

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

Decision mailed: 9/26/08  
Civil Service Commission  
*CS*

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

**ANTOINE J. KHALIFE,**  
*Appellant*

v.

**TOWN OF DARTMOUTH  
POLICE DEPARTMENT,**  
*Respondent*

**Case No.: G1-07-281**

**DECISION**

After careful review and consideration, the Civil Service Commission voted at an executive session on September 25, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated July 28, 2008. On August 27, 2008, the Commission received written objections to the Magistrate's recommended decision and a supporting brief from the Respondent. On September 24, 2008, the Commission received the Respondent's waiver of its objections.

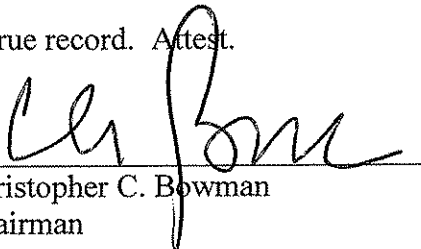
On September 25, 2008, the Commission voted to adopt the findings of fact, with the exception of Finding #5, and the recommended decision of the Magistrate.

Finding #5 states, "On October 10, 2001, Antoine Khalife signed a doing business certificate with the City of New Bedford stating that he was operating a business at 171 Coggeshall Street called Coggeshall Street Petro Mart. Also carrying the same date, he signed a discontinuance of operations from the City of New Bedford stating that the business of Coggeshall Petro Mart was discontinuing its operation and that the doing business certificate was being withdrawn." This is in error. An examination of Exhibit 17 shows that the doing business certificate was dated on October 16, 2001, and received and recorded in the New Bedford City Clerk's Office on October 16, 2001. The Discontinuance of Business Certificate was signed before a notary public on May 24, 2006.

A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By a 3-2 vote of the Civil Service Commission (Bowman, Chairman; [Henderson, NO], Marquis, Stein and [Taylor – NO], Commissioners) on September 25, 2008.

A true record. Attest.

  
Christopher C. Bowman  
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a 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 the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

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.

Notice to:

Jeffrey D. Sowa, Esq. (for Appellant)

Heather L. Martino, Esq. (for Appointing Authority)

Shelly Taylor, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

*Division of Administrative Law Appeals*

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July 28, 2008

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Christopher C. Bowman, Chairman  
Civil Service Commission  
One Ashburton Place, Room 503  
Boston, MA 02108

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CIVIL SERVICE COMMISSION

Re: *Antoine J. Khalife v. Town of Dartmouth Police Department,*  
Docket No. CS-08-185

Dear Attorneys Sowa, Martino and Chairman Bowman:

Enclosed please find the Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01(11)(c)(1), they have thirty days to file written objections to the decision with the Civil Service Commission. The written objections may be accompanied by supporting briefs.

Very truly yours,

  
Shelly L. Taylor  
Chief Administrative Magistrate

SLT/das  
Enclosure

**COMMONWEALTH OF MASSACHUSETTS**

Suffolk, ss.

Division of Administrative Law Appeals

Antoine J. Khalife,  
Appellant

v.

Docket Nos. G1-07-281;  
CS-08-185 (DALA)

Town of Dartmouth-Police Department,  
Appointing Authority

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Administrative Magistrate:

Sarah H. Luick, Esq.

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**RECOMMENDED DECISION**

Pursuant to G. L. c. 31, § 2(b), the Appellant, Antoine J. Khalife, is appealing the decision of the Human Resources Division (HRD) approving the reasons of the Appointing Authority, the Town of Dartmouth-Police Department, for bypassing him for an original appointment to the position of Police Officer. (Ex. 1) The appeal was timely filed with the Civil Service Commission. (Ex. 2) A hearing was held for the Civil Service Commission on March 27, 2008, at the offices of the Division of Administrative Law Appeals (DALA), 98 North Washington Street, 4<sup>th</sup> Floor, Boston, MA 02114.

