

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

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

CHARLES SILVIA,  
Appellant

v.

G1-12-239

TOWN OF DARTMOUTH,  
Respondent

Appearance for Appellant:

*Pro Se*  
Charles Silvia

Appearance for Respondent:

Anthony Savastano, Esq.  
404 County Street  
New Bedford, MA 02740

Commissioner:

Christopher C. Bowman

**ORDER OF DISMISSAL**

On August 22, 2012, the Appellant, Charles Silvia, filed a “bypass appeal” with the Civil Service Commission (Commission), contesting his non-selection to the position of police officer in the Town of Dartmouth (Town).

On September 14, 2012, a pre-hearing conference was held at the UMASS School of Law at Dartmouth, which was attended by Mr. Silvia and counsel for the Town. Since there was no bypass, Mr. Silvia’s appeal is dismissed.

*Background*

1. In 2009, Mr. Silvia took a civil service examination for police officer and received a score of 98. As a result, his name was placed on an eligible list of candidates for police officer in the Town of Dartmouth.
2. On July 6, 2011, the Town requested a certification from the state’s Human Resources Division (HRD) to appoint three (3) permanent, full-time police officers.

3. On August 25, 2011, HRD sent Certification No. 201127 to the Town. Mr. Silvia's name appeared high enough on this Certification to be within the statutory "2N +1" formula and be considered for employment.
4. Sometime after August 25, 2011, Mr. Silvia signed Certification No. 201127 indicating his willingness to accept employment.
5. The eligible list from which Certification No. 201127 was created expired on November 1, 2011. In order to make any appointments from Certification No. 201127, the Town was required to make conditional offers of employment on or before November 1, 2011.
6. The Town opted not to appoint any individuals from Certification No. 201127.
7. On November 1, 2011, HRD established a new eligible list. Although Mr. Silvia's name appeared on this new eligible list, based on the results of a subsequent 2011 examination, his name now appeared near the bottom, since he received a lower score of 91 on the 2011 examination.
8. Also on November 1, 2011, the Town requested a new certification to appoint three (3) permanent full-time police officers.
9. On November 21, 2011, HRD issued Certification No. 202464 to the Town. Mr. Silvia's name was not on this Certification because he was not ranked high enough on the November 1, 2011 eligible list to be within the "2N +1" formula.
10. The Town appointed three (3) individuals as permanent, full-time police officers from Certification No. 202464.

### *Legal Standard*

G.L. c. 31, § 25 is clear on how long a candidate's name can remain on an eligible list of candidates stating:

"The administrator [HRD] shall establish, maintain and revise eligible lists of persons who have passed each examination for appointment to a position in the official service. The names of such persons shall be arranged on each such list, subject to the provisions of section twenty-six, where applicable, in the order of their marks on the examination based upon which the list is established.

Persons on an eligible list shall be eligible for certification from such list for such period as the administrator shall determine, but in any event not to exceed two years, unless one of the following exceptions applies: (1) such eligibility is extended by law because such persons are in the military or naval service; (2) the administrator is temporarily enjoined by a court order from certifying names from an eligible list, in which case eligibility of persons on such list shall be extended for a period equal to the duration of such order; or (3) no new list is

established, in which case eligibility of all persons on such list shall be extended until a new list is established for the same position for which the original list was established; provided, however, that the administrator may revoke the eligibility of the entire list or of any persons on such list subsequent to said two-year period if he shall determine that the effective maintenance of the merit system so requires such revocation and, provided further, that a written notice and explanation for said revocation is sent to the clerks of the senate and house of representatives.” (emphasis added)

When drafting Section 25, the Legislature contemplated that a new eligibility list may be created during the active life of an older list. See id. (providing that most recent examination results for an individual determine ranking on merged eligible list). “Applicants are able to protect their interests in remaining eligible by taking the later examinations.” Callanan v. Personnel Administrator, 400 Mass. 597, 602 (1987).

The Supreme Judicial Court and the Commission have held that individuals who fail to take a later examination and lose their eligibility (or take a new examination and are not considered because of their lower score) are not entitled to relief. See Callanan supra at 601 (“The system the Legislature created, in which eligibility lists expire and are replaced by new lists, involves the risk that position might become available immediately after the expiration of an old list or immediately before the establishment of a new list. The overall pattern of the statute does not justify expectations that certain positions will become available during the period of a single list.”); Saunders v. Haverhill, 21 MCSR 337 (2008)(no relief granted to appellant who chose not to take the most recent examination and was, thus, not on the eligible list for certification).

### *Discussion*

Here, the Town decided not to appoint any individuals from a Certification created from an eligible list that expired on November 1, 2011. Instead, they chose to request a new Certification from an eligible list that was created on November 1, 2011.

Since Mr. Silvia’s name appeared near the bottom of the new eligible list based on his lower score, he was not within the statutory “ $2N + 1$ ” formula and was not considered for appointment.

Although frustrating for Mr. Silvia, the Town’s actions here are consistent with the civil service law and rules and the overall framework of the civil service appointment process.<sup>1</sup>

### *Conclusion*

For all of the reasons cited above, Mr. Silvia’s appeal under Docket No. G1-12-239 is hereby *dismissed*.

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<sup>1</sup> There was no allegation here that the Town’s decision not to appoint individuals from the Certification that expired on November 1, 2011 was based on political or other reasons that would warrant an investigation by the Commission.

Civil Service Commission

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Christopher C. Bowman, Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on September 20, 2012.

A true record. Attest:

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Commissioner

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.

Notice:

Charles Silvia (Appellant)

Anthony Savastano, Esq. (for Respondent)

John Marra, Esq. (HRD)