

COMMONWEALTH OF MASSACHUSETTS

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

ALFRED SHARPE,
Appellant

v.

G2-21-155

TOWN OF ARLINGTON,
Respondent

Appearance for Appellant:

Galen Gilbert, Esq.
92 State Street, 9th Floor
Boston, MA 02109

Appearance for Respondent:

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

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On August 27, 2021, the Appellant, Alfred Sharpe (Appellant), filed a promotional bypass appeal with the Civil Service Commission (Commission), contesting his non-selection for the position of Deputy Fire Chief in the Town of Arlington (Town)'s Fire Department. On October 12, 2021, I held a remote pre-hearing conference which was attended by the Appellant, his counsel, counsel for the Respondent and two Respondent representatives.

As part of the pre-hearing conference, the parties agreed that an eligible list for Arlington Deputy Fire Chief was established on July 24, 2019 with the candidates ranked in the following order:

1. Michael Kelly (TIE)
1. Alfred Sharpe (TIE END)
2. Daniel Kerr

When a subsequent vacancy became available, all three (3) candidates signed as willing to accept the promotional appointment to Deputy Fire Chief. The Town selected Michael Kelly, who was tied with the Appellant. After the Appellant filed his bypass appeal with the Commission, the Town filed a motion to dismiss and the Appellant filed an opposition.

Analysis

The Commission has long held that the appointment of a candidate among those with the same rank on a Certification is not a bypass. See Edson v. Reading, 21 MCSR 453 (2008) (upheld by Superior Court: Edson v. Civil Service Comm'n, Middlesex Sup. Ct. No. 08-CV3418 (2009)); Servello v. Dep't of Correction, 28 MCSR 252 (2015); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998). See also Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002) (citing HRD's guide), *rev'd in part on other grounds*, 323 F.3d 160 (1st Cir. 2003) ("when a civil service exam results in a tie -score, and the appointing authority ... promotes some but not all of the candidates, no actionable `bypass ' has taken place in the parlance of ... civil service"); Thompson v. Civil Service Comm'n, Suffolk Superior Ct. No. MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass). Cf. Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 261 (2001) ("In deciding bypass appeals, the commission must determine whether the appointing authority has complied with the requirements of Massachusetts civil service law for selecting lower scoring candidates over higher scoring candidates").

Since no candidate ranked below the Appellant was appointed to Deputy Fire Chief, there was no bypass and the Commission lacks jurisdiction to hear the Appellant's bypass appeal.

For this reason, the Appellant's appeal under Docket No. G2-21-155 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chair

By a vote of the Civil Service Commission (Bowman, Chair; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 4, 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:

Galen Gilbert, Esq. (for Appellant)

Nicholas Dominello, Esq. (for Respondent)