Various documents are in evidence. (Exhibits 1 – 19) Three (3) tapes were used. The parties filed pre-hearing memoranda. (“A”) The Appointing Authority presented the

testimony of: Trooper Paul Gifford of the Massachusetts State Police; Dartmouth Police Officer Kyle Costa; and, Dartmouth Police Captain and Executive Officer, Dennis McGuire. The Appellant testified on his own behalf, and presented the testimony of Oscar Gomez, a sales clerk at Petro Mart in April 2007. The record was held open for further information to determine whether the Appellant held an ownership interest in Petro Mart in April 2007, and/or for the parties to secure a stipulation about that issue. The record closed April 25, 2008 when the Appellant's counsel filed a document showing that Mr. Khalife, along with his brother, are co-owners of the land and building where Petro Mart is located. This document, dated December 26, 2001, was added to the record as Exhibit 19. Both parties raised arguments concerning this issue. ("B")

#### FINDINGS OF FACT

1. Antoine J. Khalife, d.o.b. 1/15/81, took a civil service examination for the job of permanent part-time Intermittent Dartmouth Police Officer. He passed, and his name was placed on certified list no. 27-0091 provided to the Town of Dartmouth. He filed an application for the position, and was assigned a Dartmouth Police Officer Investigator to do the required background check on him. (Exs. 7, 8 & 9. Testimony.)

2. Mr. Khalife was born in Lebannon, graduated from New Bedford High School in 1999, was married in June 2006, and served in the U.S. Marine Corps until his honorable discharge in February 2002 having reached the rank of E-3 Lance Corporal. He has lived in Dartmouth from March 2003. (Ex. 9. Testimony.)

3. By April 2007, Mr. Khalife was licensed in Massachusetts to carry a firearm. To possess or to obtain a valid Massachusetts license to carry a firearm is a

requirement for the Dartmouth police officer position he was seeking. (Exs. 5 & 18. Testimony.)

4. From April 2001 onward, Mr. Khalife has worked as a store manager for Petro Mart, Inc. The store where he works is called Petro Mart, and is located at 171 Coggeshall Street, New Bedford, MA. Petro Mart, Inc. is a Massachusetts for-profit corporation with its principal office at this store location. The current Officers and Directors of the corporation in and around April 2007 included Antoine Khalife and his brother, Michael Khalife. His brother was the President, Treasurer, and only Director. Antoine Khalife was the Secretary. His brother resides in Acushnet, MA. Petro Mart is a convenience store. (Exs. 11, 12, 13, 16, 17 & 19. Testimony.)

5. On October 10, 2001, Antoine Khalife signed a doing business certificate with the City of New Bedford stating that he was operating a business at 171 Coggeshall Street called Coggeshall Petro Mart. Also carrying the same date, he signed a discontinuance of operations form of the City of New Bedford stating that the business of Coggeshall Petro Mart was discontinuing its operation and that the doing business certificate was being withdrawn. On December 26, 2001, Michael Khalife and Joseph Khalife entered into an "Acknowledgement and Agreement" that they were equal owners of Petro Mart, Inc. which operated Petro Mart, the convenience store. Joseph Khalife is a relation of Michael and Antoine Khalife. They acknowledged that this agreement would "take precedence over any representative share of corporate stock which may be outstanding at this time or in the future." The document then stated:

[W]e, Joseph A. Khalife and Michael Khalife, understand that fifty (50%) percent shares of stock of Petro Mart, Inc. are held for Joseph A. Khalife as a courtesy to Joseph A. Khalife.

(Ex. 19. Testimony.)

6. A commercial lease was entered into between Antoine Khalife and Petro Mart, Inc. on January 9, 2002. Antoine Khalife was the landlord and Petro Mart, Inc. was the tenant. The premises rented was the convenience store at 171 Coggeshall Street, New Bedford. Antoine Khalife received the rent. This lease commenced February 1, 2002, and was for five (5) years. The tenant had an extension option "to extend the term of this Lease for five separate extension periods of five lease years each ...." Under the agreement at "Tenant's Covenants," at #16, the Tenant agreed to the following:

... will not carry on any business, trade or occupation upon the Premises or make any use thereof which shall be unlawful or offensive or contrary to any law or ordinance for the time being in force ....

