

**THE COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**CIVIL SERVICE COMMISSION  
One Ashburton Place, Room 503  
Boston, MA 02108  
(617) 727 – 2293**

**DAVID L. RADOCHIA, JR.,**

*Appellant*

v.

**CASE NO: G1-11-145**

**CITY OF SOMERVILLE,**

*Respondent*

Appearance for the Appellant:

Edward G. Seabury, Esq.  
15 Court Square – Suite 1000  
Boston, MA 02108

Appearance for the Respondent:

Robert V. Collins, Esq.  
Chief Labor Counsel  
Law Department – City Hall  
93 Highland Avenue  
Somerville, MA 02143

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, David L. Radochia, Jr., duly appealed to the Civil Service Commission (Commission), pursuant to G.L.c.31, §2(b), challenging the decision of the Respondent, City of Somerville (Somerville), as Appointing Authority, to bypass him for original appointment to a position of permanent reserve firefighter with the Somerville Fire Department (SFD) and to remove him from future certifications pursuant to Massachusetts Human Resources Division (HRD) PAR.09. A full hearing was held on July 14, 2011 and July 28, 2011, at the offices of the Commission, and was digitally recorded. Nineteen (19) exhibits [1, 2A-2C, 3A-3E, 4A-4C, 5, 6, 6A and 7 through 10]; were entered into evidence at the hearing. Somerville called four witnesses, who were not sequestered. Mr. Radochia called one witness who was sequestered and he testified on his own behalf. Both parties subsequently submitted proposed decisions.

## **FINDINGS OF FACT**

Based upon the Exhibits, the testimony of the Appellant, Mrs. Carol A. Radochia, Somerville Fire Department (SFD) Fire Chief Kevin Kelliher, Somerville Police Department (SPD) Lt. Daniel Cotter, Lt. Stephen Carrabino & Sergeant Shaun Sheehan, and inferences reasonably drawn from that evidence as I find credible, I make the findings of fact set forth below.

### **The Appellant**

1. The Appellant, David L. Radochia, Jr., is a life-long resident of Somerville, MA who resides with his parents and a brother, James. (*Exhs. 2B, 5 & 9; Testimony of Appellant and Mrs. Radochia*)

2. Since 2000, Mr. Radochia has worked the night shift for the Boston Globe as a driver and holds a CDL Class “B” operator’s license. (*Exhs. 2B, 5 & 9; Testimony of Appellant*)

3. Mr. Radochia and his family are well-known to Somerville officials. His mother, Carol Radochia, is a long-time Somerville employee. His brother, James, is a Somerville police officer. (*Exh.2A;Testimony of Appellant, Mrs. Radochia, Chief Kelliher, Lt. Carrabino & Sgt. Sheehan*)

4. Mr. Radochia took and passed examinations for Massachusetts civil service positions of correction officer (2007), police officer (2007 & 2009) and firefighter (2008 & 2010) (*Exh. 5*)

5. Mr. Radochia applied for a position with the Massachusetts Department of Correction (DOC) in 2008, 2009 and 2010, and was bypassed each time for “unsatisfactory background check”, “failure to receive the recommendation of the interview panel”, and “unsatisfactory criminal history check”, respectively. (*Exh. 2A*)

### **2009 Firefighter Application**

6. Mr. Radochia first applied for employment as an SFD reserve firefighter in a hiring cycle that began in or about September 2009. Among other things, Mr. Radochia disclosed in his

application a pending OUI charge arising from an incident in March 2009 and his discharge from the U.S. Navy for misconduct. He also mentioned an arrest in 2005 for “sexual assault” that was subsequently dismissed, which appears to relate to the same circumstances which led to his military discharge in 2006. He did not mention that, in July 2000, a 209A restraining order had issued against him. He did not mention his 2008 and 2009 rejections for employment by the DOC and answered “NO” to the question “Have you ever applied for or been rejected for any other fire position or any other civil service position in this or any other state?” (*Exh. 5*)

7. During the 2009 application process, a background check was performed on Mr. Radochia by Lt. Dan Cotter, a 23-year veteran of the Somerville Police Department who had conducted over 100 background investigations and considers his role in investigation of potential public safety personnel (fire and police) of utmost importance. (*Exh. 6; Testimony of Lt. Cotter*)

8. Lt. Cotter’s background investigation report noted the following items:

Positive aspects

1. Highly motivated to become a firefighter
2. Recommended by the Boston Globe [his current employer]

Negative aspects

1. Failure to disclose previous [209A] Restraining Order [7/31/2000]
2. Recent OUI and leaving scene after property damage [3/18/09]
3. Discharge from navy for misconduct (sexual perversion) [June 2006]

(*Exh. 6; Testimony of Lt. Cotter*)

9. As to the OUI arrest, Mr. Radochia told Lt. Cotter that he had a “couple of beers” at home when a friend asked him for a ride home and had fallen asleep at the wheel. Lt. Cotter found this explanation incredible and inconsistent with the facts reported in the arresting officer’s report. As to the incident in the Navy, Mr. Radochia did not deny the facts stated in the documentation Lt. Cotter had reviewed, which he took as Mr. Radochia’s tacit admission to responsibility for forcing a woman to engage in sexual acts with multiple partners against her will. (*Exh. 6; Testimony of Lt. Cotter*)

10. Eventually, Somerville hired four firefighters in the September 2009 cycle ranked above Mr. Radochia on the civil service list. (*Claim of Appeal; Exh. 3A; Stipulation of Counsel*)

2010 Firefighter Certification

11. In May 2010, Mr. Radochia's name appeared on new Certification No. 207388 issued by HRD for appointment of additional SFD reserve firefighters. Mr. Radochia submitted a second application for appointment. In this application, he again disclosed his military disciplinary and discharge history, as well as his March 2009 OUI arrest, noting that, in April 2010, he had been acquitted on all charges arising from that OUI incident. He also disclosed his rejection for employment with the DOC and included a description of the previously omitted 209A restraining order as follows: "issued in Somerville, dismissed 1999. I was seeing a girl and her mother didn't want us together anymore and put one on me." (*Exh. 9*)

12. A new background investigation was performed on Mr. Radochia by SPD Lieutenant Stephen Carrabino, a 15-year veteran of the Department with extensive credentials as a law enforcement professional. He also testified to the high degree of importance placed on conducting a thorough background investigation of candidates for public safety appointments, emphasizing that Somerville is making a potential thirty-year commitment in who it selects for such positions. (*Exh. 2B; Testimony of Lt. Carrabino*)

