

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200  
Boston, MA 02114  
(617) 979-1900

KENNETH ELLIS,  
Appellant

v.

E-22-134

CITY OF BROCKTON,  
Respondent

Appearance for Appellant:

*Pro Se*  
Kenneth Ellis

Appearance for Respondent:

Brett M. Sabbag, Esq.  
Norris, Murray & Peloquin, LLC  
315 Norwood Park South  
Norwood, MA 02062

Commissioner:

Christopher C. Bowman

SUMMARY OF DECISION

The Commission dismissed the Appellant's appeal, in which he raised questions about the impartiality of the promotional process for police lieutenant, after the City conducted a new, external review of candidates for promotional appointment.

DECISION ON RESPONDENT'S MOTION TO DISMISS

***Background***

This matter involves the appeal of Kenneth Ellis (Appellant), a sergeant in the City of Brockton (City)'s Police Department, who filed a non-bypass equity appeal with the Civil Service Commission (Commission) under G.L. c. 31, § 2(b), contesting his non-selection for promotional appointment to police lieutenant.

The gravamen of his appeal was that the City’s promotional process was not fair and impartial and was tainted by the fact that the selected candidate, Victor Perez (Mr. Perez), is the spouse of the City’s Police Chief. Without acknowledging any wrongdoing, the City, after attending a pre-hearing conference before the Commission, and the issuance of [interim orders by the Commission](#), effectively agreed to re-do the process, using an external review board whose members had no affiliation with the City. After conducting a “blind review” of the candidates, the external review board recommended Mr. Perez for promotional appointment and the City made his promotion to police lieutenant permanent.

Arguing that the external board had conducted a fair and impartial review, the City filed a motion to dismiss the Appellant’s appeal. The Appellant filed an opposition, raising questions about the impartiality of the external review process. On December 19, 2023, I held a remote status conference that was attended by the Appellant and counsel for the City. Mr. Perez, who was granted participant status in this matter, did not attend. At the status conference, the Appellant stated that he is in the process of filing for retirement and does not expect to return to active duty in the City’s Police Department. At my request, the City provided me with a copy of the “independent candidate review” completed by the external board.

***Summary Decision Standard***

When a Respondent before the Commission is of the opinion that there is no genuine issue of disputed material fact relating to the Appellant’s stated claim, no viable ground of appeal on the facts stated, and the Respondent is entitled to prevail as a matter of law, this party may move, with or without supporting affidavits, either to dismiss the entire appeal or for summary decision on a particular claim. 801 CMR 1.01(7)(h). Such 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 substantial and credible evidence established that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case,” and has not rebutted this evidence by “plausibly suggesting” the existence of “specific facts” to raise “above the speculative level” the existence of a material factual dispute requiring an evidentiary hearing. *See, e.g., Nigro v. City of Everett*, 30 MCSR 277 (2017); *Lydon v. Massachusetts Parole Bd.*, 18 MCSR 216 (2005). *Accord Milliken & Co. v. Duro Textiles LLC*, 451 Mass. 547, 550 n.6 (2008); *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 249 (2008). *See also Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635-36 (2008) (discussing standard for deciding motions to dismiss); *cf. R.J.A. v. K.A.V.*, 406 Mass. 698 (1990) (factual issues bearing on plaintiff’s standing required denial of motion to dismiss). *See also Zachary v. Civ. Serv. Comm’n & Dept. of Correction*, Suffolk Sup. Ct. No. 07-3197 (2008) (Commission was justified in upholding a 5-day suspension without a full hearing when the Appellant admitted that he engaged in the alleged misconduct).

### ***Analysis***

Based on a review of the Appellant’s response to the City’s motion to dismiss, he has no reasonable expectation of showing unfairness in the promotion selection process undertaken by the external board. As noted, the City has made available to me and the Appellant the external board’s relatively fulsome documentation of its reasonably thorough assessment efforts. After scrutinizing the review completed by the external board and hearing from both parties at the status conference, I am satisfied that the City has now taken sufficient steps to ensure a fair and impartial review of candidate for promotional appointment to police lieutenant. Going forward, however, the City should adopt stringent protocols to avoid even the appearance of favoritism or nepotism regarding the appointment and promotion of public safety candidates. Further, if it has

not already done so, the City should ensure that the current reporting structure follows the state ethics law.

Based on the corrective steps taken by the City and because the Appellant's application for retirement likely makes this appeal moot, the City's motion to dismiss is allowed and the Appellant's appeal under Docket No. E-22-134 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Dooley, McConney, Stein and Tivnan, Commissioners) on January 11, 2024.

Notice to:  
Kenneth Ellis (Appellant)  
Brett Sabbag, Esq. (for Respondent)  
Victor Perez (Participant)