(Ex. 12)

7. The Town of Dartmouth filled out a Form 13 Civil Service Requisition in January 2007 to hire permanent part-time Intermittent Police Officers. Certification list no. 270091 was issued on January 23, 2007. Mr. Khalife's name was among the top twenty-one (21) candidates on this list. Of the persons on the list, eighteen (18) signed that they would accept an appointment including Mr. Khalife. (Ex. 7)

8. In or around early April 2007, Mr. Khalife received an employment form for the job of permanent part-time Dartmouth Intermittent Police Officer, and an introduction letter from Dartmouth Police Captain Dennis E. McGuire. He was in charge of the hiring process. Mr. Khalife was instructed to appear for the orientation meeting on May 5, 2007. He was informed this session would last about five to eight hours. Captain McGuire noted:

The orientation day will be the beginning of a very long and detailed process which will include further testing, in depth personal background investigation ....

(Ex. 18)

9. Mr. Khalife had to fill out the employment form and bring it with him to the orientation meeting. He was not to sign the form until the application was reviewed at a private one-on-one meeting with the Police Officer assigned to investigate his candidacy. Mr. Kalife completed the form. He listed his employment from April 2001 as "Office Manager" for Petro Mart, Inc. He listed his supervisor as "Mike Khalife." He listed the employer's address as 171 Coggeshall Street, New Bedford, MA. He also listed "Mike Khalife" as his brother and as a relative he resided with for an extended period. He listed his brother's address as 15 Main Street, Acushnet, MA. (Ex. 9. Testimony.)

10. During the morning hours of April 8, 2007, some Massachusetts state troopers were performing a routine patrol of the New Bedford area that included the location of Petro Mart. The area was known to be a high crime area, including involving the sale and use of narcotics and drug paraphernalia. Trooper Paul Gifford entered Petro Mart to investigate whether narcotics and including drug paraphernalia were being sold or used. He had information to believe this might be occurring there. He entered in uniform. His cruiser was in the parking lot in front of the store. Another uniformed trooper was also there with his own cruiser in the parking lot. Trooper Gifford questioned the clerk behind the counter, Oscar Gomes, about the presence of narcotics and if he was involved with the sale of drug paraphernalia and/or the sale of narcotics. Mr. Gomes said he was not involved in narcotics and had no knowledge about the presence of narcotics or of drug paraphernalia in the store. Trooper Gifford then asked to speak to the store owner. Mr. Gomes called Antoine Khalife and handed the telephone to



Trooper Gifford once Mr. Khalife answered. Mr. Khalife was scheduled to work that morning. (Ex. 16. Testimony.)

11. Trooper Gifford spoke by telephone from the store to Antoine Khalife. He understood Mr. Khalife was the store owner from what Mr. Gomes had told him. He asked if he could do a search in the store, including behind the counter. Mr. Khalife said yes, and never said he would need to check with anyone else before granting permission. Mr. Khalife asked if he should come, and Trooper Gifford said he did not need to and that his search would not take long. After that call, Trooper Gifford conducted the search of the store. He took photos of what he felt were drug paraphernalia behind the counter. The drug paraphernalia were "hideaway cans, pipes, and Chore Boys," as well as "scales disguised as cellular telephones." No narcotics were found. About fifteen minutes after ending the call with Trooper Gifford, Mr. Khalife arrived at the store. He came with his licensed firearm on his person. As he entered the store, the other state trooper noticed his firearm. Mr. Khalife was immediately put into custody by the troopers, including being handcuffed. He then explained to them he was the person who had just been spoken to on the telephone, and that he had a license for the firearm. His information about the license was checked out, and then the handcuffs were taken off. He was in custody this way for about a half hour. (Ex. 16. Testimony.)

12. Mr. Khalife had not stated upon entering the store that he had a firearm on his person. He brought the firearm to work because Petro Mart was in a high crime area. During his time in the store with the two state troopers, he stated to Trooper Gifford that he was a candidate for a Dartmouth police officer position. Trooper Gifford informed

him that he may contact the Dartmouth Police Department with that information.

