

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS

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

JULIO SANCHEZ,  
*Appellant*

v.

G1-17-224

BOSTON POLICE DEPARTMENT,  
*Respondent*

Appearance for Appellant:

Joseph Donnellan, Esq.  
Rogal & Donnellan P.C.  
100 River Ridge Drive  
Norwood, MA 02062

Appearance for Respondent:

Jaclyn R. Zawada, Esq.<sup>1</sup>  
Boston Police Department  
Office of the Legal Advisor  
One Schroeder Plaza  
Boston, MA 02120

Commissioner:

Cynthia A. Ittleman, Esq.

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 2(b), Mr. Julio Sanchez (Appellant), appealed the decision of the Boston Police Department (BPD or Respondent) to bypass him for original appointment to the position of full-time police officer. The Appellant filed the instant appeal on October 26, 2017. The Civil Service Commission (Commission) held a prehearing conference in the case on November 14, 2017 at the Commission's office in Boston. The Commission

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<sup>1</sup> At the time of the hearing in this case, Attorney Zawada represented the Boston Police Department. At the present time, she no longer works at the BPD and a copy of this decision will be sent to BPD Legal Advisor David Fredette.

conducted a full hearing<sup>2</sup> in the case at the same location on March 22 and 26, 2018. The witnesses were sequestered. The hearing was digitally recorded and the parties were each sent a CD of the proceeding.<sup>3</sup> The parties submitted post-hearing briefs. For the reasons stated herein, the appeal is denied.

## **FINDINGS OF FACT**

Thirty-four (34) exhibits (Ex./s) were entered into evidence at the hearing. Based on these exhibits, the testimony of the following witnesses:

*Called by the Appointing Authority:*

- Detective Karyn VanDyke, Recruit Investigations Unit, BPD (“Det. VanDyke”)
- Nancy Driscoll, Director of Human Resources, BPD

*Called by the Appellant:*

- Julio Sanchez, Appellant

and taking administrative notice of all matters filed in the case; pertinent statutes, regulations, policies and stipulations; and reasonable inferences from the credible evidence; a preponderance of the evidence establishes the following:

*Appellant’s Background*

1. At the time of the hearing in this appeal, the Appellant was forty-one (41) years old and resided in Lynn, Massachusetts with his fiancé and their two (2) children. Mr. Sanchez was born and raised in Lynn. He was one of a number of children born to a single mother. He

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<sup>2</sup> The Standard Adjudicatory rules of Practice and Procedures, 810 CMR §§ 1.00, *et seq.*, apply to adjudications before the Commission, with G.L. Chapter 31, or any Commission rules, taking precedence.

<sup>3</sup> If there is a judicial appeal of this decision, the plaintiff in the judicial appeal would be obligated to supply the court with a transcript of this hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion. If such an appeal is filed, this CD should be used to transcribe the hearing.

was eventually sent to be raised by his grandmother after his mother was incarcerated.

(Testimony of Appellant)

2. Mr. Sanchez graduated from Lynn Classical High School. After high school, Mr. Sanchez attended a state university, from which he graduated with a bachelor's degree in 2000. In 2010, Mr. Sanchez earned a master's degree in Special Education from another state university. (Testimony of Appellant)
3. Mr. Sanchez has completed thirty (30) course credits beyond his master's degree. (Testimony of Appellant)
4. During his college years, Mr. Sanchez worked summers at a camp for Lynn residents. One of his supervisors was a guidance counselor from his high school who helped Mr. Sanchez obtain his first job teaching in Lynn. (Testimony of Appellant)
5. After a short period of employment with the Lynn Public Schools, Mr. Sanchez began working with special needs students in the Boston Public Schools beginning in 2001, where he was still employed at the time of this hearing. (Testimony of Appellant)
6. In addition to working in the Boston Public Schools, Mr. Sanchez began employment with the Department of Youth Services (DYS) as a shift supervisor in 2012. As a shift supervisor, the Appellant was responsible for the care and custody of juvenile offenders remanded to DYS at a facility in Dorchester from 3pm to 11pm. (Testimony of Appellant)
7. In 2008, Mr. Sanchez became an officer in the United States Coast Guard Reserve (USCGR). He has had a series of assignments with the USCGR, including in-port security and as an armorer. From March 24, 2016 to the time of the hearing in this appeal, the Appellant was on active duty and assigned to the First Coast Guard District in Boston. During active duty,

