

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

**ROGER DESROCHERS
III,**

Appellant

v.

CITY OF SOMERVILLE,
Respondent

Case No.: G1-13-273

DECISION

Pursuant to G.L. c. 31, § 2(b) and/or G.L. c. 7, § 4H, a Magistrate from the Division of Administrative Law Appeals (DALA), was assigned to conduct a full evidentiary hearing regarding this matter on behalf of the Civil Service Commission (Commission).

Pursuant to 801 CMR 1.01 (11) (c), the Magistrate issued the attached Tentative Decision to the Commission. The parties had thirty (30) days to provide written objections to the Commission. No objections were received.

After careful review and consideration, the Commission voted to affirm and adopt the Tentative Decision of the Magistrate in whole, thus making this the Final Decision of the Commission.

The decision of the City of Somerville to bypass Mr. Desrochers for appointment as a Reserve Police Officer is affirmed and Mr. Desrochers's appeal under Docket No. G1-13-273 is hereby *denied*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell and Stein, Commissioners) on January 8, 2015.

Civil Service Commission

/s/ Christopher C. Bowman
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:

Donna Lagana Silva, Esq. (for Appellant)

Matthew J. Buckley, Esq. (for Respondent)

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

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

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Docket No.: G1-13-273
CS-14-269

ROGER JAMES DESROCHERS, III,
Appellant

v.

CITY OF SOMERVILLE,
Respondent

Appearance for Petitioner:

Donna Lagana Silva, Esq.
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Appearance for Respondent:

Matthew J. Buckley, Esq.
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City of Somerville
93 Highland Avenue
Somerville, MA 02143

Administrative Magistrate:

Angela McConney Scheepers, Esq.

SUMMARY OF RECOMMENDED DECISION

The City of Somerville had reasonable justification to bypass the Appellant for the position of permanent full-time police officer. I therefore recommend that the Civil Service Commission dismiss the appeal.

RECOMMENDED DECISION

Pursuant to the provisions of M.G.L. c. 31, § 2(b), the Appellant, Roger James Desrochers III (Appellant), seeks review of the City of Somerville's (Appointing Authority or City) reasons for bypassing him for appointment to the position of permanent reserve police

officer in the Somerville Police Department (Department). As justification for the bypass, the City cited positive reasons for the one lower-ranked selected candidate (selected candidate), and negative reasons for the Appellant.

A pre-hearing conference was held on January 21, 2014 at the offices of the Civil Service Commission (Commission), One Ashburton Place, Room 503, Boston, MA 02108. A full hearing was held on April 14, 2014 at the offices of the Commission. Appellant testified on his own behalf and called one other witness: his father, Roger James Desrochers Jr. The City called one witness: William Roche, Personnel Director for the City. The hearing was digitally recorded. As no notice was received from either party, the hearing was declared private.

I admitted the parties' thirty-one (31) documents into evidence at the hearing. The parties later submitted candidates' background checks which were not admitted into evidence. Those documents have been redacted and impounded. I marked the Appellant's Pre-Hearing Memorandum "A" for identification. The City submitted its post-hearing brief on May 15, 2014. Appellant submitted his post-hearing brief on May 30, 2014, whereupon the record closed.

FINDINGS OF FACT

Based on the documents entered into evidence and the testimony of the witnesses, I make the following findings of fact:

1. Appellant, Roger James Desrochers III, has been employed as a security officer at United Security Inc. since December 2006. He is presently a senior supervisor. (Testimony of Appellant; Exhibit 8.) He has performed quite well at this position and has received multiple positive recommendations. (Exhibits 3, 8, 9 and 10.)

2. Appellant has resided in Somerville his entire life. Appellant graduated from Somerville High School, and attended Bunker Hill Community College, but did not graduate. (Exhibits 2 and 6.)

3. Appellant took and passed the civil service examination for entry-level police officers on April 30, 2011. The selected candidate scored one rank lower on the civil service examination than did Appellant. (Exhibit 1.)

