

**COMMONWEALTH OF MASSACHUSETTS**

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

DANIEL O'DONNELL,  
*Appellant*

v.

G1-20-044

CITY OF SOMERVILLE,  
*Respondent*

Appearance for Appellant:

Joseph Padolsky, Esq.  
Louison, Costello, Condon & Pfaff, LLP  
101 Summer Street, Fourth Floor  
Boston, Massachusetts, 02110

Appearance for Respondent:

Shannon T. Phillips, Esq.  
Law Department, City of Somerville  
93 Highland Avenue  
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

**DECISION**

On March 13, 2020, the Appellant, Daniel O'Donnell (Mr. O'Donnell or Appellant), pursuant to G.L. c. 31, § 2(b), filed this appeal with the Civil Service Commission (Commission), contesting the decision of the City of Somerville (City) to bypass him for original appointment to the position of permanent reserve police officer in the City's Police Department (SPD). A pre-hearing conference was held remotely via videoconference on May 12, 2020; a Status Conference was held remotely on June 25, 2020, and a full hearing was held remotely on July

23, 2020.<sup>12</sup> The remote full hearing was digitally recorded and both parties were provided with a CD of the hearing<sup>3</sup>. Both parties submitted post-hearing proposed decisions.

## **FINDINGS OF FACT**

Six (6) exhibits were entered into evidence by the Respondent and thirteen (13) exhibits were entered into evidence by the Appellant at the full hearing on July 23, 2020.<sup>4</sup> Based on these exhibits, the testimony of the following witnesses:

*Called by the City:*

- Skye Stewart, Administration Representative on the Interview panel;
- Stephen Carrabino, Deputy Chief of the SPD;

*Called by Mr. O'Donnell:*

- Daniel O'Donnell, Appellant;

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

1. Mr. O'Donnell is thirty (30) years old and is a lifelong resident of Somerville. He obtained an associate's degree from the New England Institute of Art and he received an Emergency Medical Technician Certification from Middlesex Community College in 2018. (Testimony of Appellant)

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<sup>1</sup> Videoconference proceedings via Webex have temporarily replaced in-person hearings at the Commission given the ongoing COVID-19 pandemic.

<sup>2</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.

<sup>3</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. In such cases, this CD should be used by the plaintiff in the judicial appeal to transcribe the recording into a written transcript.

<sup>4</sup> By email notice sent to the parties on July 20, 2020 prior to the full hearing, Appellant Exhibits P-7, P-9, P-11, P-13, P-15, P-17 were determined to be duplicative of Respondent exhibits contained in R-4. As such these were not entered as Appellant Exhibits.

2. Mr. O'Donnell is currently employed as a full-time carpenter. He previously worked as a paraprofessional in the City's Public Schools from 2009 to 2014. (Testimony of Appellant)
3. On March 23, 2019, Mr. O'Donnell took the civil service examination for the position of Police Officer and received a score of 93. (Stipulated Facts)
4. On September 1, 2019, the state's Human Resources Division (HRD) established the eligible list for Police Officer. (Stipulated Fact)
5. On December 4, 2019, HRD issued Certification No. 06794 to the City, authorizing the City to appointed ten (10) reserve police officer candidates. (Stipulated Fact)
6. On January 6, 2020, HRD approved the City's request to expand the number of candidates for potential appointment from ten (10) to sixteen (16). (Stipulated Fact)
7. The City ultimately appointed nine (9) permanent, reserve police officers, seven (7) of whom were ranked below Mr. O'Donnell. (Stipulated Facts)<sup>5</sup>
8. The seven (7) candidates on the Certification, each of whom was given an anonymous identifier as part of this proceeding, who bypassed Mr. O'Donnell are: R4A; R4C; R4H; R4G; R4I; R4D; and R4E. (Exhibit R1A)
9. All candidates, including Mr. O'Donnell, were required to submit documentation to the City including an application, resume, credit scores, tax returns, verify residency through a residency check, and undergo a background investigation conducted by a Detective of the SPD. (Testimony of Carrabino; Testimony of Appellant).
10. Mr. O'Connell's background investigation showed that he has no criminal record, no driving citations and a positive credit report. All of his references provided positive feedback about Mr. O'Donell. (Testimony of Stewart and Carrabino)

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<sup>5</sup> It appears that the appointments, authorized by the Mayor as Appointing Authority, have not yet been approved by the City Council, as required by the City's Charter.

