

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss

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

LISA LIMA-SOARES,  
Appellant

v.

G1-19-150

CITY OF SOMERVILLE,  
Respondent

Appearance for Appellant:

Elizabeth L. Bostwick Esq.  
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Newton, MA 02464

Appearance for Respondent:

Hannah Pappenheim, Esq.  
City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

**DECISION**

On July 19, 2019, the Appellant, Lisa Lima-Soares (Ms. Lima-Soares or Appellant), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Somerville (City) to bypass her for original appointment to the position of permanent, full-time reserve police officer. A pre-hearing conference was held on September 10, 2019 followed by two (2) days of full hearing on November 12, 2019 and January 6, 2020, at the offices of the Commission.<sup>1</sup> The full hearing was digitally recorded

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<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.

and both parties received recordings of the two days of hearing.<sup>2</sup> Both parties submitted post-hearing proposed decisions. For reasons explained below, I conclude that the City's bypass decision should be upheld.

**FINDINGS OF FACT:**

Joint Exhibits 1 - 8 were entered into evidence in this matter by both parties, Respondent Exhibits 1-6 were entered into evidence by the City, and Ms. Lima-Soares entered Appellant's Exhibits 1-18. Pursuant to an order by the Commission, the Respondent produced additional Post-Hearing Exhibits 1-3. Based on those exhibits, the stipulated facts, the testimony of:

*Called by the City of Somerville:*

- Sergeant Sean Sylvester, Somerville Police Department
- Candace Cooper, Personnel Director for the City of Somerville
- Deputy Stephen Carrabino, Somerville Police Department

*Called by the Appellant:*

- Lisa Lima Soares, Appellant

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations and policies, and reasonable inferences drawn therefrom, a preponderance of evidence establishes the following findings of fact:

1. At the time of the hearing, the Appellant was forty-five years old. She is a resident of Somerville and has obtained a bachelor's degree. (Testimony of Appellant)

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<sup>2</sup> 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.

2. On or about March 25, 2017, the Appellant took the civil service exam for the position of reserve police officer and received a score of 79. The eligible list was established September 1, 2017. (Stipulated Facts).
3. On January 10, 2019 the state's Human Resource Division (HRD) sent the City of Somerville Certification # 06035 for the appointment of ten (10) candidates to the position of Reserve Police Officer. The Appellant ranked 25<sup>th</sup> on the certification of those willing to accept employment. (Stipulated Facts; Testimony of Cooper).
4. Eight (8) candidates were appointed to the position of reserve police officer with the City, three of whom were ranked below the Appellant. (Stipulated Facts; Testimony of Cooper).
5. All candidates on Certification # 06035 who underwent the City's hiring process were required to submit documentation to the City including an application, resume, credit scores, tax returns, to undergo a residency verification investigation, and to undergo a background investigation conducted by a detective of the SPD. (Testimony of Cooper; Testimony of Carrabino).
6. Following the background investigation, all candidates, including Ms. Lima-Soares, were interviewed by the same interview panel consisting of the following individuals: Director of Human Resources Candace Cooper (Cooper), Deputy Chief Stephen Carrabino (Carrabino) of the SPD; and the Deputy Director of Health and Human Services for the City of Somerville, Nancy Bacci. (Testimony of Cooper; Testimony of Carrabino).
7. Deputy Carrabino has been employed by the Somerville Police Department for twenty-five (25) years. He is currently the Deputy in Charge of Operations. He has a BS in Nursing Science from Boston University, a JD from Suffolk University Law School, and a MA in Public Administration from Harvard Kennedy School of Government. He is a trained

background investigator and currently oversees the background investigations for recruit hiring at the SPD. He has taken part in five (5) to ten (10) interview panels prior to this hiring round. (Testimony of Carrabino).