4. Mayor Joseph A. Curtatone is the Appointing Authority for the City of Somerville. (Exhibit 2; Testimony of Roche.)

5. On or about June 5, 2012, the City requested a certification to appoint ten reserve police officers. In response, the state of Massachusetts' Human Resources Division (HRD) issued certification number 202990 to the City. The certification authorized the City to appoint ten permanent reserve police officers. (Exhibits 1, 28 and 29.)

6. The Department uses the same screening and evaluation process for every applicant. As part of this process, the Department, at times with the aid of an outside agency, performs a background check on a candidate's driving history, Criminal Offender Record Information (CORI), credit history, and employment history. Additionally, outside investigators verify an applicant's residency, including on-site investigation and neighborhood canvassing. The Department incorporates these findings into its evaluation. (Testimony of Roche.)

7. As part of the Department's screening process, National Comprehensive Report Plus Associates (NCRA) prepared an extensive background check (NCRA report) on Appellant. (Exhibit 6.)

8. In order “[t]o qualify for residency preference,” a candidate must “have resided in [Somerville] for the *entire* twelve-month period immediately preceding the date of the [civil service] examination.” (M.G.L. c. 31, s. 25, *quoted in* Exhibits 2, 23. Emphasis in original.)

9. Given that the civil service examination that Appellant and the selected candidate took was held on April 30, 2011, in order to qualify for residency preference, Appellant and the selected candidate each must have lived in Somerville between April 30, 2010 and April 30, 2011. (Exhibits 2 and 23; Testimony of Roche.)

10. Appellant submitted his application for employment to the Department on July 24, 2012. (Exhibit 2.) Before submitting, Appellant participated in an orientation where every candidate was informed of the importance of filling out an application completely. (Testimony of Roche.) Additionally, the front page of every application contains the following text: “Failure to answer any and all questions truthfully, accurately or completely shall result in the applicant’s disqualification You are applying for a responsible public safety position. It is essential that you follow instructions specifically as directed. Make sure all dates and information are absolutely accurate.” Additionally, the front page states that every applicant “must submit to a background investigation of [their] moral character and reputation.” (Exhibit 2.)

11. The application asked Appellant to list the total number of accidents that he had been involved in and the number of accidents in which he was shown to be at fault. Appellant listed five total accidents and three in which he was shown to be at fault. (Exhibit 2.)

12. The application asked Appellant to provide “complete details” of the motor vehicle accidents in which he had been involved. The application asked for: “dates, locations, causes . . . and police investigation information.” Appellant provided the following response:

“[Four] [h]appened in 2006. I was standing [a]t my girlfriend[']s car when a ve[hic]le struck me from behind. [P]olice were called and took a report.” (Exhibit 2.)

13. On September 3, 2008, Appellant was driving his fiancée’s car, which had a bad inspection sticker. Appellant was pulled over and received a seatbelt violation, which he believed was merely a warning relating to the bad sticker. (Exhibit 4; Testimony of Appellant.) Appellant did not pay the violation, and his driver’s license was accordingly suspended on October 9, 2008. (Exhibit 4.)

14. Appellant first discovered the seatbelt violation on April 8, 2010, when he sought to renew his motorcycle permit. (Testimony of Appellant.) On that date, Appellant paid off the violation and his license was accordingly reinstated. (Exhibit 4.)

15. In 2012, Appellant received two parking tickets in front of his home. (Testimony of Appellant.)

16. Appellant follows a personal policy where he pays off his parking tickets once a year. Per Appellant, “every year [when] I go to renew my [inspection] sticker I pay off my excess taxes and my parking tickets.” (Testimony of Appellant.)

17. In January 2013, Appellant’s driver’s license was placed on “NONRENEW INDEFINITE” status due to the unpaid parking tickets. (Exhibit 4; Testimony of Appellant.)

18. Appellant paid his parking tickets the same day that he saw Department Sgt. Tim Mitsakis. (Testimony of Appellant.)

19. In the “Employment” section of the application, Appellant stated he was “[l]aid off” in 2006 from his job in maintenance at the Somerville Housing Authority. The application also asked Appellant to answer whether he had “ever been dismissed, terminated or asked to resign for any reason, from any position or employment.” Appellant stated “no.” (Exhibit 2.)