(Testimony)

13. No arrests were made at the store. No report of the State Police visit and search of the store was made. Neither state trooper made a report of their visit to and search of Petro Mart. Mr. Khalife learned from Trooper Gifford that a woman had been arrested in the Petro Mart parking lot for using narcotics, and that she claimed a Petro Mart employee had sold her the drugs. Mr. Khalife defended Mr. Gomes to Trooper Gifford, stating that he was not that kind of person. (Testimony)

14. Mr. Khalife was aware at the time that the City of New Bedford had sent a letter to Petro Mart warning how certain items should not be sold as they can be used as drug paraphernalia. The letter warned of the potential for prosecution for violations of the drug laws. Mr. Khalife knew what these items were and had asked his employer/family members not to sell them. (Testimony)

15. Afterwards, Trooper Gifford called the Dartmouth Police to report the encounter with Mr. Khalife because he had noted he was a candidate for a job with the Dartmouth Police Department. Trooper Gifford noted the search, and Mr. Khalife coming to the store with a firearm on his person. He did not give an opinion that Mr. Khalife should not be hired. Captain McGuire, once he learned about this incident involving a job candidate, wrote a note containing this information to Officer Kyle Costa, who was assigned to investigate Mr. Khalife's background in connection with his candidacy. To gain information from others about job candidates is not unusual, and it has been Captain McGuire's practice to make a note of such information and put it in the candidate's file for the investigating officer to pursue further. (Testimony)

16. Mr. Khalife attended the May 5, 2007 orientation meeting. Captain McGuire gave a talk to the candidates. In his talk he emphasized the importance of revealing any past encounters with police, including even minor traffic stops. He emphasized the importance of disclosing any information that would be pertinent to a background check, noting that a failure to disclose such information could lead to a dismissal of the application. (Exs. 14 & 15. Testimony.)

17. Officer Costa reviewed Mr. Khalife's application with him, and gave Mr. Khalife the chance to raise any matter he needed to that Officer Costa had not addressed already with him. Despite the orientation meeting warning and encouragement from Captain McGuire to be forthcoming with any information concerning encounters with police, Mr. Khalife did not feel he had to reveal: the search of the store; the fact that he was at least initially handcuffed for having a gun on his person upon entering the store; or that he had mentioned to Trooper Gifford that he was a job candidate for a Dartmouth Police Department position despite Trooper Gifford informing him he might reveal that to the Dartmouth Police; or, that Petro Mart, Inc., his tenant, had received a warning letter from the City of New Bedford about selling drug paraphernalia and possible prosecution for violation of the drug laws. Mr. Khalife reasoned that the state troopers had left the scene and had not written up a report on the search of the store, had not made any arrests at that time, and that he understood a State Police supervisor had stated to his family member that there was nothing to worry about regarding the events of April 8, 2007. (Ex. 14. Testimony.)

18. Because Mr. Khalife had not raised anything at his May 5, 2007 interview about the search and the encounter with the state troopers, Officer Costa investigated the

state troopers' visit to Petro Mart he knew had occurred. He spoke to Trooper Gifford on June 8, 2007. He learned that when the state troopers searched Petro Mart on April 8, 2007, they found drug paraphernalia as though for sale and kept behind the counter. He learned that Mr. Khalife had entered the store unannounced with a gun on his person without any forewarning to the state troopers he was carrying a gun, causing the troopers to place him in custody in handcuffs until they confirmed he had a license to carry the gun. Trooper Gifford also reported how Mr. Khalife was aware that products that could be used as drug paraphernalia were sold at the store and kept behind the counter. He learned how in this context Mr. Khalife reported to Trooper Gifford that he was a candidate for a Dartmouth Police Department position. Trooper Gifford raised his concern to Officer Costa that this might have been said to gain favorable treatment from him and the other state trooper regarding the search of the store and his coming into the store with the gun unannounced. (Exs. 15 & 16. Testimony.)

19. On June 9, 2007, Officer Costa met again with Mr. Khalife. He presented to him the information he had about the events of April 8, 2007 as Trooper Gifford had explained them. Mr. Khalife defended his failure to reveal the encounter with the state police on April 8, 2007. He explained that he learned no report had been made about the visit to Petro Mart, and that no arrests had occurred. He also explained that a family member's check with a state police supervisor led to his understanding that there was nothing the store or he had to worry about. He acknowledged to Officer Costa the information Officer Costa knew about the incident was true. He agreed he arrived at the scene with a gun, that the store sold materials the troopers found to be drug paraphernalia, and that he had represented himself as a candidate for a job at the

Dartmouth Police Department, but not to gain any favorable treatment for himself or for Petro Mart. He acknowledged that there had been prior criminal activity on the store premises. He acknowledged that all this time he had been an employee at Petro Mart. He also informed Officer Costa that his brother and his father owned and operated Petro Mart, and that he worked only on payroll and paying bills. He did not reveal he was Petro Mart, Inc.'s landlord. (Ex. 15. Testimony.)