13. Lt. Carrabino's investigation included a new criminal history and driver history records check, a credit check, and interviews with Mr. Radochia, his past employers and his neighbors. Lt. Carrabino prepared a report which included positive findings that "David is polite and easy-going", was described as "hard worker" with good attendance in his current job as a driver on the night shift for the Boston Globe, and had excellent credit and strong references. Lt. Carrabino

stated: “Unlike most other background investigations, I never felt David was trying to hide information from me. His application was complete the first time around.” (*Exhs 2B & 9*)

14. Lt. Carrabino’s report noted one additional arrest that Mr. Radochia had not disclosed on either his 2009 or 2010 application. This arrest involved a charge of assault and battery with a deadly weapon (a paint ball gun) and malicious destruction of property in July 2000. The case was continued without a finding and dismissed after six months. Lt. Carrabino made no note of this youthful offense or its omission from the application as significant negative factors. (*Exh. 2B: Testimony of Lt. Carrabino*)

15. Lt. Carrabino’s report focused on three negative employment aspects, namely, his military discharge, communication skills, and issues with alcohol. (*Exhs 2B & 4B*)

#### Military Discharge for Misconduct

16. As to the military discharge, Lt. Carrabino obtained and reviewed the records obtained by Lt. Cotter, obtained some additional military records, interviewed Mr. Radochia and spoke by telephone with police and naval personnel familiar with the case. Lt. Carrabino’s inquiry was hampered by the fact that the criminal records had been expunged and “the specifics were no longer available”. (*Exhs. 2B & 6; Testimony of Lt. Carrabino*)

17. The military records Lt. Carrabino reviewed established that Mr. Radochia was separated from the Navy on June 27, 2006 with a General (Under Honorable Conditions) discharge. His DD214 states the reason for separation as “Misconduct (Sexual Perversion)”. (*Exh. 2B*)<sup>1</sup>

18. The records further disclosed that the incident which led to Mr. Radochia’s military discharge occurred in July 2005 when Radochia was stationed at Naval Station Great Lakes, Illinois. He and a fellow sailor met a woman at a bar who drove them to a public beach in

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<sup>1</sup> The Commission took administrative notice of the fact that a Military Discharge (DD214) is not a record generally available to the public but may be released to the service member or to others with the consent of the service member. (*Administrative Notice, Commission Hearing, Day 2*)

Highland Park on the shores of Lake Michigan. Radochia's companion fell asleep and Radochia and the woman began to engage in consensual sexual intercourse. When the companion awoke, both men engaged in a variety of sexual acts simultaneously with the woman, after which she dropped them off at a residence about a mile from the navy base, at their request. All three of them were under the influence of alcohol. (*Exh. 2B; Testimony of Lt. Carrabino & Appellant*)

19. Lt. Carrabino spoke with Highland Park Police Detective Jon Lowman, who remembered the case well. The woman had filed a rape complaint and the case was presented to a grand jury but the woman decided not to cooperate in the investigation and no indictment was issued. Ultimately the records were expunged. (*Exh. 2B & 4A; Testimony of Lt. Carrabino*)

20. Lt. Carrabino also spoke with "USN Officer" LN2(SW) Arletta Scott, the person listed on one of the military documents as the "POC for discussion of this case"<sup>2</sup>, who he reported "was involved in investigating the case" and who told him "I've done thousands of these, and I remember this one – even after five years. He fought until the end and it went on for months. It could have gone to court martial." She said these types of cases, involving non-Navy personnel, have the capacity to "give the Navy a black eye." (*Exh. 2B*)

21. The records available to Lt. Carrabino included a narrative of Mr. Radochia's commanding officer, Capt. Moran, who recounted the details of the incident and wrote that the two men "knew what they had done was wrong, and intentionally obscured their status as active duty Sailors. It is true that the victim was a willing participant in sexual relations, and that the behavior of these two Sailors was not sufficiently coercive to support charges of sexual assault. However, I was convinced the facts demonstrated that this was an egregious act of public indecency that victimized their perfunctorily willing partner. She agreed to have sex with one of

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<sup>2</sup> Ms. Scott's precise position or job duty was not clearly established. Lt. Carrabino understood she held the enlisted title of "Petty Officer." The designation LN2 stands for the enlisted rate of "legalman", which is the naval equivalent of a paralegal. (*Exhs. 2B & 4B; Testimony of Lt. Carrabino & Appellant*)

the Sailors; she did not agree to be humiliated or turned into a sex object for their amusement. I confronted these Sailors with these facts, and they were no doubt uncomfortable with the truth. They say their complaint is that I refused to hear what they had to say, but in fact they are disappointed that I refused to accept their characterization of events.” (*Exh. 2B*)

22. Captain Moran, recommended that Radochia be discharged from the Navy with an Other Than Honorable Discharge. An administrative board rejected that recommendation, but found Mr. Radochia had committed “Misconduct – Commission of a Serious Offense”, and ordered punishment of 45 days restriction and extra duty, forfeiture of \$1,384.50 pay per month for two months and reduction to pay grade of E1. (*Exhs. 2B, 4B & 6*)

23. Additional military records that were not likely known to Somerville at the time of the consideration of Mr. Radochia’s application, were subsequently obtained by Mr. Radochia and presented at the Commission hearing. These records established that the administrative board’s finding of misconduct and punishment was upheld upon further review, but the recommendation for retention was overturned, and he was ordered to be separated with a General (Under Honorable Conditions) discharge. Subsequent appeals were unsuccessfully taken to overturn the discharge and/or upgrade it to an Honorable Discharge. (*Exhs. 4A & 4B: Testimony of Appellant; Stipulation of Counsel*)

24. The additional military records confirm that Mr. Radochia and his companion acknowledged that they were all intoxicated and that they did engage in a variety of “unusual” sexual acts on the beach. Their statements also confirm that they were not forthcoming with the woman about their identities. They were located only after a substantial amount of police work and a hunch that eventually traced them to the navy base. The statements given to investigators by Mr. Radochia and his companion do claim that they initially only intended to get a ride to the

train station to return to the navy base, that they did not force the woman to engage in any sex acts against her will and called their encounter a “consensual, drunken, ‘one night stand’ ”. The woman’s statements claimed, however, that the sex continued to a point beyond that which she was willing to participate, that she made it clear that she wanted it to stop, and that her demands were not heeded. (*Exhs 4A & 4B*)

