

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss

SUPERIOR COURT
CIVIL ACTION
No. 23-0506A

19

PAUL DEFARIAS

v.

CIVIL SERVICE COMMISSION AND CITY OF GLOUCESTER

**MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION FOR
JUDGMENT ON THE PLEADINGS AND DEFENDANT'S CROSS-MOTION FOR
JUDGMENT ON THE PLEADINGS**

This is an action for judicial review pursuant to G.L. c. 30A, in which Plaintiff Paul DeFarias appeals from an administrative agency decision which bypassed him for original appointment to the position of firefighter. The Plaintiff alleges that the City of Gloucester's ("COG") motives to bypass him were improper and not based on substantial reasons supported by credible evidence to justify its decision.

In March 2022, the COG published four vacancies for firefighter/paramedic positions in the city's fire department. On March 22, 2022, the Human Resources Division established a certification list. The Gloucester fire chief relies on the Gloucester Police Department to conduct background investigations of applicants for fire department positions. The investigation of Mr. DeFarias was assigned to Lieutenant Williams who was assisted by Detective Trefry. In the course of the investigation, the investigators corresponded with eight police departments to collect police records relating to Mr. DeFarias, including verifying his educational history and past employers and speaking with personal references. Although much of the information collected and reviewed was positive, Lieutenant Williams prepared an investigation report dated April 19, 2022, summarizing the negative information that Detective Trefry and himself obtained

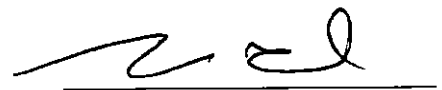
about Mr. DeFarias' work for Cataldo Ambulance Service ("Cataldo"), Beauport Ambulance Service ("Beauport"), and Lynnfield Fire Department ("Lynnfield"). Mr. DeFarias worked for Cataldo from August 2018 to March 2019. Mr. DeFarias was first suspended pending an investigation into a complaint about an interaction between him and a patient. Mr. DeFarias was later terminated on the same day because he reacted to the suspension by declining to leave the premises and demanding documentation about his suspension. Mr. DeFarias next worked at Beauport from April 2019 to December 2020. Upon talking with the business owner and Mr. DeFarias's direct supervisor, Detective Williams learned that Mr. DeFarias was terminated due to repeated clinical errors, and personality conflicts with coworkers. Finally, Mr. DeFarias was a "call" firefighter for Lynnfield from October 2018 to June 2021. Although a captain at Lynnfield complimented Mr. DeFarias's work ethic, he stated that Mr. DeFarias had trouble catching on, which would make him disinclined to rehire him in the future. Chief Smith reviewed the investigation report and was persuaded not to hire Mr. DeFarias. The Magistrate issued a recommended decision finding the city's decision to bypass Mr. DeFarias was reasonably justified. Mr. DeFarias objected on November 7, 2022. On January 26, 2023, the Commission voted (4-1) to affirm and adopt the decision of the Magistrate and issued its final decision.

Judicial review of a final decision of the Commission is governed by G.L. c. 30A. Under G.L. c. 30A, §14(7), a review is limited to determining whether the agency's decision was unsupported by substantial evidence, arbitrary and capricious, or otherwise based on an error of law. G.L. c. 30A, §14(7).

After a review of the record, the Commission's decision was supported by substantial evidence, was not arbitrary and capricious or otherwise based on error of law. As established in *Sherman v Town of Randolph*, 472 Mass. 802(2015) a decision may still be justified on its merits

even if there are flaws in the appointing authority's selection process, if the appointing authority has reasonable justification for deciding to bypass a candidate and the flaws are not so significant as to prevent evaluating the merits based on the record. *Sherman v Town of Randolph*, Id. Mr. DeFarias was bypassed for the firefighter position due to negative findings relating to his prior employment history in the EMT/firefighter field. Specifically, he was terminated and ordered to leave the premises of one ambulance service, experienced conflicts with supervisors at another, and left an impression on a fire chief who indicated he would not rehire him. These concerns arose from Mr. DeFarias' three most recent and relevant positions, which involved duties like those he would have been required to perform in Gloucester. These negative findings provide reasonable justification for the decision to bypass Mr. DeFarias as they demonstrate a pattern of performance issues and conflicts in similar roles. Although Mr. DeFarias raises concerns about the thoroughness of the investigation and the failure of the city to provide the investigator's notes before the hearing, any procedural irregularities were addressed during the hearing itself. At the hearing, Mr. DeFarias had the opportunity to testify, recall witnesses and submit exhibits. Furthermore, the background investigation notes did not alter the fact that Mr. DeFarias had received negative evaluations from three previous employers.

For the foregoing reasons, the Plaintiff's Motion for Judgment on the Pleadings is hereby **DENIED**, and the Defendant's Cross-Motion for Judgment on the Pleadings is **ALLOWED**.



Michael P. Doolin
Justice of the Superior Court

Date: October 16, 2024.