

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

CIVIL SERVICE COMMISSION
One Ashburton Place, Room 503
Boston, MA 02108
(617) 979-1900

MICHAEL HATCH,
Appellant

v.

TOWN OF AVON,
Respondent

G1-17-211

Appearance for Appellant:

Appellant, *pro se*

Appearance for Respondent:

Scott E. Bettencourt, Esq.
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333 Tremont Street
Duxbury, MA 02332

Commissioner:

Cynthia Ittleman

DECISION

Pursuant to the provisions of G.L. c. 31, § 2(b), Mr. Michael Hatch (Appellant), appealed the decision of the Town of Avon (Respondent or Town) to bypass him for original appointment to the position of full-time police officer. The Appellant filed the instant appeal on October 16, 2017. The Civil Service Commission (Commission) held a prehearing conference in the case on November 7, 2017 at the Commission's office in Boston. The Commission conducted a full hearing¹ in the case at the same location on January 25, 2018. The witnesses were sequestered. The hearing was digitally recorded

¹ The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

and the parties were each sent a CD of the proceeding.² The parties submitted post-hearing briefs. For the reasons stated herein, the appeal is allowed.

FINDINGS OF FACT

Thirteen (13) exhibits (Exhibits 1, 2, 2A and 3 through 12) were entered into evidence at the hearing. In addition, in response to my request at the hearing, the Respondent produced two (2) additional documents, which are marked as Exhibits 13 and 14. Based on these Exhibits (Ex./s.), the testimony of the following witnesses:

Called by the Appointing Authority:

- Francis T. Crimmins, Jr., Town Administrator, Town of Avon
- Robert Pomeroy, Fmr. Chief of Police, Plymouth, MA and President of BadgeQuest, Inc.
- Steven Rose, Selectman, Town of Avon
- Edward Drew, Fmr. Chief of Police, Waltham, MA and Consultant to BadgeQuest, Inc,

Called by the Appellant:

- Michael Hatch, Appellant

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies and stipulations; and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following:

2016 Hiring Process

1. On or about August 25, 2016, the Town of Avon Board of Selectmen (BOS), the Town appointing authority, asked the state's Human Resources Division (HRD) for a

² If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this 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. If such an appeal is filed, this CD should be used to transcribe the hearing.

Certification of eligible candidates to appoint two police officers. (Administrative Notice)

2. HRD issued Certification 04096 to the Town which listed six (6) candidates. The Appellant was ranked first on the Certification. Candidates 1 through 5 signed the Certification. The certification was valid until November 17, 2016. (Administrative Notice) there is no information in the record indicating that the town asked the state Human Resources Division (HRD) for an extension of the certification beyond November 17, 2016, if HRD allowed the request and the date to which it may have been extended. (Administrative Notice)
3. On September 5, 2016, the Appellant submitted a completed application for employment at the Avon Police Department (APD). (Ex. 5)
4. APD Det. Dombrosky contacted the Appellant and Candidate 3³ on the Certification to interview them and/or obtain background information about them. Det. Dombrosky asked the Appellant to submit a letter with additional information about a discipline he incurred at one (1) of the security companies where he had worked. The Appellant promptly submitted the requested letter to Det. Dombrosky. Based on Det. Dombrosky's indication that the hiring process would be completed in a couple of weeks, the Appellant resigned from his current job. (Testimony of Appellant)
5. During the fall and early winter of 2016, the Avon Police Department also had a vacancy for the position of Deputy Chief. (Testimony of Crimmins and Rose)
6. In December 2016, the BOS retained BadgeQuest, Inc., a private consulting firm that assists engaged cities and towns in recruiting and hiring public safety employees. (Testimony of Crimmins and Pomeroy)

³ Candidate 3 was ranked 4th on the Certification in 2016.

7. Robert Pomeroy, a former chief of the Plymouth Police Department, is the President of BadgeQuest. Mr. Pomeroy has been in law enforcement for over thirty (30) years and through his municipal service as well as his current consulting practice has been involved in the hiring of numerous police officers. (Testimony of Pomeroy)
8. After requesting the original Certification for entry level police officers, the BOS decided to fill the Deputy Chief position prior to moving forward with the appointment of police officers. As a result, the police officer hiring was put on hold. (Testimony of Crimmins and Rose)
9. Part of the Town's consideration in first moving forward with the Deputy Chief role was the fact that the current Chief of the department's employment contract was to expire in June of 2017 and it was unclear if the Chief was going to retire at that time. (Testimony of Crimmins and Rose)
10. In or around May 2017, through an assessment process conducted by BadgeQuest, the Town filled the Deputy Chief position. (Testimony of Crimmins and Rose)

