

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

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

MATTHEW FRAUMENI,
Appellant

v.

CITY OF CAMBRIDGE,
Respondent

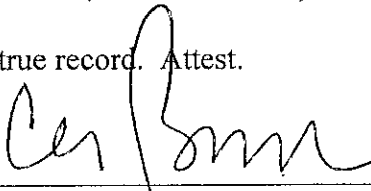
Case No.: G1-11-349

DECISION

The Civil Service Commission (Commission) voted at an executive session on September 19, 2013 to acknowledge receipt of the Recommended Decision of the Administrative Law Magistrate dated July 16, 2013; the Appellant's written objections to the recommended decision; and the Respondent's response to those objections. After careful review and consideration, the Commission voted to adopt the findings of fact and the Recommended Decision of the Magistrate therein. A copy of the Magistrate's Recommended Decision is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 19, 2013.

A true record. Attest.



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:

Joshua L. Sulman, Esq. (for Appellant)
Joshua R. Coleman, Esq. (for Respondent)
Richard C. Heidlage, Esq. (Chief Administrative Magistrate, DALA)



THE COMMONWEALTH OF MASSACHUSETTS

DIVISION OF ADMINISTRATIVE LAW APPEALS

ONE CONGRESS STREET, 11TH FLOOR

BOSTON, MA 02114

RICHARD C. HEIDLAGE
CHIEF ADMINISTRATIVE MAGISTRATE

TEL: 617-626-7200
FAX: 617-626-7220
WEBSITE: www.mass.gov/dala

July 16, 2013

Christopher C. Bowman, Chairman
Civil Service Commission
One Ashburton Place, Room 503
Boston, MA 02108

Re: Matthew Fraumeni v. City of Cambridge
DALA Docket No. CS-12-182
CSC Docket No. G1-11-349

Dear Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

If either party files written objections to the recommended decision, the opposing party may file a response to the objections within 20 days of receipt of a copy of the objections.

Sincerely,

Richard C. Heidlage /AMS
Richard C. Heidlage
Chief Administrative Magistrate

RCH/mbf

Enclosure

cc: Joseph L. Sulman, Esq.
Joshua R. Coleman, Esq.

COMMONWEALTH OF MASSACHUSETTS

Suffolk. ss.

Division of Administrative Law Appeals

Matthew Fraumeni,
Appellant

v.

Docket Nos. **CS-12-182 (DALA),**
G-1-11-349 (Civil Service
(Commission)

Cambridge City Manager/Police Department,
Appointing Authority

Dated: **JUL 16 2013**

Appearance for Appellant:

Joseph L. Sulman, Esq.
Law Office of Joseph L. Sulman
185 Devonshire Street, Suite 502
Boston, MA 02110

Appearance for Appointing Authority:

Joshua R. Coleman, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

Administrative Magistrate:

Sarah H. Luick, Esq.

Summary of Recommended Decision

The Appointing Authority was justified in bypassing the Appellant for an original appointment to police officer. The process followed to evaluate the Appellant was the same process employed for all the candidates. The Appellant was given ample opportunity to address his background with the Appointing Authority. The findings made did not uncover any pretextual reason for bypassing the Appellant. The candidate selected instead of the Appellant had a more relevant work history, performed better during his interview, and unlike the Appellant, had no significant driving record or criminal history.

RECOMMENDED DECISION

Pursuant to G. L. c. 31, § 2(b), the Appellant, Matthew Fraumeni, filed an appeal with the Civil Service Commission on December 12, 2011 seeking a review of the decision of the City of

Cambridge to bypass him for an original appointment to the position of full-time permanent police officer. By letter of November 10, 2011, he was notified by the City Manager, the Appointing Authority, of the reasons for being bypassed. (Exs. 1, 19 & 20.) A hearing was held for the Civil Service Commission on the merits of the appeal by the Division of Administrative Law Appeals at its offices at One Congress Street, 11th Floor, Boston, MA 02114. The hearing was transcribed and held over three days; April 20, September 19, and December 4, 2012.

Various documents are in evidence. (Exs. 1 - 26.) The parties filed a joint memorandum that included some stipulations as well as their legal arguments. (Ex. A.) The Commonwealth's Human Resources Division informed the Civil Service Commission that it would not be participating in the hearing. (Ex. B.) A list of the names of the candidates for the position from the certified lists that was used for making the original police officer appointments was provided for help in reviewing the evidence. (Ex. C.) (The transcript and some of the Exhibits contain the name of Candidate E who was selected for appointment when the Appellant was bypassed.)

The Appointing Authority presented the testimony of Cambridge Police Department employees; Sgt. Steven Lefebvre, Superintendent Christopher Burke, and Christina Giacobbe, as well as the testimony of Sgt. Joseph Cintolo of the Boston Police Department. The Appellant testified on his own behalf and presented the testimony of his cousin, Jonathan Lamoureux.

FINDINGS OF FACT

Based on the evidence presented and the reasonable inferences drawn therefrom, I make the following findings of fact:

1. Matthew Fraumeni, born in 1973, grew up in the Cambridge/Somerville area. His parents divorced, and his father remarried and had a daughter. He grew up with a brother about a year older. His mother moved the family frequently during his childhood. During high school, he lived with his father in Easton where he attended high school, graduating in 1991. He

2. Mr. Fraumeni has taken about four or five civil service examinations for an original appointment to police officer. He never reached the stage of a job interview until this hiring process. (Testimony of Mr. Fraumeni.)

3. Mr. Fraumeni held various jobs after graduating from college. He had also been an unpaid intern during the summer of 1997 in a probation department before he graduated. He considered becoming a probation officer as a career but was not able to secure this position soon after graduating from college. After college, Mr. Fraumeni had education loans to pay off and often changed jobs in an effort to make as much money as he could. He tried working in the financial services industry for awhile, but then decided to follow his brother into the stone masons union from August 2001 to October 2002. The pay was very good, but working as a mason's helper was physically demanding with long hours. He left this work to take a job at the Choate, Hall & Stewart law firm for less pay, but doing somewhat the kind of work he had been doing in his financial services jobs. He left this job for mortgage sales work. He changed from his first employer to another company, Ameriquest Mortgage Company, hoping for better income. He found this job potentially involved predatory practices so he left this kind of work. He next tried work for the car dealership, Herb Chambers Honda, in motor vehicle sales (October 2004-March 2005). He decided this kind of sales work was not a good fit for him and left that job. He then returned to financial services in March 2005 working with State Street.

