

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

Suffolk, ss.

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

**FIRMIN MR. TCHAKOTE,**  
*Appellant*

**v.**

**MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY,**  
*Respondent*

**Case No.: G1-13-199**

Appearance for Appellant:

Pro Se

Appearance for Respondent:

Wilson J. Castellanos, Esq.  
Massachusetts Bay Transportation Authority  
10 Park Plaza, 7<sup>th</sup> Floor  
Boston, MA 02116  
(617) 222-5793

Commissioner:

Paul M. Stein<sup>1</sup>

**DECISION**

Pursuant to G.L. c. 31, § 2(b), the Appellant, Firmin Tchakote (hereinafter “Mr. Tchakote” or “Appellant”) appeals to the Civil Service Commission (Commission) from the decision of the Massachusetts Bay Transit Authority Police Department (hereinafter “Appointing Authority” or “MBTA”), to bypass him for an original appointment to the position of permanent Police Officer. The appeal was timely. A pre-hearing conference was held on October 1, 2013 and a full hearing was held on January 28, 2014, and February 20, 2014 at the offices of the Commission. The hearing was digitally recorded and the parties were given copies of the digital recording of the hearing. The Appointing Authority submitted a post-hearing brief on April 4,

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<sup>1</sup> The Commission acknowledges the assistance of Law Clerk David Roberson in the drafting of this decision.

2014. As explained below, the MBTA has met its burden to establish reasonable justification for bypassing Mr. Tchakote and his appeal is denied.

## **FINDINGS OF FACT**

Based on Exhibits 1 through 25, the stipulations of the parties, and the testimony of:

*Called by the Appointing Authority:*

- Sergeant Daniel Spas

*Called by the Appellant:*

- Firmin Tchakote (Appellant)
- Hermine Ngo

and taking administrative notice of all matters filed in the case and pertinent statutes, regulations and policies, and reasonable inferences therefrom, I make the following findings of fact:

1. On April 30, 2011 the Appellant, Firmin Tchakote, took and passed the civil service examination for Police Officer administered by the Massachusetts Human Resources Division (HRD). On November 1, 2013, HRD established the eligible list for the position of Police Officer. (Exhibit 1)
2. On January 17, 2013, HRD established Certification #00382 for twenty (20) police officer vacancies and the Mr. Tchakote's name appeared thirteenth on the Certification. (Exhibit 1)
3. The MBTA filled six (6) police officer vacancies with candidates that were ranked below the Appellant on the Certification. The MBTA informed the Mr. Tchakote that he had been bypassed for original appointment to the position of police officer because of an unsatisfactory criminal background check and providing dishonest answers on his application for police officer. (Exhibit 14)
4. A criminal background investigation was conducted by Sergeant Michael Rutledge of the MBTA Police Department, who is supervised by Sergeant Daniel Spas. The investigation

uncovered that Mr. Tchakote had two prior Abuse Prevention Restraining Orders (hereinafter “Restraining Order(s)” or “R.O. (s)”). (Exhibit 2, 14)

#### *2003 Restraining Order*

5. On December 8, 2003, a temporary Restraining Order was issued, which named Mr. Tchakote as the defendant. On December 23, 2003, the Restraining Order was extended to January 22, 2004. (Exhibit 8)
6. During the investigation into the 2003 R.O., the supporting affidavit revealed that the victim lived with Mr. Tchakote until she found out he was married. According to the affidavit, the victim attempted to end the relationship and was met with threats against her life. As a result of this Restraining Order against Mr. Tchakote, the Dracut Police Department revoked his License to Carry. (Exhibit 14)

#### *2008 Restraining Order*

7. On January 6, 2008, Mr. Tchakote was arrested for another domestic violence incident between him and the woman he then was dating. The incident occurred once Mr. Tchakote’s then-girlfriend returned to Massachusetts. According to the record of this incident, Mr. Tchakote had previously threatened the woman in September of 2007 and, being fearful of Mr. Tchakote, she moved to California. (Exhibit 3)
8. The woman moved back to Massachusetts shortly before the 2008 incident because Mr. Tchakote urged her to move back to rekindle their relationship. (Exhibit 3, Testimony of Sgt. Spas)
9. On January 6, 2008, according to the documents in evidence, Mr. Tchakote verbally and physically abused the woman in front of her daughter. The woman obtained a restraining order against Mr. Tchakote after this incident but later rescinded the order. (Exhibit 9, 10)

10. This incident also resulted in a Department of Social Services Child Abuse Order (DSS) being filed in which Mr. Tchakote was the subject of inquiry. The Appellant was interviewed by DSS about the domestic violence witnessed by the woman's daughter. (Exhibit 9, 10)

*Recruit Application Discrepancies*

11. On February 11, 2013, Mr. Tchakote signed the recruit application package stating that he understood that withholding information or making false statements on the application would be a basis for rejection of his application. The application also stated that he could be removed from the eligibility list for making false statements and withholding information. (Exhibit 13)
12. Mr. Tchakote's response to Question 66, which asked, "*have you ever been rejected for any police position?*" was that he was only rejected from the Lowell Police Department. (Exhibit 13) No mention or explanation of the denial or withdrawal from consideration with the Nashua, New Hampshire Police Department or the New Hampshire State Police was provided to the background investigator. No explanation was given for the rejection for the position of police officer in the Lowell Police Department. (Exhibit 13, 14, 23)
13. Mr. Tchakote answer to Question 84 was that he was never the subject of a Child Protective Services complaint. (Exhibit 13) The DSS report showed, however, that he was the subject of the report based on the actions that occurred on January 8, 2008. (Exhibits 9 & 13)
14. Mr. Tchakote had previously applied for a position with the MBTA on December 10, 2010 and in August 2011. (Exhibit 12, 20, testimony of Sgt. Spas)
15. The application packet Mr. Tchakote submitted in December 2010 was provided online. During the background check process for the 2010 application, Sgt. Rutledge requested Mr. Tchakote to contact him in regard to questions that arose during his background

investigation. After the request, Mr. Tchakote replied by requesting to withdraw from the process for personal reasons. (Exhibit 12, 25)

