

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**NATHAN W. GOLDRICK,**  
*Appellant*

**CASE NO. G1-17-127**

v.

**CITY OF NEW BEDFORD,**  
*Respondent*

Appearance for Appellant:

Michael McGlone, Esq.  
128 Union Street  
New Bedford, MA 02740

Appearance for Respondent:

Elizabeth Treadup Pio, Esq.  
Associate City Solicitor  
New Bedford City Hall  
133 William Street  
New Bedford, MA 02740

Commissioner:

Paul M. Stein

**DECISION (Corrected Copy)**

The Appellant, Nathan W. Goldrick, appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31,§2(b)<sup>1</sup>, to contest his bypass by the City of New Bedford (New Bedford) for appointment as a Police Officer with the New Bedford Police Department (NBPD) and to remove his name from the eligible list pursuant to Personnel Administration Rule PAR.09. A pre-hearing conference was held on July 14, 2017 and a full hearing, which was digitally recorded<sup>2</sup>, was held on ~~June 13, 2017~~ **September 22, 2017**, both at the UMass School of Law in Dartmouth. Eighteen Exhibits (Exh.1 through Exh.18) were received in evidence and one additional exhibit (PHEXh.19) was submitted by the Appellant at the Commission's request.

The Commission received Proposed Decisions from the parties on November 27, 2017.

---

<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> Copies of a CD of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CD to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

## **FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by the Appointing Authority:*

- NBPD Lieutenant Ricard Rezendes
- NBPD Detective David Conceicao

*Called by the Appellant:*

- Nathan W. Goldrick, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Nathan W. Goldrick, was raised in Fairhaven, MA. He is a graduate of Fairhaven High School and received a Bachelor's Degree in Physical Education from Bridgewater State College in 2006, earning honors for his academic and athletic achievements (track and cross-country) in both high school and college. He has been a professional trainer since 2006, currently working for Boston Sports Clubs as lead trainer. (*Exhs. 1 & 2: Testimony of Appellant*)

2. Mr. Goldrick was taught firearms safety by his father, a Massachusetts corrections officer, and has used firearms since he was a teenager. He received a Firearms Identification Card (FID) from Fairhaven in 1998 and a Class A Firearms License to Carry (LTC) for "all lawful purposes" from Fairhaven in November, 2006. Since 2012, he has held an "unrestricted" LTC (formerly Class A "for all lawful purposes" licenses) issued by the NBPD. He belongs to several gun clubs and states that he would "often carry concealed in public." (*Exhs. 1, 2, 3 & 19; Testimony of Appellant & Det. Conceicao*)

3. After college, Mr. Goldrick moved back to his family home in Fairhaven. In the fall of 2006, he began to "hang out" with childhood friends who had purchased a duplex on Central Ave, New Bedford, making a "hand-shake" agreement to rent a room in the basement on a

month-to-month basis, and began spending most (7 out of 10) nights there. He still considered his family home in Fairhaven as his “official” permanent residence (domicile), where he left his bed, his computer, his firearms and most of his other personal belongings and furniture (taking only a spare bed to New Bedford). He registered his car in Fairhaven, filed taxes using his Fairhaven family residence as his “Home Address”, was registered to vote (and, did vote) in Fairhaven in the November 2006 presidential election, and continued to give his Fairhaven home address to employers and health care providers. *(Exhs. 10 through 17; Testimony of Appellant)*

4. In April 2008, Mr. Goldrick relocated to Carver, living with a co-worker from the Middleborough YMCA where he was then employed, lived again in a new New Bedford apartment from July 2009 to September 2010, and then moved to Taunton where he lived until June 2012. *(Exhs.1,2,5&10; Testimony of Appellant)*

5. Mr. Goldrick became a permanent resident of New Bedford in June 2012, when he moved from Taunton to an apartment on Seabury Street. He currently resides with his wife, who owns the home on Harwich Street in which they have lived together since September 2014. *(Exhs.1,2,5,10&18; Testimony of Appellant)*

6. On April 25, 2016, Mr. Goldrick took and passed the civil service examination for Police Officer administered by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list created on October 2, 2015, which expired October 31, 2017. *(Stipulated Facts; HRD Submission dated 7/12/2017)*

7. On December 9, 2016, as amended on February 7, 2017, HRD issued Certification #04224 to New Bedford for appointment of fourteen (14) Permanent Full-time NBPD Police Officers. Mr. Goldrick’s name appeared in 14<sup>th</sup> place on the list, tied with five other candidates. *(Stipulated Facts; HRD Submission dated 7/12/2017)*

8. On December 18, 2016, Mr. Goldrick submitted an Employment Application form to the NBPD in support of his application for appointment. Among other things, the application asked:

“In reverse chronological order, please state every place you have resided within the past ten years. Include addresses while attending school, if away from home, and all military addresses.”

