

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 02108  
(617) 727-2293

**DAVID SANCHEZ,**  
*Appellant*  
v.

**Case No.: E-11-261**

**HUMAN RESOURCES  
DIVISION,**  
*Respondent*

**ORDER OF DISMISSAL**

On August 19, 2011, the Appellant filed an appeal with the Civil Service Commission (Commission). His appeal effectively states that due to an action or inaction by the state's Human Resources Division (HRD), he was not granted reconsideration for the position of police officer, which he believes he was entitled to pursuant to Bradley et. al v. City of Lynn et al, No. 05-10213-PBS (2007).

A pre-hearing conference was held on September 13, 2011 and a status conference was held on October 18, 2011 at which time I heard oral argument from the Appellant and counsel for HRD. HRD subsequently filed a Motion for Summary Decision and the Appellant filed an opposition.

For all of the reasons stated in HRD's Motion for Summary Decision, incorporated herein, the Appellant's appeal under Docket No. E-11-261 is hereby *dismissed*.

Civil Service Commission



Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on April 19, 2012.

A True Record. Attest:

\_\_\_\_\_  
Commissioner

Attachment: HRD's Motion for Summary Decision

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)(1), 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.

Notice to:

David Sanchez (Appellant)

Tsuyoshi Fukuda, Esq. (for HRD)

John Marra, Esq. (HRD)

COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION

SANCHEZ, DAVID  
Appellant

v.

HUMAN RESOURCES DIVISION  
Respondent

Case No. E-11-261

**RESPONDENT, HUMAN RESOURCES DIVISION'S**  
**MOTION FOR SUMMARY DECISION**

Now comes the Human Resources Division ("HRD") and respectfully moves this Honorable Commission to grant HRD's Motion for Summary Decision of the underlying Appeal.

**I. FACTS**

1. The Human Resources Division conducted and administered the 2003 Police Office Entry Level Examination on April 26, 2003. (Exhibit A)
2. At some point prior to April 26, 2003, the Appellant, David Sanchez ("Mr. Sanchez" or "Appellant"), filled out an application for the 2003 Police Officer Examination. (Exhibit B)
3. When Mr. Sanchez applied for the 2003 Police Officer Examination, he claimed Cambridge as his residency preference. (Exhibit A)
4. Mr. Sanchez was never a Cambridge resident and admitted at the Pre-hearing conference that he was a lifelong resident of the City of Boston.
5. The Appellant identified himself as "Hispanic" in the application for the 2003 examination. (Exhibit B)
6. After taking the 2003 exam, Mr. Sanchez was not hired off any certifications issued based on the results of the April 2003 Police Officer Examination.

7. In May 2007, the Commission issued a decision in Bradley v. City of Lynn, wherein the Commission applied a remedial order in regard to the 2003 and 2005 police officer examinations. See Bradley v. City of Lynn, No. 05-10213, at 1, May 21, 2007. Ultimately, a Settlement Agreement was reached between the parties. (Exhibit C)
8. The Bradley decision pertains to individuals who took the 2003 and/or 2005 police officer examinations, and allowed qualified aggrieved individuals a reconsideration for appointment. See id. The court in Bradley found that a number of minority candidates in each of the listed municipalities would have been reached for consideration had the 2003 and 2005 examinations not had an adverse impact. In Bradley, the court utilized a "shortfall methodology" to determine the "numbers of shortfall minorities thereby identified for police officer or fire fighter positions . . . ." Id.
9. The only civil service examination the Appellant took that is relevant to the Bradley matter was the 2003 police officer examination. (Exhibit D)
10. The results of the shortfall methodology as described in the Settlement Agreement is as follows:

	<b>Fire Shortfall</b>	<b>Police Shortfall</b>
Ashland		1
Bedford		1
Belmont	1	
Beverly		1
Boston	8	18
Brookline	4	4
Cambridge		6
Everett	1	
Fall River		1
Leominster	1	
Lynn	2	4
New Bedford	1	
North Adams		1
North Andover		1
Quincy		1
Revere	1	1
Sharon		1
Southbridge		1
Taunton	2	
Waltham		3
<b>TOTAL</b>	21	45