11. Following the background investigation, all candidates, including Mr. O'Donnell, were interviewed by the same Interview panel consisting of the following individuals: Skye Stewart (former Chief of Staff to the City's Mayor; Deputy Chief Stephen Carrabino of the SPD; and the Director of Health and Human Services for the City of Somerville, Nancy Bacci. (Testimony of Stewart; Testimony of Carrabino).
12. Deputy Chief Stephen Carrabino has been a member of the SPD for twenty-five (25) years. He has held positions in various areas of the SPD including the patrol division, community policing, detective bureau, domestic violence, gang unit, commander and accreditation manager, and as Captain he oversaw the East District of the City. He now serves as Deputy Chief of the SPD in charge of operations. He has been a Deputy Chief of the SPD for the past six to seven years. There are only two Deputy Chiefs within the SPD and they rank right below the Chief. (Testimony of Carrabino).
13. Skye Stewart served as the Chief of Staff to the City's Mayor from June of 2016 to her departure in August of 2019 (due to her family move to Michigan). Prior to serving as Chief of Staff, she worked as an analyst in the City's "SomerStat" office in 2011, became budget manager for the City in 2014, then moved into the Director role in SomerStat in 2014. (Testimony of Stewart)
14. Ms. Stewart was contacted in the beginning of February 2020 by the then-current Chief of Staff for the Mayor and asked if she had any availability and willingness to sit in on the Interview panel for police reserve candidates on Certification No. 06794. The City's Personnel Director, who normally sat on these interview panels, was on leave.. (Testimony of Stewart)

15. Prior to the interviews, all interview panelists were given access to electronic files of the various candidates. These files consisted of documents such as the candidates' full application, resume, transcript, tax returns, credit scores, military documentation, certifications, police records and background investigation reports on each candidates which included interview notes of investigators with the various candidates. (Testimony of Stewart; Testimony of Carrabino).
16. The Interview panel met to discuss the candidates on the day of the candidates' interviews. The Panel reserved half an hour to discuss any concerns they had based on their individual review of the electronic file prior to each interview. (Testimony of Stewart; Testimony of Carrabino).
17. During the discussion of the Appellant prior to his interview, the Interview panel did not have any major concerns and viewed him as a strong candidate. (Testimony of Stewart; Testimony of Carrabino).
18. During the interviews, the three panelists took turns asking questions. The general format of each recorded interview was the same: the panelists walked through the application and background report with each candidate and then asked each candidate 17 general interview questions, which included questions regarding how the candidate would respond to hypothetical scenarios. Once that was complete, the Panel gave the candidate an opportunity to ask any questions and then wrapped up the interview. (Testimony of Stewart; Exhibits R4A – R4I)
19. Once the candidate left, Jessica Pavao of the City's HR (Personnel) Department came into the room, gathered any documents the panelists had written on, and jotted down on a yellow piece of paper the top concerns the panel had with the candidate. She then assembled this

piece of paper with the general concerns of the candidate, and any documents the panelists had written on or highlighted, into an “Interview Packet” that the Panel, specifically Ms. Stewart who was drafting the bypass letters and would be offsite doing so, could refer to later on when reviewing the candidates. (Testimony of Stewart; Exhibit R-2; Exhibits P-8, P-10, P-12, P-14, P-16, P-18).

20. The yellow sheets of paper at the start of each interview packet with these concerns, were not a “bypass” list, just an assembled list of concerns that the panel wished to discuss as a group later on when reviewing each candidate. (Exhibits P-8, P-10, P-12, P-14, P-16, P-18).
21. Subsequent to the last interview taking place, the panel met again to discuss and review all candidates. After the interviews, the panel knew some they would be moving forward, some who were a definite no, and identified others in the middle who required further discussion. The Appellant fell into the middle category and required further discussion of the panel’s concerns. (Testimony of Stewart).

