relation. Rather, the Department selected these four (4) applicants because each possessed one (1) of the above detailed selection criteria. Specifically, three (3) of the four (4) applicants has prior law enforcement experience. The fourth applicant, whose sibling was a recently hired police officer, was selected because of personal recommendations from sworn and/or civilian members of the Department."

(*BPD Supplemental Motion To Dismiss, Buckley Aff't, ¶12*)

11. Mr. Damas does not contest the Superintendent's statement that the report in the *Bay State Banner* was inaccurate, but he continues to question the BPD's explanation of the reasons for tie-breaking selection of the four candidates with familial relationships with a BPD member (and, by implication, others within his tie group selected for the same reasons).

- As to candidates with prior law enforcement experience, Mr. Damas pointed out that he, too, had over five years of law enforcement experience with the DOC. "This makes me wonder" whether these three candidates were selected because of their race and he was not chosen because he was an African-American man and it is "no secret that BPD tends to shy away from minorities."
- As to selection based on BPD staff recommendations, "during the hiring process we were told by the BPD recruiting staff we were not allowed to use any BPD staff as references. I could have chosen numerous close friends and colleagues to write a recommendation, however I chose to follow the recruiting staff's instruction. Moreover, the alleged neutral factors considered to break [the tie] which included the internal recommendations are still a form of nepotism. BPD . . . failed to provide any detail on who provided the recommendations."

(*Appellant's Letter dated November 15, 2016*)

Applicable Legal Standard

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These 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 undisputed material facts affirmatively demonstrate that the non-moving party has "no reasonable expectation" of prevailing on at least one "essential element of the case". See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

Applicable Civil Service Law

G.L.c.31,§2(b) authorizes appeals to the Commission by persons aggrieved by certain actions or inactions by the Massachusetts Human Resources Division (HRD) or, in certain cases

by appointing authorities to whom HRD has delegated its authority, and which actions have abridged their rights under civil service laws. The statute provides:

> *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*. Id. (*emphasis 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. (*emphasis added*)

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. The most important mechanism for ensuring adherence to basic merit principles in hiring and promotion is the process of conducting regular competitive qualifying examinations, open to all qualified applicants, and establishing current eligible lists of successful applicants from which civil service appointments are to be made based on the requisition by an appointing authority of a "certification" which ranks the candidates according to their scores on the qualifying examination, along with certain statutory credits and preferences. G.L.c. 31, §§6 through 11, 16 through 27. In general, each position must be filled by

selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the "2n+1" formula. G.l.c.31,§27; PAR.09.

In order to deviate from the rank order of preferred hiring, and appoint a person "other than the qualified person whose name appears highest", an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. A person who is bypassed may appeal that decision under G.L.c.31,§2(b) for a de novo review by the Commission to determine whether the bypass decision was based on a "reasonably thorough review" of the background and qualifications of the candidates' fitness to perform the duties of the position and was "reasonably justified". Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 688 (2012) citing Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban , 434 Mass. 256, 259 (2001); Brackett v. Civil Service Comm'n, 447 Mass. 233, 543 (2006) and cases cited; Beverly v. Civil Service Comm'n 78 Mass.App.Ct. 182 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003)

Bypass

The Commission has consistently construed the plain meaning of the language in G.L.c.31,§27 to infer that selection from a group of tied candidates is not a bypass of a person whose "name appears highest", for which an appeal may be taken as of right to the Commission. See, e.g., Edson v. Town of Reading, 21 MCSR 453 (2008), *aff'd sub nom*, Edson v. Civil Service Comm'n, Middlesex Sup.Ct. No. 2008CV3418 (2009) ("When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed"); Bartolomei v. City of Holyoke, 21 MCSR 94 (2008) ("choosing from a group of tied candidate does not constitute a bypass"); Coughlin v. Plymouth Police Dep't, 19 MCSR 434 (2006) ("Commission

. . . continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law"); Kallas v. Franklin School Dep't, 11 MCSR 73 (1996) ("It is well settled civil service law that a tie score on a certification . . is not a bypass for civil service appeals"). See also Cotter v. City of Boston, 193 F.Supp.2d 323, 354 (D.Mass.2002), *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 tied candidates, no actionable 'bypass' has taken place in the parlance of the Civil Service Commission.")