25. During his background interview, Mr. Radochia gave Lt. Carrabino only “sketchy details about what occurred” in the Highland Park incident and said it was a “mistake”. Mr. Radochia was uncomfortable talking about the incident and Lt. Carrabino didn’t press him on the specifics because he already knew the details from the reports. (*Exh. 2B; Testimony of Lt. Carrabino*)

26. At the Commission hearing, Mr. Radochia said that this discharge was the product of a personal animus that his commanding officer held against him, because the incident occurred in the town where the officer lived and had caused him personal embarrassment. He maintained that he only engaged in consensual sexual relations, that he committed no criminal acts and that the documentation, taken as a whole proved his innocence. He pointed to portions of the naval record which included testimony before the administrative board by his immediate superior officer and colleagues who urged that Mr. Radochia “had what it takes” and should be retained in the Navy (*Exhs. 4A & 4B; Testimony of Appellant*)

27. When asked to explain why, after they left the beach, he and his companion had the woman drive them approximately nine miles toward the navy base and then drop them in front of a residence and they walked the extra mile to the base, Mr. Radochia said it was because he was reluctant to be seen at the base with the woman. He did not deny that she was never told that he was in the Navy. (*Testimony of Appellant*)



### Communications Skills

28. Lt. Carrabino's background report made brief note of his concern that Mr. Radochia performed poorly in high school and college and displays "marginal writing skills". He noted, however, that "David is fluid, and accurate, in his ability to communicate verbally" and admitted that "formal education was not for him." (*Exh. 2B; Testimony of Lt. Carrabino*)

### Alcohol

29. Lt. Carrabino cited two incidents in which Mr. Radochia's behavior appeared impaired by alcohol: (1) his March 2009 OUI arrest in Medford;<sup>3</sup> and (2) an observation of Mr. Radochia at a fire scene in June 2010 recounted to Lt. Carrabino by a fellow SPD Officer, Sergeant Sheehan. (*Exh. 2B; Testimony of Lt. Sheehan*)

30. Lt. Carrabino obtained the 2009 Medford police report and interviewed the arresting officer, whom he knew personally. Lt. Carrabino called the arresting officer's report, detailing his percipient observations (including the trail of tire marks and damaged cars found) one of the highest quality police reports he had seen. Lt. Carrabino accurately summarized the incident as related to him by the arresting officer, and contained in the police report as follows:

"On March 18, 2009, at 1:15 AM, David was arrested for OUI in Medford after striking two parked cars and being found incoherent and alone behind the wheel of his pickup truck almost  $\frac{3}{4}$  of a mile from the Salem Street Rotary, where a motorist witnessed him strike a guard rail and lose a tire. He continued on three tires and a rim until striking a parked car, which struck another parked car. At this point, David lost another tire, but kept driving, this time on two tires and two rims. An off-duty officer reported seeing David's truck at rest on Ridgeway Road, where he was encountered by the arresting officer, with whom he spoke. The officer told me in part, 'The kid was hammered. I had to hold him up. He drove on his rims for  $\frac{3}{4}$  of a mile. He wasn't a problem. He was so shit-faced; he was crying and laughing the whole way to the station.' David failed all field sobriety tests and refused a breathalyzer."

(*Exhs. 2B & 6A; Testimony of Lt. Carrabino*)

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<sup>3</sup> Lt. Carrabino had erroneously listed the date of the OUI incident in Mr. Radochia's report as 9/2/07, confusing the incident with that of another candidate (whose record is described below [Findings 43 through 45]). He admitted this mistake at the Commission hearing. (*Exhs. 2B & 3B; Testimony of Lt. Carrabino*)

31. Ultimately, a judge suppressed all evidence from the point in time when Mr. Radochia was removed from his truck by the arresting officer, and he was found not guilty of the charges against him. Lt. Carrabino “couldn’t fathom” this result, given the documented trail of debris Mr. Radochia had left behind him. (*Exh. 2B; Testimony of Lt. Carrabino*)

32. Mr. Radochia stated in his interview with Lt. Carrabino that he normally didn’t drink and admitted that he shouldn’t have been driving the night of his arrest. He said he had just given a friend a ride home to Medford Heights and pulled over to sleep on his way home to Somerville. He said he didn’t think he had hit any parked cars. When Lt. Carrabino asked him why the path of the crash lead TOWARD Medford Heights, Mr. Radochia was unable to explain. Chief Kelliher, who lived in Medford and was familiar with this area, found Mr. Radochia’s statements about heading home and falling asleep particularly problematic. (*Exh. 2B; Testimony of Lt. Carrabino & Chief Kelliher*)

33. At the Commission hearing, Mr. Radochia did not have any more credible explanation for his behavior on this occasion. He presented no basis upon which to conclude that the arresting officer’s report was not reliable. He acknowledged that he had consumed 4 or 5 beers in the past hour and a half, and asserted that he refused to take the breathalyzer test because he knew that even a small amount of blood alcohol would put his CDL license in jeopardy and he could lose his job with the Boston Globe.<sup>4</sup> He agreed, with some reticence, that alcohol “probably” played a role in his behavior. (*Testimony of Appellant & Lt. Carrabino*)

34. The second alcohol-related incident involved a report that Sgt. Sheehan informally conveyed to Lt. Carrabino about having seen Mr. Radochia at a fire scene that completely destroyed a house adjacent to the Radochia residence during the evening and night hours of June

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<sup>4</sup> Lt. Carrabino testified, based on his training and experience with OUI cases, consumption of that amount of alcohol would be likely to result in a blood alcohol level at or above the legal limit (*Rebuttal Testimony of Lt. Carrabino*)

27, 2010. Sgt. Sheehan reported that Mr. Radochia was “walking around holding a red plastic cup for most of two hours . . . shirtless, shoeless, and appearing unconcerned about the gravity of the situation” and “was impaired”. (*Exhs 2B & 8*)

35. At the Commission hearing, Mr. Radochia said he had worked the previous evening until about 1 AM and was sleeping when the fire broke out, thus, explaining his state of dress. He said he holding a cup of water, not alcohol. Mrs. Radochia corroborated this testimony but had no recollection of seeing Sgt. Sheehan at the scene. Given her lapse of memory and motive for self-serving testimony, although plausible, I give limited weight to Mr. Radochia and his mother testimony on this point. (*Testimony of Appellant & Mrs. Radochia*)

36. At the Commission hearing, however, Sgt. Sheehan acknowledged that he did not know what Mr. Radochia was drinking, and did not speak with or have any other direct interaction with Mr. Radochia at the fire scene. He only generally recalled the incident and, despite considerable training and experience with OUI situations, he did not have a clear memory of specific facts that would support statements contained in Lt. Carrabino’s report that Mr. Radochia was intoxicated on June 27, 2010. (*Testimony of Sgt. Sheehan, Appellant and Mrs. Radochia*)

