

NOTIFY

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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
No. 2084CV02594

JOSEPH SANTILLI

vs.

CIVIL SERVICE COMMISSION & another<sup>1</sup>

NOTE SENT  
8/11/21  
JJH  
JSM

**MEMORANDUM OF DECISION AND ORDER**  
**ON PARTIES' CROSS-MOTIONS FOR JUDGMENT ON THE PLEADINGS**

The Plaintiff, Joseph Santilli ("Santilli" or the "Plaintiff"), filed this action under G.L. c. 31, § 44 seeking review of a decision by the Massachusetts Civil Service Commission (the "Commission") rejecting Santilli's challenge to the decision of the Boston Police Department ("BPD") not to consider Santilli for an original appointment as a full-time police officer. Before the Court are Santilli's and BPD's Cross-Motions for Judgment on the Pleadings pursuant to Superior Court Standing Order 1-96, G.L. c. 30A, § 14, and Mass. R. Civ. P. 12(c). For the reasons which follow, the Plaintiff's motion shall be **ALLOWED**; BPD's motion shall be **DENIED**; and the Commission's decision shall be set aside and the case remanded for further consideration in accordance with the terms hereof.

**BACKGROUND**

The facts as revealed by the administrative record are as follows. Some facts are reserved for discussion below.

<sup>1</sup> Boston Police Department

On April 25, 2015, Santilli took and passed the civil service examination for police officer employment.<sup>2</sup> In February, 2017, BPD sought to fill 100 full-time police officer vacancies. Upon request from Nancy Driscoll (“Driscoll”), the BPD’s Director of Human Resources, the Commonwealth’s Human Resources Division (“HRD”) provided BPD with a list of eligible candidates (the “2017 certification”).<sup>3</sup> Santilli was listed on the 2017 certification as tied with several other candidates ranked in sixty-third place. At the top of the 2017 certification, a note from HRD stated that the list was “valid for twelve (12) weeks from issuance date” or until May 18, 2017, and that “[c]andidates must indicate their interest on or before 03/02/2017.”

On February 23, 2017, HRD emailed a vacancy notice to candidates listed on the 2017 certification, directing candidates to report to Driscoll at BPD headquarters prior to March 2, 2017 if they wished to be considered for a full-time police officer position. The notice further stated that Driscoll would “provide a form which [the candidate] must sign.” That same day, Driscoll provided the 2017 certification to BPD’s Recruitment Investigation Unit (“RIU”). RIU officers posted the 2017 certification in the lobby at BPD headquarters, and directed candidates who reported to BPD headquarters to sign the certification in order to indicate their interest in the position.

Santilli did not appear at BPD Headquarters on or before March 2, 2017, and did not sign the 2017 certification. Shortly after the March 2, 2017 deadline passed, Santilli contacted BPD and attempted to be processed for appointment to the position of full-time police officer. At some point, Santilli was provided the same application forms that were given to candidates who had

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<sup>2</sup> “Police officer candidates are subject to the State’s civil service law, which, with some exceptions not applicable here, requires applicants to take and pass the civil service examination . . . in order to be hired into positions in State agencies and municipalities.” Boston Police Dep’t v. Civil Service Comm’n, 483 Mass. 461, 463 (2019), citing G.L. c. 31, § 58.

<sup>3</sup> HRD “creates eligibility lists that rank candidates in order of their examination scores.” Boston Police Dep’t, 483 Mass. at 464 n.7, citing G.L. c. 31, § 25. “When the [BPD] has an open position, [HRD] provides a ‘certification list’ of eligible candidates from which the [BPD] is expected to fill the position.” Id.

timely signed the 2017 certification before the applicable deadline. On May 11, 2017, Santilli reported to the RIU to return the completed forms, and at that time spoke with a detective about his application. Sergeant Detective Pamela Besold (“Sergeant Detective Besold”), an RIU Commander, learned of Santilli’s visit to the RIU and contacted Driscoll to inquire why Santilli had been sent to the RIU so late in the hiring process. Driscoll responded that she had not sent Santilli to the RIU, and had in fact already removed him from the civil service master list. Driscoll further advised Sergeant Detective Besold that Santilli would not be allowed to move forward in the hiring process.