Here, the undisputed evidence establishes that the BPD hired fifteen candidates from within the same 50th tie group in which Mr. Damas was included, but did not hire any candidates ranked below his tie group. Thus, for the reasons explained above, as a matter of law, the BPD correctly asserts that Mr. Damas's non-selection is not a bypass and the BPD is not required to provide written reasons for his non-selection over others in the tie group and he does not have a statutory right of appeal to the Commission for a de novo review of the "reasonably justification" for the reasons for selecting candidates in the tie group other than Mr. Damas.

Tie-Breaking Criteria

Mr. Damas also asserted a separate claim to be an aggrieved person with the right to a Section 2(b) appeal to the Commission. He asserts, in effect, that, although a tie may not be a bypass, the tie-breaking criteria used to decide whom within the tie group would be hired was tainted by nepotism, was possibly racially biased, and was arbitrary and capricious, in violation of "basic merit principles" which harmed his civil service rights through no fault of his own and which the Commission must remediate.

The Commission has acknowledged that, in theory, tie-breaking methods are properly subject to scrutiny under "basic merit principles". In the matter of Araica v. Human Resources Division,

22 MCSR 183 (2009), the Commission declined to pursue an investigation into whether the proposed adoption of "banding" test scores on eligible lists (which has since been abandoned), but did note the importance of having a fair and unbiased tie-breaking system in place:

> "[*W]ith banding, cities and towns are likely going to be presented with much larger and more diverse certification lists of candidates and will probably need to employ tie-breaking or other selection methods much more frequently* and, perhaps even adopt new methods that were not necessary in the past, to choose whom to [appoint]. . . HRD should be *actively encouraging adoption of best practices to ensure that such tie-breaking methods are consistent with, and applied in accordance with, basic merit principles and all other applicable laws*. We are confident that HRD will appreciate the importance of ensuring that this is done and that failure to do so would be . . . a disservice to all parties. *We will not stand idly by if presented with competent evidence that unlawful favoritism was the driving force behind a particular . . . appointment*."

Id., 22 MCSR at 186 (*emphasis added*) See generally De Simone v. City of Cambridge, 24 MCSR 297 (2010) (interviews used as tie-breaking criteria); St. Pierre v. Fall River School Dep't, 22 MCSR 445 (2009) (supervisor's rating used in layoffs to break tie in seniority); Bartolomei v. City of Holyoke, 21 MCSR 94 (2008) (noting, without deciding, possible question of using alphabetical order as a tie-breaker); Johnson v. City of Everett, 20 MCSR 295 (2007), citing Cotter v. City of Boston, 193 F.Supp.2d 323, 354 (D.Mass.2002), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) (noting problematic lack of standard tie-breaking procedures); Coughlin v. Plymouth Police Dep't, 19 MCSR 434 (2006) (same); Dalrymple v. Town of Winthrop, 19 MCSR 379 (interview panel used as tie-breaking criteria vs. alphabetical order or seniority); Sullivan v. North Andover Fire Dep't, 7 MCSR 175 (1990) (seniority used as tie-breaker)

The Commission has not, however, previously accepted jurisdiction of an appeal such as that brought by Mr. Damas here under G.L.c.31,§2(b), to challenge the validity of the tie-breaking methodology for making civil service appointments. Clearly, any claim that BPD used some form of patently arbitrary and capricious or unlawfully discriminatory criteria to select from

otherwise equally qualified candidates must be taken seriously. Similarly, nepotism, whether overt or concealed, has no place under basic merit principles for filling civil service positions. Thus, the Commission's door must be open to hearing and remediating all such violations of the basic merit principles of civil service law in some appropriate manner. Moreover, ensuring that a fair and merit-based system is used to select otherwise equally qualified candidates from a tie group holds particular significance when applied to appointments made by large appointing authorities, such as the BPD. Here, the tie group involved in this appeal contained 175 candidates of which 15 were selected. That number represents approximately 20% of all of the recruits appointed in that hiring cycle. Having such a large pool of candidates from which only a few are selected highlights the need for independent scrutiny of the criteria used to make the choices.

