

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

JAMES FERRARO,
Appellant

v.

CITY OF WORCESTER,
Respondent

Case No.: G2-16-30

ORDER OF DISMISSAL

The Appellant filed the instant appeal on July 19, 2016 challenging the Respondent's decision to bypass him for promotion to Police Captain. The Commission conducted a prehearing conference at its Boston office on August 30, 2016, at which time the Appellant indicated that he was not represented by counsel and that he was out of work on medical leave. I conducted a hearing in this case in Worcester on November 8, 2016, at which the Appellant was represented by counsel. On November 20, 2016, the Appellant's attorney withdrew his appearance, having been discharged by the Appellant. The Commission has not yet issued a decision following the hearing.

By email dated June 6, 2017, copied to the Appellant, the Respondent informed the Commission that the Appellant has retired. On June 6, 2017, I sent an email message to the Appellant, copying the Respondent, stating, in full, "Please advise at your earliest convenience if you have retired, which would render your appeal moot." The Appellant sent a reply email message on June 12, 2017 stating, in full, "Sorry for the delayed response. Yes I am currently retired. Was a decision reached by the Civil Service appeal board (sic)?" On June 12, 2017, I replied to the parties, stating, in full, "The Commission has not issued a decision in your appeal. Now that you are retired, there is no relief the Commission can grant you if it ruled in your favor. Therefore, the appeal is moot and will be closed accordingly."

801 CMR 1.01(7)(g)(3) provides,

"Dismissal for Other Good Cause. The Presiding Officer may at any time, on his own motion or that of a Party, dismiss a case for lack of jurisdiction to decide the matter, for failure of the Petitioner to state a claim upon which relief can be granted or because of the pendency of a prior, related action in any tribunal that should first be decided."

(Id.)

It is a well-established legal principle that, “[t]he law does not require the doing of a futile act.” Ohio v. Roberts, 448 U.S. 56, 74 (1980).

In the case of a successful bypass appellant, the Commission orders that the Appellant’s name be placed at the top of the list generated following the next exam (or assessment center) to fill a vacant position. Since the Appellant has retired, he is no longer an employee and cannot be promoted. Thus, even if the Commission were to rule in the Appellant’s favor, it could not provide him with the available relief. For these reasons, the Appellant’s appeal, Docket No. G2-16-30, is hereby *dismissed*.

Civil Service Commission

/s/ Cynthia A. Ittleman

Cynthia A. Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Stein and Tivnan, [Ittleman – absent] Commissioners) on June 22, 2017.

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)(1), 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:
James Ferraro (Appellant)
William Bagley, Esq. (for Respondent)