On September 28, 2017, Santilli appealed the BPD’s decision not to consider him for an original appointment to the position of full-time police officer to the Commission. On January 22, 2018, Santilli and BPD submitted a joint request, in which filing they asked the Commission to exercise its inherent powers under Chapter 310 of the Acts of 1993 (“310 relief”) and direct HRD to place Santilli’s name at the top of the next certification for appointment to the position of full-time police officer.

On January 23, 2018, Commissioner Cynthia Ittleman (the “Commissioner”) responded to the joint request, advising the parties that 310 relief was only available where an appellant’s civil service rights were infringed through no fault of his own. The Commissioner further stated that, “[w]ithout a clear understanding of how Mr. Santilli was able to initially proceed with the BPD’s review process without signing the certification, the record does not establish . . . that he is aggrieved.” The Commissioner proposed that Santilli’s hearing, which was scheduled to take place the following day, be converted into an informal status conference so that Driscoll could appear and provide further clarification. In response, however, BPD rescinded its assent to the joint request, and informed the Commissioner that BPD did “not intend to produce a witness to

provide testimony unless this matter proceeds to a full hearing.”<sup>4</sup> Santilli and BPD counsel appeared on January 24, 2018, but Driscoll did not appear and was not available by phone. Santilli’s hearing was accordingly rescheduled, and took place on May 15, 2018.

Santilli represented himself at the hearing, testifying that he had previously participated in BPD’s 2016 round of hiring but withdrew before his background investigation was completed. Santilli stated that, at all relevant times, it was his practice to check his primary email address, santilli.j@gmail.com (the “santilli.j email”), every day. On March 7, 2017, Santilli learned from friends and relatives that BPD had begun hiring full-time police officers. As he had not received any messages about hiring in his santilli.j email account, Santilli decided to check an older email account, tillibeach@gmail.com (the “tillibeach email”), where he discovered HRD’s February 23, 2017 vacancy notice.

Santilli provided considerable hearing testimony regarding which email addresses he used for which purposes. Unfortunately, however, because Santilli was discouraged from stating his email addresses on the record, it is difficult for the undersigned to discern which email address Santilli is talking about in many key places in the hearing transcript. Santilli did, however, testify clearly that, by the time he withdrew from BPD’s 2016 hiring process, he had changed his email address “multiple times with the Department. . . . [and] kept putting santilli.j as [his] email address.”

To show that HRD had the santilli.j email on file when it sent the February 23, 2017 vacancy notice, Santilli introduced a copy of a March 12, 2015 email HRD had sent to the santilli.j account confirming Santilli’s payment of the civil service exam fee. Santilli likewise submitted a copy of an April 23, 2015 email sent to the santilli.j email from an HRD employee,

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<sup>4</sup> The record does not reflect exactly why BPD adopted this puzzling position.

which transmittal contained an April 10, 2015 notice to appear for the civil service exam on April 25, 2015.

Santilli testified that, on or after March 7, 2017, he called BPD's human resources department ("BPD HR") and "through some communication . . . was sent to [RIU]." Santilli further testified that RIU called him on March 22, 2017, and instructed him to pick up the application packet that he later turned in on May 11, 2017. In June, 2017, Santilli called BPD HR to inquire about the status of his application. Phone records confirm that Santilli spoke with Driscoll on June 20 and 21, 2017. Santilli testified that, during those conversations, Driscoll stated that she was "really sorry about what is going on . . . but it doesn't seem like you're going to be processed for the next class[.]" Driscoll then purportedly advised Santilli "not to worry," because there would soon be an additional round of hiring and candidates for that round would be drawn from the same civil service examination Santilli had taken.

BPD's counsel called Driscoll as a witness at the hearing. Driscoll testified that BPD is not authorized to revise the deadlines HRD sets for signing certification lists, and that the only exceptions HRD allows are for candidates on active duty in the military. Driscoll explained that once the deadline passes to sign a certification list, she logs into NeoGov and reports "who has not signed the list and they're taken out of the process . . . ." Driscoll testified that she logged into NeoGov on March 10, 2017, and noted that Santilli "was rejected because he failed to respond to the vacancy" by the applicable deadline. Driscoll could not specifically recall speaking with Santilli, but did acknowledge that his phone records established they had spoken on June 20 and June 21, 2017.