(Exhibit C)

11. For Boston in particular, the shortfall methodology resulted only in a shortfall of "Black" candidates, and the settlement agreement specifically stated that "in light of [Boston]'s significant use of so-called PAR8 lists, . . . HRD will require so-called shortfall hiring of six *Black* candidates in each of the next three recruit classes." (Emphasis added) (Paragraph 2 - Exhibit C)
12. Pursuant to the Bradley decision in 2007, the Civil Service Unit identified all individuals who took the 2003 and/or 2005 examinations who were entitled to a reconsideration, and created court ordered certifications ("CTO") whenever any of the afore-listed Bradley communities made a requisition for new hires. The CTO certifications were based on the requisitions and trumped the reemployment list.
13. Because Mr. Sanchez identified himself as having a Cambridge residency preference on his application, he was placed on the Cambridge resident CTO certification, Cert. # 800080. (Exhibit E)
14. Upon learning that Cambridge would not consider him for appointment based on his Boston residency, the Appellant voluntarily submitted to the City of Cambridge a hand-written statement stating: "I David Sanchez want to withdraw from the Cambridge Police Department waiting list or hiring list because I'm not a Cambridge resident." (Exhibit F)

## II. RELIEF SOUGHT

Mr. Sanchez filed an appeal to the Civil Service Commission on August 19, 2011 claiming he was not notified of the Bradley settlement, and was wrongfully refused employment. The Appellant believes that he is entitled to relief under the Bradley decision because he took the 2003 police officer examination, and he identified himself as a minority. Accordingly, Mr. Sanchez believes that he should be placed on the next certification for candidates for the position of Boston police officer. The Appellant appeals to the Commission for 310 relief pursuant to Chapter 310 of the Acts of 1993.

HRD respectfully requests that the Commission dismiss this appeal because Mr. Sanchez's employment status has not been harmed through no fault of his own, and thus he is not entitled to 310 relief. Chapter 310 of the Acts of 1993 provides that "[i]f the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made

thereunder have been prejudiced *through no fault of his own*, the civil service commission may take such action as will restore or protect such rights . . . .” (Emphasis added.) Moreover, even had the Appellant properly identified himself as a Boston resident, the Bradley decision only entitled a certain number of Black candidates relief. Because the Appellant identified himself as Hispanic, he would not have been placed on a Boston court ordered certification.

### III. STANDARD OF REVIEW

The party moving for summary disposition of an appeal before the Commission pursuant to 801 CMR 7.00(7)(g)(3) or (h) is entitled to dismissal as a matter of law if the moving party has presented sufficiently credible evidence that the appellant cannot reasonably expect to prevail on at least one essential complaint. See, e.g., Lydon v. Massachusetts Parole Board, 18 MCSR 216 (2005), Milliken & Co. v. Duro Textiles LLC, 451 Mass. 547, 550 n.6 (2008). All the evidence must be reviewed in the light most favorable to the non-moving party. See id. The Respondent’s motion to dismiss must avail if the Appellant has failed “to raise above the speculative level sufficient facts plausibly suggesting that the Appellant is aggrieved by any action or failure to act by HRD that violates any Civil Service law or rules.” Monzon v. Human Resources Division, 22 MCSR 693 (2009), citing Iannacchino v. Ford Motor Company, 451 Mass. 623, 635-36 (2008).

### IV. ARGUMENT

It is the purview of the Human Resources Division to conduct and administer civil service examinations. See M.G.L. c. 31, § 5(e). In order to successfully challenge a “decision, action or failure to act” by the Personnel Administrator, an appellant must specifically allege that the decision, action, or failure to act was in violation of Chapter 31, basic merit principles espoused thereunder, and must also maintain that such allegations demonstrate that the appellant’s rights

were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person's employment status. See M.G.L. c. 31, § 2(b), Monzon, 22 MCSR at 695. Further, in order for the Commission to grant relief to an Appellant under Chapter 310 of the Acts of 1993, the Appellant must show that his employment status was harmed through no fault of his own. Galgay v. Human Resources Division, 22 MCSR 181 (2009).