#### The 209A Restraining Order

37. On July 31, 2000, a Complaint for Protection from Abuse (c. 209A) was filed in Somerville District Court by a woman with whom Mr. Radochia had a dating relationship. The complaint asserted that “On or about (dates) a few months ago Feb. Mar, I suffered abuse when the Defendant . . . caused me physical harm” As a result, an ex-parte temporary restraining order issued against Mr. Radochia. (*Exhs. 2B, 6 & 10; Testimony of Lt. Cotter*)

38. No evidence pertaining to the specific facts underlying this complaint or Somerville’s investigation of it was introduced. Lt. Cotter said he had contacted the young woman but could

provide no details of that conversation. The documentation attached to his report was an incomplete record. The information provided by Mr. Radochia about the restraining order in his 2010 application and in his testimony, and that of Mrs. Radochia, was not disputed or impeached. (*Exhs. 9 & 10; Testimony of Appellant, Mrs. Radochia, Lt. Cotter & Lt. Carrabino*)

39. The evidence established that the mother of Mr. Radochia's girlfriend at the time initiated the 209A complaint because she wanted her daughter to stop seeing him and the complaint was dismissed ten days later, on August 9, 2000, when the girlfriend failed to appear in court. He had not recalled the incident when he completed his first SPD application. (*Exh. 10; Testimony of Appellant, Mrs. Radochia & Lt. Carrabino*)

40. Lt. Carrabino chose to make no mention of the 209A temporary restraining order in his report. (*Exh. 2B; Testimony of Lt. Carrabino*)

#### Bypass and PAR.09 Removal Determination

41. By letter dated November 29, 2010, Somerville Mayor Joseph A. Curtatone, the Appointing Authority, wrote to HRD, requesting that Mr. Radochia's name be removed from all existing and future certifications for appointment as a Somerville firefighter or police officer,<sup>5</sup> pursuant to HRD Personnel Administration Rule 09 (PAR.09). The letter cited six factors:

- The July 2000 criminal charge for Assault with a deadly weapon
- The July 2000 c.209A restraining order
- The Navy discharge for Misconduct – Sexual Perversion
- Three rejections for employment by the DOC
- The March 2009 OUI charge
- A Pending April 2010 criminal charge for Leaving the Scene of an Accident

and concluded that “appointment of Radochia to a uniformed public safety position – police or fire – would be detrimental to the public interest. There is a clear pattern, spanning a decade, of

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<sup>5</sup> Mr. Radochia's had appeared on two certifications issued to Somerville in 2010, Certification No. 207184 for appointment as a firefighter which generated the bypass in this appeal and Certification No. 207388 for appointment as a police officer. Mr. Radochia indicated his willingness to accept both appointments. He was never processed for consideration for appointment as a police officer prior to his PAR.09 removal from both certifications.

incidents demonstrating deception, inappropriate conduct, particularly involving women, abuse of alcohol, poor judgment and lack of self-control.” (*Exh. 2A*)

42. The sixth factor cited in Mayor Curtatone’s letter had come to light after completion of Lt. Carrabino’s initial report. The Boston Municipal Court had issued a criminal complaint against Mr. Radochia on or about May 21, 2010, arising from a hit and run accident that occurred a month earlier. At the Commission hearing, the evidence established that the case was dismissed on the Commonwealth’s motion for Nolle Prosequi, after it was determined that Mr. Radochia was not the operator of the vehicle involved in the accident. (*Exh. 7; Testimony of Appellant*)

43. On November 30, 2010, HRD responded to Mayor Curtatone, stating, in material part:

“Please note that under Certification Delegation Process . . . HRD no longer review[s] or approve[s] PAR.09 Removal Information. It is the responsibility of the Appointing Authority to determine if the information found on a candidate . . . warrants removal. Therefore, the [documentation] submitted on Mr. Radoccia are being returned to the City so that the City can document this process and notified [sic] the candidate of this determination.

HRD will remove the candidate at the Appointing Authority’s request under Personnel Administration Rule 09 (PAR 09). Please note that HRD will PAR.09 Removed [sic] Mr. Radochia from both certifications per the statement in your letter dated November 29, 2010.”

(*Exh. 2C*)

44. On March 8, 2011, Somerville Acting Director of Personnel Sarah Koos wrote to Mr. Radochia stating:

“On November 29, 2010, the City of Somerville requested the Human Resources Division (HRD) . . . to have your name removed from Certification Number 207388 and Certification No. 207184, as well as from future lists under the Personnel Administration Rule 09 (PAR.09). (See attached letter of November 29, 2010 request.)

On November 30, 2010 [HRD] approved the Appointing Authority’s request. (See attached letter from HRD) You have been removed from both of the above certifications and will not be considered from these or future certifications for the City of Somerville.

You have a right to appeal this determination by filing your appeal, in writing, within sixty calendar days of receipt of this notice. . . .”

This appeal duly ensued. (*Exh. 2A; Claim of Appeal*)

### Evidence of Disparate Treatment

45. At the Commission hearing, the evidence showed that one of the candidates Somerville hired had an equally, if not worse, criminal record than did Mr. Radochia. This candidate's criminal record, as described in Lt. Carrabino's investigative report, included:

- 9/07/07 - OUI ALCOHOL and REFUSAL TO SUBMIT TO BREATH ALCOHOL TEST and FAILURE TO STOP FOR A STOP SIGN on federal property in Charlestown. The OUI and STOP SIGN were dismissed and a guilty finding was entered on the REFUSAL TO SUBMIT TO BREATH ALCOHOL TEST.
- 12/3/06 – OUI ALCOHOL in Rutland, Vermont. Charge later amended to VEHICLE OPERATION – CARELESS OR NEGLIGENT. Guilty finding and fines paid.
- 8/10/01 - LIQUOR POSSESSION UNDER 21 and FALSE LICENSE and RESISTING ARREST in Medford. CWO with probation and minimum of 15 hours attendance as substance abuse program
- 4/17/00 – ASSAULT & BATTERY DANGEROUS WEAPON and TRESPASSING and RESISTING ARREST at Boston College. ABDW reduced to ASSAULT & BATTERY and found guilty.
- 2/28/00 – MINOR IN POSSESSION OF ALCOHOL. CWO entered with community service ordered. Probation conditions violated twice before case was closed on 3/25/02.
- 11/4/99 - COUNTERFEITING A MOTOR VEHICLE DOCUMENT (LICENSE). CWO entered. Probation violated before case was closed on 5/12/00<sup>6</sup>