In response, Mr. Goldrick listed the following:

09/2014 to Present – [#] Harwich St, New Bedford, MA  
06/2012 to 09/2014 – [#] Seabury St, Apt. 2, New Bedford, MA  
09/2010 to 06/2012 – [#] Bay St, Apt. 10, Taunton, MA  
07/2009 to 09/2010 – [#] Abbott St, Apt. 2, New Bedford, MA  
Spring/2008 to 07/2009 – [#] Pleasant St, Carver, MA  
Fall/2006 to Spring 2008 – [#] Central Ave, Apt. 1, New Bedford, MA

*(Exh. 2)*

9. On January 30, 2017, an NBPD police officer was assigned to conduct a background investigation into Mr. Goldrick’s application. *(Exh. 5; Testimony of Lt. Rezendes)*

10. The background investigator reviewed Mr. Goldrick’s application, which he found to be complete. He pulled a previous NBPD Employment Application that Mr. Goldrick had filed in January 2016 in connection with an earlier hiring cycle, for which he had not been processed (being too far down on the list to be considered at that point). He also checked his criminal and driver’s records which had no issues, save for a 2002 speeding ticket and a 2009 seat-belt citation. No attempt was made to contact his current employer and attempts to reach prior employers resulted in little information due to company policy to provide only basic information or no longer having any records of his employment. Neighbors had no issues with him and called him a “good neighbor”. *(Exhs. 1, 2 & 5)*

11. In the course of his investigation, the background investigator obtained Mr. Goldrick’s November 2006 Fairhaven LTC application, in which he listed his family home as his “Residential Address”. This concerned the investigator because Mr. Goldrick had stated on his December 2016 NBPD application that he “resided” at the Central Ave, New Bedford address

from “Fall 2006” to “Spring 2008” and stated on his January 2016 application that he “resided” at that address from “SEP 2006” to “APR 2008”. (*Exhs. 1, 2 & 5; Testimony of Lt. Rezendes*)

12. On February 23, 2017, Mr. Goldrick was called to NBPD headquarters for a tape-recorded interview with the background investigator. After some preliminary questions about his residential history, the investigator stated he had discovered that Mr. Goldrick applied to Fairhaven in 2006 for an LTC during the time he claimed on his Employment Application he “resided” in New Bedford. The investigator told Mr. Goldrick that he had “committed a crime” in doing so because he only could have obtained an LTC from the community (New Bedford) in which now stated he had “resided” at the time. The investigator said this was a “big deal” for the NBPD and they “caught” a lot of people going to other towns for an LTC because, until recently, New Bedford only issued “target practice” and “sporting” LTC’s and did not issue “unrestricted” or “all lawful purpose” LTCs. He told Mr. Goldrick he could be prosecuted for making a false statement on his firearms application. He said NBPD had disqualified another police candidate for the “same thing” a year ago. (*Exh. 10; Testimony of Det. Conceicao & Lt. Rezendes*)

13. Mr. Goldrick explained to the investigator that he filed for his LTC in Fairhaven because that was who had issued his FID and he still considered his Fairhaven home to be his “official” residence. He possessed no documents such as a lease, utility bills or a voter registration that showed he was a New Bedford resident. He had no idea at the time that he applied that he was doing anything wrong or had broken any laws by his actions. (*Exh. 10; Testimony of Appellant*)

14. Mr. Goldrick indicated that he had applied for other law enforcement jobs and had an interview with the Massachusetts State Police in a few days. The background investigator told Mr. Goldrick that the State Police would be his “better option” and the NBPD would not “jam him up”, meaning that, if Mr. Goldrick chose not to mention that NBPD was rejecting him, the