Investments where he was for about six years by the time he sought this Cambridge police officer position. His job as senior account manager involved facilitating financial transactions. Around December 2007 he was promoted to client services manager and was managing employees. (Exs. A, 1 & 2. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

4. For about a month during the summer in 1993, Mr. Fraumeni worked at National Engineering Company through a temporary job agency. At times during the summers before he graduated from college, he worked for the Cambridge Recreation and Public Works Departments. (Exs. 1 & 2. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

5. Herb Chambers Honda learned shortly after his hire, that Mr. Fraumeni's driver's license was suspended, preventing him from performing his full duties. This was the first time Mr. Fraumeni realized that his license had been suspended in August 2004. He was able to pay past due fines to get his driver's license restored by December 1, 2004. He also received a written warning/final warning from Herb Chambers Honda concerning rude conduct with customers. Mr. Fraumeni signed off on this warning to keep his job, but disagreed with his manager's assessment of the circumstances his manager relied upon to show he was rude to customers. Mr. Fraumeni voluntarily left this job. (Exs. A, 1, 2, & 3B. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

6. Mr. Fraumeni received a performance review in his State Street job that found the tone of especially his emails with clients and staff to be short and curt. After receiving this review, he worked on his manner of communicating and was found to be improving. He has not received formal discipline in his work at State Street Corporation. (Exs. A, 1, 2, 12, 13 & 14. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

7. Mr. Fraumeni has a driving history that includes: an inspection sticker violation in

February 1996; four speeding ticket violations in June 1994, November 1996, October 2001, and July 2002; two seatbelt violations in July 2004 and April 2009; and one surchargeable accident in April 1996. His license was suspended in August 2004 after he received numerous warning letters that his driver's license would be suspended if he did not pay up the fines he owed. (Exs. A, 2, 3A & 3B. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

8. Mr. Fraumeni moved frequently around the time the Registry of Motor Vehicles (RMV) sent him notices warning him that his driver's license would be suspended if he did not pay his past due fines. During this time period he did not always timely notify the RMV of his new addresses as required. (Exs. 1, 2, 3C & 17. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

9. On February 18, 2001, Mr. Fraumeni was arrested by a Boston Police Officer and charged with assault and battery and with resisting arrest. Mr. Fraumeni was represented by counsel and his case that was continued without a finding with a counseling requirement. Although he satisfied the terms of his probation, the matter was never dismissed on his record. During the hiring process, the Cambridge Police assisted him in getting the matter entered as dismissed on his criminal record. (Exs. A, 1, 2, 5, 11 & 24. Testimony of Mr. Fraumeni, Sgt. Lefebvre, & Sgt. Cintolo.)

10. The circumstances that led to the arrest on February 18, 2001 involved Mr. Fraumeni, his cousin, and others he knew. They were all socializing at a Boston nightclub into the early morning hours. While dancing with a woman, two men approached his partner to move her away from Mr. Fraumeni. She resisted. One of the men got between Mr. Fraumeni and this woman. Mr. Fraumeni placed himself nearer to the woman so that his back was to the two men he did not know. One of the men grabbed Mr. Fraumeni at the shoulder, turned him around, and pushed his chest up against Mr. Fraumeni's chest. Mr. Fraumeni told the man to get away from

them and pushed him away. The other man took his friend away from the scene. A few hours later, the two men again approached Mr. Fraumeni when he was alone, shortly before the 2:00 AM closing time. One of the men came up to Mr. Fraumeni and put his chest up against Mr. Fraumeni's chest and yelled at him. Mr. Fraumeni pushed him away. The man took a swing at Mr. Fraumeni who ducked. At this time, the two men were separated, and Mr. Fraumeni was escorted out of the nightclub by a Boston police officer on detail duty, Joseph Cintolo. Mr. Fraumeni objected asking why this was happening because he had not done anything and the other man had tried to punch him. Officer Cintolo told him he had seen him push the other man. Mr. Fraumeni left the nightclub but did not obey the order to leave the area. It was near closing time and Mr. Fraumeni wanted to get a ride home from his friends. His cousin saw him being escorted out of the nightclub and left the nightclub to see him. At this point, neither Mr. Fraumeni nor his cousin left the area. Mr. Fraumeni then began to talk to other friends who were leaving the nightclub. He saw his cousin go off to speak to some people. Soon thereafter, someone alerted Mr. Fraumeni that his cousin was in a dispute with some people. As he turned his attention to his cousin, Mr. Fraumeni saw his cousin engaged in a fight with two men. Mr. Fraumeni ran over and ended up in a fight with one of the two men while his cousin was fighting with the other man. Before too long, nightclub bouncers and Officer Cintolo were coming over to break up the fight. Upon arriving, Officer Cintolo saw Mr. Fraumeni punch the man he was fighting in the head. The punch caused redness and some swelling. Mr. Fraumeni had thrown the punch near Officer Cintolo's shoulder. Once Mr. Fraumeni realized the fight was going to be broken up, he immediately left the scene, walking briskly at first and pushing away the men trying to grab hold of him. He then jogged as he moved further away from the nightclub. When he came to an alley, he turned down the alley, still moving away from the nightclub so that no

one could reach him. He was jogging down the alley when he heard someone say stop. He turned around and saw Officer Cintolo. He obeyed, and then began to walk toward him. Officer Cintolo placed him under arrest for assault and battery and for resisting arrest. (Exs. A, 1, 2, 5, 11 & 24. Testimony of Mr. Fraumeni, Sgt. Cintolo, Mr. Lamoureux, and Sgt. Lefebvre.)

11. Officer Cintolo's police report on the incident noted that Mr. Fraumeni had punched the man outside using a closed fist, then fled the scene, resisting efforts to stop him from leaving. Mr. Fraumeni cooperated with Officer Cintolo following his arrest. (Exs. A, 1, 2, 5, 11 & 24. Testimony of Sgt. Cintolo & Mr. Fraumeni.)

12. Mr. Fraumeni acknowledges that he punched someone during the fight outside the nightclub on February 18, 2001 but that he did this in defense of his cousin. He does not feel he fled the scene to avoid being arrested. (Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

13. Mr. Fraumeni dated a woman in 2005-2006. He knew she was not a U.S. citizen, but assumed that she was a legal resident. After dating and then living together for three or four months, they got married. He never asked to see paperwork from her to prove she had legal immigration status. Later, he learned that she was not in the United States legally, and was facing deportation at the time of their marriage. Within a few weeks after they were married, his wife left him, explaining she was off to help her sister in Florida, someone he had never met. When she told him that her sister had to undergo an operation, he believed her. Initially, his efforts to reach her by telephone were unsuccessful. When she finally contacted him to let him know she was not reuniting with him, he felt he had been scammed/deceived. He insisted that she do what it would take to dissolve the marriage, but she only agreed to a divorce. He insisted that she get their marriage annulled. A few months later, she filed in Massachusetts for an annulment, but the petition was dismissed. For about the next three years, Mr. Fraumeni

did not take any further action concerning the marriage. Neither party filed for a divorce. They never saw each other during this time period. Mr. Fraumeni began dating another woman in 2008. After they became engaged, he decided to investigate whether he could get an annulment. He filed for the annulment, but did not telling his fiancée. On February 17, 2009, he was awarded a Judgment of Annulment against his wife who was now living in Peru. The terms of the judgment "declared [the marriage] null and void." The judgment noted:

The plaintiff [Mr. Fraumeni] entered the marriage in good faith, but at the time of the marriage, plaintiff was induced to enter the marriage through fraud practiced upon said plaintiff by said defendant; and that upon discovery of the true facts, said plaintiff ceased the marital relationship pursuant to G. L. c. 207, § 14.

(Ex. 26.) Mr. Fraumeni told his fiancée about securing the legal annulment once he obtained it. They married in 2011 and now have a child. He understood that once he received this legal annulment, it was as though he had never been married. (Exs. 1, 2, 11, 25 & 26. Testimony of Mr. Fraumeni & Sgt. Lefevbre.)