20. On the application's "Financial Record" section, Appellant stated that "Kay Jewelers" was a credit card account for which he was responsible. Appellant did not list either the account number for this account or the current balance owed on this account. (Exhibit 2.)

21. Also on the "Financial Record" section, Appellant stated that he was over 180 days delinquent on cell phone bills for T-Mobile and Sprint. Appellant did not provide the months and/or years when the delinquencies began. Appellant did not provide the account numbers for either cell phone account. Appellant did not provide the current balance owed for either cell phone account. (Exhibit 2.)

22. When Appellant was laid off from the Somerville Housing Authority, this affected his finances. He had been paying off his cell phone bills, but when those bills were canceled, he shifted to paying off his car loans and two motorcycle loans, because he did not want those to also go into debt. Per Appellant, he "forgot about" the cell phone bills but continued to pay off his car loan and motorcycle loans. (Testimony of Appellant.)

23. Prior to Appellant running a credit report in preparation for his interview with the Department, he was not aware that he had bad credit, as he had been able to take out loans normally. (Testimony of Appellant.)

24. On March 11, 2013, Appellant had a \$992.00 debt in collection on a T-Mobile cell phone account, and a \$532.00 debt in collection on a Sprint cell phone account. (Exhibit 3.)

25. After speaking with Sgt. Mitsakis about his credit issues, Appellant proceeded to immediately make payments on all but one of his outstanding obligations. The final one he paid shortly thereafter. (Testimony of Appellant.)

26. On the application, Appellant stated that his credit had been previously considered unsatisfactory, but provided no details. Appellant also stated that he currently owed money for parking tickets and excise taxes. Appellant provided no details as to this. (Exhibit 2.)

27. On his Police Background Check, Sgt. Mitsakis noted that Appellant's credit was an "area [of] concern." Sgt. Mitsakis also noted that he "would like to see [Appellant] mature in . . . his ability to budget his finances better." (Exhibit 3.)

28. One section of the NCRA report regarded "Possible Liens & Judgments." Here, the NCRA noted (1) a small claims judgment from February 23, 2006, against "DESROCHERS, ROGER J JR," in the amount of \$1,484.00, and (2) a civil judgment from December 1, 2002, against "DESROCHERS, ROGER J," in the amount of \$2,019.00." (Exhibit 6.)

29. Both of these judgments were in actuality against Appellant's father, Roger J. Desrochers Jr. The Appellant's legal name is Roger James Desrochers, III. (Testimony of Roche; Testimony of Desrochers Jr.)

30. The first column of the table associated with the application's "Outside Activities" section is titled "From: To: (month/year)." Within this column, Appellant placed the name of his particular activity: "Somerville pop warner." (Exhibit 2.)

31. The application asked Appellant to list the "specific capabilities [that he] bring[s] that should be helpful for successful performance as a Police Officer." Appellant stated: "I am a person that always walks with a purpose and knows what going [*sic*] on around me." (Exhibit 2.)

32. Lt. Dan Cotter conducted the background investigation for the selected candidate, submitting the investigation results to Personnel Director William Roche on February 4, 2013. Lt. Cotter's investigation contained the following statement: "Credit Check: Excellent." Lt.

Cotter's investigation also contained the following "Drivers License Data": "Restrictions: none"; "Status Active." (Exhibit 24.)

33. Regarding the selected candidate's residency, under the "All past Residences" section of his investigation, Lt. Cotter listed: "March 2010 to September 2010: 180 Powderhouse Blvd[,] Somerville, [MA] 02144," "September 2010 to March 2011: 222 Fellsway[,] Somerville, [MA] 02145," and "March 2011 to October 2011: 25 Lowden Ave[,] Somerville, [MA] 02144." Additionally, Lt. Cotter stated: "I spoke to all three landlords that [the selected candidate] had during the year period he needed to live in Somerville in order to meet the residency period. All three spoke highly of him and verified his residency. [Selected candidate] and his girlfriend both understand the residency policy and have no issue with it." (Exhibit 24.)

