

COMMONWEALTH OF MASSACHUSETTS

Decision mailed: 3/11/11  
Civil Service Commission *JS*

SUFFOLK, ss.

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

WIGENS DUMEUS,  
Appellant

v.

Docket NO.: G1-09-7

BOSTON POLICE DEPARTMENT,  
Respondent

Appellant:

Wigens Dumeus, *Pro se*

Attorney for the Appointing Authority:

Amanda E. Wall, Atty.  
Boston Police Department  
Office of the Legal Advisor  
One Schroeder Plaza  
Boston, MA 02120

Commissioner:

Daniel M. Henderson

**DECISION**

Pursuant to the provisions of G.L. c. 31, s. 2(b), the Appellant Wigens Dumeus, (hereinafter "Appellant") seeks review of the Human Resources Division's (hereinafter "HRD") decision in accepting reasons proffered by the Respondent Boston Police Department (hereinafter, "BPD", "Appointing Authority" or "Department"), for the bypass of the Appellant for original appointment to the position of Boston police officer. The reasons proffered and accepted by HRD were in summary that: (1) the Appellant was the subject of a restraining order; (2) the Appellant was charged with assault and battery charge; (3) and was subject to poor references from family members: including a brother, 2 sisters and his Mother; the family consensus being that he should not be a police officer. A Full Hearing was held on June 3, 2009 at the offices of

the Civil Service Commission (hereinafter "Commission"). The proceeding was recorded on one (1) audio cassette. The BPD did file a post-hearing proposed decision.

**FINDINGS OF FACT:**

A stipulation of facts and eight (8) exhibits were entered into evidence. Exhibit 8 is the HRD document packet filed at the Commission. Based on the documents submitted at the hearing and the testimony of the following witnesses:

*For the Appointing Authority:*

- Robin Hunt, Director of Human Resources, Boston Police Department
- Detective Miguel Novo Jr., Boston Police Department

*For the Appellant:*

- Wogens Dumeus, Appellant;

**I make the following findings of fact:**

1. The name of the Appellant appeared on a special Certification #271119, dated 11/16/2007, for the position of Haitian-Creole speaking Boston Police Officer. (Exhibits 6, 7 & 8, Stipulation)
2. The Appellant signed said certification as willing to accept appointment. However, the Appellant was bypassed for appointment by the BPD. The BPD selected 12 candidates for appointment; 11 of whom appeared lower on the certification, resulting in the Appellant's bypass. The employment date of the 11 selected candidates is May, 2008. (Exhibits 6, 7 & 8, Stipulation)
3. The Appellant was born in Haiti and came to the United States in August, 1996. He is married and lives in the Readville section of Boston with his wife and two children. The Appellant is currently a Customer Service Manager for Sovereign Bank, having been

employed there since 2006. He held a series of other jobs prior to that. He previously served in the US Army for 4 years (2002-2006), achieving the rank of Staff Sergeant and being Honorably Discharged in November, 2006. He received his High School Diploma in Haiti in 1989. He received a Certificate in Economics from the State University of Law in Haiti in 1993. He received a Masters' degree from Troy University in Troy Alabama in December, 2006. The BPD investigation showed that the Appellant received positive reviews and recommendations from his employer, military commander and his wife; all people with significant experience with the Appellant. (Exhibit 1, testimony of Det. Novo and testimony of Appellant)

4. On December 11, 2007, the Appellant applied for this position when he signed his Student Officer Application, a "lengthy application" and submitted it to the BPD. (Exhibit 1, testimony of Hunt)
5. Robin Hunt (hereinafter "Ms. Hunt") has been employed by the BPD since 1999, and has served as Director of Human Resources for the BPD since 2004. (Testimony of Ms. Hunt)
6. The BPD's hiring process considers a candidate's entire background, including but not limited to the candidate's criminal history, driving record, credit history and references from family members. Each candidate is considered on a case by case basis, based on individual merits. (Testimony of Ms. Hunt)
7. After the Appellant submitted his Student Officer Application, the BPD Recruit Investigations Unit (hereinafter "RIU") undertook an investigation into his background, including interviews of relevant persons. (Testimony of Ms. Hunt)