14. On April 25, 2009, Mr. Fraumeni took a civil service examination for an original appointment to police officer. He made the eligibility list for a potential appointment. This list with certification #203315, was used by the Cambridge Police Department for original appointments to the position of police officer. The City Manager of Cambridge, the Appointing Authority, wanted to select ten candidates for appointment. Five candidates were hired on June 6, 2011. No one else has been hired off this list. Mr. Fraumeni was bypassed for selection by only Candidate E who ranked lower on the list. (Exs. A, 1, 15 & 16. Testimony of Ms. Giacobbe.)

15. When the City of Cambridge received the list of eligible names, the City received a ranking of the individuals without receiving the actual examination scores. The City had to use the list starting from the top name and work down the names on the list in considering

candidates. Mr. Fraumeni and Candidate E were within the group of thirteen that reached the interview stage toward being appointed. Once a candidate is offered a position, that offer is conditioned on the candidate being able to have a successful medical evaluation and pass a physical abilities test. The candidates received a notice from the City of Cambridge that they would need to complete an application at the Police Station and that they should bring with them various documents listed in the notice. They were also told that an interview would be done after completion of the application. No further specific information was set forth in the notice for the candidates. The specific documents listed in the notice were:

1. Massachusetts Driver's License
2. Social Security Card
3. High School Diploma or GED Certificate
4. College Diploma(s), if applicable
5. Birth Certificate
6. Naturalization Papers, if applicable
7. Military DD214, if applicable
8. VA Disability documentation, if applicable
9. Any pardons for criminal offense(s), if applicable
10. Selective Service Card, if applicable
11. Credit History
12. Motor Vehicle Excise Tax receipts for 2009 & 2010 (all vehicles)
13. EMT/Paramedic certification card
14. Police Academy certificate
15. Attendance records for past five years (most recent employer)

(Exs. C & 9. Testimony of Sgt. Lefebvre & Ms. Giacobbo.)

16. The candidates were photographed, fingerprinted and had to agree to a criminal history check and to a driving record check. A background investigation was done on each candidate by the Cambridge Police's Professional Standards Unit. The application was long with questions covering personal, criminal, driving record, and employment histories, including such information as all residencies the candidate had with the names of the persons the candidate lived with, and the candidate's education background. The application was not seen until the

candidate showed up at the Police Station to complete it. There was no set time given for completing the application but it typically took candidates at least two to four hours to complete it. The candidate completed the application in a private area or alone in a room. In terms of the information to provide in the application, the candidates were to answer fully and accurately.

(Ex. 2. Testimony of Ms. Giacobbe, Sgt. Lefebvre, & Superintendent Burke.)

17. Sgt. Lefebvre was Mr. Fraumeni's contact person on March 3, 2011 when he arrived at the Cambridge Police Station to complete his application. Sgt. Lefebvre had been in the patrol unit from 1999 until he became sergeant in March 2010. He was temporarily assigned in February 2011 to do the background investigations on some of the candidates. He received primarily on-the-job training in how to perform these investigations. He was assigned to do Mr. Fraumeni's investigation which was his fifth such investigation. Mr. Fraumeni came to the Police Station dressed in a shirt and tie. Sgt. Lefebvre had him complete the application in blue ink. He stressed the need to be honest and completely accurate in answering the application questions. He explained that there was no time limit to complete the application. Sgt. Lefebvre spent about twenty hours on his background investigation of Mr. Fraumeni. He has spent much longer on his investigations of some other candidates. One reason for having candidates complete the application only at the Police Station was to test the candidate's ready knowledge about their backgrounds and to prepare the candidate for the rest of the screening process. The application responses were contrasted against the information uncovered in the background investigation. (Ex. 2. Testimony of Sgt. Lefebvre, Ms. Giacobbo, Superintendent Burke, & Mr. Fraumeni.)

18. The application contained an "Agreement" the candidate signed. The candidate had

to “swear (or affirm) that the information ... entered ... is true and complete.” The candidate had to “authorize investigation of all statements contained in this application,” and acknowledge “that false or misleading information given herein or during interview(s) will result in ... being disqualified from further consideration.” The candidate had to “certify that all statements made ... on this application are true and complete, to the best of my knowledge.” The “Agreement” required, “that if there are any changes to my status or to the information I have provided in this application I will immediately notify the Cambridge Police Department. Failure to notify the Department in a timely manner may result in my being disqualified from further consideration.” Mr. Fraumeni signed this “Agreement” in connection with completing his application on March 3, 8 and 25, 2011. (Ex. 2. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

19. Question 7 on the first page of the application sought the candidate’s marital status. The options listed were; single, married, widowed, divorced, or separated. The question sought the date and place of marriage, and the court, date and place of any divorce or separation. On March 3, 2011, Mr. Fraumeni checked-off that he was single. He did not write anything else such as noting he had a marriage legally annulled, when, and in what court. Because the legal annulment made the marriage null and void, he felt his answer was accurate with no need to acknowledge he had ever been married. (Ex. 2. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

20. As Mr. Fraumeni began to address the application questions, he was unable to provide precise information about all the dates, names of people, addresses, and employers asked in some questions. He had many entries to make, and explained this to Sgt. Lefebvre. He asked if he could come back to provide the best information. Sgt. Lefebvre instructed him to first complete as much of the application as he could. Mr. Fraumeni made a list of needed further information, including such items as all his residences and dates, where and with whom he had

lived, dates of trips he took out of the country, some employment dates, his parents' dates of birth, more information about his arrest, and some details on financial information. Mr. Fraumeni returned on March 8, 2011 to further answer the application questions in black ink. He addressed as best he recalled, the information he researched to provide precise dates, names, residences, etc. (Exs. 2 & 10. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

21. After March 3 and before March 8, 2011, Sgt. Lefebvre told his supervisor, Lt. Sabbey, that Mr. Fraumeni's application answers versus the information uncovered in the background investigation, showed many discrepancies, including about his criminal record and driving history. Sgt. Lefebvre confronted Mr. Fraumeni about these discrepancies on March 8, 2011 in connection with the further completion of his application. There were empty pages in the application for the candidate to provide further information about answers to particular questions. On these pages there was an alert to always be honest. For example, on one of these blank pages on the bottom was, "WARNING," followed by the caution to be truthful because if not the candidate would be "automatically ... disqualified from further consideration." (Ex. 2. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

22. On March 8, 2011, Mr. Fraumeni informed Sgt. Lefebvre about his annulled marriage, explaining that he had answered that he was single on March 3, 2011 because of the annulment of the marriage. Sgt. Lefebvre asked him why he would have left out this information in answering the application on March 3, 2011, and had him write up a statement concerning this issue. Using the blank pages in the application he wrote:

I married a girl and later had the marriage annulled. When we got married I was unaware that the woman was in the process of having to leave the country for immigration reasons. I was deceived and then had the marriage annulled because we were married under the assumption that she would not have to leave the country. I could never have entered into the marriage if I knew she had immigration issues.

(Ex. 2. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

23. In answering the application question to provide addresses and some background information on the people he had lived with, Mr. Fraumeni had a very large number of entries to list. He wrote the following statement using the blank pages in the application:

Please see copy for people I have lived with. I moved around a lot when I was younger. My mother and father were divorced and we never stayed in one place for very long. We moved in with family at times and seemed to move every year. There is a long list of individuals that I have lived with in the past.

(Ex. 2. Testimony of Mr. Fraumeni.)