On the other hand, non-selection of tied candidates is still not a bypass and scrutiny of a tie-breaking process cannot be converted into one. Unlike a bypass, nothing in civil service law mandates that an appointing authority provide the reasons for picking one tied candidate over another. Thus, although it might be good form for an appointing authority to do so, the non-selected candidates cannot be required to be informed "immediately" of their non-selection, given the "reasons" therefor or notified of their appeal rights, as they would in a true bypass. As a result, as noted below, a tied candidate often fails to take prompt action to challenge a non-selection, failing to meet the deadline within which Section 2(b) appeal must be filed.

After taking all of these factual and legal nuances into consideration, absent a legislative change or judicial construction of the statute that would require it, the Commission continues to believe that, while tie-breaking procedures do not, and will not, remain immune from challenges, Section 2(b) is not the intended or appropriate mechanism to address such challenges. Rather,

when and as appropriate, the Commission will scrutinize questionable tie-breaking procedures when brought to its attention through its broad independent statutory authority to conduct an investigation into any form of a violation of civil service law, on its own initiative or at the written request of "the governor, the executive council, the general court or either of its branches, the administrator [HRD], an aggrieved person, or by ten persons registered to vote in the commonwealth." G.L.c.31,§2(a).[1]

Timeliness

In addition to the lack of Section 2(b) jurisdiction, Mr. Damas's Section 2(b) appeal also falters as a matter of timeliness. The undisputed facts, viewed in a light most favorable to Mr. Damas, establish that he was informed of his non-selection by BPD on or about December 10, 2015. His appeal was filed on July 13, 2016, more than seven months later. Thus, Mr. Damas's appeal is untimely, even if it were treated as a "bypass" appeal for which the extended 60-day statute of limitations established by the Commission applies, or as an appeal from some other form of "action or inaction" of HRD and/or the BPD acting pursuant to delegation from HRD, that allegedly violated other "basic merit principles" under civil service law and rules, as to which the general 30-day statute of limitations applies under the Standard Rules of Adjudicatory Procedure. See 801 CMR 1.01(6)(b) (adopted by the Commission, September 2, 1999) (30-day limit); Commission Rule effective October 1, 2000 (60-day limit). The period within which a candidate must appeal to the Commission after receipt of notice of the "action or inaction" that the candidate contends was an unlawful violation of his or her civil service rights is a jurisdictional matter that the Commission has strictly enforced. See, e.g., Kelley v. City of

[1] The power of the Commission to conduct an investigation under Section 2(a) is distinct from the Commission's authority to hear appeals brought under Section 2(b). For the reasons further explained below, a Section 2(a) investigation is not appropriate here.

Boston Fire Dep't, 29 MCSR 176 (2016); Armano v. City of Lawrence, 28 MCSR 599 (2015); Lane v. Newbury Police Dep't, 28 MCSR 587 (2015); Walker v. City of New Bedford, 26 MCSR 398 (2013); Allen v. Taunton Public Schools, 26 MCSR 376 (2013); Mercedes v. Springfield Housing Auth., 26 MCSR 16 (2013); Pugsley v. City of Boston, 24 MCSR 544 (2011); Murzin v. City of Westfield, 24 MCSR 610 (2011); Kearney v. Department of Conservation and Recreation, CSC No. G2-09-324 (2010) (unpublished).

The lengthy history of Mr. Damas's specific situation also bears notice. He had learned, as a result of the 2014 appeal, that the BPD had relied on what he claimed to be erroneous reasons for his non-selection. He also knew that the Commission was not authorized to review that alleged error as a "bypass" unless the BPD hired at least one candidate ranked below his tie group. Finally, he was specifically informed on December 10, 2014 that, again, BPD had reached his tie group but had not chosen him for appointment. Thus, as of December 2014, Mr. Damas had received all of the information that would have put him on notice of the BPD's continuing alleged bias and/or favoritism that forms the basis of his present appeal. Yet the appeal was not filed until July 2016. This history of "sitting on one's rights" does not show the degree of diligence that would excuse such a delay bringing this matter to the Commission's attention.