NBPD would not tell them why unless specifically asked, and the State Police might not ever learn about it on their own. Mr. Goldrick was quick to say that he knew it would be wrong to hide information from the State Police and he would disclose the information himself, now that he had been told that the NBPD was rejecting him for doing something that was illegal (knowing that it probably would hurt his chances for another job. (*Exh. 10; Testimony of Appellant*)<sup>3</sup>

15. Following the interview, the background investigator submitted his report to Lt. Rezendes, recommending that Mr. Goldrick not be hired, based on his “admission” to criminal misconduct in fraudulently obtaining a firearms license in 2006. (*Exh. 10*)

16. By letter dated March 9, 2017, drafted by Lt. Rezendes, New Bedford Mayor Jonathan Mitchell, the Appointing Authority for the NBPD, wrote to HRD, asserting that Mr. Goldrick was bypassed due to an admission to falsifying the 2006 Fairhaven firearms application and his untruthfulness calls into question his credibility to testify as a witness should he be hired as a police officer. Mayor Mitchell’s letter requested that HRD remove Mr. Goldrick’s name from the current eligible list pursuant to Personnel Administration Rules, PAR.09. (*Exh. 8*)

17. By letter dated April 28, 2017, HRD informed Mr. Goldrick that New Bedford had bypassed him and that he was being removed from the eligible list pursuant to PAR.09. (*Exh. 8*)

18. New Bedford hired three candidates from Certification #04224 who were ranked below Mr. Goldrick. This appeal duly ensued. (*Stipulated Facts; Claim of Appeal*)

19. At the Commission hearing, New Bedford called NBPD Detective David Conceicao, who serves as the NBPD Firearms Officer. Det. Conceicao explained that the NBPD currently does issue “unrestricted” LTCs but until several years ago, NBPD only issued restricted LTCs for specific limited purposes, such as “target practice” or “sporting”. He also explained what type of

---

<sup>3</sup> I draw no inference that the investigator’s comments were an invitation to lie, as opposed to a test of Mr. Goldrick’s proclivity for deceit, a test he clearly passed. I infer that he is pressing this appeal because was not hired by the State Police. (*Testimony of Appellant*)

identification was required of an applicant to obtain an LTC, namely, proof of citizenship (or a “green card”) and documentary proof of residency. He agreed that the types of documents that New Bedford accepted to show residency included utility bills, credit cards and voter registration records. He acknowledged on cross-examination that an applicant who was registered to vote in Fairhaven could not obtain an LTC in New Bedford. (*Testimony of Det. Conceicao*)<sup>4</sup>

20. NBPB Police Lt. Rezendes testified at the Commission hearing that the “only red flag” he saw in Mr. Goldrick’s application, and the basis for his recommendation to Mayor Mitchell to bypass and PAR.09 removal, was his concern that Mr. Goldrick had made a false statement under the penalty of perjury on his 2006 FTC application. The sole basis for his conclusion that Mr. Goldrick “perjured himself” on the 2006 application was Lt. Rezendes’ “comparison” of three documents, i.e., the background investigation report, the statement on the 2016 NBPB application, stating that he “resided” at an address in New Bedford, and the 2006 LTC application using the “Residential Address” in Fairhaven. (*Testimony of Lt. Rezendes*)<sup>5</sup>

21. Prior to making his recommendation to Mayor Mitchell, Lt. Rezendes had not reviewed the tape recorded interview with Mr. Goldrick. The background investigator did not testify at the Commission hearing. (*Exh. 10; Testimony of Lt. Rezendes*)

---

<sup>4</sup> Mr. Goldrick testified that he changed his voting registration from Fairhaven to New Bedford after he last voted in Fairhaven “several years ago”, but did not have a specific recollection of the year in which he did that. At New Bedford’s request, I left the record open for the City to provide copies of any relevant voting records, but none were received. (*Testimony of Appellant; Colloquy with Counsel*)