Mr. Sanchez was on military leave from Boston Public Schools and DYS. (Testimony of Appellant)

*The 2017 Hiring Process*

8. The Appellant took and passed the April 2015 civil service police officer exam, requesting that he be considered for employment as a Boston resident. In 2017, the BPD asked the state's Human Resources Division (HRD) to issue a certification to fill one hundred (100) vacant police officer positions. HRD issued Certification 04401 to the BPD on February 2, 2017 on which the Appellant was ranked in the 40<sup>th</sup> tie group. (Stipulation) On March 2, 2017, HRD added names to the Certification at the request of the BPD. (Administrative Notice – HRD information provided to the Commission and the parties) The BPD subsequently selected one hundred and thirty (130) candidates, one hundred thirteen (113) of whom were ranked below the Appellant on the Certification.<sup>4</sup>
9. Eligible candidates who are interested in applying for the position of police officer with the BPD sign a Certification maintained at the BPD Department. Thereafter, each applicant attends orientation, completes the student officer application, attends an initial interview, and undergoes a background investigation conducted by a detective assigned to the BPD's Recruit Investigations Unit (RIU). (Testimony of VanDyke and Driscoll)
10. Det. VanDyke began working for the BPD in 1994 and earned her detective rating in 2010. At all pertinent times, she was assigned to the RIU and has worked there approximately four (4) years. Her responsibilities at the RIU included conducting pre-employment background investigations on applicants to civilian and police officer positions at the BPD. (Testimony of VanDyke)

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<sup>4</sup> At the pre-hearing conference, the BPD was unable to report the precise number of candidates who bypassed the Appellant. At the full hearing, counsel for the BPD stated that 113 candidates had bypassed the Appellant. The Appellant did not dispute the BPD's statement.

11. In conducting a background investigation, Det. VanDyke reviews information including, but not limited to, an applicant's residency in the city of Boston during the one (1) year prior to the civil service exam as well as criminal history, driving history, education, and employment history. (Testimony of VanDyke)
12. Det. VanDyke was assigned to the RIU and conducted background investigations in the summer of 2017 for approximately forty-four (44) applicants to the position of police officer, including that of the Appellant. (Testimony of VanDyke; Ex. 1)  
*2017 Hiring Process - Residency*
13. During her background investigation of the Appellant, Det. VanDyke reviewed information regarding the Appellant's residency, including but not limited to, his driver's license, credit check, bank statements, tax returns and added information that the Appellant produced at her request. Det. VanDyke noted that the Appellant had addresses outside the city of Boston, including in Lynn and Woburn. (Testimony of VanDyke; Exs. 2 - 12)
14. For the 2015 civil service police officer exam, applicants were required to have resided permanently and consistently in Boston from April 2014 to April 2015 (residency period) in order to receive the statutory residency preference. (Testimony of VanDyke and Driscoll)
15. The Appellant claims that he resided at his sister's home on Washington Street in Dorchester from September 2012 to December 2015. (Testimony of Appellant; Exs. 1 and 34)
16. The Appellant purchased a four (4)-unit house on Newhall Street in Lynn in 2003. The Appellant informed Det. VanDyke that, of those units at Newhall Street, one (1) was a basement apartment, which he did not rent out from September 2012 to December 2015. (Testimony of VanDyke and Appellant; Ex. 1)