**A. THE APPELLANT IS NOT ENTITLED TO 310 RELIEF BECAUSE THE ALLEGED PREJUDICE EXPERIENCED BY HIM AROSE FROM HIS OWN ERROR.**

The sole reason Mr. Sanchez was placed on the Cambridge CTO was because he purposefully indicated that he was a Cambridge resident, and claimed a residency preference in the City of Cambridge. After realizing that the City of Cambridge was not going to consider him for appointment, the Appellant voluntarily removed himself from consideration. The Appellant acknowledges that he was never a Cambridge resident, and that he has always resided in Boston.<sup>1</sup> Accordingly, Mr. Sanchez does not qualify for 310 relief. Chapter 310 provides,

[i]f the rights of any person acquired under the provisions of chapter thirty-one of the General Laws or under any rule made thereunder have been prejudiced *through no fault of his own*, the civil service commission may take such action as will restore or protect such rights, notwithstanding the failure of any person to comply with any requirement of said chapter thirty-one or any such rule as a condition precedent to the restoration or protection of such rights.

(Emphasis added.) Also, even if the Commission believed that the Appellant was entitled to some relief, the relief sought here—to be placed on a certification for Boston Police Officer at or near the top of the eligible list—would not be appropriate. See Giacalone v. City of Gloucester and HRD, 21 MCSR 460, 463 (2008) (holding that 310 relief was not appropriate where the appointment process had, at the time the Appellant filed his claim, proceeded beyond the point of

---

<sup>1</sup> The Appellant argues that had he not voluntarily withdrawn from consideration that he would have been reached for consideration. This is simply untrue. Per the CTO, only those with a valid City of Cambridge residency preference were considered. There were enough Cambridge residents who took the 2003 examination with a valid residency preference. Therefore, Cambridge did not have to consider any non-residents, and the Appellant's named would not have been reached in Cambridge under Bradley even if he had listed as a non-resident.

establishing an eligible list, and therefore the rights of the individuals already appointed outweighed those of the individual Appellant in the matter). And in Giacalone, as opposed to here, the Commission found that the situation the Appellant found himself in did not arise from his own fault. See id. It was only upon the realization that the Appellant there was entitled to *some* relief that the Commission decided 310 relief was appropriate and justified. See id. That is not the situation in the instant matter. The Appellant here admits the fault as his own, and where the statute explicitly secures relief only to an individual who “ha[s] been prejudiced through no fault of his own . . .,” no relief should be granted where the prejudice experienced by the Appellant was caused solely by his own error.

Here, because the Complainant openly acknowledges that the error was his own mistake; he is not entitled to relief—the entire course of events that unfolded after Mr. Sanchez was placed on the certification list for the Cambridge Police Department in light of the court order resulting from the Bradley settlement can be traced directly back to Mr. Sanchez’s own mistake. There was no clerical or administrative error; Mr. Sanchez wasn’t mistakenly placed on the certification list for consideration by the CPD because of some oversight or mistake by HRD or Cambridge—the only reason he was on the Cambridge certification in the first instance was because he consciously and incorrectly submitted that he was a resident of Cambridge when he applied to take the 2003 examination.

**B. THE APPELLANT IS NOT ENTITLED TO THE RELIEF SOUGHT BECAUSE EVEN IF HE HAD LISTED BOSTON AS HIS RESIDENCY PREFERENCE, HE WOULD NEVER HAVE BEEN PLACED ON A COURT-ORDERED CERTIFICATION PURSUANT TO BRADLEY.**

Mr. Sanchez is not entitled to relief because he never would have been placed on a court-ordered certification list for the BPD based on the outcome of the Bradley settlement. Specifically, the terms of the Bradley settlement agreement stated, in relevant part:



[w]ith respect to the shortfall of 18 shown above for the City of Boston Police Department based on hirings to date from the 2003 and 2005 examinations, in light of the City's significant use of so-called PAR8 lists, the Commonwealth's Human Resources Division (HRD) will require so-called shortfall hiring of six *Black* candidates in each of the next three recruit classes.