*Panelists’ Concerns with Appellant’s Answers to Alcohol-Related Questions*

22. Ms. Bacci, an interview panelist, asked Mr. O’Donnell the following question. Mr.

O’Donnell gave the following answer and the following dialogue occurred:

Bacci: The police department schedule will require you to work during many family and holiday events. If you are scheduled to report to work at 6:00 pm for the night shift or<sup>6</sup> attending a family function such as a wedding in the afternoon, how many drinks would you consume at that function?

O’Donnell: I would do my best to not consume if I knew I might be on call, I would um...

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<sup>6</sup> The Combined Interview Packets of the Appellant (Respondent Exhibit 3) and the other Candidates (Respondent Exhibit 7) contain the panel’s list of scenario/hypothetical questions. Question 5 is stated as follows:

The Police Department’s schedule will require you to work during many family and holiday events. If you are scheduled to report to work at 6:00 pm for the night shift and were attending a family function such as a wedding in the afternoon, how many drinks would you consume at that function?

Bacci: But, tell me ... [interrupted]

Stewart: Not on call, but actually, you, you're scheduled to report ... [interrupted]

Bacci: You're scheduled to go in...

O'Donnell: Scheduled? Um, I tend to only have a beer or two, maybe three, if it's a big family event.

[pause]

Bacci: So, at this wedding we're going to say you're the best man. So best man typically stands up, says a few nice words, and has a toast. How do you handle the toast?

O'Donnell: Um... I would handle it well. I'm not the best public speaker but, um, I would do my best to take my time with the speech and... [interrupted]

Bacci: I'm sorry, I mean in regards to the alcohol.

O'Donnell: Ohh, in re... I apologize [laughter]

Bacci: That's okay.

[laughter in room]

Bacci: But I am sure you are a good public speaker.

[laughter in room]

Bacci: That's okay. How would you handle it, because typically you would toast with champagne as you had indicated earlier.

O'Donnell: Yes.

Bacci: So how would you handle that?

O'Donnell: Glasses up and take a sip.

(Exhibit R-3 at 44:32).

The second of the two-alcohol related hypothetical questions posed to Mr. O'Donnell was as follows:

Carrabino: You report to work on the night shift. The night commander is in his office doing paperwork. There is an officer on duty that appears to be under the influence of alcohol and you detect the odor of alcohol. What, if any, action would you take and why?

O'Donnell: In that situation, I would report it to my superior. It's one thing I would not want to risk all the hard work I put into establishing myself and my career or the name of the department. And, I would hope that he would seek help.

Carrabino: What if the guy says I was at a wedding earlier today and I was the best man and had to give a toast. I had a beer, just one, I can handle my alcohol. That's why you smell it. If you report me I'm in trouble. What do you do then?

O'Donnell: I would've told him that he should not have come to work. He should've called in. But I would still report forward to my supervisor.

Bacci: I have a follow up to that. So, you had said he should not have come to work. Correct?

O'Donnell: Yes.

Bacci: In the previous one if you had been the best man you had said usually I would have a beer or two, or three at a wedding, and you would be scheduled to work at six o'clock. So, tell me the difference between that?

O'Donnell: I would have ... there is no difference. I also should have said that I would have called out of work if necessary, if I didn't feel...

Bacci: Thank you.

(Respondent Exhibit 3 at 44:20)



23. The Panel was surprised and concerned that Mr. O'Donnell would consider drinking hours before a scheduled shift, and thought his willingness to come to work potentially impaired showed a lack of judgment and could pose a risk to public safety. (Exhibit R-5; Testimony of Stewart; Testimony of Carrabino).
24. The Panel also found the Appellant's responses showed inconsistency in his responses to the two scenarios, including that he held himself to a different standard than a fellow officer (he would come into work after having a few drinks prior to his shift).
25. In discussing the general concerns of the Appellant post-interview, the one remaining concern the panel could not overcome were his responses to the above questions. The panel found significant problem with him never acknowledging that he would not drink before work or that that would be a major problem. He also held a colleague to a different standard in his answers, and acknowledged that if he did drink he would call into work rather than just not drink in advance. This was very concerning as others would then have to pick up the slack, and cover for him at the last minute. The panel was surprised at his responses and it was a combination of these concerns the panel could not overcome with the Appellant. (Testimony of Stewart; Testimony of Carrabino).

