

COMMONWEALTH OF MASSACHUSETTS

CIVIL SERVICE COMMISSION

100 Cambridge Street, Suite 200
Boston, MA 02114
(617) 979-1900

CHARLES OSBORNE, III,
Appellant

G1-23-010

v.

MARBLEHEAD FIRE DEPARTMENT,
Respondent

Appearance for Appellant:

Melanie Dempster, Esq.
Nixon Peabody, LLP
53 State Street,
Boston, MA 02109

Appearance for Respondent:

Katherine McNamara Feodoroff, Esq.
Mead, Talerman & Costa, LLC
730 Main Street, Ste. 1F
Millis, MA 02054

Commissioner:

Angela C. McConney¹

SUMMARY OF DECISION

The Commission denied the Appellant's bypass appeal for firefighter as the Marblehead Fire Department had reasonable justification to bypass him for failing to be forthright about a serious workplace incident.

DECISION

On February 3, 2023, the Appellant, Charles Osborne, III (Mr. Osborne or Appellant), acting pursuant to G.L. c. 31, § 2(b), timely appealed to the Civil Service Commission

¹ The Commission acknowledges the assistance of Law Clerk Alana Khan with the preparation of this decision.

(Commission), contesting the December 7, 2022 decision of the Marblehead Fire Department (Department or Respondent) to bypass him for appointment to the position of a permanent, full-time firefighter.

The Commission held a pre-hearing conference on February 21, 2023, via videoconference. On May 23, 2023, I conducted a full hearing at the offices of the Commission, located at 100 Cambridge Street, Boston, MA.² I recorded the hearing via the Webex platform, which serves as the official recording of the hearing.³ Copies of the video recording were emailed to both parties. The Respondent submitted its post-hearing brief on June 19, 2023. The Appellant submitted his post-hearing brief on June 30, 2023.

FINDINGS OF FACT

I marked Mr. Osborne's Pre-hearing Memorandum as "A" for identification, and the Department's Pre-hearing Memorandum as "B" for identification. I admitted into evidence two Appellant exhibits (Appellant Exhibits 1-2) and 14 Respondent exhibits (Respondent Exhibits 1-14). I admitted the March 14, 2023 Stipulated Facts as Joint Exhibit 1, and the March 9, 2023 letter from the state's Human Resources Department as Joint Exhibit 2.

Based on the documents submitted and the testimony of the following witnesses:

² The Standard Adjudicatory Rules of Practice and Procedure, 801 C.M.R. §§ 1.01 (Formal Rules) apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

³ Should there be a judicial appeal of this decision, the plaintiff in the judicial appeal is obligated to supply the court with a transcript of this hearing to the extent that they wish to challenge the decision as unsupported by substantial evidence, arbitrary or capricious, or an abuse of discretion. In such cases, the plaintiff in the judicial appeal must transcribe the transcript from the Commission's official recording.

Called by the Respondent:

- Jason R. Gilliland, Fire Chief, Marblehead Fire Department;
- Eric Ridge, Fire Captain, Marblehead Fire Department;
- Mark Souza, Harbormaster, Town of Marblehead;

Called by the Appellant:

- Charles Osborne III, Appellant,

and taking administrative notice of all pleadings filed in the case, pertinent rules, statutes, regulations, case law and policies, and drawing reasonable inferences from the credible evidence,

I make the following findings of fact:

Background

1. Charles Edward Osborne, III, is a 35-year-old resident of Marblehead, Massachusetts, where he was born and raised. (Testimony of Appellant)
2. Mr. Osborne attended Fitchburg State University for two years but did not graduate. (Respondent Exhibit 5)
3. Mr. Osborne has been a self-employed commercial fisherman for over ten years. He owns and operates a large fishing vessel, employing a crew of several fishermen. (Testimony of Appellant)
4. Mr. Osborne took the November 2020 civil service exam for the position of firefighter and received a score of 99. (Testimony of Appellant)
5. Aware that the Marblehead Fire Department (Department) required its firefighters to be emergency medical technicians (EMTs), Mr. Osborne underwent the necessary certification and became an EMT. (Testimony of Appellant)
6. Chief Jason R. Gilliland is the Appointing Authority for the Department. He has

been chief for 14 years. (Respondent Exhibit 4)