17. On the Appellant's 2014 state tax returns covering the residency period, the Appellant reported his residence as being Newhall Street in Lynn, Massachusetts. On that tax return, the Appellant signed his name and declared under the penalties of perjury that the return was true, correct, and complete. (Testimony of VanDyke; Ex. 2)
18. The Appellant did not provide the BPD any tax records indicating that his address was in Boston. (Testimony of VanDyke)
19. The Appellant gave Det. VanDyke a copy of his Group Life Insurance Election and Certificate, which was dated during the residency period and which identifies the Appellant's address as Newhall Street in Lynn. The Appellant signed the form to "certify that the information provided on [the] form is true and correct to the best of [his] knowledge and belief." (Testimony of Appellant; Ex. 5)
20. Det. VanDyke reviewed the Appellant's Experian credit report, which listed numerous addresses for the Appellant outside of Boston, including addresses in Lynn and Woburn. The credit report states that addresses it contains are personal information reported to Experian by the Appellant, his creditors, and other sources. The Washington Street, Dorchester address where the Appellant asserts that he resided during the residency period was not among the addresses listed in the credit report. (Testimony of VanDyke; Ex. 7)
21. The Appellant provided a list of his prior residences as part of his application. All of the addresses he disclosed on his application were listed in the Experian credit report except for the Washington Street, Dorchester address where the Appellant claimed residency during the residency period. (Testimony of Appellant; Exs. 7 and 34)
22. Det. VanDyke reviewed the Appellant's bank statements for the residency period, which indicate that the Appellant's address was on Newhall Street in Lynn. The four (4) bank

statements in the record were for April and May 2014 and January and February 2015.

Based on the four (4) bank statements, the BPD found that the Appellant made purchases (i.e. – at retail establishments) near the Dorchester address he claimed as his residence in April 2014 on five (5) days of the month; in May 2014 on seven (7) days of the month; in January 2015 on fifteen (15) of the month; and in February 2015 on four (4) days of the month.

There were very few occasions in the four months of bank statements on which the Appellant made such purchases on consecutive days. This was insufficient to establish that the Appellant had been a Boston resident during the residency period. (Testimony of VanDyke; Ex. 4; Administrative Notice)

23. According to excise tax records provided by the Appellant, he paid motor vehicle excise tax on three (3) vehicles to the City of Woburn, Massachusetts in 2013, 2014 and 2015.

(Testimony of VanDyke; Ex. 8)

24. The Appellant gave Det. VanDyke auto insurance statements for the three (3) vehicles during the residency period. The auto insurance statements indicate that the Appellant's address was in Woburn. Moreover, the statements indicate that the three (3) vehicles were principally garaged in Woburn. Det. VanDyke did not receive any information indicating

that the Appellant provided a Boston address on his auto insurance documents. (Testimony of VanDyke; Ex. 3)

25. The Appellant gave Det. VanDyke a copy of his Planet Fitness membership agreement dated 2013. (Ex. 1)<sup>5</sup>

26. The Appellant's sister, who lives in Dorchester, provided a letter that the Appellant gave to

Det. VanDyke regarding his residence during the residency period. The letter, dated April

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<sup>5</sup> The gym membership document is not in the record but Det. VanDyke's PCM indicates that the Appellant gave her a copy of the membership.

10, 2017, asserts that the Appellant lived with his sister at her home on Washington Street in Dorchester during the residency period. The Appellant did not pay rent to his sister.

(Testimony of Appellant; Ex. 12)

27. The Appellant applied to the BPD previously and underwent a background investigation in 2015, which was completed by Det. Anthony Ortiz. At that time, the Appellant stated that he was “living simultaneously in Dorchester and in Lynn.” (Testimony of VanDyke; Ex. 28)

28. On September 21, 2015, Det. Ortiz conducted a home visit at the Washington Street, Dorchester address, a home owned by the Appellant’s sister. There, Det. Ortiz observed “a couch that the applicant stated was his bed.” Det. Ortiz also noted that the Appellant “didn’t have a closet (sic) or dresser for clothing” and rather only “had a few articles of clothing hanging on a wooden stick and some clothing in a duffle bag.” The Appellant admitted to Det. Ortiz in 2015 that he stayed with his girlfriend in the town of Melrose “the majority of the time.” Det. Ortiz concluded “[i]t appears that the [A]pplicant doesn’t actually live at” the Dorchester address where he claimed residency. (Testimony of VanDyke and Appellant; Exs.1 and 28)

29. In 2017, Det. VanDyke reviewed the Appellant’s 2015 application and Det. Ortiz’s Privileged and Confidential Memorandum (PCM). Det. VanDyke also spoke with Det. Ortiz about his 2015 background investigation into the Appellant and incorporated his observations into her PCM. (Testimony of VanDyke; Exs. 1 and 28)