8. Candance Cooper has been the Director of Human Resources for the City of Somerville since 2016 and has been employed by the City since 2008, starting in payroll, then advancing to personnel, to Assistant Director, and to Deputy Director before her current role as Director. She participates in all police officer hiring, manages the process, collects information from the candidates, participates in the interview panel, and makes a recommendation to the Mayor. (Testimony of Cooper).
9. During the interviews, the panelists took turn asking questions. The general format for each interview was the same. The panel would go through each line of the multi-page application the candidate completed. Following that review, the panel walked each candidate through the findings of the background investigator's report. Finally, the candidate was then asked standard interview questions, which included numerous hypothetical scenarios. Once this process was complete, every candidate was given the opportunity to ask any questions he or she had before the interview was complete. (Testimony of Carrabino; Testimony of Cooper; Joint Ex. 1, 8).
10. Every candidate's interview was audio recorded by the City, with the consent and knowledge of the candidate, and has been submitted as evidence at the hearing of this matter. Ms. Lima-Soares interview lasted approximately two and half hours. (Jt. Ex. 1, 8).
11. Following the final candidate interview, the panel met to discuss and review every candidate. The interview questions were not individually scored. The panel made a unanimous decision as to which candidate would be bypassed and which candidate would be given a conditional

offer of employment. Following this decision, Ms. Cooper made a recommendation to the Mayor, who is given general, periodic updates on the hiring process. (Testimony of Carrabino; Testimony of Cooper).

12. On or about May 17, 2019, Ms. Lima-Soares was notified by the City that she would not be given a conditional offer of employment with the Somerville Police Department at that time, the reasons detailed therein. (Joint Ex. 7; Testimony of Cooper).

Concerns with Appellant's Prior History as Somerville Crossing Guard

13. Ms. Lima-Soares was employed by the City as a crossing guard from March 2016 to January 2018. Her supervisor was Officer Sean Sylvester during that time. He has since been promoted to the rank of sergeant. (Joint Ex. 2; Testimony of Sylvester; Testimony of Lima-Soares).

14. Early on in her time as a crossing guard, Ms. Lima-Soares spoke to Officer Sylvester at least three (3) different times (in a relatively short amount of time) about what she perceived to be illegal drug activity near her crossing guard post. Officer Sylvester informed Ms. Lima-Soares that he knew there to be a suboxone clinic in the area and took her concern seriously. (Testimony of Sylvester).

15. Within a few days of that first conversation, Ms. Lima-Soares came to Officer Sylvester again to report what she believed to be an illegal drug deal. She met with him at his desk at the precinct. At that time, Officer Sylvester informed Ms. Lima-Soares that he would pass her concern along to the Narcotics Unit. (Testimony of Sylvester; Testimony of Appellant).

16. Ms. Lima-Soares approached Officer Sylvester a third time to report perceived drug activity. At this time, Officer Sylvester told Ms. Lima-Soares that she needed to be more concerned with crossing children safely than repeatedly reporting the same information to him. He

repeated to Ms. Lima-Soares that he had passed the information along to the Narcotics Unit. He also advised her that the Narcotics Unit often times works undercover and she would not be privy to what those undercover officers may or may not be doing in response to her report, neither would Officer Sylvester, for that matter. (Testimony of Sylvester).

17. Instead of accepting his response, Ms. Lima-Soares insisted on knowing who exactly he had passed the information along to. At that point, Officer Sylvester gave her the contact information of a detective in the Narcotics Unit. (Testimony of Sylvester).

18. Officer Sylvester initially thought her reporting showed initiative since part of the training of a crossing guard is to report suspicious activity; however, he became frustrated that she would not follow his directives, nor would she accept his answers on the subject as satisfactory or to her liking. (Testimony of Sylvester).

19. Ms. Lima-Soares was repeatedly counselled by Officer Sylvester on this same issue - advising her to focus on her primary responsibility – crossing children safely. Officer Sylvester did not write Ms. Lima-Soares up because he did not see this as rising to the level of discipline and because she was a relatively new employee at the time. He felt she was overreaching her authority as a crossing guard, questioning her supervisor multiple times. (Testimony of Sylvester).

20. Deputy Chief Carrabino spoke to the Narcotics Unit detective about this matter. The detective told him that Ms. Lima-Soares called him repeatedly about suspicious activity she witnessed as a crossing guard, even after he acknowledged her report. The detective described this to Deputy Carrabino as “almost badgering.” (Testimony of Carrabino).