8. The findings of the background investigation and the candidate's application are compiled and presented to a hiring committee called a "roundtable" discussion. (Testimony of Ms. Hunt)
9. Typically, the roundtable discussion involves the Commander of Recruit Investigations, the Director of Human Resources, a Deputy Superintendent from Internal Affairs, an attorney from the Legal Advisor's Office, and occasionally the detective who carried out the investigation. In this matter the roundtable decided that it wanted more information, including the interview of family members.(Testimony of Ms. Hunt)
10. Detective Miguel Novo Jr., (hereinafter "Det. Novo") has worked for the BPD for ten (10) years. He is currently assigned to the Family Justice Center.
11. At the time the Appellant applied to be a Boston Police officer, Det. Novo was a member of the RIU and was assigned to conduct the Appellant's background investigation. (Testimony of Det. Novo)
12. Any findings that Det. Novo collected were submitted to Human Resources to be presented at roundtable discussion in front of a hiring committee in consideration of the application that is currently on the table. (Testimony of Ms. Hunt and Det. Novo)
13. Det. Novo testified that he begins his investigation by looking for red flags (i.e. criminal history, negative references, or a problematic driving record) in the candidate's application. (Testimony of Det. Novo)
14. On his initial reading of the Appellant's application, Detective Novo noticed two (2) issues that were problematic. The Appellant's history showed that a restraining order had been taken out against him and he had been arrested and charged with assault and battery. Both of these incidents involved the Appellant's siblings. The Appellant was found Not Guilty on the

assault and battery charge. Det. Novo sought more information by interviewing family members. (Testimony of Det. Novo)

15. When contacted for a reference, the Appellant's Sister Mer\_\_\_\_ (hereinafter "Mer"), the victim of the restraining order, gave a poor review. She said that she was afraid that her brother, serving as a police officer, would be carrying a gun, that he is a "violent person who is capable of anything when he is angry" (Testimony of Det. Novo and Exhibit 5)
16. The Appellant's Sister Mar\_\_\_\_, (hereinafter "Mar") echoed Mer's concerns. Mar felt that the Appellant is "always angry and can be violent when he is upset." She also stated that she also has a problem with him becoming a police officer. (Testimony of Det. Novo and Exhibit 5)
17. The Appellant's Sister Sem\_\_\_\_ (hereinafter "Sem") had no problem with the Appellant becoming a police officer and also predicted that her Sister Mer would speak negatively about the Appellant. (Testimony of Det. Novo and Exhibit 5)
18. The Appellant's Mother, (hereinafter "Mother") was interviewed and briefly described some estrangement with the Appellant and did not feel happy with him becoming a police officer; "...should not pick him". (Testimony of Det. Novo and Exhibit 5)
19. According to Det. Novo, the Appellant's brother, J\_\_\_\_ (hereinafter "J"), the victim in the assault and battery charge, was not forthcoming about the incident. He claimed he did not want to divide his family. (Testimony of Det. Novo and Exhibit 5)
20. After contacting references, Det. Novo sits down with the candidate to discuss issues and get to know the candidate he is investigating. (Testimony of Det. Novo)
21. Detective Novo testified that he met with the Appellant multiple times while he was reviewing his application and investigating his background. He met with the Appellant at the initial orientation for all applicants, he met with him again when the Appellant needed to

bring in documentation to complete his paperwork, and he met with him a third time to discuss the negative references given by a series of family members. (Testimony of Det. Novo)

22. Det. Novo is professional in his dress, presentation and demeanor. He did not try to embellish his testimony but testified only from his memory. He appeared to give honest appraisals; his answers rang true. He found it unusual to hear negative family opinions since “families are normally very supportive.” He stated that although most of the family’s view was negative on his temperamental and behavioral qualifications for a police officer position; he did not detect a vendetta on the part of the family. He admitted the Appellant’s positive recommendations from his military commander, cousin, employer and from his wife. I find Det. Novo’s testimony to be credible and reliable. (Testimony and demeanor of Det. Novo)
23. Det. Novo’s results of the Appellant’s background investigation were presented to the Department’s hiring committee during a roundtable discussion. (Testimony of Ms. Hunt)
24. During the roundtable discussion, the committee discussed the negative references, guarded reference from his brother, the assault and battery charge, as well as positive references that were received from a former employer and the military. (Testimony of Ms. Hunt).
25. In regard to the negative references, the committee asked Det. Novo to gather more information in order to receive a more complete understanding of the Appellant’s family situation. (Testimony of Ms. Hunt)
26. After the initial roundtable discussion, as directed, Det. Novo contacted two more siblings; a male cousin who lived with the family, and the Appellant’s mother. (Testimony of Det. Novo)