20. After the June 9, 2007 second meeting with Officer Costa, Mr. Khalife found documentation that he felt supported his contention that he was not an owner of Petro Mart, Inc. He sent information to Officer Costa showing he owned the land and building that Petro Mart, Inc. rented to operate the convenience store. He acknowledged he was the corporation's Secretary. (Exs. Testimony.)

21. Officer Costa decided to investigate further, what if any financial interest Mr. Khalife had in Petro Mart. He discovered documentation showing to him that Mr. Khalife had at one time been the owner of Petro Mart, and that he was the current Secretary of Petro Mart, Inc. (Exs. 15. Testimony.)

22. Officer Costa discussed his investigation of Mr. Khalife with Captain McGuire. As a result, Captain McGuire discussed with Officer Costa how he could present Mr. Khalife with the option to withdraw his application instead of facing the possibility of being bypassed because of his failure to disclose his connections with Petro Mart and his conduct with the state troopers during their visit and search of Petro Mart on April 8, 2007. (Testimony.)

23. Officer Costa gave this option to Mr. Khalife, but he did not withdraw his application. (Testimony)

24. Officer Costa made a written report of his investigation of Mr. Khalife. Captain McGuire agreed with Officer Costa's concerns, and recommended to the Town of Dartmouth that Mr. Khalife not be hired. The report stated:

Antoine KHALIFE does not possess the character and decision making skills it takes to be successfully appointed as a Permanent Intermittent Police Officer with the Town of Dartmouth Police Department.

(Ex. 16)

This was concluded even though Officer Costa reported that Mr. Khalife appeared on May 5, 2007,

very well dressed in business attire, well mannered, respectful, and presented an application and personal portfolio that I can only describe as "impeccable."

(Ex. 16)

25. Officer Costa wrote in his report how he asked Mr. Khalife the same question he asked all the candidates he was assigned to investigate:

"Is there anything you wish to disclose to me at this time that might present itself during your background investigation?"  
In response, KHALIFE answered, "No."

(Ex. 16)

Officer Costa wrote in his report that he contacted Trooper Gifford after Mr. Khalife answered that he had nothing else to report at his interview in order to learn about the April 8, 2007 incident. Officer Costa reported that after gaining information from Trooper Gifford he again met with Mr. Khalife and confronted him about the incident of April 8, 2007. Officer Costa wrote that Mr. Khalife defended his failure to reveal this incident at the initial interview because he did not think anything was going to happen as a result of the incident; a point Mr. Khalife contended was confirmed by a state police supervisor. At this second meeting, Officer Costa reported that he provided Mr. Khalife

with a copy of G. L. c. 94C, § 321 prohibiting the sale, possession, or purchase or manufacture of drug paraphernalia, knowingly or where the person should have known that the items would be so used. In reaction, Officer Costa wrote that Mr. Khalife said he already knew about this law since the New Bedford Police had come to Petro Mart some time prior to the state police visit to warn about having items in the store that could be used as drug paraphernalia; that if sold from the store, there might be a prosecution. Officer Costa wrote that Mr. Khalife explained how he could not control the items sold at the store his brother and father owned, that he had asked his father to remove the items, and that he never sold the items to anyone. Officer Costa reported that he asked him if he owned part of the business, and Mr. Khalife said no. (Ex. 16. Testimony)

26. Officer Costa reported on how this second interview ended. He wrote that he informed Mr. Khalife the information he failed to disclose about Petro Mart and the April 8, 2007 incident could disqualify him for appointment to the Dartmouth Police Department. He wrote that he told Mr. Khalife he could withdraw his application, but that Mr. Khalife would not do that. Officer Costa wrote how he thanked Mr. Khalife at the conclusion of the interview “for his seeming candid and honest disclosure.” (Ex. 16. Testimony.)