7. In June 2021, Mr. Osborne hand delivered his application for the position of permanent full-time firefighter. He informed the chief that he had been involved in a criminal matter in August 2008. (Testimony of Chief Gilliland)

8. The Department did not select Mr. Osborne after a July 2021 interview. (Testimony of Chief Gilliland)

9. The Department submitted a requisition to the state's Human Resources Department (HRD) for a certification to fill one vacancy for a firefighter position. On September 19, 2022, HRD issued Certification #08889 to the Department. Mr. Osborne was ranked #6 on the certification. (Joint Exhibit 2, Respondent Exhibit 5)

10. Mr. Osborne was ranked first among those candidates willing to accept appointment. (Stipulated Fact)

11. On September 20, 2022, Mr. Osborne filed a second application for employment with the Department. His June 2021 and the September 2022 application packets were identical, requiring applicants to disclose their criminal history. (Testimony of Appellant)

12. On the application form, under the heading "Criminal Record," candidates were informed that, under Massachusetts law, they could answer "no record" if the following circumstances applied:

- 1) You have never been arrested for violation of a criminal statute;
- 2) You have been arrested but have never been tried for a criminal offense;
- 3) You have been tried for a criminal offense but were not convicted;
- 4) You have a first conviction for any of the following misdemeanors;
 - a. Drunkenness
 - b. Simple assault
 - c. Speeding
 - d. Minor traffic violations
 - e. Affray
 - f. Disturbance of the peace

- 5) You have not been convicted of a criminal offense within the five years before the date of this application and *you have been convicted of misdemeanors where the date of the conviction or the termination of incarceration, if any occurred more than five years before the date of this application;*
- 6) You have felony convictions which have been sealed pursuant to Massachusetts law; ...

(Respondent Exhibit 5)

13. Cpt. Eric Ridge is one of four captains in the Department. He served more than nine years in the United States Coast Guard. (Testimony of Chief Galliland)

14. At the time of the 2000 interview, Chief Galliland and Capt. Ridge had worked together for ten years. The chief testified that he relied on Cpt. Ridge's feedback during interviews. (Testimony of Chief Gilliland)

15. Chief Galliland and Capt. Ridge interviewed Mr. Osborne on November 1, 2022. Each candidate was asked the same 28 questions, each question with a maximum value of 5 and a minimum value of 1. The highest score a candidate could receive was 140. (Respondent Exhibits 6 and 7; Testimony of Appellant, Testimony of Cpt. Ridge, Testimony of Chief Gilliland)

16. Mr. Osborne received a 66% on his interview (scored at 92). He appeared unprepared, his answers lacked depth, and panelists observed that he did not appear concerned about helping the community. (Respondent Exhibit 4; Testimony of Chief Galliland)

17. Capt. Ridge described Mr. Osborne's interview performance as "average"—having scored above average on some questions, and below average on others. The captain noted that Mr. Osborne displayed low enthusiasm during the interview. (Testimony of Cpt. Ridge)

18. Mr. Osborne asserted that his enthusiasm or interest for the position had not waned, but as a parent of a then four-month-old, it is possible that he was tired. (Testimony of Appellant)

19. After the interview, the chief decided not to extend an offer to Mr. Osborne. The Department informed Mr. Osborne of his bypass in a December 7, 2022 notice enclosing his appeal rights. As reasons for the bypass, the appointing authority cited: (1) Mr. Osborne's failure to be forthright and truthful about an August 24, 2008 incident at the University of Connecticut (UConn), where he was charged with a misdemeanor; (2) Mr. Osborne's failure to be forthright, truthful or take responsibility about a June 7, 2021 incident, wherein he piloted a town-owned boat onto a rocky ledge at low tide and mid-tide, causing "damage beyond repair" to the boat's stainless steel propellers, and failing to report the accident or damage to the harbormaster;⁴ and (3) Mr. Osborne's low interview score of 92 (66%) out of a maximum of 140. (Respondent Exhibits 3 and 4)