24. On March 8, 2011, Sgt. Lefebvre told Mr. Fraumeni that he had an open criminal case so that his application answer on March 3, 2011 was incomplete. To respond to that, Mr. Fraumeni wrote the following using the blank pages in the application:

I provided info related to an arrest I was under the impression from going to court and speaking with my lawyer at the time that my case was Continued Without a Finding C.W.O.F. I was told by the court to see a social worker, which I did. The paperwork shows that I did not complete my requirement to see the social worker. I will get the required paperwork to get it straightened out.

(Ex. 2. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

25. On March 3, 2011, Mr. Fraumeni answered no to the application question on whether or not his driver's license had ever been suspended. Because the RMV driving record obtained by Sgt. Lefebvre was read to show Mr. Fraumeni's driver license had been suspended five times, he raised this discrepancy to Mr. Fraumeni on March 8, 2011. In terms of additional information, Mr. Fraumeni wrote the following using the blank pages in the application:

I do not recall ever being told that my license to drive was suspended. If it was, it must have been due to my moving around a lot and changing addresses frequently causing paperwork to go to the address on file with the registry rather than where I was living at the time. I admit to not providing my current address promptly to the registry. I can recall changing my address with the registry months later than I should have. If any statements regarding my driving history are inaccurate, it is not because I am intentionally being dishonest, but because I have forgotten.

(Ex. 2. Testimony of Sgt. Lefebvre & Mr. Fraumeni.)

26. Mr. Fraumeni had to return to further address the information on his application. On March 25, 2011, he met with Sgt. Lefebvre and other officers in the Professional Standards Unit. By this time, further information about Mr. Fraumeni's work history had been uncovered showing that he had been disciplined for being rude to customers while working at Herb Chambers Honda, had a performance evaluation with his current employer finding he had been curt at times with customers and staff, and that a background check by Herb Chambers upon his hire had uncovered his suspended license. The background investigation had also uncovered that he had worked at National Engineering and in a Probation Department. None of this information had been revealed by Mr. Fraumeni on his application. At this session, he was shown documents from the background investigation. He was told that he had lied and given incomplete and dishonest answers on the application. He was also asked why he had moved from job to job. Mr. Fraumeni was upset that he was being challenged this way. He told the officers that he never intentionally left out or given false information in his application. He told them he did not recall having five license suspensions and had forgotten about Herb Chambers uncovering his suspended license. He suggested that because he had moved so frequently, the RMV may not have known his current address when sending out notice of his driver's license suspension. He explained that he changed jobs a lot to try to make good income and because he wasn't thrilled with work in the financial services field. He explained that he felt an annulled marriage meant a void marriage. He explained that his work at the Probation Department had been as an unpaid intern so that he had not listed it as employment, and that he had only worked for about a month in a temporary job with National Engineering and had forgotten about it. After providing his explanations to the officers, he was still told that he had not been fully truthful in his answers.

(Exs. A, 2, 4A, 4B & 11. Testimony of Mr. Fraumeni & Sgt. Lefebvre.)

27. On March 25, 2011, on one of the blank pages in the application, Mr. Fraumeni wrote about being disciplined for his conduct with customers while working for Herb Chambers:

I was presented with an Employee Warning Report from Herb Chambers. I did sign this document. I did not include this information in my application because I did not remember any incident at all. Now that it is presented to me, I am trying to recollect, but I do not remember this incident.

(Ex. 2.) He wrote on another blank page concerning his license suspension:

I did not provide this information regarding my license to operate a vehicle being suspended in the past. My driving record clearly shows that it was on multiple occasions. I do recall paying tickets late. I do not recall my license being suspended. It clearly was and I do not recall. Knowing that all of this information would be pulled, I would not be dishonest. There was a lot going on in my life around that time (financially) and that could be the reason why I do not recall the events presented to me.

(Ex. 2.) He wrote on another blank page concerning leaving off some work history:

From November '93 – December '93, I worked at National Engineering Company. It was a temp. placement ... It was for such a short time that I did not even recall this position. I was placed for a month or so (maybe less – maybe more) at Arthur D. Little in Cambridge. Actually, I believe it was a couple of weeks, until the project was over.

(Ex. 2.) At the bottom of each of the pages in the application where he wrote down this additional information, he signed the page, which was witnessed by one of the officers, certifying to the following:

My statements on this form are true and correct to the best of my knowledge and belief and are made in good faith.

(Exs. 2, 4A, 4B & 11. Testimony of Mr. Fraumeni.)

28. Mr. Fraumeni finished the application process on March 25, 2011. His next step was the interview that all candidates had to have with a panel that included Police Commissioner Hass, Chief Police Department Administrative Officer Giacobbo, Superintendent Burke in

charge of the Professional Standards Unit and Support Services, and Superintendent Williams in charge of Operations Services. (Testimony of Mr. Fraumeni, Ms. Giacobbo, Superintendent Burke, & Sgt. Lefebvre.)

29. Both Ms. Giacobbo and Superintendent Burke have had experience being on interview panels to assess original appointments for Cambridge police officers. Ms. Giacobbo manages the hiring process for police officers, overseeing all the required civil service procedures. She has had human resources trainings over the years and has done hundreds of evaluations of job candidates. She has participated in at least eight police officer hiring processes. Superintendent Burke has about twenty-eight years on the Cambridge police force with promotions from patrol officer to sergeant to lieutenant to deputy superintendent. He reports directly to Commissioner Haas. He has supervised patrol officers, worked in Internal Affairs, and done many criminal and background investigations. He has served on interview panels for about twenty to thirty candidates for police officer. He is not a relative of Candidate E. (Ex. C. Testimony of Ms. Giacobbo & Superintendent Burke.)

30. Superintendent Burke uses benchmark standards in doing evaluations of job candidates of uncovering positive and negative aspects in a background check. Significant is how recent an event was, if the conduct involved was repeated/how frequently it occurred, and the severity of the conduct. Inconsistencies in the information uncovered by the police background investigation versus what the job candidate provided as background information is what is highlighted when the candidate is interviewed for the position. In terms of negative events/conduct in the candidate's background, Superintendent Burke wants the job candidate to accept responsibility for his mistakes and to show he learned how to improve his future conduct as a result. He looks for full disclosure of all background information on a topic and expects the

candidate not to be evasive in addressing any questions raised either in the application or during the interview. These benchmark standards were employed by the panel in evaluating the job candidates including Mr. Fraumeni. (Testimony of Superintendent Burke & Ms. Giacobbo.)

31. To assist the interview panel, the Professional Standards Unit produced summary reports on each of the candidates. Mr. Fraumeni's summary provided his basic profile information, education, employment history, criminal history, and RMV record. The report covered the duties he performed in his various jobs, job discipline matters and how these came to light through only the investigation process, his performance evaluations and reasons for leaving jobs, highlights of his RMV record including addressing the driver's license suspension matter, and the criminal case. No specific discussion about the marriage being annulled was in the report, but the report referenced "some inconsistencies with the current police application; and information ... obtained during the background investigation process." (Ex. 11. Testimony of Sgt. Lefevbre, Ms. Giacobbo & Superintendent Burke.)