On October 8, 2020, the Commissioner issued a decision denying Santilli's appeal. Citing G.L. c. 31, § 27, which states that a "a bypass occurs . . . [where] an appointing authority makes

an original or promotional appointment from a certification of any qualified person other than the qualified person whose name appears highest, and the person whose name is highest is willing to accept such appointment[.]” the Commissioner found that Santilli had not been “bypassed.” Instead, BPD had never considered Santilli to be a viable police officer candidate in the first place, on account of his failure to timely sign the 2017 certification. The Commissioner additionally found that the tillibeach email was Santilli’s email address of record in NeoGov at all relevant times, and that Santilli had “admitted at the hearing that he was not monitoring” this particular account. The Commissioner also cited records produced by HRD showing that the tillibeach email had not been changed in NeoGov until June 21, 2017.<sup>5</sup>

The Commissioner further found that there was “substantial evidence that contradict[ed] [Santilli’s] contention that Ms. Driscoll permitted him to enter the [hiring] process weeks after the Certification closed and sent him to RIU to be processed[.]” including the fact that Driscoll had denied telling Santilli to do so and had entered Santilli’s rejection into NeoGov on March 10, 2017.<sup>6</sup> The Commissioner concluded that, “having led the RIU to believe that it was appropriate for him to be processed for consideration when it was not, [Santilli] cannot rely on [the RIU’s] mistaken assignment of a detective to conduct a background investigation weeks after [the 2017 certification] closed to successfully argue that he was actually considered any bypassed for appointment . . . .”

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<sup>5</sup> During the hearing, Santilli denied ever personally changing his email address in the NeoGov system. The records cited in the Commissioner’s decision do show that the tillibeach email was changed in NeoGov on June 21, 2017, but to jos2772@gmail.com rather than the santilli.j email. Santilli testified that he had sent an email to HRD around that time from this third address, asking whether he could make up that year’s civil service exam because he had missed the original exam date.

<sup>6</sup> In a post-hearing letter, Santilli stated that, after he discovered he had missed the March 2, 2017 deadline to express his position interest, he immediately called BPD HR to speak with Driscoll and was directed to RIU.

## DISCUSSION

### **I. Standard of Review**

Pursuant to G.L. c. 31, § 44, the Court reviews the Commission's decision "to determine whether it was in conformity with the standards set forth in G.L. c. 30A, § 14(7)." Police Dep't of Boston v. Kavaleski, 463 Mass. 680, 689 (2012). The Court may set aside the Commission's decision if it determines "that the substantial rights of any party may have been prejudiced because the agency decision is in violation of constitutional provisions; in excess of statutory authority or jurisdiction of the agency; based on an error of law; made on unlawful procedure; unsupported by substantial evidence; unwarranted by the facts found by the court on the record as submitted or as amplified; or arbitrary or capricious, an abuse of discretion, or otherwise not in accordance with law." Malloch v. Hanover, 472 Mass. 783, 795 (2015) (internal quotation marks omitted), quoting Rivas v. Chelsea Housing Authority, 464 Mass. 329, 334 (2013). Because the Court "'give[s] due weight to the experience, technical competence, and specialized knowledge of the [Commission], as well as to the discretionary authority conferred upon it,' G.L. c. 30A, § 14(7), the [Plaintiff] bears a 'heavy burden of establishing that the [C]ommission's decision was incorrect.'" Boston Police Dep't v. Civil Service Comm'n, 483 Mass. 461, 469 (2019).

### **II. The Parties' Cross-Motions for Judgment on the Pleadings**

BPD argues that the Commission properly concluded it lacked subject matter jurisdiction over Santilli's appeal, because Santilli was never considered for an appointment rather than bypassed for one. As will be explained below, this argument is belied by the Commission's enabling legislation.

General Laws c. 31, §§ 2(b)-(c) broadly empower the Commission “[t]o hear and decide appeals by a person aggrieved by *any* decision, action, or failure to act” by HRD or an appointing authority. (Emphasis added.) Persons “aggrieved” are those who have made “specific allegations in writing that a decision, action, or failure to act on the part of the administrator [or appointing authority] was in violation of [Chapter 31], the rules or basic merit principles promulgated thereunder and said allegations shall show that such person’s rights were abridged, denied, or prejudiced in such a manner as to cause actual harm to the person’s employment status.” G.L. c. 31, § 2(b). The “basic merit principles” of G.L. c. 31 are defined in G.L. c. 31, § 1, and include, *inter alia*, the “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment[.]”

