

**COMMONWEALTH OF MASSACHUSETTS**

**CIVIL SERVICE COMMISSION  
One Ashburton Place – Room 503  
Boston, MA 02108  
617-979-1900**

**PATRICK DUFFY,**  
*Appellant*

**CASE NO. G1-21-254**

v.

**CITY OF WALTHAM,**  
*Respondent*

Appearance for Appellant:

Patrick Duffy, Pro Se

Appearance for Respondent:

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

Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT’S MOTION TO DISMISS FOR NO JURISDICTION**

The Appellant, Patrick Duffy, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L. c. 31, § 2(b), to contest his non-selection by the Respondent, City of Waltham (Waltham) for original appointment to the position of Firefighter with the Waltham Fire Department (WFD). Following the pre-hearing conference on May 22, 2020 (held via Webex Video Conference), Waltham filed a Motion to Dismiss for No Jurisdiction, claiming that Mr. Duffy had not been reached for appointment because no one in his tie group or below had been hired. Waltham also argued that: (a) Mr. Duffy was not entitled to Waltham residency preference; and (b) his name should appear in a lower-ranked (non-resident) position, which would put him outside the so-called “2N+1 formula” for consideration. The Appellant opposed the motion. I held a motion hearing on July 15, 2022 (held via Webex videoconference). After the hearing, the Appellant submitted further documentation to support his claim that he was entitled

to Waltham residency preference. After carefully considering the submissions and arguments of the parties, I have concluded that Waltham's motion must be allowed, and this appeal must be dismissed.

### **FINDINGS OF FACT**

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

1. On January 6, 2021, the Appellant, Patrick Duffy, took and passed the entry-level civil service examination for firefighter administered by the Massachusetts Human Resources Division (HRD) (originally scheduled to be held on March 21, 2020, but delayed due to COVID). (*Stipulated Facts; Respondent's Motion; Administrative Notice [HRD letter on file dated 1/27/2022]*)<sup>1</sup>

2. On March 15, 2021, HRD established the eligible list for Waltham firefighter. (*Administrative Notice [HRD Letter on file dated January 27, 2021]*)

3. On April 26, 2021, HRD issued Certification #07757 to Waltham for appointment of full-time permanent firefighters. Mr. Duffy's name was listed as a Waltham resident on the certification in 13<sup>th</sup> place, tied with fifteen (15) other Waltham residents. (*Administrative Notice [HRD Letter on file dated 1/27/2021]; Administrative Notice [Waltham Certificate of Appointments from Certification 07757 attached to e-mail 7/19/2022]; Stipulated Facts*)

4. On or about December 5, 2021, Waltham made ten (10) appointments from the Certification, but no candidates in the 13<sup>th</sup> tie group or below were appointed. Mr. Duffy was informed that he had not been selected. (*Administrative Notice [HRD Letter on file dated*

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<sup>1</sup> The examination had originally been scheduled for March 21, 2020 but, due to the COVID-19 State of Emergency, HRD postponed the examination until January 6, 2021 (*Undisputed Facts; Administrative Notice [HRD Letter on file dated January 27, 2022]*). The postponement does not affect the issue presented here.

1/27/2021]; *Administrative Notice [Waltham Certificate of Appointments from Certification 07757 attached to e-mail 7/19/2022]; Stipulated Facts*)

5. On December 28, 2021, Mr. Duffy filed this appeal. (*Claim of Appeal*)

6. The evidence before the Commission established that Mr. Duffy last physically resided in Waltham in November 2019. He was hospitalized for several weeks until mid-December 2019. By the time he was discharged, his apartment lease in Waltham had expired and he was unsuccessful in finding a suitable place to live in Waltham, and so he relocated to Tewksbury, where he lived for approximately a year, and then later moved to Boston. He had stored his belongings in Waltham and did continue from time to time to look for an apartment in Waltham, but he never returned to live there. He currently lives in Falmouth. (*Respondent's Motion; Representations of Appellant at Motion Hearing; Appellant's Supplemental Documentation*)

#### **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).

## **ANALYSIS**

The undisputed facts, viewed in a light most favorable to Mr. Duffy, establish that his place on Certification 07757 put him below any of the candidates who were selected for appointment. In particular, the lowest ranked candidate appointed was in the 12<sup>th</sup> tie group and Mr. Duffy was in the 13<sup>th</sup> tie group ranked below that candidate. A non-selected candidate may appeal to the Commission only when his or her name appears “high[e]r” than one or more candidates who were appointed and, in this regard, appointment of a candidate in one tie group is not the appointment of a higher ranked candidate. See, e.g., Damas v. Boston Police Dep’t, 29 MCSR 550 (2016); Servello v. Department of Correction, 28 MCSR 252 (2015). See also PERSONNEL ADMINISTRATION RULES, PAR.02. As no candidates ranked below him on the certification were selected, Mr. Duffy’s appeal must be dismissed for lack of jurisdiction.

The parties also dispute whether Mr. Duffy properly belonged in the 13<sup>th</sup> tie group of Waltham residents; if not, contends the Respondent, he should have been ranked with non-residents, not Waltham residents, much lower on the eligible list and the certifications issued to Waltham from that list. In order to claim residency preference, Mr. Duffy would have to have resided in Waltham for one year immediately prior to the date of the firefighter civil service examination, originally scheduled for March 21, 2020. See G.L. c. 31, § 58. As Mr. Duffy was not bypassed because he was never reached, even if he were a resident, the Commission need not decide the residency issue at this time. I note, however, that the facts of this appeal closely parallel those in Campbell v. Abington Police Dep’t, 29 MCSR 174 (2016), in which the Commission interpreted the residency statute to conclude that, although sympathetic to the plight of that appellant who had been involuntarily forced to vacate his home, it could not create an exception to the plain language of the residency statute and it was required to dismiss his appeal when he had not, in fact, resided in Abington for a full year prior to the date of the examination.

## **CONCLUSION**

In sum, for the reasons stated herein, Waltham's Motion to Dismiss is hereby *granted* and the appeal of the Appellant, Patrick Duffy, CSC No. G1-21-254, is *dismissed*.

Civil Service Commission

/s/Paul M. Stein

Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; Stein and Tivnan, Commissioners) on August 25, 2022.

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. 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:

Patrick Duffy (Appellant)

Luke Stanton, Esq. (for Respondent)

Jennifer N. Kelly. (for HRD)

Regina Caggiano (HRD)