20. The chief, as appointing authority, elaborated that each bypass reason, standing alone, was a disqualification for employment as a firefighter. (Respondent Exhibits 3 and 4)

21. Mr. Osborne was bypassed by an individual who scored 108 (78%) in the interview. This person also held a degree in criminal justice and had no criminal or disciplinary history. (Respondent Exhibits 11-14)

22. Mr. Osborne filed a timely appeal on February 3, 2023. (Respondent Exhibit 1)

August 24, 2008 Incident

19. In the section of the employment application seeking criminal history, the Appellant wrote that the UConn campus police arrested him in August 2008 for a misdemeanor. (Respondent Exhibit 5)

20. During the 2022 hiring cycle, Mr. Osborne was asked to explain further. He

⁴ Cpt. Ridge conducted an investigation into the June 7, 2021 incident, but testified that he did not speak to the other crew member involved in the incident. (Testimony of Cpt. Ridge)

wrote, “I got into an altercation while visiting a friend at UConn. I felt as I was defending myself + a female friend, I plead [sic] ‘No Contest’ in court.” (Respondent Exhibit 5)

21. After reviewing the Appellant’s application, Chief Gilliland requested the incident reports and court records related to the incident. (Respondent Exhibit 5; Testimony of Chief Gilliland)

22. On November 10, 2009, Mr. Osborne pled nolo contendere to the misdemeanor and received three years of probation. (Respondent Exhibit 8)

23. Chief Gilliland testified that the August 24, 2008 incident was not cause for bypass in itself. Rather, he believed that Mr. Osborne’s lack of candor and honesty in his reporting of the incident was cause for concern and was a reason for bypass. (Testimony of Chief Gilliland)

24. Cpt. Ridge did not review the UConn incident report during the 2022 interview process. (Testimony of Cpt. Ridge)

June 7, 2021 Incident

25. Mark Souza is the Marblehead Harbormaster and has been operating boats for over forty years. He employs ten to fifteen staff. (Testimony of Souza)

26. In addition to his commercial fishing business, Mr. Osborne worked as a part-time seasonal assistant to the harbormaster during the summer of 2021. (Testimony of Souza)

27. JG, a veteran of the United States Coast Guard, worked as a full-time seasonal assistant to the Marblehead Harbormaster. (Testimony of Appellant)

28. JG is a first cousin of the wife of Cpt. Ridge (who, as noted earlier, played a role in assessing Mr. Osborne’s candidacy). (Testimony of Cpt. Ridge)

29. The harbormaster maintained and operated two boats: one owned by the Town,

one owned by the Department. The Department-owned boat could operate at high speed, and was equipped with a flare system and a hose. As an apparatus boat, it had to be kept in a state of readiness. The town-owned boat was a Hornet, and not equipped for fire suppression.

(Testimony of Chief Gilliland, Testimony of Souza)

30. Crew members were required to complete the log at the end of every shift for legal reasons, to inform the incoming crew and to report accidents. Groundings had to be reported in the log. The crew routinely reported accidents in the log. (Testimony of Souza)

31. On June 7, 2021, Mr. Osborne and JG responded to a distress signal for paddleboarders lost at sea in the area of Ram Island, between the towns of Marblehead and Swampscott. They were assigned to the Town of Marblehead Public Safety Boat HM250, the boat owned by the Department. (Respondent Exhibit 9; Testimony of Souza, Testimony of Appellant)

32. While searching for the paddleboarders and piloting the boat, Mr. Osborne and JG struck a rocky ledge in the area of Ram Island at low tide or mid-tide. However, they continued the patrol. (Testimony of Appellant)

33. After patrolling for 10-15 minutes, they learned that the paddleboarders had made it back to shore safely. Mr. Osborne and JG continued their patrol until the end of their shift. The boat operated with no apparent issues. (Testimony of Appellant)