34. NWI Investigative Group, Inc. (NWI) investigated on the selected candidate's residency, presenting its results to Lt. Cotter on February 20, 2013. (Exhibit 32.)

35. The selected candidate presented NWI with the following addresses: March 2010 to September 2010: 180 Powderhouse Boulevard, Somerville, MA; September 2010 to March 2011: 222 Fellsway, Somerville, MA; March 2011 to October 2011: 25 Lowden Avenue, Somerville, MA. (Exhibit 32.)

36. NWI confirmed residence at 180 Powderhouse Boulevard via multiple documents. NWI confirmed residence at 222 Fellsway via multiple documents and via neighborhood canvassing. NWI confirmed residence at 25 Lowden Avenue via multiple documents and via neighborhood canvassing. Additionally, the selected candidate provided the correct trash removal day of the week for all three residences. (Exhibit 32.)

37. A Physical Aptitude Test (PAT) is one required component of an applicant's application to the Department. (Testimony of Roche.) A practice session of the PAT was held on April 11, 2013. (Exhibit 27.)

38. City Human Resources Coordinator Deborah Connolly (Connolly) had communicated to Appellant that he was not to attend the April 11 practice PAT unless Connolly had previously instructed him via phone and via email to attend. (Exhibit 27.)

39. On April 10, 2013, reacting to a text message from a fellow applicant, Appellant called the Department regarding the April 11 practice PAT. (Testimony of Appellant.) Appellant spoke to a member of Department staff who was not Connolly. This staff member informed Appellant to attend the April 11 practice PAT. (Exhibit 27; Testimony of Appellant.)

40. Appellant attended the April 11 practice PAT. Upon arriving, he found out he was not on the list of test-takers for that day. Appellant left and emailed Connolly later that day, "just trying to figure out what [was] going on." (Exhibit 27.)

41. Connolly and Appellant spoke on April 23. Connolly reprimanded Appellant, "explain[ing] that [Appellant] should have never called [the Department] to begin with." Appellant "did not apologize for his error," and Connolly "told him he should learn to listen to [the] entire conversation [and] not just what he wanted to hear." (Exhibit 27.)

42. On June 18, 2013, Appellant was interviewed by an interview panel consisting of Chief Thomas Pasquarello, Labor Counsel Bob Collins and Personnel Director William Roche. (Exhibit 11; Testimony of Roche.) The interviewers asked each candidate the same 30 questions and kept notes of their answers. (Testimony of Roche.)

43. One of the interview questions asked Appellant to give his "understanding of the duties and responsibilities of a Police Officer." Chief Pasquarello recorded Appellant's answer

as: “Sometimes you have to walk around, sometimes you have to be in a cruiser – sometimes you have to answer community questions.” (Exhibit 11a.) Roche recorded: “Walk around / cruiser / dom[estic] assault / ass[ault] + battery. Community guy.” (Exhibit 11b.) Collins recorded: “Walk around, cru[iser], detail, shootings, stabbings, [assault and battery], dom[estic] viol[ence]. “Community guy” walking around, [answering questions].” (Exhibit 11c.)

44. One of the interview questions asked Appellant to list the “personal strengths” he would bring to the position. Chief Pasquarello recorded that Appellant in part answered: “I am a leader not a follower.” (Exhibit 11a.) Collins recorded: “leader [not] follower – rather make an example than do what others [are] doing.” (Exhibit 11c.)

45. One of the interview questions placed the Appellant in the following hypothetical scenario: “You will be given orders to do something that will put your life in jeopardy. How do you handle orders you do not agree with, especially if you think your life is in jeopardy?” Pasquarello recorded that Appellant “would do the job asked, regardless of the request. When asked about how this fits in with being a leader and not a follower, [he] could not answer.” (Exhibit 11a.) Roche noted that Appellant “would do his job as directed” if it was legal; however, when pushed on the subject, the Appellant found it difficult to draw the line of what was legal. (Exhibit 11b; Testimony of Roche.)