32. The summary report contained a lengthy discussion with information that supported an RMV record of Mr. Fraumeni having had his driver's license suspended five times on "08/02, 11/01, 02/98, 05/96, 03/96." The report noted how Mr. Fraumeni had sought his RMV record on November 22, 2004, a date that lines up with the information in the report concerning how the Herb Chambers' RMV check had uncovered that his driver's license was suspended and that led to him clearing up this matter by paying off past due fines. The report explained that Mr. Fraumeni was confronted with the license suspension issue on March 8, 2011 when he responded "that he does not recall ever being told that his license to operate a motor vehicle had been suspended on any occasion ... that if it was he must not have received notification due to his frequent address changes and his own failure to notify the RMV of the new address." This

information was reported to the panel interviewers along with Mr. Fraumeni changing "his story [once confronted with the Herb Chambers' investigation] ... that if his statements regarding his driving history are not accurate it [is] not because he is intentionally being dishonest but because he had forgotten about the suspensions." The report concluded that his answers about his driver's license were "implausible" because, for instance, he had to attend an eight hour "certified safe driving class in 1998 after 5 surchargeable events," and that his recollections were not consistent with the information uncovered through the investigation. (Ex. 11.)

33. The interview panel used the same template of questions, provided to the panel in advance of doing each candidate's interview, so that each panel member could jot down impressions of the candidates. Mr. Fraumeni's interview was on April 6, 2011. Each candidate was asked the template questions, but there were follow-up and further probing questions asked of each candidate. These questions were developed by Ms. Giacobbo with help from Commissioner Haas. The template questions asked for,

a little bit more about yourself and career, particularly any achievements or activities that you are particularly proud of ... the two most important reasons why you would like to work for the Cambridge Police Department ... [C]larifications on background (i.e., sick, driver history, employment history) ... What things haven't we covered that you think ... important for us to know about you ... What questions do you have for us.

(Ex. 7. Testimony of Ms. Giacobbo & Superintendent Burke.)

34. Much of the tone of the questioning of Mr. Fraumeni involved the panel members' skepticism that he was forthcoming with his answers concerning his personal, work, driving, and criminal histories. The panel members felt his claimed memory lapses were not credible as to important events. They felt he was not accepting responsibility for the negatives he had in his record. For instance, the panel found he was not accepting of sufficient wrongdoing in connection with his February 2001 criminal conduct as a twenty-seven year old, and that it was

not credible to believe he just forgot the Herb Chambers' investigation in 2004 that caused him to learn about and remove his driver's license suspension by paying off fines he owed the RMV, or forgetting he received a written warning about being rude to Herb Chambers' customers. At the time of the interview, the panel along with the officers who produced his summary report, believed Mr. Fraumeni had five driver's license suspensions on his record and that his reason for not listing his marriage on his application was an attempt to be evasive. They felt that simply having a marriage annulled did not remove the fact of having been married. The panel members were not impressed with Mr. Fraumeni's work history as it did not have much pertinence to law enforcement work, and he had held many jobs. The panel found Mr. Fraumeni was not forthcoming and was sometimes deceptive in addressing the panel's questions. He was observed sweating and looking nervous. The panel had job performance evaluations with Mr. Fraumeni's current State Street employer mentioning that he needed to be less curt in his communications with customers and staff, something he had not listed in his application. They concluded that Mr. Fraumeni, in contrast to the other twelve candidates interviewed, ranked among the worst interviewees. (Exs. 1, 7 and 11. Testimony of Mr. Fraumeni, Superintendent Burke, Ms. Giacobbo & Sgt. Lefevbre.)

35. Following these interviews, the panel members reviewed with one another the candidates' interview performances and their summary records. No scoring process was used, but a comparison of candidates was done. The purpose of this process was to help the Police Commissioner reach a recommendation for the City Manager on candidates to select. The City Manager alone makes the hiring decisions. The panel members, including Police Commissioner Haas, were unanimous in not recommending the hire of Mr. Fraumeni. This was also the recommendation made by the Police Commissioner to the City Manager. (Testimony of Ms.

Giacobbo & Superintendent Burke.)

36. By the time the hiring decisions were to be made by the City Manager, there had been a further investigation concerning Mr. Fraumeni's driving record. The outcome was that the RMV had only suspended Mr. Fraumeni's driver's license once, in September 2004. What the prior police investigation had done was to read the RMV data to show five suspensions of the license when in fact the information only showed notices sent by the RMV to Mr. Fraumeni at the address(es) the RMV had for him, warning him that his driver's license would be suspended unless he paid his outstanding fines. A correction was produced in Mr. Fraumeni's summary report by the Professional Standards Unit. There was no further interview set up for Mr. Fraumeni in light of this corrected information concerning only one driver's license suspension. The amended summary report was what the City Manager had before him when he made his hiring decision concerning Mr. Fraumeni. Present at the meeting when the City Manager made his hiring decisions were Police Commissioner Haas and Ms. Giacobbo. (Exs. 11 & 11A. Testimony of Ms. Giacobbo, Mr. Fraumeni & Sgt. Lefebvre.)

37. The day following his interview before the panel, Mr. Fraumeni wrote an email to Commissioner Haas regarding his candidacy including his responses to the application questions and to the questions asked at the interview with the panel. He noted in the email how his responses at the interview before the panel were labeled as "unforthcoming and/or untruthful about certain things ... in my past." Mr. Fraumeni mentioned his annulment, and how he had researched and learned that in a court a judge in granting an annulment is undoing the marriage because a party to the marriage was not legally entitled to be married. In presenting this information Mr. Fraumeni quoted from information he had located checking various websites on what a legal annulment means. Mr. Fraumeni explained:

My understanding of an annulment and the information available seems to conflict with the information presented by yourself and also by your colleagues in our meeting. My intention is not to prove anyone wrong, but just to present the information in order to remove this potentially negative mark or connotation from my record.

(Ex. 25. Testimony of Mr. Fraumeni.) Mr. Fraumeni also discussed in this email his driving record. He noted how his "recollection of my license history differs from the information presented to me by the CPD during this process." He noted how he sought "a copy of my driving record from the Registry of Motor Vehicles." He explained that he was not claiming mistakes were made during the police investigation, and he acknowledged: "It is plausible that I may have simply forgotten the details of these events over the years." He explained that he would,

research the info to make sure the department's interpretation of the events is correct. Should the findings of my driving history differ from having my license actually suspended on 5 separate occasions, I will provide the information to you.

(Ex. 25. Testimony of Mr. Fraumeni.)

38. The candidates chosen for appointment all were found by City Manager Robert W. Healy to possess the general criteria he wanted in a Cambridge Police Officer. By letter of October 20, 2011 to the Commonwealth's Human Resources Division, City Manager Healy provided his criteria for selecting the candidates he did. The letter included detailed profiles on each of the candidates chosen, Candidates A, B, C, D and E. All of the candidates selected were found to be superior to the candidates not selected based on the following criteria:

- Selected candidates were truthful and complete when filling out their candidate information forms and answered questions concerning their past employment truthfully and consistently during the background and interview process.
- Selected candidates possessed a good work experience as indicated by references, statements, and assessments of their capacity to be good police officers from supervisors of current and previous employers.

- Selected candidates possessed good characteristics evaluated during the course of the interview, background, and reference checking, such as self-control, sound judgment, non-violent behavior, and ability to get along with others.
- Selected candidates do not have a history of criminal behavior within the ten years.
- Selected candidates qualified for residence preference and were truthful in answering questions concerning their residency status.

(Exs. C & 1. (See Ex. 1's profiles on the chosen candidates, A, B, C, D, & E). Testimony of Ms. Giacobbo.)