The candidate's driving record, as reported by Lt. Carrabino, referenced numerous other infractions, although it is not stated if the candidate was held "responsible" for all of them:

- 2/16/10 – Surchargeable Accident
- 9/25/05 – Surchargeable Accident & Leaving Scene Accident<sup>7</sup>
- 6/15/04 – Unregistered/Improper Equipment
- 2/1/04 – Surchargeable Accident
- 10/25/03 – No Reg/License in Possession
- 9/12/99 – False License/Reg
- 9/5/99 – State Highway Violation & Speeding
- 7/22/99 – Speeding
- 7/18/98 – Speeding

*(Exh. 3B: Testimony of Lt. Carrabino)*

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<sup>6</sup> Lt. Carrabino's report did not include the other candidate's CORI record so it is unknown whether or not any of the probation violations resulted in a surrender or guilty finding.

<sup>7</sup> Lt. Carrabino's report also notes that this incident was not disclosed on the selected candidate's application. His investigation revealed that, according to the police report and witness statements, the candidate had struck a parked car and a building in the North End and fled the scene, only to be caught when he later returned to retrieve his license plate that had "sheared off on impact" during the crash. *(Exh. 3B; Testimony of Lt. Carrabino)*

46. In addition, Lt. Carrabino also stated that “[this candidate] interfered with my investigation” by having one his past employers forward his personnel file to him [the candidate] rather than directly to the investigator and that he was less than truthful in neglecting to list his current employment as a bartender because he “did not want me to know that he worked in a bar, possibly because his criminal history is replete with incidents revolving around alcohol’s use and abuse” and “I was often left wondering what else [the candidate] hadn’t told me.” Lt. Carrabino’s report also quotes from a report by a psychologist who evaluated this candidate in November 2009 and stated: “He also drinks a fair amount of alcohol. This makes him a high risk for potential problems . . . Given this high risk, he is not recommended for appointment as a Full time (sic) firefighter in the Somerville Fire Department at this time.” (*Exh. 3B*)

47. Chief Kelliher calimed that the two situations were different for several reasons: (1) the final decision is up to the Appointing Authority (Mayor) and not police department personnel; (2) everyone has some “baggage”, but this was the candidate’s “second time around” and he had demonstrated since his last application that he “overcame” his prior poor criminal record, which was older in time than Mr. Radochia’s most recent OUI; and (3) the candidate did not have the same blemished military record that implicated Mr. Radochia’s behavior toward women as a risk that Somerville was unwilling to take in hiring a firefighter (or police officer). (*Testimony & Rebuttal Testimony of Chief Kelliher*)

#### Possible Bias or Ulterior Motivation

48. Mr. Radochia did not assert that his non-selection was due to any political factors, or that the selected candidate with a comparable, or worse, record had any “in” with anyone in the City of Somerville. (*Testimony of Appellant*)

49. Chief Kelliher, himself a military veteran, considered being a veteran was “a plus”, as military service prepared a candidate for the “paramilitary” structure of a fire department. Mr. Radochia presented no direct evidence that his veteran’s status – as opposed to his discharge - played any role in why he was not selected. (*Testimony of Chief Kelliher & Appellant*)

50. In support of his explanation for why the circumstances surrounding Mr. Radochia’s military discharge and OUI behavior were especially problematic, both Chief Kelliher and Lt. Carrabino pointed to two concerns that influenced their conclusion that Mr. Radochia posed an unacceptable risk for potential abuse of women and/or alcohol:

- Somerville is a diverse community – with over 50 languages spoken by its inhabitants – many fearful of anyone in uniform. This means that those appointed to serve as SFD firefighters must demonstrate the highest degree of trustworthiness, honesty and respect for others.
- Although the SFD does not run a municipal advanced life support ambulance service, SFD firefighters are “first responders” to every medical emergency. This work represents a majority of the calls to which the SFD responds and frequently calls for “hands on” first aid of injured and vulnerable female patients.

(*Testimony of Chief Kelliher & Lt. Carrabino*)

## **CONCLUSION**

### **Summary of Decision**

This appeal involves the bypass and administrative removal from future consideration of the Appellant for original appointment to a permanent civil service position of firefighter and police officer. Somerville has proved by a preponderance of the evidence that it had reasonable justification to bypass Mr.. Radochia for the position of a SFD firefighter based on some,



although not all of the reasons it provided. Although the PAR.09 removal of Mr. Radochia's name from all existing and future certifications did not comport with the standards for such actions, the eligible list for which such PAR.09 removal was applicable would now have expired. Thus, this error is moot and the Commission need not grant further relief on that ground. Should Mr. Radochia's name appear on any future eligible lists as a result of successfully taking and passing subsequent civil service examinations for firefighter and police officer, his consideration for appointment to such position(s) will be governed by the provisions for by-pass and/or PAR.09 removal under applicable civil service law and rules, consistent with this opinion.

#### Civil Service Law and Rules for Bypass of Candidates

The bypass process is governed by G.L.c.31, Section 27, which provides:

“If an appointing authority makes an original or promotional appointment from certification of any qualified person other than the qualified person whose name appears highest [on the certification], . . . the appointing authority shall immediately file with the administrator [HRD] a written statement of his reasons for appointing the person whose name was not highest. Such an appointment . . . shall be effective only when such statement of reasons has been received by the administrator.”

Rule PAR.08(4) of the Personnel Administration Rules, promulgated by HRD to implement this statutory requirement, provides:

“Upon determining that any candidate on a certification is to be bypassed . . . an appointing authority shall, immediately upon making such determination, send to the Personnel Administrator [HRD], in writing a complete statement . . . that shall indicate all reasons for selection or bypass. . . . No reasons . . . that have not been disclosed to the Personnel Administrator shall later be admissible as reason for selection or bypass in any proceedings before . . . the Civil Service Commission. . . . The certification process will not proceed, and no appointments or promotions will be approved, unless and until the Personnel Administrator approves reasons for selection or bypass.”

These requirements have been judicially construed to mean that that HRD, with Commission oversight, in bypass cases must “review, and not merely formally to receive bypass reasons” and

evaluate them “in accordance with [all] basic merit principles” See McHenry v. Civil Service Comm’n 40 Mass.App.Ct. 632, 635(1995), rev.den., 423 Mass.1106(1996).<sup>8</sup>

Candidates must be considered according to their relative placement on the certification list, which creates a rank ordering based on their scores on the competitive qualifying examination administered by HRD, along with certain statutory preferences. In order to deviate from this paradigm, an appointing authority must show specific reasons, consistent with basic merit principles, that justify picking a lower ranked candidate. G.L.c. 31, §1, §27. See, e.g., Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971), citing Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928); Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991).