*The Responses of Candidates who Bypassed the Appellant to the Alcohol-related questions*

26. All of the candidates who bypassed Mr. O'Donnell for appointment stated they would not drink at the wedding if they were scheduled to work later that day. None of these selected candidates said that they would drink and/or call in sick. Specifically, these selected candidates stated: :

- Candidate R-4A: During the toast if they have water could grab water bottle, if friends do respect your profession, knowing a drink could impair jeopardize your job put yourself and others in jeopardy they would respect your decision of not drinking. - (Exhibit R-4A at 1:24:20);

- Candidate R-4C: Immediately responded none. Would have water during the toast would not risk anything with his job. (Exhibit R-4C at 41:35);
- Candidate R-4D: Doesn't drink and doesn't plan on drinking. Would fill the glass with water during the toast. (Exhibit R-4D at 24:06);
- Candidate R-4E: Immediately answered none, said he would still handle the toast but without alcohol. (Exhibit R-4E at 49:40);
- Candidate R-4G: Answered would have zero, would pour some ginger ale in a glass and fake it. Added the bride/groom would understand if they were a friend and knew you had to report to work. (Exhibit R-4G at 29:56);
- Candidate R-4H: Would not drink at all. Would perform the toast but would handle it with sprite or water and thinks the person would understand they couldn't drink at the wedding. (Exhibit R-4H at 49:57);
- Candidate R-4I: Immediately responded zero. Would ask bartender with something without alcohol and participate in the toast but would not consume any alcohol. If best man would think friend knows he has a job and if they didn't understand they wouldn't be friends of mine. (Exhibit R-4I at 48:54).

*Interview Question Responses of Candidates who Bypassed the Appellant to Other Questions*

27. Excerpts from R4I's interview included the following::

Carrabino: You and your partner have arrested a suspect for selling drugs. During the arrest procedure at the scene, you've recovered illegal drugs and a large amount of money. While you are securing these items for submittal to evidence, you observe your partner place some of the money into his pocket. What would you do?

R4I: I'd tell him to put it back, first. Um... say it's not right. If he refuses to, I'd be forced to take it to the shift commander.

Carrabino: So, if he puts it back, you're not going to take it to the shift commander?

R4I: I think if he puts it back the issue has been resolved in that moment. Um... it's not the right thing to do...

Carrabino: So that's the end of it.

R4I: I think...

Carrabino: Ok.

R4I: Yeah. Obviously that doesn't pose a danger to the community, it's just dishonest.

Carrabino: So he tells you, I don't know what I was thinking but, it won't happen again, that's...

R4I: And I think it differs from the situation with the intoxicated officer, because the intoxicated officer poses a danger to the community. I think this situation is ... it's just dishonest, and it's not right. I think that to solve it in the moment might be a good approach because he's not going to ... like I said, cause a danger to anybody else. But, the officer who's intoxicated is an outward threat to the wellbeing of the community.

Carrabino: So the intoxicated officer you report, but this one, if he puts it back, you're okay with it?

R4I: I wouldn't say I'm okay with it. I ... I just think that would be my ... my gut reaction, my instinct to follow. And obviously the reasons why.

Bacci: Would you think that this was the first time the person had done it?

R4I: I could speculate all I want but if I didn't have any proof, all I have is that one instance that I witnessed. Obviously, like I said, I could have my speculations but I would not be able to hang my hat on any of them.

Bacci: Do you think it would be more dangerous to the community if it was the fifth or the hundredth time they had done it?

R4I: It obviously shows a habit of, um, dishonesty. And, you know, disregard for the trust that has been bestowed upon this officer.

Stewart: What if they had pocketed some of the drugs instead?

R4I: That's definitely ... that would be a danger. Show's that he may be using them. Using them on the job maybe. But ... I think I would tell him to put it back and... you know.

Stewart: Ok.

Carrabino: So the distinction is dictated by the substance, in your mind?

R4I: I think it's the threat at the moment to the community, is what it is. And the threat to the officers around him that have to rely on him, potentially, in an emergency.

Stewart: Do you think if you have a partner who might be stealing, would that be a threat to you as a partner?

R4I: I mean, it would have to depend on the partner. I think, physically, probably not at that moment. But... yeah, I guess. If he's being dishonest. That's his pattern, that could probably take me down with it.