46. One of the interview questions asked Appellant to explain the “buttons” that set him off. Appellant stated that people putting their hands on him was a particular “button” that set him off. (Exhibit 11b and 11c.)

47. On or about October 11, 2013, the City sent a letter to Appellant informing him of his bypass. The City provided positive reasons for the lower ranked candidate and negative reasons for bypassing Appellant. (Exhibit 5.)

48. The positive reasons for the lower ranked candidate were: (1) specific training accomplishments; (2) present employment responsibilities and accomplishments; (3) volunteer and community work; (4) lack of criminal history and/or issues with driving or credit; and (4) positive performance during the interview with the panel. (Exhibit 5.)

49. The negative reasons listed for Appellant were: (1) a negative credit history; (2) a negative driving history; (3) poor attention to detail concerning the application process; and (4) Appellant's responses to the interview panel's questions. As stated by the City, these four negative factors together reflected a "lack of maturity" and showed a "pattern of irresponsible behavior" "that [the City] felt it could not simply ignore." (Exhibit 5.) Regarding poor attention to detail specifically, the City noted that "Police Officers are required to document their actions, observations and those of others in accurate, honest and objective detail. The foundation of many prosecutions is based on the quality, completeness and accuracy of an officer's report." (Exhibit 5.)

50. It was not one factor or reason in particular that drew the City to make its decision, but rather a "combination of concerns" about Appellant's ability to conform to the duties and responsibilities of a police officer. (Testimony of Roche.)

51. Appellant's father is the sole administrator of Somerville's Pop Warner youth football league and has served in this capacity for ten years. The league serves low-income children from ages 5 to 15. (Testimony of Desrochers Jr.)

52. Appellant's father has been in contention with the Mayor of the City regarding the use of Conway Park, one of only two football stadiums in the city that is lighted. Somerville Pop Warner would traditionally start their football season at Forest Park – a state-run field without lights, without bathrooms, and with poor field condition – and then transition to Conway Park as

the season progressed and it began to get darker earlier. However, the Mayor's Office forced Somerville Pop Warner to use Forest Park for the entirety of the 2011 football season. Due to the lack of lights on the field, Appellant's father feared injury for the participating players. After political pressure, the City permitted Somerville Pop Warner to resume use of Conway Park. Parents attempting to park near Pop Warner games at Conway Park were often ticketed by the City. (Testimony of Desrochers Jr.)

53. During the 2012 football season, there was a similar dispute over the use of Conway Park, which had been reserved for a soccer team based in Winchester, Massachusetts, with the Mayor's son on the roster. After additional political pressure from a Somerville alderman, schedules were changed to permit Somerville Pop Warner to use Conway Park. However, the City would not permit Somerville Pop Warner to use the park's concession system. (Testimony of Desrochers Jr.)

54. The selected candidate's father is the former Police Chief of Somerville. (Exhibit 24; Testimony of Roche.)

55. None of the Department panel members personally knew Appellant, or Appellant's father, before Appellant applied. (Testimony of Roche.) The Mayor of Somerville knew Appellant over ten years ago, when Appellant was playing in the Somerville Pop Warner league. (Testimony of Desrochers Jr.)

56. The Appointing Authority, Mayor Joe Curtatone, followed the recommendations of the panel in appointing every candidate. (Testimony of Roche.)

57. There was no evidence that the Mayor of the City interfered in any way with the decision made by the panel regarding Appellant. (Testimony of Roche; Testimony of Appellant.)

58. On or about October 24, 2013, the City notified HRD of its intent to hire six candidates. The City had originally requested ten candidates, but ultimately wished to select six. One of the six appointed candidates ranked below Appellant. (Exhibit 28.) Accordingly, Appellant was not the only candidate bypassed. (Testimony of Roche.)

