

COMMONWEALTH OF MASSACHUSETTS

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

MIGUEL A. RODRIGUEZ III,
Appellant

v.

G1-21-133

CITY OF LAWRENCE,
Respondent

Appearance for Appellant:

Pro Se
Miguel A. Rodriguez III

Appearance for Respondent:

Eric T. McKenna, Esq.
Valerio Dominello & Hillman LLC
One University Avenue, Suite 300B
Westwood, MA 02090

Commissioner:

Christopher C. Bowman

DECISION ON RESPONDENT’S MOTION FOR SUMMARY DECISION

On July 25, 2021, the Appellant, Miguel A. Rodriguez III (Appellant), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Lawrence (City) to bypass him for appointment to the position of permanent, full-time police officer in the City’s Police Department.

On August 31, 2021, I held a remote pre-hearing conference which was attended by the Appellant and counsel for the City. As part of the pre-hearing conference, the parties stipulated to the following:

- A. On March 23, 2019, the Appellant took and passed the civil service examination for police officer, receiving a score of 88.

- B. On September 1, 2019, the state's Human Resources Division (HRD), established an eligible list for police officer.
- C. On July 14, 2020, HRD sent Certification No. 07226 to the City from which the City ultimately appointed ten candidates, five of whom were ranked below the Appellant.
- D. On September 2, 2020, the City notified HRD of the proposed reason for bypassing the Appellant: the Appellant's failure to establish that he met the requirements for the residency preference in Lawrence.
- E. On May 28, 2021, HRD notified the Appellant (and the City) that the reason for bypass was approved.
- F. On July 25, 2021, the Appellant filed a timely appeal with the Commission.

In order to qualify for the residency preference as part of this examination process, applicants must have continuously resided in the community in which they seek preference (i.e. – Lawrence) for one year prior to the date of the examination. Applied here, the Appellant must be able to show that he continuously resided in Lawrence from March 23, 2018 to March 23, 2019.

According to the Appellant, he graduated from Lawrence High School in 2012, spent approximately two years in Arizona related to college football and then spent some time residing in Rhode Island while attending college, before returning to live at his mother's home in Lawrence in 2015. The Appellant acknowledges that his mother moved to Worcester in September 2018 with assistance from the Housing Choice Voucher Program, a program with income-based caps tied to the size of the household. The Appellant also acknowledges that his name was listed on the lease for the Worcester apartment as a member of the household, effective September 2018, within the window that the Appellant was required to have resided in Lawrence in order to qualify for the residency preference. The Appellant stated that, from March

23, 2018 to March 23, 2019, he was first residing with his mother, then with friends and family, including his grandfather, all of whom, according to the Appellant, reside in Lawrence. The City was not able to identify any documents showing that the Appellant continuously resided in Lawrence during this one-year time period.

As part of the pre-hearing memorandum submitted to the Commission, the City suggested that, even if the Appellant were able to produce verification that he resided in Lawrence during the applicable one-year period, that would raise the issue of whether the Appellant provided inaccurate information to the State in regard to the Worcester apartment.

For all of the above reasons, I provided the City with 30 days to file a Motion for Summary Decision, in which it could argue that, based on the undisputed facts and/or viewing the facts most favorably to the Appellant, the Appellant has no reasonable expectation of prevailing in his appeal. The Appellant was provided with 30 days thereafter to file a reply, arguing why the appeal should not be dismissed without a full hearing, identifying the disputed facts that would need to be resolved, and listing the proposed exhibits and/or testimony that, according to the Appellant, would resolve those disputed facts in his favor. The City filed a Motion for Summary Decision on September 29, 2021 and the Appellant did not submit any reply or opposition.

Legal Standard for Summary Disposition

An appeal may be disposed of on summary disposition when, “viewing the evidence in the light most favorable to the non-moving party”, the undisputed material facts affirmatively demonstrate that the non-moving party has “no reasonable expectation” of prevailing on at least one “essential element of the case”. See, e.g., Milliken & Co., v. Duro Textiles LLC, 451 Mass. 547, 550 n.6, (2008); Maimonides School v. Coles, 71 Mass. App. Ct. 240, 249 (2008); Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005).

Analysis / Conclusion

At a minimum, the undisputed facts here show that, during part of the one-year period in which the Appellant was required to have resided continuously in Lawrence to qualify for Lawrence residency preference, he had signed a lease stating that he resided in Worcester. The Commission and the Courts have held that an Appellant “can’t have it both ways” and claim residency in two different communities when it is advantageous to him. See Town of Shrewsbury v. Civ. Serv. Comm’n, Worcester Sup. Ct. No. 2008-02124 (2009); Gould v. City of Boston, 27 MCSR 352 (2014). For this reason, and for the uncontested reasons stated in the City’s brief, the City’s Motion for Summary Decision is allowed and the Appellant’s appeal under Docket No. G1-21-133 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Stein and Tivnan, Commissioners [Ittleman – Absent]) on December 2, 2021.

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

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

Notice:

Miguel A. Rodriguez III (Appellant)
Eric T. McKenna, Esq. (for Respondent)