27. Section V of the Dartmouth Police Department Rules and Regulations at (IV) (A), “Professional Conduct & Responsibilities,” states:

Police officers are professionals, and as such are expected to maintain exceptional high standards in the performance of their duties ....

(Ex. 5)

At “Conflict of Interest” within this same section and subsection, the Rules and Regulations state:

The position of police officer is a public trust, it is important to avoid all situations involving conflict of interest whether in fact or only in appearance. Areas of concern are:

- Certain kinds of outside employment.
- ...
- Use of an official position to secure unwarranted privileges.

(Ex. 5)

At "Outside Employment" within this same section and subsection, the Rules and

Regulations state:

Prior to accepting any outside employment, which would interfere with the employee's responsibilities as a police officer, a member or employee must obtain the permission of the Chief of Police. No member of the force shall accept other employment which could impair his independence of judgement in the exercise of official duties.

(Ex. 5)

And, at "Use of Official Position" within this same section and subsection, the Rules and

Regulations state:

Officers shall not use their official position, departmental cards or badges for the following:

- For personal or financial gain.
- Obtaining privileges not otherwise available to them, ....

....

(Ex. 5)

28. The recommendation to disqualify Mr. Khalife from appointment to the position of Intermittent Police Officer was adopted by the Dartmouth Board of Selectmen. Captain McGuire sent Mr. Khalife a letter on or about June 15, 2007, explaining how he would not be hired. He stated Officer Costa's investigation revealed "a number of categories ... [where you] were found to be deficient." He explained that the background report of Officer Costa was being relied upon to support a bypass of the appointment. (Ex. 2)



29. Eleven candidates were chosen from the certification list no. 27-0091 to be permanent part-time Dartmouth Intermittent Police Officers. As required, the Town of Dartmouth provided to the Human Resources Division its reasons in writing for bypassing Mr. Khalife as his name appeared higher on the list than some candidates who were appointed. The reason given for bypassing Mr. Khalife relied upon his connection to Petro Mart, Inc., the April 8, 2007 incident including his coming to the store during the incident wearing a gun, his making the statement to the state troopers that he was a candidate for a job with the Dartmouth Police Department, and his failure to disclose this information at his May 5, 2007 interview. These reasons were set forth in detail for the Human Resources Division. (See, Ex. 4)

30. The Human Resources Division accepted the Town of Dartmouth's reason for bypassing Mr. Khalife. Mr. Khalife was informed in writing of this determination, and that he had the right to appeal to the Civil Service Commission. Mr. Khalife filed a timely appeal with the Civil Service Commission. (Exs. 1 & 3)

### **DECISION**

There must be a justifiable reason on the part of the Appointing Authority to support a bypass. Brackett v. Civil Service Commission, 447 Mass. 233, 241 (2006). In Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 303 (1997), the Appeals Court explained to be justifiable, the bypass must be "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." Wakefield v. First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928); Civil Service Commission v. Municipal Ct. of Boston, 359 Mass. 214 (1971). G.L.c.31, §2(b) requires that bypass decisions be

supported by a preponderance of the evidence. This test calls for the Civil Service Commission “to determine whether, on the basis of the evidence before it, the Appointing Authority has established that the reasons assigned by the bypass of the Appellant were more probably than not sound and sufficient.” Revere v. Civil Service Commission, 31 Mass. App. Ct. 315 (1991).

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates. The Civil Service Commission is not to decide a bypass appeal based on its own preferences about candidates, but to determine if the facts show a reasonable justification for the decision made about the candidate based on the information the Appointing Authority had at the time of its decision. Watertown v. Arria, 16 Mass.App.Ct. 331, 334 (1983). See, Civil Service Commission v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003). Personnel decisions that are not grounded in sound reasons represent occasions for the Civil Service Commission to overturn a bypass decision, “to protect against overtones of political control, objectives unrelated to merit standards, and assure neutrally applied public policy.” Cambridge, supra at 304; Revere, supra at 321; and, Watertown v. Arria, supra at 334.

The Town of Dartmouth bypassed Mr. Khalife because he failed to disclose significant information involving police contacts he and Petro Mart had. He was sufficiently warned to provide full disclosure, and encouraged to come forward by Captain McGuire in his orientation talk to the candidates, to reveal any involvement with police, even traffic violations. The candidates were even warned that a failure to raise

such information during the orientation one-on-one interview with the police investigator could lead to a disqualification.