21. In her application, Ms. Lima-Soares checked “No” in response to the question, “Have you ever been counseled either verbally or in writing for poor job performance, inappropriate behavior, attendance or any other work-related issue?” (Joint Ex. 2).
22. During her interview for this position, Ms. Lima-Soares was asked whether a supervisor had ever spoken to her about concerns regarding her job performance. Ms. Lima-Soares stated that she “was never directly spoken to as though there was a problem.” (Joint Ex. 1).
23. In the interview, Ms. Lima-Soares acknowledged that she felt she saw suspicious activity going on as a crossing guard, that she spoke to her supervisor, and that he referred her to the person who deals with that in the department. She admitted in the interview that she contacted the Detective in the Narcotics Unit several times and left messages, but he never called her back. She reiterated again, “I was never spoken to about my work.” (Joint Ex. 1).
24. The interview panel felt that Ms. Lima-Soares’ response to this line of questioning in the interview was not sufficient. The panel did not credit her when she said that she was never spoken to about her repeated conduct. The panel felt that she acknowledged the matter at hand - that she felt there were drug deals going on and that she reported it - but she would not acknowledge that her supervisor had counselled her to focus more on crossing children or that he told her he had passed along the information to the Narcotics Unit. (Testimony of Cooper).
25. The panel was concerned with Ms. Lima-Soares’ ability to take orders. (Testimony of Carrabino).

Concerns about Appellant’s Financial History; Bankruptcy Filing and Failure to File Taxes

26. Every candidate who applied for the position of reserve police officer with the SPD was required to provide credit reports as part of their application. Ms. Lima-Soares provided the

City with three (3) credit reports. (Joint Ex. 2, 3; Respondent Post-Hearing Ex. 2, 3; Testimony of Cooper; Testimony of Carrabino).

27. Two bankruptcies appeared in Ms. Lima-Soares Experian Credit Report, one from 2010 and the other 2017. At the hearing of this appeal based on evidence presented by the Appellant, the City stipulated that the 2010 bankruptcy was not Ms. Lima-Soares'. This 2010 bankruptcy was the result of identity theft. (Stipulated Fact).
28. The 2017 bankruptcy that appears on her credit report is legitimate and factual. Ms. Lima-Soares filed for bankruptcy in 2017. (Testimony of Appellant; Joint Ex. 2, 3; Respondent Post-Hearing Ex. 2).
29. The interview panel discussed Ms. Lima-Soares 2017 bankruptcy with her during the interview at length. Ms. Lima-Soares confirmed that she had filed for bankruptcy in 2017. During the interview, she indicated that she had not been able to repay her student loans, which total \$28,000; she had been paying, then they were put in forbearance. She filed for bankruptcy due to marital debt. The last time she paid on the student loans was nine years ago, around the time of her divorce. At the time of her divorce, her shared total debt was \$75,000, which included the student loans. (Joint Ex. 1).
30. The interview panel felt that the filing of bankruptcy shed light on how responsible Ms. Lima-Soares is. (Testimony of Carrabino).
31. In Ms. Lima-Soares' application, she was asked, "Have your Federal Income Tax Returns been filed on time, each year, for the past 7 years?" Ms. Lima-Soares checked "Yes" to that question. She then attached a written attachment stating that she had *not* in fact filed income taxes for the years 2011-2015. She indicated that she owned a fitness business during that



same time period; however, for various reasons, she did not file taxes from 2011-2015. (Joint Ex. 2).

32. Ms. Lima-Soares told the interview panel that, during the years she ran her fitness business (2013-2015), she did not file taxes because she did not make more than \$400 per year, which was her understanding of the income limit at which one needs to file an income tax return. (Testimony of Appellant; Joint Ex. 1).

33. The interview panel was concerned with her statements on this topic and did not find her to be credible. Deputy Carrabino noted that Ms. Lima-Soares did not file a Schedule C (for independent contractors/ business owners) so there was no way to determine what the “ins and outs” were, i.e., the money coming in and the money going out. She had her own location and clients, but she did not have net income. Although these were her statements to the panel, she did not have anything to back them up, explained Deputy Carrabino. (Testimony of Carrabino).

34. The panel believed Ms. Lima-Soares should have documentation to show that she earned less than \$400 a year. (Testimony of Cooper).

35. In addition, Ms. Cooper and Deputy Carrabino believed Ms. Lima-Soares received credit towards her daughter’s tuition in exchange for fitness classes, which both believed would need to be accounted for in calculating income taxes. Deputy Carrabino spoke with the principal of the school<sup>3</sup> who stated that Ms. Lima-Soares received a tuition credit for teaching fitness classes. (Testimony of Carrabino).