30. During this 2017 hiring process, Det. VanDyke’s supervisor, Sgt. Lucas Taxter, performed a visit of the Appellant’s home in Lynn. (Testimony of VanDyke; Ex. 1)

31. The Appellant gave the BPD his earnings statements from the USCGR during the 2014-2015 residency period. Det. VanDyke reviewed these statements and noted that they indicated that



the Appellant's address was on Newhall Street in Lynn. None of the USCGR earnings statements that the Appellant provided to Det. VanDyke provided a Boston address during the residency period in this case. (Testimony of VanDyke; Ex. 6)

32. The Appellant gave Det. VanDyke documents of his Prudential Life Insurance policy dated during the 2014-2015 residency period. These insurance policy documents indicate that the Appellant's residence was on Newhall Street in Lynn. (Testimony of VanDyke; Ex. 5)

33. Det. VanDyke also reviewed a letter to the Appellant from DYS, one of the Appellant's employers. The date of the letter is within the residency period and the letter indicates that the Appellant's address was on Newhall Street in Lynn. (Testimony of VanDyke; Ex. 9)

34. Det. VanDyke also reviewed police reports and records concerning the Appellant, generated during the April 2014 – April 2015 residency period. (Testimony of VanDyke; Exs. 10 and 11) According to an October 4, 2014 Boston Police report, the Appellant reported a motor vehicle accident and indicated that his address was in Woburn. (Testimony of VanDyke; Ex. 10)

35. According to a Lynn Police Department report, the Appellant had two (2) recorded addresses during the residency period, one in Woburn and one in Lynn. (Testimony of VanDyke; Ex. 11)

36. Det. VanDyke determined that the documents the Appellant had provided were not adequate to prove the Appellant's Boston residency during the residency period so she asked the Appellant for additional documents. (Testimony of VanDyke) The additional documents that the Appellant provided and Det. VanDyke considered included registration for one (1) car at the Appellant's purported Boston address during the residency period, a Boston Board of Election Commissioners notice for the Appellant at the Boston address the Appellant claimed

during the residency period and a Juror Service Summons to the Appellant at the Boston address that the Appellant claimed during the residency period. However, the insurance policy for the car registered at the Boston address states that the insured's address was in Woburn. (Testimony of VanDyke; Exs. 1, 3, 30, 31 and 32) In addition, the Appellant's Board of Election Commissioners notice was based on his voting in Boston in 2013 and 2016 and the Appellant did not provide Det. VanDyke any documents indicating that he voted in Boston during the residency period. (Testimony of Appellant; Ex. 30) Further, the Appellant's jury duty was scheduled for October 2015, a date five (5) months after the residency period. (Ex. 32)

37. By letter dated August 31, 2017, the BPD informed the Appellant that he had been bypassed, in part, because he failed to prove his residency in Boston during the residency period.

38. The Appellant timely filed the instant appeal. (Administrative Notice)

#### *Applicable Law*

The core mission of Massachusetts civil service law is to enforce "basic merit principles" for "recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills" and "assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions." G.L.c.31, §1. *See, e.g., Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban*, 434 Mass. 256, 259, (2001); *MacHenry v. Civil Serv. Comm'n*, 40 Mass.App.Ct. 632, 635 (1995), *rev.den.*, 423 Mass.1106 (1996) .

A person may appeal a bypass decision under G.L. c.31, § 2(b) for de novo review by the Commission. The Commission's role is to determine whether the appointing authority had shown, by a preponderance of the evidence, that it has "reasonable justification" for the bypass

after an “impartial and reasonably thorough review” of the relevant background and qualifications bearing on the candidate’s present fitness to perform the duties of the position. Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 474-78 (2019); Police Dep’t of Boston v. Kavaleski, 463 Mass. 680, 688-89 (2012); Beverly v. Civil Service Comm’n, 78 Mass.App.Ct. 182, 187 (2010); Leominster v. Stratton, 58 Mass.App.Ct. 726, 727-28 (2003).

“Reasonable justification . . . 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’”. Brackett v. Civil Service Comm’n, 447 Mass. 233, 543 (2006); Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971) and cases cited. *See also* Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315, 321 (1991)(bypass reasons “more probably than not sound and sufficient”).

