

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

**One Ashburton Place – Room 503  
Boston, MA 02108**

**EVERETT ROSA,**  
*Appellant*

**CASE NO. G1-20-073**

v.

**CITY OF NEW BEDFORD,**  
*Respondent*

Appearance for Appellant:

Everett Rosa, Pro Se

Appearance for Respondent:

Elizabeth Treadup Pio, Associate City Solicitor  
Office of the City Solicitor, Room 203  
City of New Bedford  
133 William Street, New Bedford, MA 02740

Commissioner:

Paul M. Stein

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

The Appellant, Everett Rosa, appealed to the Civil Service Commission (Commission), purporting to act pursuant to G.L.c.31,§2(b) & §27, to contest his non-selection by the Respondent, City of New Bedford (New Bedford) for appointment to the position of Police Officer with the New Bedford Police Department (NBFD). Following the pre-hearing conference May 22, 2020 (held via Webex Video Conference), New Bedford filed a Motion to Dismiss the appeal for lack of jurisdiction on the grounds that the Appellant's non-selection was not a bypass.

**FINDINGS OF FACT**

Based on the submissions of the parties, I find the following material facts are not disputed:

1. The Appellant, Everett Rosa, took and passed the civil service examination for municipal police officer administered on March 23, 2019 by the Massachusetts Human Resources Division (HRD). His name was placed on the eligible list established on September 1, 2019.  
*(Administrative Notice [HRD Letter on File]; Stipulated Facts)*

2. On September 4, 2019, HRD issued Certification #06566 to New Bedford for appointment of new permanent full-time NBFD Police Officers. Mr. Rosa's name was listed on the Certification in the 30<sup>th</sup> position, tied with two other candidates. Eventually, New Bedford made approximately 13 appointments from the Certification, but no candidates in the 30<sup>th</sup> tie group or below were appointed. (*Administrative Notice [HRD Letter on File]; New Bedford E-mail 5/26/2020; Stipulated Facts*)

3. By letter dated March 3, 2020, sent by certified mail, New Bedford informed Mr. Rosa that he had been "bypassed". (*Claim of Appeal*)

4. On April 17, 2020, Mr. Rosa filed this appeal. (*Claim of Appeal*)

#### **APPLICABLE LEGAL STANDARD**

A motion to dismiss an appeal before the Commission, in whole or in part, may be filed pursuant to 801 C.M.R. 1.01(7)(h). These motions are decided under the well-recognized standards for summary disposition as a matter of law, i.e., "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**

The undisputed facts, viewed in a light most favorable to Mr. Rosa, establish that New Bedford's letter dated March 3, 2020 erroneously stated that he was "bypassed" for appointment, when, in fact, he was not bypassed within the meaning of G.L.c.31,§2(b) & G.L.c.31, §27. In particular, a non-selected candidate may appeal to the Commission only when his or her name appears "high[e]r" than one or more candidates who were appointed and, in this regard,

appointment of a candidate in one tie group is not the appointment of a higher ranked candidate. See, e.g., Damas v. Boston Police Dep't, 29 MCSR 550 (2016); Servello v. Department of Correction, 28 MCSR 252 (2015). See also PERSONNEL ADMINISTRATION RULES, PAR.02. Mr. Rosa believed that, since he received a letter stating that he was bypassed, his non-selection must have been a bypass. However, the erroneous characterization of his non-selection in the March 3, 2020 letter cannot alter the statutory requirements for bypass appeals to the Commission. Thus, as no candidates ranked below him on the certification were selected, Mr. Rosa's appeal must be dismissed for lack of jurisdiction.

### **CONCLUSION**

In sum, for the reasons stated herein, the Motion to Dismiss is hereby ***granted*** and the appeal of the Appellant, Everett Rosa, CSC No. G1-20-073, is ***dismissed***.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on June 18, 2020.

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

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

Notice:

Everett Rosa (Appellant)  
Elizabeth Treadup Pio., Esq. (for Respondent)  
Alexis N. Demirjian, Esq. (for HRD)  
Regina Caggiano (HRD)