34. After their shift ended, Mr. Osborne and JG returned the boat to the marina, and JG locked it. (Testimony of Appellant)

35. Although a grounding had occurred, neither Mr. Osborne nor JG recorded it in the harbormaster log. Neither man reported the accident or any damage to Mr. Souza. (Testimony of Appellant, Testimony of Souza)

36. Mr. Osborne testified that when he asked JG about the boat's condition, JG said that it was dark, but that he could see two scratches on the propeller. (Testimony of Appellant)

37. Two days later, on June 9, 2021, two other harbormaster employees took the boat out on their regularly scheduled shift. However, due to extensive damage, they had to take the boat out of service and return it to the harbor. The propellers of the boat had been significantly damaged beyond repair, rendering the boat inoperable. (Respondent Exhibit 9; Testimony of Souza)

38. Mr. Souza sent out a mass email, asking the staff whether an accident had occurred. He also made an in-person announcement to that effect, but no one came forward. (Testimony of Souza)

39. After four to five days had passed, Mr. Souza was reduced to checking the boat's GPS history for the vessel's recent locations. He then correlated the time stamp with the staffing log. (Respondent Exhibit 9)

40. About a week after the incident, Mr. Souza emailed Mr. Osborne, asking him to come to his office. JG had already spoken to Mr. Souza. JG said that Mr. Osborne had checked the boat after the incident and reported that there was no damage. (Respondent Exhibit 9)

41. At the meeting with Mr. Souza, Mr. Osborne admitted that he was involved in an accident and apologized for not reporting it. (Appellant Exhibit 1; Testimony of Appellant, Testimony of Souza)

42. According to the harbormaster's incident report, Mr. Osborne stated that he was the one who checked the boat and determined that there were no issues or damage. Although he apologized, Mr. Osborne expressed no concern over the severity of the damage. However, Mr. Osborne offered to pay for the propeller damage. (Respondent Exhibit 9; Testimony of

Appellant)

43. The boat was out of operation for four days, and the damage exceeded \$10,000.

(Testimony of Souza)

44. Knowing that Mr. Osborne intended to apply to the Department, Mr. Souza advised him to speak to Chief Gilliland about the incident. (Testimony of Appellant; Testimony of Souza)

45. When Mr. Osborne tried to have a conversation with the chief, Chief Gilliland did not engage him because he was not yet a candidate for the position of firefighter. (Testimony of Chief Gilliland)

46. Mr. Osborne then emailed Mr. Souza on June 18, 2021, again apologizing for failing to report the incident and acknowledging that he should not have put public safety at risk. (Appellant Exhibit 1; Testimony of Appellant)

47. Mr. Souza testified that both Mr. Osborne and JG delayed coming forward, but JG was the first to take responsibility. Mr. Souza allowed both of them to continue the 2021 summer seasonal employment, and asked Mr. Osborne to return the following summer. (Testimony of Souza)

48. Before the 2022 interview, the chief was aware that Mr. Osborne was the seasonal assistant to the harbormaster involved in the damage of the fire apparatus boat. He was also aware that JG was involved in the accident. (Testimony of Chief Galliland, Testimony of Appellant)

49. Mr. Osborne brought up the June 7, 2021 incident before the interview panel. (Testimony of Chief Galliland, Testimony of Appellant)

50. Mr. Osborne testified that he did not receive the harbormaster's email, and that he

was absent when the Harbormaster made his inquiry in person. (Testimony of Appellant)

51. Citing the June 7, 2021 incident as a reason for bypass, Chief Gilliland testified that it was not the accident itself that was problematic, and that it didn't matter who was operating the boat. He also was not concerned primarily with the damage, because "things can be fixed." Rather, he was concerned that Mr. Osborne failed to report the matter in a timely manner and failed to take responsibility for it. (Respondent Exhibit 4; Testimony of Chief Gilliland)

52. Chief Galliland labeled Mr. Osborne as a "putter," accepting no responsibility for the UConn incident or the harbormaster incident. He believed that Mr. Osborne failed to report the damage to the Department's boat because he intended to apply to the Department. (Testimony of Chief Gilliland)