(Emphasis added.) Bradley, 1:05-cv-10213, at 2. Boston was unique among the other municipalities listed in the shortfall calculations. Boston is the only municipality where the settlement agreement expressly requires the hiring of individuals identified as a particular minority—Black. See id.

The shortfall methodology utilized in the settlement agreement was implemented in order to remedy any adverse impact minority candidates experienced as a result of the 2003 examination. To summarize the methodology, it allowed HRD to identify the number of minority candidates in each municipality who would likely have been certified as eligible for hiring based on the results of the 2003 and 2005 examinations, had those examinations not had an adverse impact. Boston, however, was considered separately in the Bradley settlement because of their significant use of PAR8. Therefore, the methodology purposefully set Boston aside, and determined that for purposes of the settlement agreement, only candidates who identified themselves as “Black” would be considered for placement on any Boston Police Department requisitions for certification. Mr. Sanchez listed and represented himself as “Hispanic” on the 2003 exam. So, even had Mr. Sanchez indicated that he was a Boston resident for purposes of the 2003 exam, he would not have been placed on the CTO certification for the BPD.

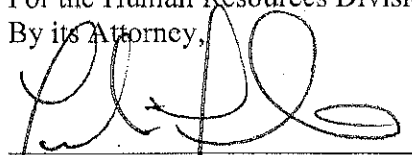
Mr. Sanchez was not eligible, under the Bradley settlement agreement, for placement on a court-ordered certification in Boston. He did take the 2003 examination, he is a minority, but he is not the minority specifically delineated in the terms of the settlement agreement. The only

reason Mr. Sanchez, incorrectly, believes he is entitled to relief is because he erroneously listed his residency as Cambridge for the 2003 examination, and was placed on a court-ordered certification. Had he correctly identified his place of residency as Boston, he still would not have been contacted for consideration in Boston, pursuant to the Bradley settlement.

**V. CONCLUSION**

Based on a review and analysis of the relevant facts, Mr. Sanchez is not entitled to 310 relief because the mistake that led to his initial placement on a court-ordered certification for police officer in the City of Cambridge was entirely his own fault. Therefore, the Appellant's argument—that HRD is the party responsible for the failure of either Boston or Cambridge to consider him for appointment—is wholly unpersuasive. Additionally, the Appellant mistakenly believes he is entitled to some sort of relief pursuant to the Bradley settlement; even had he correctly listed Boston as his place of residence, he still would not have been placed on a certification for the position of police officer with the BPD based on his race—Hispanic. Because he erroneously listed Cambridge as his residency preference, the Appellant is not entitled to appointment there for failure to meet residency requirements. Accordingly, the Human Resources Division respectfully asks the Commission to dismiss the present appeal.

Respectfully Submitted  
For the Human Resources Division  
By its Attorney,

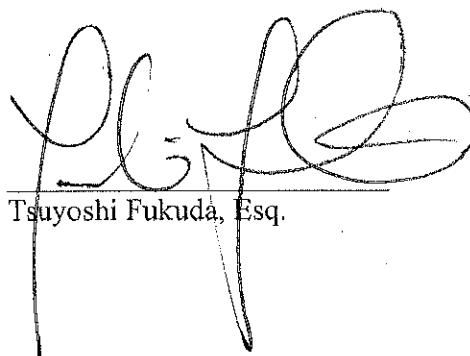


Tsuyoshi Fukuda  
Human Resources Division  
One Ashburton Place  
Boston, MA 02108  
(617) 878-9785

**CERTIFICATE OF SERVICE**

The undersigned represents that a copy of this MOTION FOR SUMMARY DECISION  
has been served upon the following via first class mail, postage prepaid and via e-mail on  
November 18, 2011:

David Sanchez  
52 Erie Street  
Dorchester, MA 02121  
davesboston@hotmail.com



Tsuyoshi Fukuda, Esq.