Candidates are entitled to be adequately, fairly and equivalently considered. Evidence of undue political influence is one relevant factor, but it is not the only measure of unjustified decision-making by an appointing authority. The Commission has construed its obligation to prohibit the bypass of an appellant when “the reasons offered by the appointing authority were untrue, apply equally to the higher ranking, bypassed candidate, are incapable of substantiation, or are a pretext for other impermissible reasons.” Borelli v. MBTA, 1 MCSR 6 (1988). See Tuohey v. Massachusetts Bay Transp. Auth., 19 MCSR 53 (2006) (“An Appointing Authority must proffer objectively legitimate reasons for the bypass”) See generally, G.L.c.31, §1 (“basic merit principles” mean “recruiting, selecting and advancing of employees on the basis of their

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<sup>8</sup> Beginning in 2009, HRD issued an administrative memorandum, by which HRD “delegated” its authority to review and approve the reasons for bypassing certain candidates for civil service appointments, including most municipal public safety positions, to the Appointing Authorities. As a result, de facto responsibility for compliance with G.L.c.31,§27 has been considered the purview of each Appointing Authority, rather than HRD, with the sole remedy of any aggrieved candidate being his or her right of appeal to the Commission. See HRD Civil Service Unit, Certification Delegation Information Session (Fall 2009); HRD Civil Service Unit, A Certification Handbook, published at [www.mass.gov/hrd](http://www.mass.gov/hrd) The propriety of that procedure is not challenged here. cf. Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 682n.3 (2012) (citing G.L.c.31,§27)

relative ability, knowledge and skills . . . assuring fair treatment of applicants and . . . assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.”)

The task of the Commission hearing a bypass appeal is “to determine . . . whether the appointing authority sustained its burden of proving, by a preponderance of the evidence, that there was reasonable justification for the action taken by the appointing authority. . . . Reasonable justification in this context 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.’ ” E.g., Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006) and cases cited. In performing this function:

“[T]he commission does not view a snapshot of what was before the appointing authority . . . the commission hears evidence and finds facts anew. . . . [after conducting] ‘a hearing de novo upon all material evidence and a decision by the commission upon that evidence and not merely for a review of the previous hearing held before the appointing officer. There is no limitation of the evidence to that which was before the appointing officer’ . . . For the commission, the question is . . . ‘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.’ ”

Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-728 (2003) (affirming Commission’s decision to reject proof of appellant’s failed polygraph test and prior domestic abuse orders and crediting appellant’s exculpatory testimony about that evidence) (*emphasis added*). cf. Town of Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (inconsequential differences in facts found were insufficient to find appointing authority’s justification unreasonable); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997) (same). See generally Villare v. Town of North Reading, 8 MCSR 44, reconsid’d, 8 MCSR 53 (1995) (discussing need for de novo fact finding before a “disinterested” Commissioner in context of procedural due process); Bielawski v. Personnel Admin’r, 422 Mass. 459, 466 (1996) (same)

The “preponderance of the evidence test” requires the Commission to conclude that an appointing authority established, through credible evidence presented to the Commission, that the reasons assigned for the bypass of an appellant were “more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass. App. Ct. 315, 321, 577 N.E.2d 325, 329 (1991); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482, 160 N.E. 427, 430 (1928) (*emphasis added*) The Commission must take account of all credible evidence in the record, including whatever would fairly detract from the weight of any particular supporting evidence. See, e.g., Massachusetts Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass 256, 264-65, 748 N.E.2d 455, 462 (2001)

It is the purview of the hearing officer to determine the credibility of the testimony presented through the witnesses who appear before the Commission. “[T]he assessing of the credibility of witnesses is a preserve of the [commission] upon which a court conducting judicial review treads with great reluctance.” E.g., Leominster v. Stratton, 58 Mass.App.Ct. 726, 729 (2003) See Embers of Salisbury, Inc. v. Alcoholic Beverages Control Comm’n, 401 Mass. 526, 529 (1988); Doherty v. Retirement Bd. Of Medford, 425 Mass. 130, 141 (1997). See also Covell v. Dep’t of Social Services, 439 Mass. 766, 787 (2003); (In cases where live witnesses giving different versions do testify at an agency hearing, a decision relying on an assessment of their relative credibility cannot be made by someone who was not present at the hearing)

#### Administrative Removal of Candidates from Future Certifications

HRD also has been vested with broad authority to establish qualifications for civil service positions. See, e.g., G.L.c.31,§5,16,21,50,58,58A,59 & 61A. HRD has established a separate administrative track by which candidates whose names appear on a civil service certification and/or eligible list, but who fail to meet the established qualifications for the position, may, in

certain situations, be removed from the certification and from the eligible list and any existing or future certifications issued by HRD from that list.

PAR.03(3) provides:

“Failure to prove qualifications established by the administrator [HRD] may be grounds for removal from an eligible list, after an investigation by the administrator which includes prior notice to the applicant and the opportunity to respond.”

HRD has construed this rule to apply to the “most serious” matters “generally of a criminal nature” and requires that the candidate be given an opportunity for a hearing. See HRD Civil Service Unit, Certification Delegation Information Session (Fall 2009); HRD Civil Service Unit, A Certification Handbook, published at [www.mass.gov/hrd](http://www.mass.gov/hrd).

PAR.09(2) provides:

“If an appointing authority concludes the appointment of a person whose name has been certified to it would be detrimental to the public interest, it may submit to the administrator [HRD] a written statement giving in detail the specific reasons substantiating which a conclusion. The administrator shall review each such statement, and if he agrees, he shall remove the name of such person from the certification and shall not again certify the name of such person to such appointing authority for appointment to such position. For the purposes of this section, ‘appointment’ shall include promotions.”

According to HRD’s guidelines, PAR.09(2) removal requests “are carefully reviewed by the Personnel Administrator and are subject to stringent guidelines and constraints. Appointing authorities are advised that such removal should be requested only when substantive documentation exists that such an appointment would be detrimental to the public . . . .” Id.