27. Based on his interviews, Det. Novo reported negative references were received from both the Appellant's older sister and his Mother. His sister based her fears on the fact that he is always angry and can be violent when he becomes upset. She specifically told Det. Novo that the BPD "should not pick him." (Testimony of Det. Novo and Exhibit 5)
28. Det. Novo reported that the Appellant's other sister Sem and male cousin told Det. Novo that they had no problem with the Appellant becoming a police officer, his cousin felt the Appellant is a good role model. (Testimony of Det. Novo and Exhibit 5)
29. The Appellant reported to Det. Novo that he did not have a physical incident with his brother James and the charge of A&B resulted in a "not guilty" finding. The Appellant claimed that his family changed after they arrived in the US from Haiti. He has always been devoted to and responsible for his family. He claimed that his sister "Mer" impersonated his Mother, when Det. Novo conducted a telephone interview of her. He claimed that his Mother and his sister "Mer" can not speak English. He claims that he has had long term problems with his sister "Mer" who acts irresponsibly and is vindictive. One other critical family member has been "troubled" since birth. (Testimony of Appellant)
30. Det. Novo admitted that the Appellant's Army Commander and employer gave him A+ recommendations. His wife also spoke very highly about him. When questioned as to why he had not contacted the Appellant's Father in his investigation; he answered that he had no information on his Father and was not asked to contact him. (Testimony of Det. Novo)
31. The Appellant identified some of his positive and generous acts for each family member, including allowing his nemesis sister "Mer" to live with him when she was homeless and eventually giving her all of his own furniture. (Testimony of Appellant)

32. The Appellant's self image is superlative if not grandiose. He certainly has been responsible and accomplished in his life. He is very well educated and served admirably in Iraq in the US Army, then being honorably discharged. He has been accomplished in his employment as a bank customer relations Manager. He always had a dream of seeing himself in a uniform; both military and police officer. In sum; he testified that "I want to be the one to enforce the law." He appears to be very sincere in his preparation for and desire to be a police officer.

(Testimony and demeanor of Appellant)

33. The Appellant is straight forward, if not assertive in his responses. He is loquacious and prideful in describing his own education, employment, military and personal family successes. However, it is noted that his successes are remarkable and consistent especially considering that he immigrated to the US in 1996. His negative family relationships and past controversies are the basis of the BPD bypass and the Appellant failed to adequately address these issues. He chose to specifically rebut them by his own testimony and view point. I find the Appellant to be a credible witness, but the accuracy of his version of family relations and past controversies were insufficiently supported or corroborated. (Testimony and demeanor of Appellant)

34. Det. Novo submitted his additional findings to the BPD Human Resources in a memo directed to Ms. Hunt. (Testimony of Det. Novo and Exhibit 5)

35. The second roundtable considered the additional information and merged it with the information collected during the first round of interviews. The roundtables were concerned that the Appellant's criminal record stemmed from altercations with family members. The Appellant tried to justify this by saying that he was trying to be a father figure, and role model to his family. (Testimony of Ms. Hunt, Testimony of the Appellant)



36. The roundtable concluded that the Appellant's violent history with his family as evidenced by the restraining order, the assault and battery charge, and poor references years later, evidenced a show of poor judgment and a disregard for the law. This renders the Appellant unsuitable to be a Boston Police Officer. Ms. Hunt described the concerning theme relayed by the evidence; that the Appellant became angry with his family and reacted with violence. (Testimony of Ms. Hunt)
37. Ms. Hunt admitted that no specific records of the roundtable meetings are kept by the BPD. There are no records of roundtable: dates of meetings, attendance, votes, specific statements or concerns etc. Ms. Hunt relies on her own memory to respond to inquiry or questions. (Testimony of Ms. Hunt)
38. On May 1, 2008, the BPD's Robin Hunt sent a bypass letter to Sally McNeely outlining these details as stated above, as the reasons that it found the Appellant ineligible for appointment as a Boston Police Officer. (Stipulation, Exhibit 6, testimony of Ms. Hunt)
39. On November 18, 2008, by letter, HRD notified the Appellant that it had approved the BPD's reasons for bypass as stated and also notified him of his right of appeal to the Commission. (Stipulation, Exhibits 6, 7 testimony of Ms. Hunt)

## **CONCLUSION**

The role of the Civil Service Commission is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass. App. Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First

Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Comm'ners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a 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 Service Comm'n, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are granted considerable discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the Commission is “not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision.” Watertown v. Arria, 16 Mass. App. Ct. 331, 332 (1983). *See* Comm'ners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge, 43 Mass. App. Ct. at 304.

