

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

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

VIRGINIA HUSSEY,

Appellant

v.

CITY OF SOMERVILLE,

Respondent

G1-16-215

Appearance for Appellant:

Pro Se

Appearance for City of Somerville:

Shannon T. Phillips, Esq.
Assistant City Solicitor.
City of Somerville
93 highland Avenue
Somerville, MA 02143

Commissioner:

Paul M. Stein

DECISION ON MOTION TO DISMISS

The Appellant, Virginia Hussey, acting pursuant to G.L.c.31, §2(b), appealed to the Civil Service Commission (Commission), contesting her non-selection by City of Somerville (Somerville) for original appointment from Certification #03873 to a position of permanent, full time Police Officer with the Somerville Police Department (SPD).¹ A pre-hearing conference was held on January 10, 2017, at which time Somerville filed a Motion to Dismiss the appeal on the grounds that the Appellant was not bypassed because she was incorrectly listed on the Certification as a Somerville resident and all candidates who were hired did have Somerville residency preference. The Appellant was allowed until January 31, 2017 to file a response to the Motion to Dismiss but did not do so.

¹ The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission with G.L. c. 31, or any Commission rules, taking precedence.

FINDINGS OF FACT

Based on the submissions of the parties, including all documents, affidavits and memoranda submitted with the Motion to Dismiss and at pre-hearing conference, I find the following material facts are not in dispute:

1. The Appellant, Virginia Hussey, a qualified disabled veteran, took and passed the civil service examination for municipal police officer administered by HRD on April 25, 2015 and her name was placed on the eligible list established October 2, 2015, set to expire October 31, 2017.

2. Pursuant to Somerville's request to appoint four (4) permanent full time police officers, HRD issued Certification #03873, on which the Appellant's name appeared ranked 2nd, based on her disabled veterans status, score and claim of residency preference in Somerville.

3. Ms. Hussey was born and raised in Somerville and graduated from Somerville High School. She lived with her parents until she enlisted in the U.S. Army, maintained her residence of record at her family home and returned to that residence upon her discharge from active duty in 2010, where she continued to live with her minor son until November 2013.

4. In June 2013, Ms. Hussey was approved for housing assistance provided to disabled veterans under the VASH program. After six months of searching, Ms. Hussey had been unable to find a landlord in Somerville who would accept a VASH subsidy and, with her voucher approval about to expire, she took housing in Stoneham for one year (the minimum period that was required under the voucher program). She lived in Stoneham with her son from November 2013 until November 2014, when she found housing in Somerville and relocated there, where she still resides.

5. Ms. Hussey kept up her connections to Somerville, even during the one year that she lived in Stoneham, keeping her license and mailing address at her parents' home, her son

continued to attend Somerville schools and she continued to coach a Somerville youth football cheerleading team. She continued looking for housing in Somerville on a regular basis. It was always her “intention” to return to Somerville just as soon as she could.

6. After completing its background investigation, which included an independent outside agency who performed the residency portion of the investigation, Somerville determined that Ms. Hussey had not lived as a resident of Somerville for a full year immediately prior to the civil service exam and, therefore could not be considered to qualify for residency preference.

7. Without residency preference, Ms. Hussey’s name would have appeared as the top-ranked non-resident, in the 91st tie group, on Certification #03873, and would not have been reached for consideration.

8. No candidate properly ranked below Ms. Hussey was hired (all were Somerville residents)

9. Ms. Hussey does not dispute that she lived in Stoneham for six of the twelve months prior to taking the April 2014 examination.

STANDARD OF REVIEW

An appeal before the Commission may be disposed of summarily, in whole or in part, pursuant to 801 C.M.R. 1.01(7)(g) and 801 C.M.R.1.01(7) (h) when, as a matter of law, the undisputed material facts affirmatively demonstrate that there is “no reasonable expectation” that a party can prevail on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass.App.Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005)

ANALYSIS

Somerville's residency preference is governed by G.L.c.31, §58,¶3, which states, in pertinent part: “[U]pon written request of the appointing authority to the administrator [HRD], the administrator shall, when certifying names from said eligible list for original appointment to the police force or fire force of a city or town, place the names of all persons who have resided in said city or town for one year immediately prior to the date of examination ahead of the name of any person who has not so resided.”

Although the term “reside” is not specifically defined in Chapter 31, applicable Commission and judicial decisions have made it clear that “The term ‘reside’ is used to designate the physical location of the employee’s house or other dwelling place” and that the existence of other “strong ties” to a community and the “intention” to return there are not sufficient to establish a person to have “resided” in a community in which they do not actually live full-time. See, e.g., French v. Town of Plainville, 29 MCSR 269 (2015); Gould v. City of Boston, 27 MCSR 353 (2014), and cases cited.

Ms. Hussey concedes that she lived in Stoneham for six of the twelve months prior to taking the April 2014 examination but she contends that an exception to the general rule should be made under the unique facts of her case, and she should be deemed to have remained a legal resident of Somerville as she was forced to move, in effect, solely for exigent circumstances beyond her control. Ms. Hussey presents compelling ties to Somerville and is sincerely interested in becoming a Somerville Police Officer, but the Commission is obliged to apply the law as written. As Ms. Hussey did not qualify, at the time, to be placed on the Certification #03873 as a Somerville resident, she was not bypassed and the Commission lacks jurisdiction to consider her appeal.

CONCLUSION

Accordingly, for the reasons stated, the Motion to Dismiss is GRANTED. The appeal of the Appellant, Virginia Hussey, under Docket No. G1-16-215 is *dismissed*.

Civil Service Commission

/s/ Paul M. Stein

Paul M. Stein
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein & Tivnan, Commissioners) on February 16, 2016.

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

Notice to:

Virginia Hussey (Appellant)
Shannon T. Phillips, Esq. (for Respondent)
John Marra, Esq. (for HRD)