53. Chief Gilliland raised the issue of public safety. The crew that took out the boat later were unaware that it was damaged, and could have risked their lives, or those of others they would have tried to save. If there had been an emergency, the availability of only one boat could have jeopardized public safety for the town. (Testimony of Chief Gilliland)

54. Use of the fire apparatus boat is necessary when combating a fire when a building faces water, and there is no ground access to all four sides. The apparatus boat is also used for firefighter training. (Testimony of Cpt. Ridge)

Applicable Law

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L. c. 31, § 1. See, e.g., *Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259 (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass. App. Ct. 632, 635 (1995), rev. den., 423

Mass. 1106 (1996). *See also Brookline v. Alston*, 487 Mass. 278 (2021) (analyzing broad scope of the Commission’s jurisdiction to enforce basic merit principles under civil service law).

Original appointments of civil service employees are made from a list of candidates, called a “certification”, whose names are drawn in the order in which they appear on the applicable civil service “eligible list”, using what is called the 2n+1 formula. G. L. c. 31, §§ 6 through 11, 16 through 27; Personnel Administration Rules, PAR.09.

The Commission’s role is to determine whether the appointing authority has shown, by a preponderance of the evidence, that it has “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 Serv. Comm’n*, 483 Mass. 461, 474-78 (2019); *Police Dep’t of Boston v. Kavaleski*, 463 Mass. 680, 688-89 (2012); *Beverly v. Civil Serv. Comm’n*, 78 Mass. App. Ct. 182, 187 (2010); *Leominster v. Stratton*, 58 Mass. App. Ct. 726, 727-28 (2003).

Public safety officers are vested with considerable power and discretion and must be held to a high standard of conduct. *See, e.g., Falmouth v. Civil Serv. Comm’n*, 61 Mass. App. Ct. 796, 801 (2004), citing *Cambridge v. Civil Serv. Comm’n*, 43 Mass. App. Ct. 300, 303-305, rev. den., 428 Mass. 1102 (1997); *Police Comm’r v. Civil Serv. Comm’n*, 22 Mass. App. Ct. 364, 371, rev. den. 398 Mass. 1103 (1986).

Analysis

The Department cited three reasons for bypassing Mr. Osborne: his failure to be forthright and truthful about the August 24, 2008 and June 7, 2021 incidents, and his low interview score.

An appointing authority relies heavily on the information candidates provide in their

applications to perform a thorough background check into whether they are qualified. It is well established that an applicant's truthfulness and candor may be considered as a reason for bypass. *See O'Brien v. Somerville*, 25 MCSR 294 (2012). In addition, Mr. Osborne interview score was considerably lower than that of the appointed candidate.

In the December 7, 2022 notification, Chief Gilliland stated that each bypass reason on its own was enough for disqualification for appointment to the position of permanent full-time firefighter.

First bypass reason, the August 24, 2008 Incident

The events of August 24, 2008 are stale, having taken place fourteen years ago when Mr. Osborne was twenty years old.

There is something amiss here. The application states on its face that candidates may answer "no record" regarding misdemeanors, where the date of conviction or termination of sentence occurred more than five years before the date of the application. Mr. Osborne had fulfilled all court obligations by December 2013, almost nine years before his September 30, 2022 application.

Thus Mr. Osborne could have truthfully answered "no record" to this question. Under these circumstances, he unwittingly provided information that he did not have to — and to his great detriment. The Department improperly considered the events of August 24, 2008, in contradiction of its own application form. More concerning, the administrative record does not reveal how the chief was able to access Mr. Osborne's criminal record information.

I find that the first bypass reason may not qualify as a reason for bypass.

Second bypass reason, the June 7, 2021 incident

It is undisputed that Mr. Osborne and JG were operating the Department-owned apparatus boat on their regularly scheduled shift on June 7, 2021. It is undisputed that a grounding occurred while they were operating the boat, that they finished their shift, returned the boat to the marina, and informed no one. It is undisputed that the apparatus boat incurred serious damage beyond repair to the twin propellers and was out of commission for four days. It is undisputed that it was a mandatory duty for crew members to report a grounding and memorialize it in the harbormaster log, which neither man did.