A police officer, as a public figure sworn to uphold the laws of the Commonwealth, is expected to adhere to certain standards of conduct. They must be able to show restraint in the most stressful of situations and in general be a model of good citizenship. In this case, the applicant's record shows a history of poor judgment, a pattern of violence involving his family, and criminal behavior. The charges brought against the Appellant for Assault and Battery and

the restraining order filed against the Appellant by his sister illustrate very concerning behavior. Despite being found not guilty, the charge itself carries weight in the consideration of the Appellant's candidacy by the BPD and the Commission upon review. The Commission has long held that an applicant's arrest record, even where there is no conviction, is entitled to some weight by the appointing authority in making its decision. Thames v. BPD, Docket No. G-02-82 (Civil Service Commission 2004).

The Appellant tried to justify the inappropriate behavior by testifying that he was the father figure of the household and that he needed to exert his influence in order to make his younger siblings obedient (Testimony of Appellant). Despite this explanation, Det. Novo's memorandum and testimony demonstrate confirmation from a majority of his family members as to a history of violent behavior. This information does not reconcile with the Appellant's justification. The Appellant also seemed to imply that some of the information was fabricated by his sister Mer, who impersonated other family members during telephone interviews by Det. Novo. However, the Appellant failed to substantiate this claim. Regardless of the Appellant's explanations, the BPD presented sufficient evidence of his violent behavior and family discord to show him to be unacceptable as a candidate applying to be a Boston Police Officer.

After considering all of the testimony and evidence in the record, I conclude that the BPD established just cause, by a preponderance of the credible evidence, for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter. Acknowledgment is made of a recent decision City of Beverly v. Civil Service Comm'n & another, 78 Mass. App. Ct. 182 (2010).

City of Beverly decision addressed the standard of review employed by the commission for cases involving the bypass of a candidate for a police officer position as well as the burden of proof and the proper exercise of judgment incumbent on the Appointing Authority in such matters. The candidate there, Bell, was bypassed for appointment based on an allegation of misconduct which led to him being fired by a prior employer. The Commission allowed his appeal. A Superior Court judge vacated the commission's ruling after concluding that the commission had improperly substituted its judgment for that of the city. Bell appealed and the Appeals Court affirmed the Superior Court's finding. That decision stated: "although it is plain that the finding of facts is the province of the commission, not the appointing authority, the commission owes substantial deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. Such deference is especially appropriate with respect to the hiring of police officers. "Prior misconduct has frequently been a ground for not hiring or retaining a police officer." The Appeals court concluded: "In sum, we agree with the judge below that the city demonstrated a reasonable justification to bypass Bell and that the commission improperly substituted its judgment for that of the city in ordering that he be hired." *id* at page 192.


The Appellant, Dumeus, submitted no exhibits. He did not present any witnesses other than himself. He testified in admission to some circumstantial facts that the BPD relied on in determination of its bypass decision. However, he failed to present qualified, factual evidence of sufficient weight to corroborate his own personal view of those past circumstances. The BPD presented sufficient evidence as to the negative family references and his tendency toward violent behavior in times of stress, at the time of the BPD bypass decision. The BPD reasonably decided not to take the risk of hiring the Appellant, considering the results of its family

background investigation. The BPD evidence submitted here is sufficient to meet the burden of submitting a preponderance of credible evidence in the record.

The Appellant has failed to show that the BPD's decision to bypass him was made with any political considerations or other unpermitted consideration.

For all of the above reasons, the appeal under Docket No. G1-09-7 is hereby *dismissed.*

Civil Service Commission,

  
Daniel M. Henderson  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, McDowell, and Stein, Commissioners) [Marquis absent] on March 10, 2011.

A true record. Attest:

  
Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(1), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Wigens Dumeus. (Appellant)  
Amanda Wall, Atty. (for Appointing Authority)  
John Marra Atty. (HRD)