39. Mr. Fraumeni was not offered the appointment. He was bypassed for Candidate E who was offered the appointment and accepted it. (Exs. C, 1 & 18. Testimony of Ms. Giacobbo.)

40. Candidate E completed an application, had a background investigation done with a summary report produced, and was interviewed by the panel members on April 6, 2011. He is about ten years younger than Mr. Fraumeni. At the time of the evaluation process he was single with no children. He had graduated from high school in 2002, and in 2005 got an associate's degree in criminal justice from Middlesex Community College. His employment record included his position at the time of the evaluation process as a security officer for the Cambridge Health Alliance from October 2005. The Cambridge Police were able as part of the background check to secure his personnel files. Candidate E had a two day suspension for failing to submit in a timely way paperwork for becoming a special state police officer and for failing to notify his director that he had not completed some academy classes. Although he had attended this training, he had forgotten to submit his certification document to his training officer. Once his director prompted him about this matter, he submitted his paperwork and gained credit for taking the course. Also, during 2006, Candidate E was described as having "the ability to become a good officer, but had a performance evaluation critical of his posting on his "my space page" that

he was a 'rent a cop.' This was found to be offensive to his profession and his conduct was attributed to a "lack of maturity." When the Police Department contacted his employer, his lieutenant rated him as,

above average on assessment data and attendance ... great ... a gold employee rating in the top 5% of the 47 officers employed ... trustworthy, reliable and balances common sense with intelligence ... remains calm under stress, has above average de-escalation skills, and executes tactically sound and appropriate physical techniques.

(Exs. C & 1.) Candidate E's other work history included time in the summer of 2004 as a security guard for a company no longer in business. His work history showed he was unemployed thereafter from October 2004 - January 2005 when he was a sales representative for Abercrombie and Fitch. Thereafter, he worked as an EMT-Basic for an ambulance company from January 2005 until June 2005. He left because he did not like the job. He again worked as an EMT-Basic for the Boy Scouts of America at the Hanscom Air Force Base for the month of July 2005. He was unemployed June - October 2005. He worked as a police cadet for the Waltham Police Department from January to February 2006. His personnel file showed that he had tried to gain this position in 2003, but was not offered the position "due to an allegation made by another auxiliary candidate" for the Waltham police cadet position who alleged that Candidate E "continually called, instant messaged, and emailed her after she told him numerous times that she was not interested." Her allegation was accepted by the Waltham Police and she was hired as an auxiliary member. When Candidate E re-applied, he was investigated, including about the female's allegations. Those allegations were found to be groundless. The female was asked to leave her position for being "deceitful and unfit to be an auxiliary officer." Candidate E left this position to pursue a better job. Candidate E had no criminal record. His driving history with the RMV included "no moving violations and no surchargeable accidents. He had no

“outstanding parking tickets and excise taxes have been paid.” (Exs. A, C, 1 & 22. Testimony of Sgt. Lefebvre.)

41. Candidate E had a very good interview with the panel members who found him to be engaging and forthcoming with useful information when answering their questions. They found he had a work background that he was succeeding in and that would transition him well into police work. He was found to have done much better than Mr. Fraumeni in the interview process and to have a better background. (Exs. C, 8 & 22. Testimony of Ms. Giacobbo & Superintendent Burke.)

42. Candidate E’s father had been a Cambridge Police Officer and was retired at the time Candidate E was under consideration for appointment. Candidate E’s uncle is a Cambridge Police Officer. Neither relative was interviewed concerning Candidate E’s candidacy. This connection with relatives on the police force did not play any role in his evaluation process. (Ex. C. Testimony of Sgt. Lefebvre, Ms. Giacobbo, & Superintendent Burke.)

43. City Manager Healy’s October 20, 2011 letter contained his reasons for bypassing Mr. Fraumeni for appointment and addressed “his employment history, driver history, criminal history and his false statements in our application.” (Ex. 1.)

a) *Work History* - Noting Mr. Fraumeni has been employed at State Street Corporation as a client service manager from March 2005, his work was described as being “a support liaison for investment management.” City Manager Healy acknowledged that State Street would not permit Mr. Fraumeni’s supervisor to be interviewed so that bi-annual performance evaluations were reviewed. Positive evaluations were acknowledged including Mr. Fraumeni’s “ability to take ownership, initiative, and ... [that he had] confidence in his work.” Negative factors were described as “a common theme that the applicant needs to take a more hands on approach when

dealing with his staff and that the applicant needs to develop a more cordial demeanor with his communications both verbally and on email ... can be curt in his responses to internal and external clients.” In terms of prior work, the letter describes how Mr. Fraumeni worked October 2004 through March 2005 for Herb Chambers Honda as a sales representative, and that there “was no assessment data available ... [but a] review of the applicant’s personnel file revealed a letter of discipline issued on February 2, 2005 ... a final written warning for being rude to customers while attempting to hurry up and complete a sale.” Also noted in the letter was this employer’s discovery of Mr. Fraumeni’s suspended driver’s license, a license he needed for his work, and that he had to regain by paying his past due fines. In terms of prior employers, the letter noted Mr. Fraumeni’s work as a mortgage sales representative and how he left work at one such job due to his disagreement with his employer over a company policy he felt involved “preying on homeowners.” The letter mentioned how at another such employer, Mr. Fraumeni was rated as “above average on assessment data and there were no problems with his attendance ... a quick learner, very reliable, someone you could always count on ... would make a good police officer because despite the personal struggles in his life, he still keeps a positive attitude.” The letter went on to list his other places of prior employment and in what positions, noting that his personnel records for these jobs did not show “anything negative.” But, the letter also listed further prior employment “where no information was obtained because the company no longer exists or the information is no longer available.” (Ex. 1.)

b) *Driving Record and Criminal History* - The letter listed Mr. Fraumeni’s full driving record, but noted just one driver’s license suspension. The letter noted Mr. Fraumeni’s arrest in February 2001 in connection with his time at a local night club during the early morning hours,

for assault and battery and resisting arrest ... detail [Boston police] officer noticed an altercation inside a local night club and upon investigation the officer escorted

Mr. Fraumeni out of the club and ordered him to leave the area ... [later on] the same officer observed the applicant punch the victim in the head with a closed fist ... victim sustained a bloody lip and swollen forehead ... arresting officer recalls Mr. Fraumeni reaching over his shoulder to reach the victim. After the assault, the applicant ran and was apprehended after a brief foot chase by police ... placed under arrest for assault and battery and resisting arrest ... applicant was placed under pre-trial probation with conditions to dismiss the matter on 4/24/02 after certain requirements were met ... [D]ue to some clerical error, [the case] remained open until it was brought to Mr. Fraumeni's attention during the background process in 2011 ... case was finally dismissed on March 8, 2011.

(Ex. 1.)

c) *Application Responses re: driving record* - The letter provided an account of the answers Mr. Fraumeni made on his application contrasted against the information uncovered from his background investigation and his interview answers.

When Mr. Fraumeni ... [was] asked if his license has ever been suspended or revoked, he answered no ... The excuse that he gave for not knowing that his license was suspended was that he failed to notify the Registry of Motor Vehicles of his address changes. However, through our investigation, we found that according to the Registry's history, his address changes were several months prior or after receiving the suspension.