2017 Hiring Process

11. In February 2017, the BOS asked BadgeQuest to assist the Town in evaluating police officer candidates. (Testimony of Crimmins, Rose and Pomeroy; Ex. 1) There is no indication in the record that the town entered into a delegation agreement with HRD authorizing it to conduct, in essence, an assessment center to hire police officers instead of the using the Certification HRD issued to the Town in response to the Town's request, which was based on the pertinent civil service police officer exam results. (Administrative Notice)

12. BadgeQuest contacted all of the individuals who had signed the 2016 Certification to determine their level of continued interest in the positions. Only three (3) of the listed individuals indicated that they were interested: the Appellant (ranked first), Candidate 2 (ranked second) and Candidate 3 (now ranked third). (Testimony of Pomeroy)
13. In or about June 2017, BadgeQuest gave each of the three (3) candidates a Background Application form to complete and return to the company. (Testimony of Pomeroy) At or around the same time, the candidates were also asked to complete a Town of Avon application. (Exs. 6 and 7)
14. On July 8, 2017, all three (3) candidates appeared before two (2) panels of interviewers (Teams A and B) assembled by BadgeQuest on behalf of the Town to participate in a Structured Interview Process, and to prepare a written response to an ethical question. (Testimony of Pomeroy and Appellant; Ex. 10) All three (3) candidates wrote proper responses to the ethical question. (Exs. 10 and 11)
15. The interviewers were retired Massachusetts Chiefs of Police: Chief Robert Pomeroy (Plymouth), Chief Edward Drew (Waltham), Chief Michael Whalen (Dennis) and Chief Stephen Unsworth (Waltham). (Testimony of Pomeroy; Exs. 3 and 4)
16. In addition to the interviewers, four (4) individuals sat in on the interviews: then-Chief Martineau and Selectman Rose observed the Team A interviews. APD Deputy Chief Bukunt, who had been appointed one or two months earlier, and Town Administrator Crimmins observed the Team B interviews. (Testimony of Pomeroy; Ex. 2A)
17. The only information that the interviewers had about the candidates prior to the interviews was their names and addresses. (Testimony of Pomeroy and Drew)

However, at the interviews by both Team A and Team B, Candidate 2 informed the interviewers that then-Chief Martineau had “recruited” him to be an SPO and he had been working at the APD as an SPO for two (2) years, often working forty (40) hours, more or less, per week. (Ex. 2A) Selectman Rose knew Candidate 2 from where he worked in a restaurant bar, although he denied interacting with Candidate 2 at the bar. Selectman Rose also knew that the Appellant’s family had a towing contract with the Town. (Testimony of Rose)

18. The interviewers began each interview telling each candidate that there was only a half hour provided for each interview, that there were many questions to be asked, that time management was important and that the interviewers may interrupt them if their answers were taking up too much time. Team A asked each candidate the same questions. Team B asked each candidate the same questions; however, the questions asked by Team A were different from the questions asked by Team B, except that both Teams asked what the candidate had done since high school. Both Teams interviewed all three (3) candidates. (Exs. 2A and 12) Any notes taken by the interviewers were not available. (Testimony of Pomeroy)

19. The interviewers asked each candidate a series of questions that were designed to allow the panel to evaluate the candidates’ “Knowledge, Skills, Abilities and Personal Characteristics.” (Testimony of Pomeroy)

20. The observers did not ask any questions of the candidates and were not allowed to interact with the interviewers during the interview process. (Testimony of Pomeroy, Rose and Crimmins)

21. The recorded interviews show that then-Chief Martineau sat a few feet behind the candidates, facing the interviewers, who could see him. During the Appellant's interview, the Chief shook his head side-to-side disapprovingly or appeared skeptical in response to certain of the Appellant's responses to questions. During Candidate 2's interview, the Chief smiled in response to certain of the candidate's answers. During Candidate 3's interview, the Chief's expression appeared mostly neutral but, on occasion, skeptical. (Ex. 2A)
22. The observers were permitted to remain in the room as the interviewers produced a "consensus" score for each candidate but the observers were not permitted to talk to the interviewers until they completed the scoring process. (Testimony of Pomeroy; Ex. 3) The interviewers did not keep individual score sheets. (Id.; Administrative Notice)
23. ⁴The Appellant was born and raised in Avon, where he lives with his parents and siblings. He graduated from Avon High School in 2007 and graduated from a community college in 2012 with an associate's degree in criminal justice. While in school, the Appellant worked for a large furniture company for five (5) years. (Testimony of Appellant; Ex. 5)
24. After college, the Appellant worked for an armored car company as a guard and driver for one (1) year. Thereafter, he worked as an armed guard for a security company, providing security at the U.S. Bankruptcy Court in Boston for two (2) years. At this security position, the Appellant was trained to use a baton and pepper