(Appellant Exhibit 17 at 1:03:45).

28. Candidate R4H's combined packet and interview revealed the following:

- He failed to list a college he attended on his application and answered "No" that he was suspended while in school. When questioned he admitted he was kicked off campus for smoking marijuana. (Candidate Interview at 11:00) When questioned why he answered "no" he said "I didn't put it because I didn't put Framingham State, or, like you said, I didn't read it carefully enough."
- He did not indicate any accidents in his records when, in fact, he had two accidents; (Candidate Interview at 13:00)
- He failed to list multiple jobs; (Candidate Interview at 16:00)
- He withdrew his name from consideration as a Somerville Firefighter because he was smoking marijuana at the time of the hiring process and "did not want to jeopardize [his] chances"; (Candidate Interview at 21:00)
- He did not list an incident that occurred at Powder House Park in Somerville where he and a friend were questioned by the police for smoking marijuana and drinking Hennessy in the park; (Candidate Interview at 39:00)

29. Mr. O'Donnell received a bypass letter at the end of this hiring process dated March 3, 2020.

As reasons for the bypass, the City stated that he had demonstrated poor judgment in response to scenario questions during the interview. Specifically, as referenced above, the

Panel had serious concern with his responses to pre-written questions # 5 and # 6, which they could not overcome and ended up bypassing Appellant for these responses. (Testimony of Stewart and Carrabino)

### *Legal Standard*

The fundamental purpose of the civil service system is to guard against political considerations, favoritism, and bias in governmental hiring and promotion. The commission is charged with ensuring that the system operates on "[b]asic merit principles." Massachusetts Assn. of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, citing Cambridge v. Civil Serv. Comm'n., 43 Mass.App.Ct. 300, 304 (1997). "Basic merit principles" means, among other things, "assuring fair treatment of all applicants and employees in all aspects of personnel administration" and protecting employees from "arbitrary and capricious actions." G.L. c. 31, section 1. Personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public policy represent appropriate occasions for the Civil Service Commission to act. Cambridge at 304.

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the Appointing Authority made its decision." Watertown v. Arria, 16 Mass.App.Ct. 331, 332 (1983). See Commissioners of Civil Service v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975); and Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003).

The Commission's role, while important, is relatively narrow in scope: reviewing the legitimacy and reasonableness of the appointing authority's actions. City of Beverly v. Civil Service Comm'n., 78 Mass.App.Ct. 182, 189, 190-191 (2010) citing Falmouth v. Civil Serv.

Comm'n, 447 Mass. 824-826 (2006) and ensuring that the appointing authority conducted an “impartial and reasonably thorough review” of the applicant. The Commission owes “substantial deference” to the appointing authority’s exercise of judgment in determining whether there was “reasonable justification” shown. Beverly citing Cambridge at 305, and cases cited. “It 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 and another v. McCarthy, 60 Mass. App. Ct. 914, 915 (2004).

Disputed facts regarding alleged prior misconduct of an applicant must be considered under the “preponderance of the evidence” standard of review as set forth in the SJC’s recent decision in Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461 (2019), which upheld the Commission’s decision to overturn the bypass of a police candidate, expressly rejecting the lower standard espoused by the police department. Id., 483 Mass. at 333-36.

### *Analysis*

In regard to bypass appeals, the core mission of the Civil Service Commission 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 found none. Both Ms. Stewart and Deputy Chief Carrabino were good witnesses. Neither of them had any personal animus against the Appellant. In fact, they both candidly acknowledged that, based on a review of the background investigation report, they both found Mr. O’Donnell to be a strong candidate prior to his interview. Neither of them tried to paint Mr. O’Donnell in a bad light and/or pile on with other reasons to justify their decision here. They considered both the positive and negative aspects of Mr. O’Donnell’s candidacy.

Further, as part of the interview process, they gave Mr. O'Donnell (and many other candidates) the benefit of the doubt regarding various errors or omissions on his application after listening to Mr. O'Donnell's explanations for these errors. In summary, the interview panelists were not predisposed to bypassing Mr. O'Donnell nor did they develop any animus or bias against Mr. O'Donnell that factored into their decision to bypass him for appointment.

