

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION
One Ashburton Place - Room 503
Boston, MA 02108
(617) 727-2293

RICHARD DeROSE,
Appellant
v.

G1-19-160

CITY OF NEW BEDFORD,
Respondent

Appearance for Appellant:

Pro Se
Richard DeRose

Appearance for Respondent:

Elizabeth Treadup Pio, Eq.
Associate City Solicitor
133 William Street
New Bedford, MA 02740

Commissioner:

Paul M. Stein

DECISION ON MOTION TO DISMISS

The Appellant, Richard DeRose, brought this appeal to the Civil Service Commission (Commission), claiming to be aggrieved by the decision of the City of New Bedford (New Bedford) to decline to appoint him to the position of Police Officer with the New Bedford Police Department (NBPD). On October 28, 2019, New Bedford filed a Motion to Dismiss the appeal on the grounds that the Commission lacked jurisdiction over the appeal inasmuch as none of the candidates appointed from the certification in question were ranked below the Appellant. The Appellant filed no opposition to this motion.

FINDINGS OF FACT

I find the following material facts to be undisputed:

1. The Appellant's name appeared within the 53rd "tie group" on Certification No.05612 issued to New Bedford by the Massachusetts Human Resources Division (HRD) for appointment of full-time police officers to fill vacancies in the NBPD.
2. New Bedford appointed a total of thirty (30) candidates from Certification No. 05612, including, several candidates from the 53rd tie group.
3. The Appellant was one of the candidates in the 53rd tie group that was not selected for appointment.
4. None of the candidates appointed from Certification No. 05612 were ranked below the 53rd tie group.
5. The eligible list from which Certification No. 05612 was created expired on August 31, 2019 and has been replaced by a new eligible list.

CONCLUSION

Pursuant to 801 C.M.R. 1.01(7)(g)(3) or (h), an appeal before the Commission is entitled to dismissal as a matter of law under the well-recognized standards for summary disposition, i.e., if, "viewing the evidence in the light most favorable to the non-moving party [i.e. Mr. DeRose], New Bedford has presented substantial and credible evidence that Mr. DeRose has "no reasonable expectation" of prevailing on at least one "essential element of the case", and that he has not produced sufficient "specific facts" to rebut this conclusion. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005). cf. Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550n (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008).

Based on the undisputed facts, Mr. DeRose's non-selection for appointment to the NBPD was not a bypass from which the Appellant has the right of appeal to the Commission. The Commission has consistently held that selection from a group of tied candidates is not a bypass. 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. 2008-CV3418 (2009); Bartolomei v. City of Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth Police Dep't, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1996). See also, Cotter v. Boston, 193 F.Supp.2d 323 (D.Mass.2002), rev'd in part on other grounds, 323 DF.3d 160 (1st Cir. 2003). As no candidates were appointed who were ranked below the 53rd tie group, the Appellant was not bypassed. The Commission does not have jurisdiction to hear an appeal from his non-selection.

Accordingly, for the reasons stated above, the Motion to Dismiss is hereby allowed, and the appeal of the Appellant, Richard DeRose, is hereby *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on November 21, 2019.

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)(I), 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:
Richard DeRose (Appellant)
Elizabeth Treadup Pio, Esq. (for Respondent)