In his appeal to the Commission, Santilli challenged BPD’s decision not to consider him for an original appointment as a full-time police officer on account of his failure to timely sign the 2017 certification. Santilli was, therefore, aggrieved by a decision of an appointing authority that deprived him of the right to be selected for appointment on the basis of the job knowledge or skills evidenced by his score on the civil service exam. General Laws c. 31, § 2 thus authorized the Commission to hear and decide Santilli’s appeal.

Although Santilli appears to have erroneously filed his appeal using a form titled “Massachusetts Civil Service Commission Bypass Appeal Form,” nothing in the record indicates that Santilli was *required* to file his appeal using a particular form; and the fact that he was not actually appealing a bypass should have been readily apparent to both BPD and the Commission prior to the hearing. More particularly, BPD could not have negotiated the parties’ prehearing joint request for 310 relief without ascertaining the true nature of Santilli’s appeal, and the



Commissioner would undeniably have recognized the basis for Santilli's appeal when she read the joint request. Moreover, Santilli wrote "n/a" in the boxes on the appeal form asking him to identify the "person who signed [the] Bypass Letter" and the date he "received written notification of bypass." Accordingly, nothing in the record suggests that Santilli's use of the arguably incorrect form operated to limit the Commissioner's jurisdiction over his appeal.

BPD next argues that Santilli failed to submit any evidence that BPD was at fault for the vacancy notice being sent to the tillibeach email, and that Santilli should have sought relief from the consequences of his failure to timely sign the 2017 certification directly from HRD pursuant to G.L. c. 31, § 25. Section 25 states, in relevant part, that:

"The name of a person which was placed on an eligible list as the result of an examination for original appointment shall be removed from such list if the person fails to respond to a notice of certification . . . provided that [HRD] may permit the name of such person to remain on the eligible list if such person submits to [HRD], during the period of his eligibility on such list, a satisfactory explanation of such refusal or failure to respond . . . ."

While a request for Section 25 relief may have been appropriate in this case, Santilli testified that he did not discover that his failure to sign the 2017 certification would preclude him from participating in the BPD's hiring process until late June, 2017. By that point, BPD was no longer selecting candidates who had taken the 2015 civil service exam, and was instead set to begin drawing applicants who had sat for the exam in 2017. Therefore, relief under Section 25 would have been unavailing to Santilli, inasmuch as it would only have allowed him to remain on a list from which BPD was no longer selecting candidates.

In view of the foregoing, it is evident that Santilli cannot be placed on a future BPD certification list based on his 2015 civil service exam results unless the Commission grants him relief under Chapter 310. Chapter 310 allows the Commission to "take such action as will

restore or protect” the rights of any person acquired under G.L. c. 31, where such rights “have been prejudiced through no fault of [the person’s] own . . . 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.” St. 1993, c. 310.

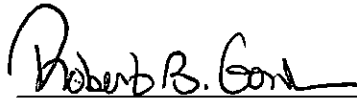
Here, the Commissioner determined that Santilli’s failure to sign the 2017 certification was his fault, because the tillibeach email was listed as Santilli’s contact address in NeoGov and Santilli had admitted that he did not regularly monitor it. The Commissioner, did not, however, identify the factual basis of the premise underlying that conclusion, viz., that Santilli had a duty to monitor the email address associated with his NeoGov account as opposed to the email address he used to register for the civil service exam. The Commissioner’s decision is likewise devoid of any findings as to how or why Santilli received emails from HRD concerning the 2015 civil service exam at the santilli.j email address if he had not informed HRD that it should contact him at that address. The absence of such findings renders the Commissioner’s conclusion that Santilli was at fault for his failure to timely sign the 2017 certification arbitrary and capricious. See Cambridge v. Civil Service Comm’n, 43 Mass. App. Ct. 300, 303 (1997) (“A decision is arbitrary and capricious when it lacks any rational explanation that reasonable persons might support.”).

### **CONCLUSION AND ORDER**

For all the foregoing reasons, the Plaintiff’s motion shall be **ALLOWED**; BPD’s motion shall be **DENIED**; and the Commission’s decision shall be set aside and the case remanded for further findings concerning: (1) the source of Santilli’s duty, if any, to monitor the tillibeach email; (2) why HRD used the santilli.j email address to communicate with Santilli regarding the

2015 civil service exam; and (3) whether and, if so, to what extent Santilli is entitled to relief pursuant to St. 1993, c. 310 in view of the additional findings required by this Order.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read "Robert B. Gordon", written over a horizontal line.

Robert B. Gordon  
Justice of the Superior Court

Dated: August 10, 2021