During an interview on 3-8-11, the applicant was asked to explain the discrepancy in a written statement ... response was that he does not recall ever being told that his license to operate ... had been suspended ... that if it was suspended, he must not have received notification due to his frequent address changes and his own failure to notify the RMV of the new address ... the applicant changes his story and states that if his statements regarding his driving history are not accurate it is not because he is intentionally being dishonest but because he had forgotten about the suspension.

... The RMV history shows the applicant changing his address six (6) months prior to the August [2004] suspension and one (1) month after the suspension. The applicant's own address history shows him at two separate addresses prior to [the] suspension and the same addresses for 2 and [one] half years after the suspension

The applicant's statement that he never knew that his license was suspended or just forgot [was] also shown to be inconsistent with a personnel record from Herb Chambers Automotive. On 11-30-04 they ran a license check which showed the applicant's license was suspended, ... 'Driver not eligible to drive per Dept. of Motor Vehicles.' The RMV record shows ... the suspension ... was from 8-9-04

for a payment default. Record shows applicant paid fines the day after being notified and the suspension was removed.

In addition, the applicant's explanation proves implausible again as driver's history shows applicant was required to attend a National Safety Council (NSC) certified safe driving class in 1998 after 5 surchargeable events ... an eight hour class held Saturdays which the applicant was required to pay for

(Ex. 1.)

d) *Application Responses re: work discipline* - Mr. Fraumeni's answers on his application concerning work discipline were found to be inconsistent with the information uncovered through the background investigation.

When ... asked, "Have you ever been reprimanded or received a written warning from an employer or supervisor for poor job performance, inappropriate behavior, attendance or any other work related issue?" he answered no. However, ... while he worked at Herb Chambers ... he had received a final written warning for being rude to customers ... this letter was signed by the applicant in acknowledgement of understanding and receipt ... in his interview, ... he could not recall receiving this written warning letter.

The applicant was asked if he provided a complete and accurate account of his employment history ... he responded yes ... [T]he applicant failed to report that he was employed at the Cambridge District Court in the probation department in his police application ... states that he did not realize that unpaid internships needed to be included in the application ... also failed to report that he worked at National Engineering Company ... did not remember to include this job ... was a temporary agency job that only lasted for a month.

... [D]uring the interview [with the panel], Mr. Fraumeni was not able to recall any instances that resulted in the infractions on his driver's history; particularly as it related to the suspension and several notices that he received regarding the original suspension. He was very evasive when asked about his driver's history as he did not recall receiving any notice of the suspension and stated that he moved several times and was not notified ... [T]he background investigation ... determined that he was also advised by ... Herb Chambers of his suspended license. Once this was brought to his attention during the interview, he indicated that he did not recall the employer notifying him but insisted that they must have. During the interview, Mr. Fraumeni was asked about his arrest ... [H]e was not forthcoming about the incident ... [H]e was asked about his responses to questions on his application. He indicated that he did not mislead the investigators but rather was not able to recall pertinent information such as job history, marital status and driver's history.

(Ex. 1.)

44. In the City Manager's letter concerning the appointments made and the reasons for bypassing specific candidates, the following explanation was provided to the Commonwealth's Human Resources Division concerning Mr. Fraumeni:

The City requires applicants to be truthful and complete in filling out their information forms. These forms are the primary sources used in conducting the background investigation. If the candidate fails to disclose employment or other relevant history the City could easily fail to discover important facts and thus fail to investigate the candidate fully. The form very clearly states that failure to be truthful or complete in filling out the form will result in disqualification. Therefore, Mr. Fraumeni's name should be removed from consideration.

If his name is not approved for removal, he is still subject to by-pass. None of the other candidates who have been hired have had as many job changes as he has, negative evaluations or a criminal history.

(Ex. 1.)

45. This same letter included detailed information on Candidate E who was described as a good candidate for appointment. The letter did not directly contrast his background, performance at the interview, and what information he gave in his application answers to Mr. Fraumeni's background, performance at the interview, and answers to the application questions. Rather, Candidate E's record was assessed as follows in City Manager Healy's October 20, 2011 letter:

[Candidate E] ... has no criminal record and there were no violations or surchargeable accidents on his driver's history ... [H]e was more qualified than the candidates not selected whose names appeared ahead of him on the list of candidates willing to accept.

(Exs. C & 1.)

46. On December 12, 2011, using the Civil Service Commission form, Mr. Fraumeni timely filed for an appeal of the City Manager's bypass decision. He filed after receiving the

City Manager's letter to the Commonwealth's Human Resources Division with a cover letter of November 10, 2011 from the City Manager. (Exs. A, 19 & 20.)

Conclusion and Recommendation

I conclude from the findings made that the City Manager had justifiable reasons for bypassing Mr. Fraumeni for an original appointment to the position of police officer. The findings show that the City Manager was in agreement with the recommendation of the Police Commissioner to bypass Mr. Fraumeni, which in turn was in agreement with the assessment made by the other members of the panel that interviewed Mr. Fraumeni and evaluated his background and profile information. Mr. Fraumeni was only bypassed by Candidate E.

When an Appointing Authority bypasses an otherwise eligible candidate it must provide both a reasonable justification for doing so, as well as proof that such a justification could be applied fairly to all potential candidates. *Brackett v. Civil Service Commission*, 447 Mass. 233, 241 (2001); *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. 300, 304 (1997). In hearing bypass appeals, the Civil Service Commission must determine whether the Appointing Authority has "sustained its burden of proof that there was reasonable justification for the action taken." *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304. Reasonable justification requires that the Appointing Authority base its actions on adequate reasons, supported by creditable evidence, guided by common sense, and weighed by an unprejudiced mind. See *Wakefield v. First District Court of Eastern Middlesex*, 262 Mass. 477, 482 (1928); *Civil Service Commission v. Municipal Court of Boston*, 359 Mass. 214 (1971). In sustaining its burden of proof, the Appointing Authority must prove its justification by a preponderance of the evidence. G.L. c. 31, § 2(b). I conclude the Appointing Authority's proof satisfies these standards for supporting its bypass determination.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates. The Civil Service Commission cannot substitute its views and preferences for those of the Appointing Authority. *Burlington v. McCarthy*, 60 Mass. App. Ct. 914 (2004). Rather, the Civil Service Commission's role is to "protect against overtones of political control, objectives unrelated to merit standards, and assure neutrally applied public policy." *Cambridge v. Civil Service Commission*, 43 Mass. App. Ct. at 304; *Revere v. Civil Service Commission*, 31 Mass. App. Ct. 315, 321 (1991); *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983). The Civil Service Commission reviews the legitimacy and reasonableness of the Appointing Authority's reasons for bypassing the Appellant. *Beverly v. Civil Service Commission*, 8 Mass. App. Ct. 182, 187 (2010). So long as the Appointing Authority provides sound and sufficient reasons for the bypass and applies its policies equally, the Civil Service Commission should not intervene. There was no proof of any pretextual reason for bypassing Mr. Fraumeni, and no proof of any tainted consideration of Mr. Fraumeni's candidacy.