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<sup>3</sup> The principal of St. Catherine’s school is a cousin of Deputy Carrabino. (Testimony of Carrabino).

36. Ms. Lima-Soares denied that she received any tuition benefit for volunteering at the school. She acknowledged that those parents who opted out of the community service hours paid a fee to the school. (Testimony of Appellant).

37. Ms. Lima-Soares was unaware that she may have been eligible for an Earned Income Credit had she filed income taxes for the years 2013-2015. (Joint Ex. 1; Testimony of Appellant).

38. Deputy Carrabino thought that Ms. Lima-Soares “was trying to be artful not owning up to things, but she is intelligent and well-spoken and she can write, but I felt she was trying to work the corners instead of owning the situation.” (Testimony of Carrabino).

*Negative Community Feedback Regarding Appellant's Candidacy*

39. As part of her background investigation, Ms. Lima-Soares' residency from March 25, 2016 to March 25, 2017 was checked by a third party, NWI Investigative Group (NWI), hired by the City of Somerville. (Respondent Ex.1 ).

40. The NWI investigator met with Ms. Lima-Soares on February 11, 2019 as part of the residency verification investigation for the City. The investigator informed Ms. Lima-Soares that that he would need to speak to her neighbors to confirm her residency. She responded with the question of whether the investigator would need to divulge to the neighbors her name or what the inquiry was about. The investigator explained that he would need to provide her neighbors with only her name and the information that she was applying for a police officer position with the Somerville Police Department. The investigator then asked Ms. Lima-Soares if there was a reason or any type of issue that would explain why she did not want the investigator to speak with her neighbors to confirm the information. She told the investigator that there wasn't any type of issue, but that she is a private person and does not like everyone knowing her personal business. (Respondent Ex. 1).

41. As part of NWI's investigation, their investigator spoke to neighbors of Ms. Lima-Soares.
- One such neighbor was Mr. P<sup>4</sup> and his girlfriend. During their conversation on February 11, 2019, they verified that Ms. Lima-Soares was indeed a resident at the address she provided at the relevant times. (Respondent Ex. 1).
42. When the NWI investigator explained to Mr. P the purpose of their inquiry, Mr. P immediately became somewhat irate when Ms. Lima-Soares' name was mentioned and the fact that she was applying for a position as a police officer for the City. Both Mr. P and his girlfriend went on to complain about Ms. Lima-Soares' character for approximately twenty (20) minutes. Mr. P did most of the talking for the couple, stating that he disliked the candidate very much. They both stated that Ms. Lima-Soares does not get along with many of her neighbors because she is always causing problems and acts as if she has authority over all the neighbors on the street. Mr. P further stated that he has heard the candidate tell people several times that she is a police officer. They stated that she has followed the girlfriend along the street with a camera filming her. (Respondent Ex. 1).
43. The interview panel asked Ms. Lima-Soares whether or not she had any prior issues with her neighbor. In her interview, Ms. Lima-Soares denied any contentious relationship with Mr. P and said she never interacts with him one-on-one. (Joint Ex. 1).
44. In her interview, Ms. Lima-Soares stated that she took pictures of some flooding in the street for insurance purposes. (Joint Ex. 1).
45. At the hearing, Ms. Lima-Soares stated that she may have captured Mr. P or his girlfriend while taking pictures for flood insurance purposes but was unsure how many pictures they may have appeared in. (Testimony of Appellant).

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<sup>4</sup> Although the City has made the Appellant aware of the neighbor's full name, for purposes of the recorded hearing and this Decision, the neighbor's identity has been kept confidential.