Justification for Bypassing Appellant for Appointment as a Firefighter

Somerville pointed to six examples of misconduct to support its decision to bypass Mr. Radochia because of a “clear pattern, spanning a decade, of incidents demonstrating deception, inappropriate conduct, particularly involving women, abuse of alcohol, poor judgment and lack of self-control.” The “lynch-pin” of Somerville’s decision was two of these incidents – the Navy

discharge in 2006 for “sexual perversion” and the OUI arrest in March 2009. The evidence presented concerning each of these two factors, standing alone, or in combination, are sufficient to meet Somerville’s burden of proof to show “reasonable justification” for declining to appoint Mr. Radochia to the position of an SFD firefighter.

As to the Navy discharge, Somerville is “reasonably justified” to rely on a prior employment record obtained from third-party sources, that showed Mr. Radochia was given a General (not Honorable) discharge from the Navy, after a finding that he had committed serious misconduct that the Navy characterized as “sexual perversion” so long as Somerville made an impartial and reasonably thorough independent review. See City of Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 189 (2010). There must be a “credible basis for the allegations” that present a “legitimate doubt” about a candidate’s suitability, but the appointing authority is not required “to prove to the commission’s satisfaction that the applicant in fact engaged in the serious alleged misconduct. . . .” Id., 78 Mass.App.Ct. at 189-90. Especially when it comes to hiring an applicant for a sensitive public safety position, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was ‘reasonable justification’ shown . . . . Absent proof that the [appointing authority] acted unreasonably . . . the commission is bound to defer to the [appointing authority’s] exercise of its judgment” that “it was unwilling to bear the risk” of hiring the candidate for such a sensitive position. Id., 78 Mass.App.Ct. at 190-91. See also Town of Reading v. Civil Service Comm’n, 78 Mass.App.Ct. 1106 (2010) (Rule 1:28 opinion); Burlington v. McCarthy, 60 Mass.App.Ct. 914 (2004) (rescript opinion); City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305 (1997).

Mr. Radochia has correctly proved that Somerville did not have all of the available records of the Navy incident at the time of its decision. There is also some validity to the contention that

Mr. Radoccia's punishment could be considered unusually severe. The fact remains, however, that while Somerville's investigation of the matter was not perfect, it was reasonably thorough. The discipline meted out was the product of a multi-layer administrative review process that resulted in a decision (ultimately endorsed by the Secretary of the Navy) that Mr. Radochia had crossed the line of decency expected of him as a member of the uniformed armed services. His conduct demonstrated, to be generous to him, a lack of respect for a sexual partner that brought disgrace upon the Navy sufficient to warrant his separation from the service. Somerville's duty of independent review did not oblige it to parse the underlying facts to the degree necessary to re-evaluate that decision on the merits. It sufficed that Somerville took reasonably thorough steps to determine that the decision had a rational basis in reliable facts.

These circumstances distinguish this situation from the case of Hamilton v. Boston Police Dep't, 11 MCSR 16 (1998), cited by Mr. Radochia, in which a Marine officer, who had received an Honorable Discharge, was bypassed based on information found in a military document which referred to an "investigation to inquire into alleged fraternization and adultery with a junior enlisted Marine." No reference to this charge appeared in the candidate's official military record and no investigation into the situation was made by the Appointing Authority. The evidence at the Commission hearing demonstrated that the charges mentioned in the document were unfounded and the Appointing Authority admitted that, had it known the actual facts, there was a strong possibility that it would not have bypassed the candidate. Id.

Reliance on the OUI incident was also reasonably justified. Somerville was entitled to rely on the well-documented report prepared by the arresting officer, who had direct, percipient knowledge of the facts, and the corroborating facts established through Lt. Carrabino's investigation as well as his personal knowledge and the personal knowledge of Chief Kelliher.

Mr. Radochia's subsequent acquittal on legal technicalities involving the suppression of evidence in a criminal case) does not make the facts established in the report necessarily less reliable See, e.g., Boston v. Boston Police Patrolman's Ass'n, 443 Mass. 813, 820 (2005) ("it is the felonious misconduct, not a conviction of it, that is determinative"). See also Boston Police Dep't v. Suppa, 79 Mass.App.Ct. 1121 (2011) (Rule 1:28 decision) and cases cited.

The incident, as described by the arresting officer's report, portrayed an egregious episode of substandard behavior that appears reasonably related to the ability to perform the job of firefighter. To be sure, this one occasion was an isolated episode in an otherwise decent driving record, which includes nearly ten years of commercial driving history with the Boston Globe without incident. Nevertheless, the fact that the incident had occurred so close in time to the application process, as well as the fact that Mr. Radochia was unable to persuade Somerville (and this Commissioner) that he fully acknowledged his culpability, provides sufficient justification for the conclusion that, at the time of this bypass, Mr. Radochia was not then suitable for appointment to the SFD.

The remaining examples of Mr. Radochia's disqualifying behavior do not support bypassing him. The 2000 paint ball gun "assault with a deadly weapon" was clearly an isolated incident and there was no evidence to support any lingering risk of violent behavior of that nature. Chief Kelliher acknowledged that this juvenile episode carried little weight with him.

The July 2000 c.209A complaint, as well as the April 2010 criminal charges (unlike the Navy discharge) had not been even minimally investigated. On its face, the c.209A complaint alleged no more than unspecified physical abuse that occurred in an vaguely defined two month window of time six months in the past, and was dismissed ten days later when no one appeared in court to present specific evidence in support of the charges. Lt. Carrabino said he made contact with the



complainant, but he never documented that interview. He made makes no mention of the incident in his investigative report. Similarly, the April 2010 charges for leaving the scene of an accident turned out to be unfounded and were promptly dropped.<sup>9</sup>

Similarly, Somerville was not reasonably justified to rely on the fact that Mr. Radochia had been bypassed by the DOC on multiple occasions, without having made a sufficient independent investigation of the circumstance for those decisions. Indeed, the Commission has recently decided that the DOC's vaguely worded form of bypass letter is insufficient notice, as a matter of law, to inform even an applicant as to the actual reasons for bypass. See Manca v. Department of Correction, CSC Case No. G1-12-35, 25 MCSR ---- (2012),

In sum, although some of the grounds asserted for bypassing Mr. Radochia were unfounded or unjustified, the two instances of his prior misconduct stand as sufficient grounds that reasonably justify his bypass for appointment to the position of SFD firefighter in March 2011. There was no proof that the decision was tainted by improper political influence, bias or was arbitrary and capricious.

