

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

KENY GATEAU,
Appellant

G1-16-206

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

James W. Gilden, Esq.
173 North Main Street
Sharon, MA 02067

Appearance for Respondent:

Jaclyn R. Zawada, Esq.
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On December 7, 2016, the Appellant, Keny Gateau (Mr. Gateau), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection by the Boston Police Department (BPD) for original appointment as a police officer.

On December 20, 2016, I held a pre-hearing conference which was attended by Mr. Gateau, his counsel and counsel for the BPD.

As part of the pre-hearing conference and via documentation submitted after the pre-hearing conference, the BPD showed that Mr. Gateau's name appeared on Certification No. 03766 and he was tied in the 68th rank with other candidates. Importantly, no candidate ranked below 68th was appointed.

For that reason, the BPD submitted a motion to dismiss the Appellant's appeal on December 28, 2016. The Appellant did not file any reply.

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass . See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court; Edson v. Civil Service Comm'n, Middlesex Sup. Crt. No. 08-CV3418

(2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates); Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), rev'd in part on other grounds, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable ` bypass ' has taken place in the parlance of... civil service")

Since no candidate ranked below Mr. Gateau was appointed to the position of police officer, there was no bypass. For this reason, Mr. Gateau's appeal under Docket No. G1-16-206 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on February 2, 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)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

James Gilden, Esq. (for Appellant)
Jaclyn R. Zawada, Esq. (for Respondent)