59. The Appellant filed an appeal with the Civil Service Commission on December 10, 2013. (Exhibit A.)

CONCLUSION AND ORDER

A. *Applicable Legal Standards*

When a candidate for appointment appeals from a bypass, the commission's role is not to determine whether that candidate should have been bypassed. The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. *Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 187 (2010). The commission determines, "on the basis of the evidence before it, whether the appointing authority [has] sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification" for the decision to bypass the candidate. *Brackett v. Civil Serv. Comm'n*, 447 Mass. 233, 241 (2006), citing G.L. c. 31, § 2 (b). "Reasonable justification in this context 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.' " *Brackett v. Civil Serv. Comm'n*, *supra*, quoting *Selectmen of Wakefield v. Judge of First Dist. Court of E. Middlesex*, 262 Mass. 477, 482 (1928). *See also Beverly v. Civil Serv. Comm'n*, 78 Mass. App. Ct. 182, 189, 190-91 (2010) *citing Falmouth v. Civil Serv. Comm'n*, 447 Mass. 814, 824-826 (2006). *See also Methuen v. Solomon*, No. 10-01813-D, Essex Sup. Ct. (July 26, 2012); *Police Dep't of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012). A "preponderance of the

evidence test requires the Commission to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an Appellant were more probably than not sound and sufficient.” *Mayor of Revere v. Civil Serv. Comm’n*, 31 Mass. App. Ct. 315 (1991). In determining whether the department has shown a reasonable justification for a bypass, the commission's primary concern is to ensure that the department's action comports with “[b]asic merit principles,” as defined in G.L. c. 31, § 1. *See Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001). The commission “finds the facts afresh” in conducting this inquiry, and is not limited to the evidence that was before the Department. *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010). The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. *Id.* Cities and towns have wide discretion in selecting public employees, and absent proof that they acted unreasonably, may not be forced to take the risk of hiring unsuitable candidates. *Tewksbury v. Massachusetts Civ. Serv. Comm’n*, No. 10-657-G, Suff. Sup. Ct. (August 30, 2012) (Town was justified in not hiring unsuitable and risky candidate).¹

B. Reasonable Justification for Bypassing the Appellant

The City gave four reasons for its bypass of the Appellant: (1) a negative credit history; (2) a negative driving history; (3) poor attention to detail concerning the application process; and (4) Appellant’s responses to the interview panel’s questions. As stated by the City, these negative factors together reflected a “lack of maturity” and showed a “pattern of negative behavior” “that [the City] felt it could not simply ignore.” The City ultimately found a

¹ Superior Court reversed Commission decision. *Cyrus v. Tewksbury*, Docket Nos. G1-08-107, CS-08-539, Recommended Decision, (June 5, 2009), *rev’d by Final Decision* 23 MCSR 58 (2010).

“combination of concerns” regarding Appellant. I find that the City was reasonably justified in bypassing Appellant for the position of permanent reserve police officer in the Department because of the foregoing reasons.

When he applied to the Department, the Appellant had a negative credit history.² He was over six months delinquent on two separate cell phone bills, with one account over \$500, and the other nearing \$1,000. In fact, he testified he “forgot about” the cell phone bills’ very existence. He admitted his credit had previously been unsatisfactory, and that at the time of his application, he currently owed money for parking tickets and excise taxes.

As Sgt. Mitsakis noted in his Police Background Check, Appellant’s credit was an “area [of] concern.” Sgt. Mitsakis noted he “would like to see [Appellant] mature in . . . his ability to budget his finances better.” After meeting with Sgt. Mitsakis, the Appellant was able to pay off his numerous outstanding bills and resolve his financial commitments. However, Department was concerned that he “forgot” about the two separate cell phone bills.

Appellant also had a negative driving record. The Appellant failed to pay the ticket after receiving a seatbelt violation, leading to a suspension of his license. Years later, the Appellant’s license was placed on “NONRENEW INDEFINITE” status – because he admittedly only pays his parking tickets once a year. The Appellant was at fault in three separate driving accidents.

Operating a police cruiser or other police motor vehicle is an important part of police work, so a negative driving record is a serious concern. When facing other significant concerns as well, the Department should not be forced to hire an individual with a mediocre driving record

² Appellant’s father’s previous liens and judgments have not been considered to be part of Appellant’s credit history. However, Appellant’s failure to correct the City as to this point is discussed *infra*.

of this kind. As part of promoting public safety and order, police officers must themselves adhere to the rules and regulations of the public ways of the Commonwealth.