⁴ Facts 23 through 25 reflect the information contained in the Appellant's testimony at the Commission, his recorded APD job interviews (Ex. 2A) and pertinent Exhibits as indicated. Since Candidates 2 and 3 were not called to testify at the Commission hearing, the background information about them was obtained from their recorded APD job interviews.

spray, in addition to being armed. The Appellant was disciplined at the security company that provided security at the Boston courthouse and did not return to work there. He was unemployed for several months thereafter but then began working for a document disposal company in February 2016. He left the document disposal company in anticipation that he would be hired at the APD in 2016, which hiring process he was told would be quick. However, the 2016 hiring process was not completed and the Town did not begin the police officer hiring process again until nearly one (1) year later. (Testimony of Appellant; Exs. 2A and 5)

25. As the Appellant's references, his testimony and interviews indicate, he is a soft-spoken, even-keeled person who is reliable and who knows how to de-escalate difficult security situations. The Appellant has not had difficulties communicating at any of the jobs he has held. However, at his 2017 interview, the Appellant disclosed that he was the most nervous he had ever been. (Testimony of Appellant; Exs. 2A and 5)

26. Candidate 2 lived in Avon with his parents. His mother has been a longtime Town employee and had recently retired from her position in the Town's Clerk's office. He obtained an associate's degree in criminal justice in the same community college that the Appellant had attended. He then transferred to an area university and completed a bachelor's degree in criminal justice while living at home. In high school, Candidate 2 was a restaurant busboy at a local restaurant for two years. For six (6) years, in college and thereafter, Candidate 2 worked as a bartender at the same local restaurant until approximately January 2016. Candidate 2 worked as an Avon part-time call firefighter for approximately a year. Then APD Chief Martineau asked Candidate 2

to be a Special Police Officer and Candidate 2 attended an academy for reserve police officers. For the two (2) years prior to the 2017 police officer hiring process, Candidate 2 worked as an SPO for forty (40) hours, more or less, at the APD. Candidate 2's responses to interview questions in 2017 were mostly confident, quick and energetic. (Exs. 2A and 14; Testimony of Rose))

27. Candidate 3, his wife and their two (2) small children live in Avon, where at least part of his wife's family is from. He grew up in Braintree and graduated from Braintree High School; he has no college degree. For three (3) years after high school, Candidate 3 worked for a construction general contractor. From 2007 until approximately 2012, Candidate 3 worked at the Suffolk County Sheriff's Department as a Corrections Officer. In or about 2011, Candidate 3's father passed away and his father's employer offered to send Candidate 3 to an HVAC training program so that Candidate 3 could take over his father's job. While in the certificate program, Candidate 3 worked for an oil services company for his wife's uncle. Candidate 3 completed the HVAC program but wanted to return to law enforcement but as a police officer. At the time of his interview, Candidate 3 had been working for a company that makes, installs and services safes for about five (5) years, where he was recently promoted. Candidate 3's responses to the interview questions in 2017 were measured, exhibiting a relatively quiet confidence, he appeared to be slow to anger and he has experience de-escalating security situations. (Exs. 2A and 3)

28. The BadgeQuest report on the interviews indicate that the interviewers scored each candidate's performance on a scale of 1 to 100 in the areas of "Interpersonal Relations, Service Orientation, Teamwork/Cooperation and Judgment." (Testimony

of Pomeroy, Rose; Ex. 3) The average scores for the candidates for the interviews were: Team A – Appellant = 73.5, Candidate 2 = 93, and Candidate 3 = 93.75; Team B – Appellant = 77.25, Candidate 2 = 93, Candidate 3 = 91. The average scores for the written response to an ethical question, assessing each candidate’s communication skills and the candidate’s principles, were: Appellant = 80, Candidate 2 = 86 and Candidate 3 = 89.5. (Ex. 3)