46. In both her interview and her testimony at the appeal of this matter, Ms. Lima-Soares stated that the only interaction she ever had with Mr. P was when Mr. P became very angry that her father had parked his vehicle in front of his yard while trying to offload groceries. Ms. Lima-Soares indicated that her involvement in that situation was simply to de-escalate it, nothing more. (Joint Ex. 1; Testimony of Appellant).
47. The Appellant told Ms. Cooper in the interview that Mr. P had mental health issues and a criminal history and that the Cambridge Police were familiar with him. Deputy Carrabino looked further into that allegation after the interview and nothing was found to substantiate Ms. Lima-Soares' allegation. (Testimony of Cooper; Testimony of Carrabino).
48. After Ms. Lima-Soares' interview, the panel received a written statement from a current Somerville Police, Officer 1.<sup>5</sup> (Respondent Ex. 5).
49. Since it was received after the interview, the panel did not have the opportunity to ask Ms. Lima-Soares about Officer 1's statement. (Testimony of Cooper)
50. Officer 1 allowed his statement to be used by the City at the Civil Service appeal hearing despite his wife's fear of retaliation from Ms. Lima-Soares because Officer 1 believed it was the right thing to do ultimately. Ms. Lima-Soares and Officer 1 both have children at the same school. (Testimony of Carrabino).
51. Deputy Carrabino testified that he felt the statement written by Officer 1 was significant because Officer 1 was so concerned about Ms. Lima-Soares' candidacy that he wrote it despite the fear of retaliation. (Testimony of Carrabino).

#### *Somerville Auxiliary Police*

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<sup>5</sup> Although the City has made the Appellant aware of the Officer's full name, for purposes of the recorded hearing and this Decision, the officer's identity has been kept confidential.

52. In the “Civil Service Employment” section of her Application, Ms. Lima-Soares did not indicate that she either applied or began an application process with the Somerville Auxiliary Police Department in response to any questions. She did, however, indicate that she applied and then withdrew her application from the City of Cambridge in 2018. (Joint Ex. 2).
53. In her interview and in her testimony at the appeal hearing, Ms. Lima-Soares testified that she did not apply to the Somerville Auxiliary Police Department in 2016. She stated that she inquired and picked up an application, but because her questions and phone calls went unanswered, she did not continue with the process. (Jt. Ex. 1; Testimony of Appellant).
54. In 2016, Ms. Lima-Soares attended an orientation for the Somerville Auxiliary Police, she signed a release for the SPD to do a background check, and, thereafter, her CORI and driver history were retrieved by the SPD due to her interest in applying to the Department. (Respondent Ex. 4).
55. The Somerville Auxiliary Police Department has since disbanded in 2018 and the interview panel was unable to locate any application for Ms. Lima-Soares for the Auxiliary Department. (Testimony of Carrabino).
56. Although there is no application, documents produced by the City show that Ms. Lima-Soares was rejected by the Auxiliary Police for an incomplete application and poor driving record. (Testimony of Carrabino; Respondent Ex. 4).

*Information Regarding Other Candidates*

57. All candidates underwent an interview with the interview panel. Every candidate was asked questions relative to each page of their Application and went through the entirety of their background investigation. Lastly, each candidate was given the same set of standard questions as every other candidate. The audio recording of each candidate’s interview was

admitted into evidence at the hearing of this matter. All three interview panelists took lengthy notes on each candidate and all of their notes were admitted into evidence at the hearing of this matter. Additionally, all of the candidates' applications, references, credit histories, and background investigator summaries were entered into evidence. (Joint Ex. 8; Appellant's Ex. 7-14; Respondent Post-Hearing Ex. 2 and 3).

58. Ms. Cooper and Deputy Chief Carrabino were not concerned with other candidates admitting to using marijuana in their past on their written application because it is legal in Massachusetts, although it is still illegal at the federal level. They explained that the question is in the application to gauge honesty of the applicant and to discern if there are any deeper issues. (Testimony of Cooper; Testimony of Carrabino; Appellant's Ex. 7-14).

59. Every prospective candidate's Application includes a standard question that asks whether any of the candidate's relatives work for the City. As Ms. Cooper testified, the City always wants to know where there is a conflict of interest and strives to avoid them. Candidate A's father is a firefighter in the City of Somerville. Candidate B has a relative who works for the City, as well. Ms. Cooper testified that she does not know Candidate A's father's rank in the fire department, nor does she see him frequently at work in her capacity as Human Resource Director. (Testimony of Carrabino; Testimony of Cooper; Appellant's Exhibits 7-14).