Rather, the panelists testified credibly that they had serious concerns regarding the troubling answers that Mr. O'Donnell provided to scenario questions meant to assess whether the candidate understood the need to refrain from drinking alcohol when he was scheduled for duty later the same day. The Appellant argues that the City should have simply asked a more straightforward question (i.e. – Would you drink alcohol prior to a scheduled shift?) as opposed to posing a hypothetical scenario involving attendance at a wedding reception. I disagree. The case scenario presented was realistic; it was designed to elicit a candid answer regarding a serious issue; and it was not complicated.

Likely anticipating that all of the candidates would state that they would *not* drink alcohol at a wedding reception prior to a scheduled shift, the interview panelists were ready with a follow-up question to see if the answer remained the same if drinking alcohol was limited to giving a toast at the wedding reception. All of the selected candidates stated unequivocally that they would not drink alcohol at a wedding reception being held before a scheduled shift. The Appellant, even after being provided with a clarification, referenced drinking multiple beers at the hypothetical wedding reception. He was then specifically asked how he would handle giving a toast at that same reception, to which he inexplicably replied: "glasses up and take a sip." Later, when asked to square these answers with his statement that he would report an on-duty officer who had been drinking before his shift, the Appellant compounded his bad answers by

saying, after reflection, that he should have called-out if he had something to drink before a scheduled shift.

All of these responses troubled the interview panelists, who were concerned that the Appellant was unable to clearly state, as all selected candidates had, that he simply would not drink alcohol at a social event on the same day that he was scheduled to report to duty. This is a reasonable and obvious concern, particularly given that police officers carry a firearm and are required to make split second decisions regarding use of force that have life and death consequences.

The Commission, in a series of prior decisions, has ruled that a candidate's poor interview performance can serve as a basis for bypass where there is no evidence of inappropriate motivations. See McMahon v. Town of Brookline, 20 MCSR 24 (2007) (poor interview performance can stand alone as the sole basis for bypass where there is no evidence of any inappropriate motivations on the part of the Appointing Authority). See also O'Connor v. Police Comm'r of Boston, 408 Mass. 324, 328 (1990). An applicant's poor performance during the interview process is a relevant factor an appointing authority can use to judge an applicant. Frost v. Town of Amesbury, 7 MCSR 137 (1994) (Commission upholds bypass where applicant's answers to situational questions were unsatisfactory); LaRoche v. Department of Correction, 13 MCSR 159 (2000) (Commission upholds bypass where applicant's answers to situational scenarios did not comply with department policies and procedures and failed to demonstrate an ability to lead).

The Appellant argues, either explicitly, or tacitly, that the process here was not fair and impartial. I address each of the Appellant's arguments below.



First, the Appellant argues that Candidate R-4B has a criminal history and that he gave a poor response to an interview question when he initially stated that he *may* report his partner if he witnessed the partner stealing money from the scene of a crime, then clarifying his answer only after Deputy Carrabino asked a follow-up question.

To ensure clarity, Candidate R-4B did *not* bypass Mr. O'Donnell as Candidate R-4B was ranked *higher* than Mr. O'Donnell on the Certification. Put another way, the City is not required to provide the Appellant with sound and sufficient reasons for appointing someone ranked higher than him on the Certification. That notwithstanding, both interview panelists offered credible testimony that past indiscretions or mistakes of candidates did not result in an automatic bypass recommendation by the Panel. The Panel noted various concerns with some candidates that were discussed at length with those candidates during their interviews. The Panel was not looking for "perfect people". Rather, they were looking for maturity, those with good judgment, who have grown and learned from their mistakes in the past. For the panelists, the way the individual was able to reflect on their personal growth, and who they are today was what was important to them in deciding who would make a successful police officer. In regard to whether Candidate R-4B's initial answer to a scenario regarding another officer stealing money was: a) a poor answer; and b) equally as poor as the Appellant's answer to a different question involving drinking alcohol before a scheduled shift, that type of hair-splitting analysis is not the role of the Commission, particularly when the interview panelists who testified before the Commission showed no signs of bias against the Appellant. In the sound judgment of the unbiased interview panelists, they concluded that the Appellant's answers regarding the alcohol-related scenario raised red flags about the Appellant that did not arise regarding Candidate R-4B's answers to a different question. As noted above, the Appellant's poor answers involved his own hypothetical actions