29. On July 9, 2017, the day after the interviews and ethics writing assignment, BadgeQuest gave the BOS a report of the interview process. (Testimony of Pomeroy, Rose and Exhibit 3)
30. With respect to the Appellant, the interview report noted that he earned an associate’s degree in criminal justice, stating that obtaining his associate’s degree was the only thing the Appellant had accomplished to prepare to be a police officer. The report added that the Appellant’s written answer to the ethics question was “correct”. However, the report ignored much of the Appellant’s positive experiences working at two (2) different security companies for three (3) years and his ability to de-escalate situations at those jobs, focusing nearly exclusively on one discipline at one of the security companies. The report also stated that the Appellant “lacked command presence”, gave a “lackluster interview performance”, gave “general, vague and brief answers and, at times, had a nervous laugh. In addition, the report stated that the Appellant showed poor judgment by giving notice at his job in anticipation that he would be hired by the Town. (Ex. 3)
31. Regarding Candidate 2, the interview report stated that he gave “spontaneous and thoughtful answers” and demonstrates his commitment to the APD by working there

many hours as an SPO. The report added that Candidate 2 had an “excellent grasp of community policing”, was enthusiastic and had a “demonstrated history of excellent judgment”. The report took no notice that prior to his experience at the APD and his work as an on-call firefighter at the AFD, the candidate had worked at a bar for six (6) years. This report made no reference to Candidate 2’s written response to the ethics question posed to the candidates. (Ex. 3; Administrative Notice)

32. About Candidate 3, the interview report states that he is mature and has good judgment. It also states that he has experience as a corrections officer but does not indicate that the candidate had not worked in corrections for five (5) years. The report adds that Candidate 3 has “excellent grasp of community and service”, a “demonstrated history of conflict resolution” and “excellent judgment regarding his career and family”. (Ex. 3; Administrative Notice)

33. Subsequent to the candidate interviews, retired Chief Drew conducted a background investigation on each of the candidates. This investigation consisted of reviewing the candidate’s applications, speaking with former employers and references and calling the candidates with any questions or concerns raised by his investigation. (Testimony of Drew) The background investigations did not include checks of the candidates’ criminal records and driver histories, which Drew’s reports indicated that the Town was responsible for conducting them. (Ex. 4)

34. Retired Chief Drew’s background investigation report on the Appellant incorrectly states that when interviewers asked the Appellant whether he contacted anyone at the security company where he had been disciplined to inquire why they had not returned him to work after an extended period of time, that the Appellant “really had no

answer”. (Ex. 4) However, in response to the Team A interviewers, the Appellant specifically stated that he had reached out to the security company five (5) times in an attempt to find out what was going on. (Ex. 2A)

35. Drew’s report states that the Appellant gave inconsistent responses to questions about his discipline at security company where he was disciplined. In his 2016 APD application, the Appellant indicated that he was suspended for signing out at the wrong time but in the 2017 BadgeQuest application, the Appellant wrote that he had been suspended for cell phone use. In both the 2017 BadgeQuest application and the 2017 Town application, the Appellant said he left the security company where he had been disciplined because he had been “waiting to return from suspension”.

However, in his background investigation of the Appellant, Drew also obtained the Appellant’s 2016 letter the Appellant had written to Det. Dombrosky explaining in significant detail that the Appellant was originally suspended for cell phone use but only later was he informed of allegations that he signed out of work improperly.

(Exs. 4, 5, 6, 7 and 8) Specifically, the letter states,

“During my employment at [security company] the company and the union were having severe contract issues. I (sic) working alongside the business agent of the union nearly every day was a witness to many of these issues. A file cabinet had been broken in the lobby, the company decided to check the camera tapes to investigate how it was broken. My two dogs had gotten into a fight early before I left for work. The camera showed me in the lobby checking my cell phone multiple times getting updates from home ... The camera also showed 5-6 others behind a barrier in the lobby where the file cabinet was ... We were all questioned about the file cabinet and what we were doing at the time. While the company was checking the camera they saw that we were leaving at a time that did not match their time on the cameras. The way we signed in and out was on a form, we would sign our name, time our shift starts, and when we leave, the time the shift ends. We went by the main clock of the building just above the lobby that the entire building went by such as: federal employees, maintenance, and housekeeping. Every shift that we had all went by that clock when you arrived you were on post relieving the previous officer ... when leaving the officer would

be there when the main clock read the time he/she was supposed to arrive. I was later told that the cameras were no more than 1-2 minutes off of the time of the clock that we had always gone by. After my shift I and 6-7 others were told by supervisors we were being “suspended pending investigation”, mine for cell phone use. I later was told by union representation we were essentially being suspended for ‘forging government documents’ because the suspensions many of us received were typically ‘slaps on the wrist’. After about two months of being suspended I and others decided to resign.... (Ex. 8)(emphasis added))