60. In his application for reserve police officer, Candidate A did not accurately indicate that he had left two recent employers without giving proper notice. This question is asked in the application to determine whether a candidate can properly follow protocol. Candidate A explained to the background investigator that he left the bank because he wanted to focus on the hiring process for a law enforcement position. In his interview, Candidate A stated that he believed he had given Partners two weeks' notice before leaving. He worked there for less

than a month, from November 12, 2018 to December 3, 2018. Following the interview, Candidate A contacted Ms. Cooper via email and told her that he searched his emails and could not find any notice, which led him to conclude that he must not have given the proper notice. He apologized and explained that it must be his error and that he did not give the proper notice to that employer. (Appellant's Ex. 7, 7A, 7B,15; Joint Ex. 8; Testimony of Carrabino; Testimony of Cooper).

61. In determining Candidate A's suitability, the panel considered the fact that Candidate A did not properly disclose this information in the employment section of the application. Deputy Carrabino's scribbled the word "lie" on the background investigator's notes relative to Candidate A's explanation about giving notice for these two jobs. Deputy Carrabino explained that it is important for a police officer to always tell the truth no matter what. He explained that the fact pattern in this instance "was not a huge deal" as it related ultimately to Candidate A's candidacy, additionally because he apologized and took full responsibility for it. (Testimony of Carrabino; Testimony of Cooper).

62. Candidate A was asked in his interview about answering "No" to the question regarding whether he had ever been counseled at work about tardiness, or otherwise. One of his employers had indicated that he had been verbally reprimanded for being tardy. Candidate A apologized, took responsibility for his actions and explained the situation. (Joint Ex. 8; Appellant Ex. 7; Testimony of Carrabino; Testimony of Cooper).

63. Candidate A worked for the City in the summer jobs program as a high school student. His supervisor for the summer job was not contacted to discuss Candidate A because, as Ms. Cooper explained in her testimony, the City does would not typically contact a supervisor for

a paid summer job during high school. Candidate A was not a current employee of the City at the time of his candidacy, either. (Testimony of Cooper; Appellant Ex. 5).

64. Ms. Lima-Soares was not bypassed by Candidate A, as he appeared higher on the certification. She was only bypassed by three candidates, Candidate E, Candidate F, and Candidate G. (Stipulated Fact).

### *Legal Standard*

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 has shown, by a preponderance of the evidence, "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. 461, 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, 243 (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" and upon "failure of proof by the [appointing authority], the commission has the power to reverse the [bypass] decision.") 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 that the Commission find that the appointing authority



acted “arbitrarily and capriciously.” City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997) The commission “. . . cannot substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority”; however, 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.” *Id.* See also Town of Brookline v. Alston, 487 Mass. 278 (2021)(analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law). That said, “[i]t is not for the Commission to assume the role of super appointing agency, and to revise those employment determinations with which the Commission may disagree.” Town of Burlington v. McCarthy, 60 Mass.App.Ct. 914, 915 (2004).

### *Analysis*

The Civil Service Commission’s core mission is to ensure that Appointing Authorities, as part of a fair and impartial hiring process, offer valid reasons for bypassing a candidate in favor of lower-ranked candidates. As part of that review, the Commission must consider whether there is any evidence of personal or political bias by the Appointing Authority. Here, I have found none. Both Candace Cooper, the Director of Human Resources for the City, and Deputy Chief Stephen Carrabino were good witnesses. They had a command of the facts and clearly recalled this hiring process and how it unfolded. They were consistent with one another and the concerns they articulated. I do not find that either of them had any personal animus against the Appellant.

The panel provided Ms. Lima-Soares over two and half hours of their time to go through her application, her background investigation, and the standard questions. I do not find that they asked leading or “gotcha questions,” as the Appellant alleged in her brief. The interview

panelists were not predisposed to bypassing Ms. Lima-Soares nor did they develop any animus or bias against Ms. Lima-Soares that factored into their decision to bypass her for appointment. There is no evidence to show that any candidate was chosen due to familial history, due to their age or gender, as alleged by the Appellant. Rather, the panelists testified credibly that they had serious concerns regarding many aspects of Ms. Lima-Soares' background, including her prior job as a crossing guard with the City, her tax and financial history, unsolicited comments from concerned citizens relative to her candidacy, and her candor relative to whether or not she applied to the Somerville Auxiliary Police Department.