The employment form contained no specific question to discuss police involvement, that did not lead to criminal charges. But, Mr. Khalife should have exercised better judgment than he did, and revealed what happened to him and to Petro Mart on April 8, 2007. He never presented any confirming evidence to show that the event was nothing to worry about as he understood a state police supervisor told his family member. Yet, even if he had such confirming evidence, he should have known that comment could not overcome Captain McGuire's clear instruction at the orientation meeting.

Mr. Khalife may or may not be a beneficiary of the profits of Petro Mart, Inc., but he has been a related party as a family member owner of the land and building Petro Mart, Inc. rented for operating the convenience store. He was so much more than a mere bookkeeper type of employee for Petro Mart. He received rent from Petro Mart, Inc. He was also the corporate Secretary of Petro Mart, Inc. He was clearly sufficiently involved in Petro Mart, Inc. to have felt able to give permission to the state troopers to do the search of the store.

Mr. Khalife was aware when he sought the Dartmouth Police Department job, that Petro Mart had received a warning from the City of New Bedford about selling items that could be used as drug paraphernalia. That fact alone would appear sufficiently important under Captain McGuire's instruction to the candidates at the orientation meeting to have revealed that information about Petro Mart at the first interview with Officer Costa. Certainly, no evidence shows Mr. Khalife fostered or ignored any criminal activity

connected with Petro Mart. If anything, the evidence shows he tried to get his family members to stop selling items that could be used as drug paraphernalia. On the other hand, Petro Mart, Inc.'s lease agreement with Antoine Khalife warned against operating the business in ways that are "unlawful or offensive or contrary to any law or ordinance." As landlord, Mr. Khalife had the ability to do more than simply try to persuade his family members not to sell these items anymore. This authority over Petro Mart's business means he should have revealed his important connection to Petro Mart on May 5, 2007 to Officer Costa.

I agree with the Town of Dartmouth that Mr. Khalife should have known he needed to reveal how he had been placed in custody in handcuffs for about a half hour by the state troopers when he arrived at the scene of the April 8, 2007 search and criminal investigation at Petro Mart because he had a gun on his person. He knew the state troopers were still on the scene due to their cruisers being in the parking lot of Petro Mart. But even if he did not see the cars, once he entered and saw the state troopers still present, he should have immediately reported he had on his person his licensed firearm. It is an exercise of poor judgment not to have anticipated that wearing his gun in their presence would be problematic for the state troopers as they conducted a criminal investigation.

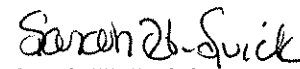
It is not clear when Mr. Khalife told Trooper Gifford that he was a candidate for a Dartmouth Police Department job that he did so to gain favorable treatment for himself and for Petro Mart in terms of the criminal investigation he walked into. He may have said this to ensure that the state troopers would appreciate that he had not brought the gun with him to engage in criminal activity or to threaten them. If he had made that statement

in an effort to try to gain some advantage for himself and Petro Mart, then that would be the kind of conduct that a Dartmouth Police Officer should not engage in as per the Police Department rules and regulations. (See, Ex. 5)

Mr. Khalife was forthcoming with what happened on April 8, 2007 after he was confronted by Officer Costa at the second interview about those events. But, as Captain McGuire explained, that was too late with this acknowledgement. I also found Mr. Khalife's explanations of why he did not reveal on May 5, 2007 the April 8, 2007 events and his connections other than as an employee of Petro Mart, to be very defensive and not sufficiently acknowledging he should have disclosed this information.

Not everything about Mr. Khalife was unfavorable as a job candidate. His background, including his military service, his long ties to the community, and the very favorable personal presentation he made at the May 5, 2007 interview with Officer Costa, are all positive. Nevertheless, I conclude that the Town of Dartmouth's reasons for the bypass were sound and sufficient, were non-political, and were justifiable. The findings made show sufficient proof to support the bypass determination. Therefore, I recommend that the Civil Service Commission affirm the bypass determination.

DIVISION OF ADMINISTRATIVE  
LAW APPEALS

  
Sarah H. Luick, Esq.  
Administrative Magistrate

DATED: 7/28/08