Drew spoke with the Appellant’s Captain and former supervisor at the security company who confirmed the contents of the Appellant’s letter as “accurate” and reported that the Appellant had been a good officer. (Exs. 4, 5, 6, 7 and 8)

36. In response to questions worded differently in the 2016 APD application and the 2017 BadgeQuest application asking, in essence, if the Appellant had been disciplined, discharged or fired, the Appellant answered accurately that he had been disciplined at the security company. (Exs. 5 and 6)

37. The Appellant answered “no” to application questions that asked if he had resigned according to a mutual agreement because he did not enter any such agreement and he had not received any document of such an agreement. (Testimony of Appellant)

38. Drew called the Appellant and discussed with him what had occurred at the security firm and the Appellant answered Drew’s questions. (Testimony of Appellant)

39. Drew also spoke to Mr. A, who was a union representative at the security company but now works at the Department of Homeland Security. Mr. A indicated that the Appellant was disciplined for using his cell phone during work hours but that the Appellant, along with 7 or 8 other guards, was also alleged to have submitted inaccurate timesheets, and that the company and the union settled by having the guards resign but stating that they could be rehired. (Ex. 4)

40. Drew's report on Candidate 2's employment history mentioned only his position as an SPO at the APD for two (2) years and his references included very supportive references, including references from then-Chief Martineau and Deputy Chief Bukunt, although Deputy Chief Bukunt had only been working at the APD for a couple of months.(Ex. 4)
41. Drew's report on Candidate 3 focused on his prior experience as a corrections officer, stating that he has been a successful employee who is easy to get along with, who does not lose his temper and has a number of very supportive professional references. (Ex. 4)
42. BadgeQuest gave the BOS a copy of Drew's report, dated August 7, 2017. (Testimony of Drew; Ex. 4)
43. The BOS met on August 8, 2017 and considered the police officer candidates. The BOS voted to extend conditional offers of employment to Candidates 2 and 3. (Testimony of Rose; Ex. 10)
44. At the BOS's next meeting, on August 17, 2017, the Board announced the retirement of Candidate 2's mother, who had worked in the office of the Town Clerk. (Ex. 14)
45. By letter dated August 14, 2017, the Town notified the Appellant that he was being bypassed by Candidates 2 and 3 because of their positive attributes and because 1) of his suspension and/or resignation from the security company, 2) his answers on the application forms were incomplete, inconsistent or inaccurate regarding his suspension and/or resignation from the security company, and 3) his "weak performance" in the interviews. (Ex. 9)

46. On October 16, 2017, Hatch filed the instant appeal with the Commission.

(Administrative Notice)

Applicable Law

The core mission of Massachusetts civil service law is to enforce “basic merit principles” for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills” 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. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259, (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass.App.Ct. 632, 635 (1995), *rev.den.*, 423 Mass.1106 (1996)

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 specific, 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 the appointing authority had shown, by a preponderance of the evidence, that it has “reasonable justification” for

the bypass after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 474-78 (2019); 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) and cases cited. *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”).

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.”

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.

Analysis

The Respondent has failed to establish by a preponderance of the evidence that it had reasonable justification to bypass the Appellant. First, a preponderance of the evidence shows that the scales were tipped in favor of Candidate 2 and against the Appellant here. First, Candidate 2, the son of a longtime Town employee, who had been recruited by the Police Chief to serve as a Special Police Officer, received a positive reference from the same Chief. Second, the Police Chief attended the interviews of the Appellant and Candidate 2, showing his approval to the interview panelists regarding certain of Candidate 2's answers, while shaking his head in response to certain answers provided by the Appellant. Third, the Board of Selectmen was told that the Appellant provided inconsistent answers to questions regarding his prior employment, while the preponderance of the evidence does not support this conclusion. Fourth, while the Board of Selectmen was provided with all of the positive factors related to Candidate 2, the Board was provided with a truncated review of the Appellant's background, in which not all of the positive attributes were provided. Whether this bias in favor of Candidate 2 was intentional or implicit, it resulted in a review process that was not fair and impartial which harmed the Appellant, thus warranting the Commission's intervention to ensure that the Appellant is at least reconsidered, through a fair and impartial process. Further, given that Candidate 2's mother was a longtime employee of the Town, the Town should have taken steps to ensure that there was no appearance that Candidate 2 would be treated any differently than other candidates. The Town's failure to do so only reinforces the problematic nature of the Chief's above-referenced involvement in the hiring process here.