For two years, Ms. Lima-Soares was supervised by Officer Sean Sylvester as a crossing guard for the City of Somerville. Officer Sylvester testified that he had concerns with Ms. Lima-Soares' ability to respect the chain of command and to following directives. I credit his testimony. Ms. Lima-Soares' core responsibility as a crossing guard was to facilitate the crossing of children safely from one side of the street to another. Officer Sylvester believed Ms. Lima-Soares became repeatedly distracted from that main responsibility and began focusing on whether there was suspicious drug activity in the area.

The interview panel was concerned that Ms. Lima-Soares was overreaching her authority as a crossing guard and not playing her proper role. The panel discussed this situation with Ms. Lima-Soares in her interview. They noted that she did not indicate in her application that she had received counselling from a prior employer. In her interview, she repeatedly stated that she never received any counselling from Officer Sylvester. She acknowledged the basic underlying facts- that she had seen what appeared to be drug activity, that she had reported it several times to Officer Sylvester, that he told her to contact the drug unit, and that she had indeed contacted that unit multiple times – but she never admitted that Officer Sylvester had counselled her that she

did not need to continue to report this activity, that the matter was being dealt with, and that she must focus more on her responsibility of crossing children. The panel found her responses in the interview on this topic to be disingenuous and inconsistent. At no time did she take any responsibility for her own actions nor did she appear to reflect on her behavior or decisions. The panel was reasonable in its concern that she had conflicts with her supervisor during her tenure as a crossing guard and failed to obey her superior's directives and follow the chain of command.

The Appellant points to Candidate A and his failure to disclose in his Application that he left two prior jobs without giving the proper two weeks' notice and his failure to note that he received a verbal reprimand for being tardy to his job at a sporting good store. Both Ms. Lima-Soares and Candidate A did not disclose these particular details of their employment history and the interview panel considered the facts of each candidate's employment history, taken in conjunction with the entirety of their Application, background investigation, and interview. In their discretion, the interview panel did not view Candidate A's circumstances to rise to the level of severity of Ms. Lima-Soares' situation, since Candidate A's issue involved failure to give proper notice and one instance of tardiness, whereas the Appellant's involved failure to obey directives and subordination. Candidate A owned up to his non-disclosure and apologized. Ms. Lima-Soares continued to deny she was ever counselled and failed to take any responsibility for her actions. Unlike Ms. Lima-Soares, the City did not conclude that Candidate A had failed to pay his tax returns, had filed for bankruptcy, had negative feedback from the community, etc. I do not find any evidence to support the allegation by the Appellant that Candidate A was given a conditional offer of employment because his father is a firefighter in the City. Further, Candidate A did not bypass the Appellant, as his name appeared higher on the certified list.

The City also points to Ms. Lima-Soares' financial history, to include filing for bankruptcy in 2017 and failure to file federal tax returns, as reason why it determined she was unsuitable for the position of permanent reserve police officer. Municipalities often take candidates' financial histories into consideration when determining suitability for a police officer position. *See Pena v. City of Lawrence*, G1-15-84; *Conley v. City of New Bedford*, G1-14-224. The first concern the City had was Ms. Lima-Soares' 2017 bankruptcy filing which appeared on her credit history, of which Ms. Lima-Soares does not dispute. Pursuant to 11 U.S.C. 525, "... a governmental unit may not... deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act... *solely* because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act.... (emphasis added). The City cites to the 2017 bankruptcy in its bypass letter as one reason for bypass; yet this is not the City's sole reason for failing to hire Ms. Lima-Soares. Had this been the sole reason for bypass, the City would not have met its burden; however, such is not the case, as there are numerous other reasons for bypass delineated in the City's bypass letter.

The City points to Ms. Lima-Soares' failure to pay federal income tax during the years 2011-2015 as an additional reason for bypass. The City notes that her failure to pay these taxes was concerning and her responses to questions regarding this issue put her credibility in doubt. The City was not convinced that she was not required to file taxes, since she did not file a Schedule C (for independent contractors/business owners) so there was no accounting for the money that was coming in or going out. The City was reasonable in its concern that she failed to file federal taxes, thereby failing to adhere to federal law.

The Appellant, in her brief, attempts to correlate Ms. Lima-Soares' failure to pay federal income tax to certain candidates' admitted prior marijuana use. Since marijuana use and failure to pay income tax are federal crimes, the Appellant contends that the City should not have given a conditional offer of employment to anyone who admitted using marijuana. The City, in its discretion, views the issue differently than the Appellant. The City testified that the question about marijuana use in the Application is asked to gauge the candidate's level of honesty and to determine if there are any larger issues at play. The City noted that marijuana use is legal in the state of Massachusetts and it did not equate an admission to prior marijuana use to that of failure to pay federal income taxes.