(drinking at a social event before a scheduled shift; calling in sick to the shift instead of abstaining from alcohol altogether) and then applying a different standard to another officer. The Appellant's argument that Candidate R-4B was purportedly given an opportunity to clarify his answer and that the Appellant was not falls into the same category of micromanagement of the Appointing Authority interview process that is not the purview of the Commission. The interview panelists did, however, attempt to provide the Appellant with clarity when he first misunderstood the question. More importantly, I did not see any evidence that the Panelists' clarifications during Candidate R-4B's interview was designed to give that candidate an unfair advantage over any other candidate, including the Appellant.

Second, the Appellant argues that Candidate R-4F also "performed poorly" in the interview and that, according to the hand-written notes of Ms. Pavao (provided by the panelists), there were "omissions and falsehoods" in Candidate R-4F's application. Similar to Candidate R-4B, Candidate R-4F did not bypass the Appellant and the City was not required to provide the Appellant with sound and sufficient reasons for appointing Candidate R-4F. That notwithstanding, as referenced above, the interview panelists put less weight on errors and omissions on an application for *all* candidates, including certain errors and omissions of the Appellant.

Third, the Appellant argues that the City, in a different hiring cycle that took place approximately four years ago, purportedly appointed a candidate (identified in a prior Commission decision as "Candidate 7") who stated that he would consume one or two alcoholic beverages at a social function prior to a scheduled shift. Not only is this far outside the bounds of what should be considered in regard to whether there was fair and impartial treatment in *this* hiring process, in 2020, but the Appellant acknowledges, that "Candidate 7" ultimately clarified

and corrected his answer, as opposed to stating, in retrospect, that he should have called in sick if he drank at a social event before a scheduled shift.

Fourth, the Appellant cites two candidates from *this* hiring cycle who *did* bypass the Appellant for appointment: Candidates R-4H and R-4I. Candidate R-4H had errors and omissions on his application, including failing to list that he has attended college before being asked to leave and failing to list an “interaction” with police in which Candidate R-4H and a friend, many years ago, were spotted drinking alcohol and smoking marijuana in a park. As referenced above, errors and omissions on an application, including those of the Appellant, were not necessarily a reason to automatically bypass a candidate for appointment. Further, consistent with prior Commission decisions, candidates, as part of the application process, may only be asked a limited number of questions related to their criminal history. The question regarding any “police interactions” appears to be an impermissible application question and it would not be appropriate to use that as a yardstick here to show whether the Appellant received fair and impartial treatment. Also, as referenced above, the Panelists candidly acknowledged that prior misconduct, particularly if it occurred many years ago, would also not be an automatic disqualifier for appointment today, depending on various other factors, including whether the candidate showed that he/she had matured and learned from past mistakes.

In regard to Candidate R-4I, the Appellant argues that he gave an “even more egregious answer” (than Candidate R-4B) to the question regarding whether he would report a fellow officer that he witnessed stealing. First, in regard to the *alcohol-related* questions, which formed the basis for the Appellant’s bypass, Candidate R-4I immediately responded “zero” in regard to how much alcohol he would consume at the social event; that he would ask the bartender for something without alcohol and participate in the toast but would not consume alcohol; and, if the

friend who was getting married didn't understand, they would no longer be friends. That was precisely the type of unambiguous moral clarity that the panelists were looking for. In regard to that same candidate's response to the question regarding observing a fellow officer stealing, the panelists concluded that this was not an "ideal answer". After discussing the matter, they ultimately concluded that the less than ideal response was not a reason to bypass this candidate. While the panelists were not able to clearly articulate during their testimony before the Commission why the less than ideal answer did not result in his bypass, it is clear, based on their testimony, that they were far more troubled by the multi-faceted troubling answers provided by the Appellant regarding the alcohol-related questions. Here, where the evidence does not show any impermissible motivations by the decision-makers, the Appointing Authority maintains the discretion to assess how much weight is given to problematic answers by candidates.