<sup>5</sup> New Bedford did not claim that Mr. Goldrick had made any false statements about his residency on his applications to the NBPB. I note that the application called for “every place you have resided” in the past ten years, including “while attending school”, living “way from home”, and “all military addresses”. In compliance with that requirement, on his first application, Mr. Goldrick listed the on-campus student apartment at Bridgewater State College where he resided from September 2005 to May 2006. Lt. Rezendes “concurred” that, at least in that instance, for purposes of the question on the Employment Application, Mr. Goldrick lawfully “resided” in two places, his on-campus residence in Bridgewater and his home in Fairhaven (*Exh. 2; Testimony of Appellant & Lt. Rezendes*)

## **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1.

Basic merit principles in hiring and promotion calls for regular, competitive qualifying examinations, open to all qualified applicants, from which eligible lists are established, ranking candidates according to their exam scores, along with certain statutory credits and preferences, from which appointments are made, generally, in rank order, from a “certification” of the top candidates on the applicable civil service eligible list, using what is called the 2n+1 formula. G.L.c. 31, §§6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

In order to deviate from that formula, an appointing authority must provide written reasons – positive or negative, or both, consistent with basic merit principles, to affirmatively justify bypassing a higher ranked candidate in favor of a lower ranked one. G.L.c.31,§27; PAR.08(4)

A person may appeal a bypass decision under G.L.c.31,§2(b) for de novo review by the Commission. The Commission’s role is to determine whether, by a preponderance of evidence, the appointing authority had “reasonable justification” to bypass the candidate after making an “impartial and reasonably thorough review” of the background and qualifications of the candidate that was sufficient to form a “credible basis” to believe allegations of misconduct or other facts that presented “legitimate doubts” about the candidate’s present fitness to perform the duties of the position, in this case, the sensitive job of a police officer. Police Dep’t of Boston v.



Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . means ‘done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law’ ”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211,214 (1971), *citing* Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477,482 (1928). See also Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991) (bypass reasons “more probably than not sound and sufficient”) The Commission has primary concern to ensure that the action comports with “[b]asic merit principles.” G.L.c.31,§1. See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182,188 (2010); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm’n, 40 Mass. App. Ct. 632, 635 (1995), *rev.den.*,423 Mass.1106 (1996)

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission

“ . . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*, then the occasion is appropriate for intervention by the commission.”

See City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997) (*emphasis added*) However, the governing statute, G.L.c.31,§2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority's action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” *Id.*

The Commission does recognize that law enforcement officers are vested with considerable power and discretion and must be held to a high standard of conduct:

“Police officers are not drafted into public service; rather they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official responsibilities.”

Police Comm’r v. Civil Service Comm’n, 22 Mass.App.Ct. 364, 371, 494 N.E.2d 27, 32 rev.den. 398 Mass. 1103, 497 N.E.2d 1096 (1986). An appointing authority is justified to refuse to hire and/or to terminate a police officer who repeatedly demonstrates his “willingness to fudge the truth”. See City of Cambridge v. Civil Service Comm’n, 43 Mass. 300, 303 (1997) (“a demonstrated willingness to fudge the truth in exigent circumstances was a doubtful characteristic for a police officer. . . . It requires no strength of character to speak the truth when it does not hurt.”) See also Everton v. Town of Falmouth, 26 MCSR 488 (2013) and cases cited, aff’d, SUCV13-4382 (2014); Gonsalves v. Town of Falmouth and cases cited, 25 MCSR 231 (2012), aff’d, SUCV12-2655 (2014); Keating v. Town of Marblehead, 24 MCSR 334 (2011) and cases cited.

## **ANALYSIS**

The preponderance of the evidence presented to the Commission establishes that the NBPD’s decision to bypass Mr. Goldrick solely for “perjuring himself” on a 2006 LTC application was not reasonably justified because it was not based on a reasonably thorough review of the facts and was premised on a misunderstanding of applicable law. Mr. Goldrick was lawfully entitled to apply to Fairhaven for an LTC in November 2006 as he had not abandoned his residency there although, a few months earlier, he began living with friends at a second residence in New Bedford. Neither Mr. Goldrick’s 2006 LTC application nor his two NBPD applications contain any false statements or untruthfulness. The NBPD has established no rational basis to call into

question his reputation as a witness for truth and veracity or otherwise raise legitimate concern about his suitability to serve as an NBPD police officer.