Section 2(a) Investigation

Mr. Damas did not specifically request that the Commission exercise its independent discretion to open an investigation into the BPD's tie-breaking procedures but, as noted above, the Commission has the authority to do so. Section 2(a) grants the Commission broad discretion to decide, if at all, what response and to what extent an investigation is appropriate. See, e,g, Dennehy v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00540 (2014) ("The statutory grant of authority imparts wide latitude to the Commission as to how it shall conduct

any investigation, and implicitly, as to its decision to bring any investigation to a conclusion.") See also Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014); Boston Police Patrolmen's Association et al v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2006-4617 (2007) The Commission's exercise of its power to investigate is not subject to the general rules for judicial review of administrative agency decisions under G.L.c30A, but can be challenged solely for an "abuse of discretion". See Erickson v. Civil Service Comm'n, Suffolk Superior Court C.A. No. 2013-00639 (2014), citing Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321-22 (1991).

The Commission exercises its discretion to conduct an investigation only "sparingly" and, typically, when there is clear and convincing evidence of an irreparable political or personal bias that can be rectified only by the Commission's affirmative remedial intervention into the hiring process. See, e.g., Richards v. Department of Transitional Assistance, 24 MCSR 315 (2011) (declining to investigate alleged age discrimination and favoritism in provisional promotions, but admonishing agency that "certain actions . . . should not be repeated on a going forward basis") For example, after learning that the BPD had hired candidates and began placing them into the Police Academy without having informed numerous bypassed candidates of the right to challenge their non-selection by appeal to the Commission, the Commission recently did initiate a thorough review of the BPD's 2015 hiring cycle, which resulted in the entry of numerous orders to the BPD to implement changes, both retrospective and prospective, to rectify the violations found by the Commission with the BPD's bypass procedures, with which the BPD has complied. See Investigation Re: Boston Police Dep't and Due Process of Non-Selected Candidates, 29 MCSR 367, supplemental decision, 29 MCSR 297 (2016). See also 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 Selectmen'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)

Here, unlike other cases the Commission has investigated, this record lacks the kind of credible evidence to imply that the selection of certain candidates over others was tainted by clearly unlawful bias or favoritism by the appointing authority. Some of the criteria BPD has used, on their face, do appear to be objective, rational and legitimate distinguishing characteristics, such as prior employment at BPD or in law enforcement. To be sure, in theory, some of the criteria could be misapplied and become a pretext for a nuanced form of nepotism or preference for individuals with personal contacts at the BPD. In the present case, however, those concerns do not rise above the speculative level and do not warrant the Commission's further review at this time.

Nevertheless, the Commission will continue to monitor the concerns that Mr. Damas has raised about the BPD's tie-breaking process to ensure they do not persist in the future. In particular, it is hard to understand how the fact that picking a candidate who happens to be personally acquainted with the BPD Police Commissioner and/or knows other members of the BPD staff, over another otherwise equally qualified candidate who does not have those

relationships, fits the standards of a merit-based hiring process. Similarly, if the BPD does, in fact, discourage applicants to use BPD members as "references" but considers "recommendations" from BPD staff for use as a tie-breaker, that problematic practice should be carefully reviewed. More generally, to avoid any future implications of impropriety and for the sake of transparency, the BPD should consider, possibly in collaboration with HRD, whether the time has come to promulgate specific uniform standards and objective tie-breaking procedures to guide future decisions. The establishment of such procedures would seem especially apt for appointing authorities such as the BPD who routinely hire a large number of recruits at a time and often are choosing a significant portion of any given recruit class through use of a tie-breaking process. The Commission trusts that these concerns will be taken seriously. The Commission will continue to pay close attention to developments in this area.

CONCLUSION

In sum, for the reasons stated herein, the Commission lacks jurisdiction to hear this appeal. The Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Vladimer J. Damas, is ***dismissed.***

Civil Service Commission
/s/Paul M. Stein
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 8, 2016.

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.Lc.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:
Vladimir J. Damas (Appellant)
Nicole I. Taub, Esq. (for Respondent)
Katherine Hoffman, Esq. (for Respondent)
John Marra, Esq. (HRD)