

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

VINCENT JAMES,
Appellant

G1-14-49

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

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

Appearance for Respondent:

Meryum Z. Khan, Esq.
Boston Police Department
Office of the Legal Advisor
One Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 21, 2014, the Appellant, Vincent James (Mr. James), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection by the Boston Police Department (BPD) to the position of permanent, full-time police officer.

On March 18, 2014, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. James, his counsel and counsel for the BPD. Based on the documents submitted and the statements of the parties, it is undisputed that:

- Mr. James's name appeared on Certification No. 00746 within the 55th "tie-group" of those candidates who signed the Certification as willing to accept appointment if selected.
- While other candidates in the 55th tie-group were appointed, no candidate ranked below Mr. James (i.e. – ranked 56th or below) was appointed.

The Commission has consistently held that selection from a group of tied candidates is not a bypass. See Kallas v. Franklin Sch. Dep't, 11 MCSR 73 (1996) ("It is well settled civil service

law that a tie score on a certification ... is not a bypass for civil service appeals”); Bartolomei v. Holyoke, 21 MCSR 94 (2008) (“choosing from a group of tied candidates does not constitute a bypass”); Coughlin v. Plymouth Police Department, 19 MCSR 434 (2006) (“the Commission ... continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law”) (*emphasis in original*); Edson v. Town of Reading, 21 MCSR 453 (2008) (“When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed”), decision affirmed by Superior Court, see Edson v. Civil Serv. Comm’n, Middlesex, Sup. Ct. No. 08-CV3418-F ((2009); see also Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002), 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 tied candidates, no actionable ‘bypass’ has taken place in the parlance of the Civil Service Commission.”)

BPD subsequently filed a Motion for Summary Decision (which I have deemed a Motion to Dismiss) seeking to dismiss Mr. James’s appeal. No reply was received from Mr. James.

For all of the reasons cited in BPD’s motion, including that no bypass occurred here, Mr. James’s appeal under Docket No. G1-14-99 is hereby ***dismissed***.

Civil Service Commission

Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on June 26, 2014.

A true record. Attest:

Commissioner

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:

James W. Gilden, Esq. (for Appellant)

Meryum Khan, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)