First, this appeal does not raise the issues of untruthfulness that are more commonly presented to the Commission and upon which New Bedford cites in support of its bypass decision. Those appeals typically involve the case of an applicant who makes knowingly false statements at the time he submitted an employment application, such as omitting or misrepresenting information on the application, or being less than truthful during the investigation into the application. Here, NBPD found Mr. Goldrick's application "complete" and free of errors or omissions. Moreover, when the NBPD background investigator gave Mr. Goldrick an opening to be less than truthful to the Massachusetts State Police, Mr. Goldrick promptly rejected that suggestion and strongly professed that he knew how important it was to be forthright and honest when seeking appointment as a police officer. His actions throughout the application process and his testimony before the Commission show that his intention to be truthful was genuine. The preponderance of the evidence proved that Mr. Goldrick is not a person who would be inclined to "fudge the truth" for personal gain.

Second, the residency issue here is also distinct from what is more typically involved in bypass appeals, in which an appellant has been rejected based on an appointing authority's investigation that showed that an applicant falsely claimed permanent residency status (also known as domicile) in the municipality where he was applying (also known as domicile). i.e., claiming to have been a permanent resident of a municipality for at least a year prior to taking the civil service examination for the position, which is a statutory requirement to qualify for preference in hiring over any non-residents. Here, it is not disputed that Mr. Goldrick was a permanent resident of New Bedford for at least a year prior to the qualifying examination.

Similarly, every statement on his both of his NBPD applications, including, in particular, his meticulous disclosure of all of the places he resided in the past ten years, which, as the instructions required, must include both all permanent residences (domicile) and other temporary residences, was completely truthful. The only issue, here, involves his residency status ten years earlier under non-civil service law.

Third, Mr. Goldrick argues that the NBPD wrongfully equated the term “residing” in the LTC and FID laws with permanent residence or “domicile”, when they are legally distinguishable and, in the LTC and FID statutes, the term was not meant to be limited to permanent residency or domicile but allowed for an applicant to have, and lawfully use, more than one “Residential Address” on an LTC application. His argument makes a fair point.

“Domicile is ‘the place of one's actual residence ‘with intention to remain permanently or for an indefinite time and without any certain purpose to return to a former place of abode.’ ” *Hershkoff v. Registrars of Voters of Worcester*, 366 Mass. 570, 578, 321 N.E.2d 656 (1974), quoting from *Opinion of the Justices*, 365 Mass. 661, 663, 312 N.E.2d 208 (1974). “[A] person may have a residence in one place and a ... domicile ... in another.” *Horvitz v. Commissioner of Rev.*, 51 Mass.App.Ct. 386, 393, 747 N.E.2d 177 (2001).

*Commonwealth v. Becker*, 71 Mass.App.Ct. 81, 92-93, rev.den., 451 Mass. 1106, cert.den., 555 U.S. 933 (2008) (*emphasis added*)

Confusion about the meaning of the terms “residing” and “residence” in any particular statutory context is understandable, as the courts have acknowledged that the terms are ambiguous.

“The words of the statute imply that there may be a distinction between ‘residence’ and ‘address’ of the applicant for registration, and that both are required in the application. [Citation] ‘Residence’ is not a word of inflexible meaning but may be used in different senses. It is not synonymous with domicil[e]. . . . [I]n the laws relating to taxation, voting, and settlement, it means the same as ‘domicile.’ Usually it means the same in the law of divorce. . . . [but f]or the purpose of giving notice to an indorser, his place of residence implies less permanency of abode.’ [Citations] Although a person can have but one domicil[e] . . . [i]t is matter of common knowledge that a person may have two places of residence within the commonwealth. [Citations omitted] A statement of the residence and address of the applicant affords information sufficient in the ordinary case to satisfy one main purpose of the statute as to the easy identification of the registrant. . . . The desire of

the plaintiff to secure a lower rate of automobile insurance, if warranted . . . was not bad faith in the circumstances disclosed.”

Doyle v. Goldberg, 294 Mass. 105, 107-109 (1936) (*emphasis added*)

Thus, on the one hand, for example, the NBPD’s own Employment Application treats the term “resided” to include both permanent and non-permanent residences. Lt. Rezendes concurred that, within the meaning of the NBPD Employment Application, an applicant could have “resided” in more than one place at the same time, e.g., residing at college or on military base, and still have another permanent residence. On the other hand, for purposes of “residency preference” in civil service examinations, the ambiguity in the term has uniformly been construed in the tax law and divorce law sense not to mean any residence but only one’s permanent residence or domicile.