Appointing authorities are vested with a certain degree of discretion in selecting public employees of skill and integrity. The commission --

“. . . cannot substitute its judgment about a *valid* exercise of *discretion based on merit or policy considerations* by an appointing authority” but, when there are “*overtones of political control or objectives unrelated to merit standards or neutrally applied public policy*,” then the occasion is appropriate for intervention by the commission.”

City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, *rev.den.*, 428 Mass. 1102 (1997)(*emphasis added*). However, the governing statute, G.L. c. 31, § 2(b), gives the Commission’s de novo review “broad scope to evaluate the legal basis of the appointing authority’s action” and it is not necessary for the Commission to find that the appointing authority acted “arbitrarily and capriciously.” *Id.*

The Commission’s role, while important, is relatively narrow in scope: to review the legitimacy and reasonableness of the appointing authority’s actions. *See* Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 824-26 (2006). In doing so, the Commission owes substantial

deference to the appointing authority's exercise of judgment in determining whether there was "reasonable justification" shown. City of Beverly v. Civil Serv. Comm'n, 78 Mass.App.Ct. 182, 188 (2010).

*Analysis*

It is clear that the Appellant has made great strides, overcoming exceedingly difficult challenges in his life to obtain a master's degree, to teach students in need of special education, supervise juvenile offenders in the custody of DYS, and become a Lieutenant in the Coast Guard reserves. Nonetheless, I find that the Respondent has established by a preponderance of the evidence that it had reasonable justification to bypass the Appellant because he did not establish that he resided in Boston during the 2014 – 2015 residency period.

The Respondent considered numerous documents it obtained and asked the Appellant to produce to assess whether the Appellant had been a Boston resident during the residency period. The documents included the Appellant's state and federal tax records, bank statements for four (4) months, his service member's life insurance policy, a Coast Guard Earnings Statement, a credit report, a September 8, 2014 DYS letter, Lynn Police Department reports, car insurance documents, car registration information, car excise tax documents, a BPD incident report, a letter from the Appellant's sister, a voter address document and a jury duty summons. These documents failed to establish the Appellant's Boston residency between April 2014 and April 2015. Exs. 2, 3, 5, 6 through 9 and 11. Instead, these documents indicated that he informed certain authorities that his address was in Lynn, where he owned residential property, or in Woburn. The Appellant's sister wrote a letter stating that the Appellant had lived in her house in Boston but the Appellant indicated that he did not pay her rent and the recruit investigator in the 2015 hiring cycle visited the Appellant at his sister's house and the Appellant said he lived in the

finished basement, where the investigator found a couch with some clothes hung on a wooden stick and a duffle bag with clothes and the Appellant told that investigator that he lived in both in another city with his girlfriend and in Boston. Det. VanDyke included this information in her own PCM. The Appellant's jury duty summons was for a date five (5) months after the residency period. The Appellant registered a car at his sister's address but the insurance for the vehicle indicated that the Appellant's address was in Woburn during the residency period. The voter address document the Appellant provided to the BPD did not indicate that the Appellant had voted in Boston in the residency period. The few bank statements the Appellant offered showed that he only made purchases near his purported Boston residence on five (5) days in one month, seven (7) days in another month and on fifteen (15) days in another month. When Det. VanDyke determined that the residency information she received was not sufficient, she afforded the Appellant the opportunity to provide additional documentation to prove his residency in the City of Boston during the residency period. Moreover, the Appellant claims he was living in his sister's basement without paying rent during the residency period while the basement apartment of his property at Newhall Street in Lynn was not rented out during the residency period. In sum, the Appellant provided insufficient information to indicate that he resided in Boston during the residency period. Since the Appellant would not have been considered for appointment in this hiring cycle but for his rank on the Certification based on the residency preference, he was not eligible for consideration for appointment.<sup>6</sup>

### *Conclusion*

For all the reasons asserted herein, the Appellant's appeal under Docket No. G1-17-224 is hereby *denied*.

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<sup>6</sup> Since the Appellant was not eligible for consideration, I have not addressed other issues raised in the bypass letter.

Civil Service Commission

/s/Cynthia Ittleman  
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on December 31, 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:

Joseph Donnellan, Esq. (for Appellant)  
David Fredette, Esq. (for Respondent)