As the City indicated in its bypass letter to Appellant, attention to detail is a key part of being an effective police officer. Throughout the entire process, Appellant showed a prevailing lack of attention to detail. Appellant was informed on multiple occasions about the necessity of filling out the application completely. Yet on many application questions, Appellant failed to do so. He either gave answers that did not match the question prompt, or he neglected to answer the question entirely.

The front page of the application warned Appellant that a background check would be performed on him. It is unknown if the Appellant knew of his father's negative credit history, but he was aware that they shared the same name. The Department's lack of knowledge in this regard led to its confusion of Appellant and his father's liens and judgments. Finally, Appellant disregarded Deborah Connolly's express instruction to not attend the April 11 practice PAT unless he received express instruction from her.

Appellant's responses to interview questions also provided a reason for the City to not look favorably upon his candidacy. Appellant did not show an appropriate understanding of what a police officer is responsible for. For example, Appellant did not display a grasp of the administrative aspects of police work, as well as the aspects of police work that relate to working together in teams. The fact that people putting their hands on Appellant sets him off also presents an issue. That situation is something that police officers deal with frequently, and police officers must be able to handle these situations respectfully and appropriately in order to ensure public safety. Appellant, who portrayed himself as a "leader not a follower," said it would be difficult for him to follow orders in a certain set of circumstances that he could not

precisely define. As a police officer, it would be imperative for Appellant's safety, the safety of those fellow officers he worked with, and the general safety of the Somerville public that he be able to take orders and respect those who are in positions of authority over him. Given the often volatile and dangerous nature of police work, the ability to do as instructed is a critical trait for a successful police officer.

The Appellant's father testified that the City was biased against his son because of the father's own dispute with the mayor over the use of the Conway playing fields. It is undisputed that the Mayor's child's private team displaced the Appellant's father's city league, which was forced to play on less maintained and badly-lit fields. However, there is no evidence to support a claim of a connection between the dispute and Appellant's bypass. I find that there is no evidence that the Appellant being treated differently from any other candidate throughout the application and selection process.

The Appellant claimed that the City was biased in favor of the candidate that bypassed him because of family connected. The selected candidate's father was the police chief of Somerville. I find that the Department did in fact perform a substantive background check of the selected candidate's residency, and did not display any bias in favor of disregarding or minimizing any flaws within this section of the selected candidate's application.

The City's concerns about the Appellant: negative credit, bad driving record, inattention to detail and lackluster responses to interview questions – comprised a "pattern of irresponsible behavior" when taken together. The Appointing Authority had to make a judgment regarding whether Appellant had sufficiently overcome his prior pattern of irresponsible behavior. In such circumstances, the courts have recognized that there is an inherent risk in hiring such a person and determined that "whether to take such a risk is . . . for the appointing authority to decide."

See Beverly, 78 Mass. App. Ct. at 190. The City did not believe that Appellant was quite ready to become a police officer. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone as a new . . . officer than in disciplining an existing tenured one.” *Attleboro v. Massachusetts Civ. Serv. Comm’n et al.*,³ No. 2011-734, (Bristol Sup. Ct. Nov. 5, 2012), citing *Beverly* at 191.

I find that the Appellant has failed to meet the standards required in order to be a police officer in the City of Somerville. There is no evidence that the City’s decision was based on political considerations, favoritism or bias. Thus, the City’s decision to bypass the Appellant is “not subject to correction by the Commission.” *Cambridge*, 43 Mass. App. Ct. at 305. Based on the preponderance of credible evidence presented at the hearing, I conclude that the City had just cause to bypass Appellant Roger J. Desrochers III. Accordingly, I recommend that the appeal be dismissed.

SO ORDERED

DIVISION OF ADMINISTRATIVE LAW APPEALS

Angela McConney Scheepers
Administrative Magistrate

DATED:

³ William Dunn.