I have not been made aware of any case law on point that definitively resolves the ambiguity in the term “residing” as it appears in the LTC and FID statutes, which provide that any person may obtain an FID and/or LTC from a licensing authority in any jurisdiction where he or she is then “residing or having a place of business”, including “residing in an area of exclusive federal jurisdiction located within a city or town”. G.L.c.140,§129B (FIDs); G.L.c.140,§131 (LTCs). It does seem reasonable to me that the term “residing” in those laws and the term “Residential Address” on the application form itself, more closely fits the usage described by the SJC to the motor vehicle registration statute involved in Doyle v. Goldberg, *supra*, i.e., it was meant primarily to identify a verifiable nexus or contact point with a gun owner within the licensing authority’s jurisdiction, and need not be limited to a single jurisdiction. Indeed, the laws, on their face, give a gun owner the option to obtain an FID or LTC from more than one jurisdiction, i.e. where they personally reside or anywhere they have a place of business (which may or may not necessarily be where the gun owner has a “residence” and/or is permanently “domiciled”), as

well as the jurisdiction encompassing an area owned by the federal government, i.e. a military base (a town that most military personnel would not consider themselves permanently residing or domiciled).

What is important here, however, is not how the ambiguity in the LTC statute should be construed. More significant to this bypass appeal is the fact that it is inconceivable to believe that a 23-year old Mr. Goldrick could possibly parse the statutorily ambiguous meaning of the term “residing” in these laws, an ambiguity that appellate courts have explicitly recognized, so that he could be found to have “perjured himself” by listing his “Residential Address” on the 2006 LTC application form as his family home in Fairhaven, which he then still considered his permanent residence (i.e., domicile) and where all his firearms were kept. Moreover, even if the law is construed to mean that an LTC can be issued only by a jurisdiction in which the applicant was permanently “domiciled”, Mr. Goldrick produced compelling evidence that, in the few short months that he had been staying with his friends in New Bedford as of November 2006, he, indeed, had done nothing to evidence that he was changing his “legal” permanent residence from his Fairhaven home and had continued many actions that demonstrated his continuing intent to continue using his family home as what he called his “official” (i.e., permanent) residence.. Also, Fairhaven approved his application, which provides, at a minimum, a presumption that Fairhaven concluded that it had the authority to issue Mr. Goldrick’s LTC. On the other hand, based on the testimony of the NBPD witnesses at the Commission hearing, at the time (November 2006), Mr. Goldrick had none of the documentation that he would have been required to produce to obtain an LTC from New Bedford.

In sum, based on the evidence presented at the Commission hearing, I am persuaded that, at the time of his LTC application, Mr. Goldrick honestly (and, probably, correctly) believed that

he remained a Fairhaven “resident” (whether permanent or not) and that he was lawfully entitled to use his Fairhaven family home “Residential Address” on an LTC application for firearms which he kept at that address. Even if Mr. Goldrick’s (and my) understanding of the residency requirement in LTC statute is incorrect, he is responsible for no more than an honest mistake, not a disqualifying falsehood. See generally, Boyd v. City of New Bedford, 29 MCSR 471 (2016); Morely v. Boston Police Dep’t, 29 MCSR 456 (2016); Lucas v. Boston Police Dep’t 25 MCSR 420 (2012)

Fourth, I dismiss as speculation the NBPD’s impression that Mr. Goldrick acted with the same ulterior motive as other people encountered by the NBPD, who intentionally avoided making application to New Bedford because they knew that the NBPD was not then issuing “all lawful purposes” licenses. Lt. Rezendes conclusion was based entirely on his “comparison” of the LTC application with Mr. Goldrick’s own (truthful) disclosures on his NBPD applications, as noted above, that indicated he “resided” in New Bedford when he filed his 2006 LTC application in Fairhaven. Lt. Rezendes had not listened to what Mr. Goldrick has to say about his actions during the tape-recorded interview, and New Bedford took no other steps to investigate and did not consider whether there might well be a rational and consistent explanation, rather than an ulterior motive, for the statements in those applications more than ten years apart. I note that Lt. Rezendes “concurred” at the Commission hearing that “residing” at one address (such as his Bridgewater school apartment) did not mean Mr. Goldrick was claiming that was his only residence, but, for purposes of truthfully completing the Employment Application, he could lawfully be “residing” in two places simultaneously.