JG and Mr. Osborne's failure to report resulted in a later shift taking the damaged boat onto the water – a dangerous occurrence that could have resulted in a public safety catastrophe if the boat were called into public emergency service, or a danger to the crew members themselves.

After four or five days with no one responding to his email or in-person announcement, Mr. Souza had to check the staffing log and GPS coordinates to discover the crew members operating the boat during the accident. JG came forward before Mr. Osborne chose to.

Mr. Osborne's excuses don't hold water. He is a commercial fisherman and should understand the importance of maintaining a log and reporting accidents therein, which he failed to do after the events of June 7, 2021. As a commercial fisherman, the owner and operator of a large fishing vessel, he should be aware of the damage a boat could sustain in the event of a grounding. As someone employing a crew of several fishermen, with over a decade of experience with boats and related equipment, it is not reasonable that he chose to rely on JG's word that the boat only had a few scratches on the propellor.

In his testimony, Mr. Osborne still did not appear to take full responsibility for his lapse in judgement. He testified that he relied on JG's inspection of the propellers after the incident,

but the harbormaster's report documents that he admitted to inspecting the boat and making the determination that there were no issues or damage.

I find that Mr. Osborne's failure to be forthright about the event of June 7, 2021 is a valid reason for bypass, and also qualifies on its own as a sole reason for bypass.

Third bypass reason – Mr. Osborne's interview

I find that it is a close call whether Mr. Osborne's interview performance is reason sufficient for bypass. However, the Commission does not address this bypass reason because the second reason proffered by the Appointing Authority is a sufficient reason alone for bypass to appointment as a permanent full-time firefighter.

Alleged bias within the selection process

Mr. Osborne alleges bias within the Department because of the familial relationship between Cpt. Ridge and JG, his fellow crew member on the August 24, 2021 grounding. Before the 2021 and 2022 interviews, Chief Galliland and Cpt. Ridge knew that Mr. Osborne had been involved in the grounding and damage of the fire apparatus boat. They both knew that Mr. Osborne's fellow crew member had been JG, an in-law of Cpt. Ridge. There are three other captains in the Department. The Department has provided no valid reason why another captain could not have conducted the interviews with the chief.

Capt. Ridge has been married for over twenty years, and testified that JG was a distant relative of his wife. However, when I questioned him as to the degree of the relationship between them, he testified that JG was the first cousin of his wife.

Cpt. Ridge testified that he investigated the August 24, 2021 events without speaking to JG. It is unusual that the events of August 2008 were thoroughly investigated, but the events of June 7, 2021 were not.

While it would have been more prudent for the Department to utilize another captain in the interview process, I find no bias here. Mr. Osborne was not bypassed because he caused damage to a Department-owned vessel. Rather, he was bypassed because he did not act forthrightly or professionally in assuming responsibility for the nonreporting of the accident and its consequences. JG's involvement in the grounding incident or its aftermath, and any familial connection he had to Cpt. Ridge, has no bearing on Mr. Osborne's own shortcomings.

CONCLUSION

I find that the Department has proven by a preponderance of the evidence that it had reasonable justification to bypass Mr. Osborne for original appointment to the position of permanent full-time firefighter. The Department properly based its bypass on his failure to be forthright and truthful about the June 7, 2021 incident.

Accordingly, the Marblehead Fire Department's decision to bypass Charles Edward Osborne, III, for the position of firefighter is affirmed. The appeal filed under Docket No. G1-23-010 is hereby *denied*.

CIVIL SERVICE COMMISSION

/s/ *Angela C. McConney*

Angela C. McConney, Commissioner

By vote of the Civil Service Commission (Bowman, Chair; McConney, Dooley, Stein, and Tivnan, Commissioners) on November 16, 2023.

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 C.M.R. § 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 to:

Melanie Dempster, Esq. (for Appellant)

Katherine McNamara Feodoroff, Esq. (for Respondent)