#### PAR.09 Removal

The request to remove Mr. Radochia from all other existing and future certifications stands on a different footing. This action was both substantively and procedurally flawed under applicable civil service law and rules. The eligible lists from which such certifications would have been issued has now expired (having a two-year life under G.L.c.31,§25), however, and the matter is now moot and does not require that the Commission consider further whether it would

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<sup>9</sup> Somerville's bypass letter did not specifically mention Mr. Radochia's alleged drunken behavior at the June 2010 fire scene as informally reported to Lt. Carrabino by Sgt. Sheehan, but, to the extent Somerville's decision relied on that incident, such reliance was also misplaced. Sgt. Sheehan did not have sufficient percipient knowledge to draw any inference about Mr. Radochia's alleged state of intoxication, and the evidence presented to the Commission established that his conclusion was mere speculation. At a minimum, Mr. Radochia's explanation, which could have been corroborated by other percipient witnesses, including his police officer brother, warranted further inquiry.

be warranted to grant further relief in this case. The issues raised in this case, however, have important implications for any future consideration of applications for civil service appointments in the future, both Mr. Radochia's and others. Thus, it behooves the Commission to express its view of the appropriate standards and procedures that apply to the process of a PAR.09 removal.

First, as a matter of procedure, the circumstances presented here suggest that there remains some uncertainty within the civil service community as to whether, under the current system of "delegation" of certain responsibility previously exercised by HRD in the hiring of civil service employees, the decision to review and approve the decision to "PAR.09 remove" a candidate rests with HRD or the Appointing Authority. In particular, it appears that HRD had advised Somerville on November 30, 2010, that such a decision was up to Somerville. This advice, however, seems inconsistent with HRD's own rules and written guidelines. PAR.09 expressly prescribes that the "administrator" [defined as the Personnel Administrator of the Human Resources Division] is responsible to review such requests and "if he agrees, he" shall remove the name of such person from the certification and "shall not again certify the name of such person to such appointing authority." Since HRD is responsible for maintaining eligible lists and, even under "delegation", issues certifications for original appointments to municipal public safety positions, it seems implicit that the review and approval of any PAR.09 removal must be made through HRD. This has always been the Commission's understanding of HRD's intent.

If it were HRD's intent to allow Appointing Authorities to make the decision to "PAR.09 remove" a candidate from all future certifications in the manner followed in this case, that would raise serious due process concerns. As indicated by the facts of this case, Mr. Radochia was "PAR.09 removed" from all existing and future certifications as of November 30, 2010, but received no notice of that fact until March 2011, more than three months later, after his

Appointing Authority had completed the pending hiring process and notified him that he had not been chosen. Meanwhile, unbeknownst to him, he was given no opportunity for consideration for appointment as to any then pending or future certifications and no right of appeal. Surely, more is required.

In order to be consistent with existing civil service law and rules, no PAR.09 removal should be approved without prior review and approval by HRD, and immediate notice to the candidate by HRD, which will afford the candidate an opportunity to take an immediate appeal pursuant to G.Lc.31,§2(b). Without such recourse, the civil service rights of a candidate whose name appears on an eligible list can be prejudiced without his or her knowledge. This should not be onerous, as HRD already provides for prior notice and opportunity for hearing in the case of a PAR.03 removal. See HRD Civil Service Unit, Certification Delegation Information Session (Fall 2009); HRD Civil Service Unit, A Certification Handbook, published at [www.mass.gov/hrd](http://www.mass.gov/hrd)

Second, on substantive grounds, the distinction between a bypass decision and a “PAR.09 removal” decision must be preserved. The former requires “reasonable justification” – either positive or negative reasons, or both – for selecting a lower ranked candidate on a particular certification after full consideration and comparison of the relative credentials of all the candidates willing to accept the particular appointment, as to which the bypassed candidate must be given the reasons and has the right of appeal to the Commission. The standards by which a bypass decision is made are prescribed by civil service law and well-developed in the case law, as described above.

A PAR.09 removal, however, is a creature of administrative rule and has received little, if any judicial construction. It involves a unilateral decision, made in the abstract, based on purely negative assessments, that cause the name of a candidate who has taken and passed a civil

service examination from being given any consideration at all for as long as the eligible list remains in effect, which may be two years, and, possibly longer. HRD guidelines dictate that such removal is subject to “stringent guidelines and constraints.” Thus, the PAR.09 removal process appears to be meant to apply only in exceptional circumstances -- e.g., felony convictions which are statutory disqualifiers for police officer candidates -- and is not intended to serve as a routine substitute for the established statutory process for bypassing a candidate in the next hiring cycle for the same legitimate, but judgmental, reasons established in the prior cycle, after due inquiry to confirm that there was no material change in the relevant circumstances.

The present case illustrates the distinction that needs to be maintained. Somerville met its burden to establish reasonable justification for selecting candidates (most of them stellar) ranked lower than Mr. Radochia on the firefighter certification. While one of the candidates had a similar, if not worse, dossier than Mr. Radochia, Somerville proffered that its decision to hire that other candidate was not based on ulterior motives but rather, a perceived, good-faith belief that the candidate had overcome his past difficulties. Yet, the very reason that Somerville offers as to why hiring this other candidate does not negate the reasonable justification for bypassing Mr. Radochia on one singular occasion, demonstrates why it would be improper to unilaterally “PAR.09 remove” Mr. Radochia from all future consideration. Specifically, Somerville hired this other candidate “the second time around”, despite that candidate’s atrocious driving record (three surchargeable accidents, most recently in 2010 and other offenses including carrying a fraudulent license), multiple criminal offenses (several OUIs, counterfeiting, among others), a psychologist’s 2009 negative recommendation, and various omission and deceptions during the 2010 hiring process). By accepting that such a candidate got beyond this baggage, Somerville leaves no room to argue that Mr. Radochia, now many years after his mishaps in the Navy and in

Medford, would be unable to present a case for his own rehabilitation as some later date. While Mr. Radochia's demeanor at the Commission hearing might suggest he still has a way to go to convince an Appointing Authority that he has overcome his past mistakes (which starts by taking responsibility), he is entitled to that opportunity, especially given the standards for rehabilitation that Somerville has applied to others.

For all of the above reasons, the bypass appeal of the Appellant, David L. Radochia, Jr., is hereby *dismissed*. The PAR.09 appeal of the Appellant, David L. Radochia, Jr., is hereby *dismissed as moot*.

Civil Service Commission

Paul M. Stein  
Commissioner

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman Marquis, McDowell and Stein Commissioners on November 29, 2012.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in the 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 a Civil Service Commission's final decision.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

Edward G. Seabury, Esq.[for Appellant]

Robert V. Collins, Esq. [for Respondent]

John Marra, Esq. [HRD]