Fifth, the Commission appreciates the so-called Brady/Ellison obligation that police departments and prosecutors carry to disclose “exculpatory evidence” to defense counsel about

the truthfulness of witnesses expected to be called to testify in a criminal prosecution, but that only reinforces how critical it is that NBPD conduct a thorough and deliberate investigation before permanently tainting an applicant for appointment as untruthful, especially, for something that occurred ten years before the person even became a sworn police officer. Moreover, I doubt that type of “exculpatory evidence” would come within the sweep of the “automatic disclosure” requirements, but, rather, would be subject to stricter limits upon disclosure imposed on internal affairs investigation and personnel files. See, e.g., Worcester Telegram & Gazette Corp. v. Chief of Police, 58 Mass.App.Ct. 1, rev.den. 440 Mass. 1103 (2003) (employment applications); Commonwealth v. Wanis, 426 Mass. 639, 643-44 (1998) (internal affairs files)

In sum, when bypassing a candidate for untruthfulness, which is, in effect, a career-ending decision for most applicants, an appointing authority must do more than what New Bedford did here. In order to satisfy civil service requirements, disqualification must come only after a “reasonably thorough” review of an applicant’s suitability that is “based on credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law”. Given the facts and the legal ambiguity that came out during this appeal, Mr. Goldrick was entitled to more than a paper review of his situation. Unfortunately, here, there was a rush to judgment on the paper record, instead of the required deliberate and reasoned assessment of all of the facts and the applicable law that should have been more thoroughly considered, given the serious nature and severe consequences of disqualifying a candidate for untruthfulness, especially for something that did not occur during the application process but based on what some might view as a potentially stale incident that occurred more than a decade earlier. At a minimum, Mr. Goldrick should have been allowed to move forward in the hiring process to the next level of review – typically the Captains Board, which vets all candidates before decisions



are made as to who should be appointed – where he would have the opportunity to present all of the relevant facts that the NBPD investigator missed and persuade the NBPD panel of the merits of his claim that his LTC application complied with lawful requirements and/or, at most, he made an honest, youthful mistake concerning an ambiguous statute, and, in either case, that should not disqualify him.

Accordingly, Mr. Goldrick is entitled to be given at least one further opportunity to have the thorough consideration for appointment to the NBPD that he deserves.<sup>6</sup>

### **CONCLUSION**

In sum, for the reasons stated herein, this appeal of the Appellant, Nathan, is *allowed*. Pursuant to the powers of relief inherent in Chapter 310 of the Acts of 1993, the Commission ORDERS that the Massachusetts Human Resources Division and/or the City of New Bedford in its delegated capacity take the following action:

- Place the name of Nathan W. Goldrick at the top of any current or future Certification for the position of NBPD Permanent Full-Time Police Officer until he is appointed or bypassed after consideration consistent with this Decision.
- If Mr. Goldrick is appointed as a NBPD Permanent Full-Time Police Officer, he shall receive a retroactive civil service seniority date which is the same date as the first candidate ranked below Mr. Goldrick who was appointed from Certification No. 04224. This retroactive civil service seniority date is not intended to provide Mr. Goldrick with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission  
*/s/Paul M. Stein*  
Paul M. Stein, Commissioner

By 3-2 vote of the Civil Service Commission (Bowman, Chairman [NO]; Camuso [AYE] Ittleman [NO], Stein [AYE] and Tivnan [AYE], Commissioners) on February 28, 2019.

---

<sup>6</sup> As Certification #04224 has expired, the issue of Mr. Goldrick's PAR.09 removal is moot and need not be addressed by this Decision.

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:

Michael McGlone, Esq. (for Appellant)

Elizabeth Treadup Pio, Esq., Associate City Solicitor (for Respondent)

Michael Downey, Esq. (HRD)