Finally, the Appellant argues that since one of the other selected candidates who bypassed the Appellant was the son of a Somerville Police Captain, it calls into question whether the process here was fair and impartial. The Appellant was provided with the recorded interviews of each candidate, including this particular candidate. I infer that, had the Appellant concluded that this candidate performed poorly during his interview, including the case scenarios, the Appellant would have identified that candidate as a purported example of disparate treatment. The Appellant made no such argument.<sup>7</sup>

I have, however, as part of this appeal, and another appeal pending before the Commission, considered the sequence of events that resulted in this candidate and 3 other lower-ranked candidates being considered for appointment. As referenced in the findings, the City first

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<sup>7</sup> While this appeal was pending, I held a hearing regarding Tivinis v. Somerville, G1-20-045. Tivinis was also bypassed for appointment during this hiring cycle. As part of the Tivinis appeal, the audio recording of the Police Captain's son was entered into evidence. In response to the alcohol-related scenario question, that candidate stated that he doesn't drink and wouldn't drink at a wedding reception before a scheduled shift, even if he was the best man giving a toast.

requested authorization to appoint ten (10) reserve candidates, which would limit the City's consideration to the first 21 candidates who signed the Certification as willing to accept appointment under the so-called 2N+1 formula. At least four candidates who were ultimately appointed by the City were not among the first 21 candidates on the Certification.

Approximately four weeks later, the City requested authorization from HRD to appoint 16 (as opposed to 10) candidates from this Certification, thus, arguably increasing the number of candidates that could potentially be considered from 21 to 33. As a result, the City considered additional, lower-ranked candidates on the Certification, including 4 other lower-ranked candidates who were ultimately appointed. However, the City only appointed a total of 9 reserve candidates, based on the interview panel's recommendation.

The above-referenced sequence of events may warrant additional inquiry by the Commission in regard to the City's rationale for requesting authorization to hire 16 candidates, as opposed to 10, and whether, based on the City's decision to appoint only 9 candidates, those additional, lower-ranked candidates were even eligible for appointment.<sup>8</sup>

In regard to the instant appeal, however, I gave the City's decision to bypass Mr. O'Donnell heightened scrutiny based on the above-referenced questions. Specifically, I considered whether the decision to bypass Mr. O'Donnell was somehow related to a possible pre-determination by the City to reach lower-ranked candidates on the Certification. As discussed above, I found the two interview panelists who testified before the Commission to be highly credible. Even applying heightened scrutiny to their testimony, my assessment of their testimony has not changed. I believe they were sincerely troubled by Mr. O'Donnell's problematic answers to the alcohol-related scenario questions, causing them to conclude it would be too much of a risk to appoint Mr. O'Donnell as a reserve police officer at this time, and, but for the Appellant's

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<sup>8</sup> The Commission has authority to conduct such inquiries, on its own initiative, through G.L. c. 31, s. 2(a).

problematic answers to the alcohol-related questions, they would have recommended Mr. O'Donnell for appointment.

In summary, the Appellant is a good person who performed badly on a multi-faceted question that the interviews panelists gave great weight to. Ultimately, his poor performance (i.e.- his inability to say unequivocally that he would not drink alcohol before a scheduled shift) caused the interview panel to conclude that the City would be taking too much of a risk in granting him a conditional offer of employment. Absent evidence that the Appointing Authority acted in bad faith here, the City is afforded deference in its judgment to bypass the Appellant for this valid reason.

While the City has shown reasonable justification for bypassing the Appellant at this time, nothing in this decision should be construed to hold that the Appellant's poor interview performance during this hiring cycle should serve as a permanent bar to appointment. Mr. O'Donnell is a lifelong resident of Somerville with a sincere desire to serve the City as a police officer. He has worked hard to obtain a college degree; scored well on a civil service examination; and he has a solid employment history, coupled with strong personal and professional references. Should his name appear among those eligible for consideration in the future, his candidacy should get a fresh look by the City.

*Conclusion*

For all of the above reasons, the Appellant's appeal under Docket No. G1-20-044 is hereby *denied*.

Civil Service Commission

/s/ Christopher Bowman  
Christopher C. Bowman  
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on September 24, 2020.

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by this Commission order or decision may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of this order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of this Commission order or decision. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d).

Notice:

Joseph Padolsky, Esq. (for Appellant)  
Shannon Phillips, Esq. (for Respondent)