The City's bypass letter also contends that Ms. Lima-Soares failed to disclose that she had previously applied to the Somerville Auxiliary Police Department. The City has not proven, by a preponderance of the evidence, that Ms. Lima-Soares actually fully applied to the Somerville Auxiliary Police. There is evidence that she made numerous inquiries to the Department, her CORI was checked, her driver history was checked, an investigator was assigned to undertake a background investigation, and a decision appears to have been made that the Auxiliary Police would not hire Ms. Lima-Soares due to her driver history and an *incomplete application*; however, the City was unable to produce the application. Additionally, Ms. Lima-Soares denies that she ever passed in an application. For these reasons, the Commission does not sustain this particular reason for bypass.

Lastly, the final reason for bypass was the negative input by the community, specifically by Ms. Lima-Soares' own neighbor, Mr. P. Initially, the City sought information from Mr. P through a residency check. When Ms. Lima-Soares was notified by the investigator that he was going to speak to her neighbors, she showed some concern and wondered if the investigator had

to reveal her identity or the reason for his inquiry about her residency, leading the investigator to ask Ms. Lima-Soares whether she had a reason to be concerned with him speaking to her neighbors. Her residency was verified by Mr. P, yet he became irate and stressed repeatedly that she should not become a Somerville Police Officer, that she does not get along with her neighbors, that she tells others on the street that she is a police officer, and that he feared retaliation should she become a police officer.

When the panel asked Ms. Lima-Soares about her relationship with Mr. P, she denied any contentious relationship and indicated that she never interacts with him one-on-one. The only time she recalled speaking with him was when she tried to de-escalate a situation where Mr. P was angry at her father for parking in front of his house. Ms. Lima-Soares denied that she ever took pictures of the couple in order to harass them, but she did confirm that she has taken pictures outside to document flood damage and Mr. P and his girlfriend may have accidentally been in a picture or two. Although she claims to not know Mr. P, she did tell the interview panel that he has mental issues and that the Cambridge Police are familiar with him. Following the interview, the City investigated further and did not confirm Ms. Lima-Soares' allegations about Mr. P's criminal involvement with the police, further leading the City to question her credibility or truthfulness on this topic.<sup>6</sup> Throughout the interview, the panel felt Ms. Lima-Soares was "trying to be artful not owning up to things...trying to work the corners instead of owning the situation."

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<sup>6</sup>The City also presented evidence of a letter written by a fellow Somerville Police Officer, Officer 1, which voiced his concern about the City hiring Ms. Lima-Soares. This letter was sent to the Department after Ms. Lima-Soares' interview, and therefore she was not able to refute the contents of the letter. This letter was received prior to the bypass decision, however. The Commission did not consider the contents of this letter in its decision.

In summary, the interview panel concluded that the City would be taking too much of a risk in granting Ms. Lima-Soares a conditional offer of employment. Absent evidence that the Appointing Authority acted in bad faith, the City is afforded deference in its judgment to bypass the Appellant for valid reasons. I carefully considered whether a fair, thorough, and impartial review process has been undertaken by the City, and whether the City has shown, by a preponderance of the evidence, that there was reasonable justification to bypass Ms. Lima-Soares for her insubordination and failure to follow directives as a crossing guard, her poor relationship with certain community members, and her failure to file federal tax returns as a business owner, in conjunction with her lack of candor relative to these three issues. I find that the City has met that burden of proof with regards to these three (3) reasons for bypass. The City failed to meet its burden of proof as it relates to the allegation that Ms. Lima-Soares failed to disclose her application to the Somerville Auxiliary Police, since the City failed to produce any such application.

For all of the above reasons, the Appellant's appeal under Docket No. G1-19-150 is hereby *denied*.

Civil Service Commission

/s/ Cynthia Ittleman

Cynthia Ittleman

Chairman

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 3, 2021.

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:

Elizabeth L. Bostwick, Esq. (for Appellant)  
Hannah Pappenheim, Esq. (for Respondent)