In addition, the Town's hiring process was flawed, compounding the effects of the Town's bias in favor of Candidate and against the Appellant. The APD began the hiring process for appointment of two (2) fulltime police officers in the summer or fall of 2016 based on the civil service police officer exam. The Appellant filled out an APD application in which he disclosed that he had been suspended from a security firm where he worked for two (2) years, with no other discipline in his record. The Appellant wrote a detailed explanation about the matter as requested by APD Det. Dombrosky in the 2016 hiring process and submitted it to him, which detailed explanation BadgeQuest had obtained and discussed with the Appellant's supervisor at the security firm where the Appellant had been disciplined and the supervisor told BadgeQuest that the Appellant's detailed explanation was "accurate" and that the Appellant had been a good officer. Therefore, the Town has failed to establish by a preponderance of the evidence that the Appellant's comments about the one employment discipline against the Appellant were inconsistent. The Town did not complete the hiring process in 2016.

The second hiring process for police officers in the Town took place in 2017, after the Town appointed a Deputy Police Chief in May 2017 with the assistance of BadgeQuest. The Town then engaged BadgeQuest to conduct the 2017 hiring process for police officers. Municipalities have the option of going with an examination to hire police officers, an assessment center or both. However, the Town chose to go with the examination. In mid-course, the Town effectively decided to replace that decision with a de facto assessment center. The Certification indicated that it expired November 16, 2016. There is no indication in the record that the Town requested that the Certification remain effective until it filled the vacant police officer positions in September 2017,

nearly a year after HRD issued the Certification requested by the Town. In addition, there is no indication in the record that the Town entered into a delegation agreement with HRD authorizing the Town to use, in essence, an assessment center to appoint two (2) police officers instead of selecting them from the civil service exam Certification. Further, the Town had never hired a consultant before to be involved in the hiring process for entry-level police officers. Asked why, Selectman Rose testified that it was done to avoid “internal politics”, without identifying what specific internal politics the Town wanted to avoid. However, upon careful review of the candidates’ interviews of all three (3) of the police officer candidates by BadgeQuest and the rest of the record here, the “internal politics” became evident, as noted above. While the Town’s concerns about the Appellant’s one discipline and his responses to certain interview questions may be valid, the 2017 process here was not a neutral process and it did not reflect civil service basic merit principles.

In the 2017 hiring process, BadgeQuest recorded the interviews with the candidates. In addition, the Team A interviewers asked each candidate the same questions and the Team B interviewers asked the same questions (which were different from the questions asked by Team A). However, both the Team A interviewers and the Team B interviewers scored each candidate by “consensus”, as noted in the BadgeQuest interview report, rather than retaining their independence and rating each candidate based on their own observations and any notes written by the interviewers during each interview were not available. Further, there is no indication in the record how each candidate’s written response to an ethical question were scored other than stating that they were scored between 1 and 100 points. BadgeQuest reviewed the candidates’ completed applications,

contacted the candidates' references, obtained their credit ratings, and called the candidates if they had any questions or documents were missing. However, BadgeQuest did not obtain and review the candidates' criminal record and driver history, writing in its report that that is the responsibility of the Town and there is no indication in the record that the Town obtained and reviewed the candidates' criminal record and driver history and what was in them.

Conclusion

For all of the above reasons, Michael Hatch's appeal under Docket No. G1-17-211 is hereby **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 Town of Avon in its delegated capacity take the following action:

Place the name of the Appellant at the top of any current or future Certification for the position of police officer in the Town of Avon until he is appointed or bypassed after consideration consistent with this Decision.

If the Appellant is appointed as a police officer in the Town of Avon, he shall receive a retroactive civil service seniority date which is the same date as the candidates appointed from Certification No. 04096. This retroactive civil service seniority date is not intended to provide the Appellant with any additional pay or benefits including, without limitation, creditable service toward retirement.

Civil Service Commission

/s/Cynthia Ittleman
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Stein and Tivnan, Commissioners [Camuso – Absent]) on December 17, 2020.

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:

Michael Hatch (Appellant)

Scott E. Bettencourt, Esq. (for Respondent)

Melissa A. Thomson, Esq. (HRD)