There was ample evidence presented by the Appointing Authority to show the process that it used to evaluate candidates for an original appointment to the position of police officer. This was shown from the documents such as the application, the summary report on the background investigations of Mr. Fraumeni and Candidate E, the application questions and procedures for completing it, and the interview template questions. This was also shown by the testimony of Sgt. Lefebvre, Ms. Giacobbo, and Superintendent Burke describing the process engaged in to evaluate not only Mr. Fraumeni but all the other candidates, including the standards employed in considering the significance of both positive and negative information uncovered, and what the panel looked for when a candidate was confronted with questions at the

interview. Moreover, at least Ms. Giacobbo and Superintendent Burke were shown to have significant prior experience working through this process of assessing candidates for original appointment to a police officer position, demonstrating that the Appointing Authority did not veer from this process and treat Mr. Fraumeni differently from the way they engaged in the process with all the other candidates.

Mr. Fraumeni contends that he was at all times completely honest during the evaluation process. He maintains through his testimony that he never intentionally misled or left out any information about any event he was asked to address either in the application or at the interview.

Mr. Fraumeni testified that he was sincere when he insisted that he never remembered he ever had his driver's license suspended. Without any corroborative evidence from any other useful source to confirm this memory lapse, I found it reasonable to believe that Mr. Fraumeni would have recalled that his driver's license was suspended when on March 3, 2011 he answered this question in the application. The reasons provided by City Manager Healy in his October 2, 2011 letter as well as the testimony of Sgt. Lefebvre, Superintendent Burke, and Ms. Giacobbo, are understandable in not believing he forgot his driver's license was suspended. He knew he had not paid the violations he owed on driving violations. Even if he had not read or did not receive the notices the RMV sent him that his license would be suspended if the fines were not paid, once he learned about the driver's license suspension when he became employed by a car dealership in 2004 and paid the past-due fines to restore his license, that kind of event would not likely be easily forgotten, particularly as it tied into being able to work at Herb Chambers Honda. Mr. Fraumeni gave no believable explanation either within the hiring process or at his bypass appeal hearing that he simply forgot. The fact that the information was not properly evaluated as a result of the background investigation because his RMV record was read to show five and not

just one suspension does not explain at all why Mr. Fraumeni would not have recalled this significant event when he first became employed by a car dealership. And, the evidence shows that the accurate RMV record showing just one driver's license suspension was before the City Manager when he made his bypass determination. (Ex. 11A.)

In terms of forgetting if he had ever been reprimanded or disciplined or received any kind of negative job evaluation, I did not find Mr. Fraumeni credible that he did not recall the written reprimand and final warning from his Herb Chambers' manager about how he dealt with some customers. This is particularly the case because he testified that he disputes a determination that he was rude to these customers but signed the form because he wanted to keep his job. This explanation seems all the more reason why he very likely fully recalled this event and simply decided not to list it on his application on March 3, 2011. In terms of his failing to recall that his current employer ever had any issues with his manner of communicating with his customers and co-workers, that explanation for not listing this on his application also is not credible. This is particularly the case because his employer found he had made good progress on correcting his curt manner, particularly via email.

Mr. Fraumeni maintains that the course of events that led to him facing criminal charges in 2001 shows he did not engage in egregious conduct because he stepped in to defend his cousin from getting hurt in a "two against one" fight. He acknowledges that he punched a man in the face, but he did not express any remorse over having caused this man enough injury to result in a criminal charge of assault and battery. He maintains he never saw a police officer involved until he was in the alley after the fight. This may have been his recollection because he was engaged in the fight and did not see how close he swung his punch to the Boston Police Officer at the scene. He claims that he jogged away from the fight because he did not want to deal with the

bouncers, but that is no excuse for having left the scene after causing harm to the man. He claims he never was escorted out of the nightclub by a police officer but only by a bouncer who never told him to leave the area. This is contrasted against the testimony of Sgt. Cintolo, who aided by his police report on the incident from 2001, testified credibly that he escorted Mr. Fraumeni out of the nightclub and told him to leave the area, an order Mr. Fraumeni failed to obey. Superintendent Burke found Mr. Fraumeni's account of his conduct failed to acknowledge any wrongful conduct despite the serious nature of the criminal charges. Superintendent Burke expected an acknowledgment of wrongdoing because Mr. Fraumeni was not a teenager when he engaged in this conduct, but a twenty-seven year old. I agree, and find that Mr. Fraumeni's account of what occurred shows a lack of accepting full responsibility for all his conduct. Mr. Fraumeni claims that he was wrongfully charged at least as to resisting arrest, but pled in court to sufficient facts. He testified that he just did what his attorney told him to do as though he did not fully appreciate what he was doing. That is not credible. I conclude he pled to sufficient facts to eventually get the criminal charges dismissed.

I find that Mr. Fraumeni was not trying to avoid revealing he had ever been married when he listed himself as single on his application on March 3, 2011. I find his explanation that he felt he had no reason to list that he had been married because he obtained a legal annulment of his brief marriage. Moreover, by raising the issue to Sgt. Lefebvre on March 8, 2011, he was being forthcoming about having an annulled marriage in his background. He revealed this information on March 8, 2011 when he wrote a paragraph about what happened in the extra pages provided in the application. This issue was also not specifically discussed with much discussion as a reason for his bypass by the City Manager other than noting Mr. Fraumeni was evasive with the interview panel when discussing whether he had ever been married. Given that the marriage was

legally annulled, I do not find Mr. Fraumeni was trying to hide from his interviewers or from Sgt. Lefebvre that he had ever been married.

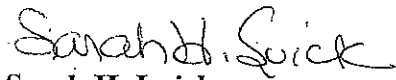
In terms of forgetting he was an unpaid intern in a probation office during a summer he was in college and forgetting he worked in a temporary job for a month, I do not find these lapses in his listing of all his many prior jobs in his application demonstrates he was trying to hide that he did either of these jobs. It is credible he forgot about them and those two lapses are not significant enough to support a bypass of his candidacy.

The Appointing Authority rightfully acknowledged the positives that emerged from the assessment made of Mr. Fraumeni's candidacy. Those positives appear in the City Manager's letter to the Human Resources Division. To acknowledge such positives as well as negative events and conduct is consistent with how the City Manager assessed the candidacies of those persons who were chosen for the police officer position. It is just that Candidate E's assessment had fewer negatives than did Mr. Fraumeni's, and Candidate E had a job history that was reasonably viewed to be more appropriate and useful than Mr. Fraumeni's. He also had no criminal record, and overall did much better than Mr. Fraumeni during his interview before the panel. No false answers or less than fully forthcoming information was found in Candidate E's evaluation. I also find that there is no evidence that Candidate E was offered the position over Mr. Fraumeni because his father had been a Cambridge Police Officer or because he had an uncle on the police force. That concern was adequately addressed by Sgt. Lefebvre, Superintendent Burke, and Ms. Giacobbo to show it was baseless. Mr. Fraumeni's background included a driving record of concern, a criminal record, a work history that did not involve prior work experiences pertinent to transitioning into police work, a poor interview, and a failure to accept full responsibility for his criminal conduct engaged in as an adult, and his failure to admit

he had his driver's license suspended, all confirm that the Appointing Authority had justifiable reasons for bypassing him for appointment as a police officer.

For these reasons, I recommend that the Civil Service Commission affirm the action taken by the Appointing Authority and that the Commission dismiss Mr. Fraumeni's bypass appeal. I recommend that the Commission take any further action it deems appropriate in terms of whether to remove Mr. Fraumeni's name from the list if it is still to be used for an original appointment as a Cambridge police officer.

**DIVISION OF ADMINISTRATIVE
LAW APPEALS**



Sarah H. Luick

Administrative Magistrate

Dated: JUL 16 2013