16. During Mr. Tchakote's prior application process in August 2011, he attempted to submit a previous edition of the application packet to Sgt. Spas. Sgt. Spas is a decorated police officer who is certified in background checks. Sgt. Spas asked Mr. Tchakote how he received this particular application and Mr. Tchakote stated that he was given the application when he signed the Certification. Sgt. Spas knew that this was not true because this application contained a filename at the bottom of the packet that only appeared on the previous edition. (Exhibit 19, Testimony of Sgt. Spas)

17. Sgt. Spas provided Mr. Tchakote with the updated application packet and asked him to fill it out and get the packet notarized. The application was resubmitted to Sgt. Spas and the MBTA on August 18, 2011. (Testimony of Sgt. Spas)

18. On July, 12, 2013, Mr. Tchakote was notified by the MBTA that they were bypassing him for an original appointment of MBTA police officer. In the notification, the MBTA provided their reasons for their decision to bypass Mr. Tchakote for an unfavorable background history and untruthfulness during previous hiring process. (Exhibit 14)

19. On September 9, 2013 Mr. Tchakote filed a timely appeal with the Commission (Stipulated Facts)

#### *Applicable Civil Service Statutes and Rules*

The role of the Civil Service Commission in a bypass appeal is to determine "whether the Appointing Authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304 (1997). Reasonable justification means the Appointing Authority's

actions were based on adequate reasons supported by credible evidence, when weighed by an unprejudiced mind, guided by common sense and by correct rules of law. Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 214 (1971). G.L. c. 31, § 2(b) requires that bypass cases be determined by a preponderance of the evidence. A “preponderance of the evidence test requires the Commission to determine whether, on a basis of the evidence before it, the Appointing Authority has established that the reasons assigned for the bypass of an appellant were more probably than not sound and sufficient.” Mayor of Revere v. Civil Service Comm’n, 31 Mass.App.Ct. 315 (1991). G.L. c. 31, § 43.

An appointing authority may use any information it has obtained through an impartial and reasonably thorough independent review as a basis for bypass. *See* City of Beverly v. Civil Serv. Comm’n, 78 Mass.App.Ct. 182, 189 (2010). “In its review, the commission is to find the facts afresh, and in doing so, the commission is not limited to examining the evidence that was before the appointing authority.” *Id.* at 187 (quoting City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, *rev. den.*, 440 Mass. 1108 (2003)). “The commission’s task, however, is not to be accomplished on a wholly blank slate.” Falmouth v. Civil Serv. Comm’n, 447 Mass. 814, 823 (2006). Further, “[t]he commission does not act without regard to the previous decision of the appointing authority, but rather decides whether there was reasonable justification for the action taken by the appointing authority in the circumstances found by the commission to have existed when the appointing authority made its decision.” *Id.* at 824 (quoting Watertown v. Arria, 16 Mass.App.Ct. 331, 334, *rev. den.*, 390 Mass. 1102 (1983)).

In deciding an appeal, “the commission owes substantial deference to the appointing authority’s exercise of judgment in determining whether there was reasonable justification”

shown. Beverly at 188. An appointing authority “should be able to enjoy more freedom in deciding whether to appoint someone ... than in disciplining an existing tenured one.” See City of Attleboro v. Mass. Civil Serv. Comm’n, C.A. BRCV2011-00734 (MacDonald, J.), citing Beverly at 191. The Commission is charged with ensuring that the system operates on “[b]asic merit principles.” Mass. Ass’n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, at 259 (2001). “It is not within the authority of the commission, however, to substitute its judgment about a valid exercise of discretion based on merit or policy considerations by an appointing authority.” Id. (citing Sch. Comm’n of Salem v. Civil Serv. Comm’n, 348 Mass. 696, 698-99 (1965); Debnam v. Belmont, 388 Mass. 632, 635 (1983); Comm’r of Health & Hosps. of Bos. v. Civil Serv. Comm’n, 23 Mass.App.Ct. 410, 413 (1987)). While these principles afford an appointing authority reasonable discretion to screen out questionable candidates in favor of those more suitable, this discretion is not absolute or unreviewable. The essential issue being evaluated in a bypass appeal to the Commission remains whether or not the appointing authority has reasonable justification, under basic merit principles, to prefer a candidate whose performance on the civil service qualifying examination placed him lower than the bypassed candidate, thus skipping over the more highly ranked candidate for some valid reason.

### *Analysis*

The MBTA based its decision to bypass Mr. Tchakote for the position of MBTA Police Officer on a long documented history of domestic violence and a history of untruthfulness. Mr. Tchakote argues that this history is unfounded and that the bypass is unjust. The MBTA had reasonable justification to bypass Mr. Tchakote for the MBTA police officer position because of his documented history of domestic violence and untruthfulness.

The MBTA was justified to bypass Mr. Tchakote for the documented record of two domestic violence incidents, one occurring in 2003 and the other in 2008. The undisputed record of the 2003 incident described in vivid detail a pattern of shocking and unconscionable behavior, Mr. Tchakote provided no evidence or testimony during the application process or the hearing to dispute that this incident occurred.

Mr. Tchakote attempted to dispute the 2008 incident, which also involved shocking behavior that was thoroughly supported by reliable documentation. His testimony that he never even dated the woman in question was not credible. He provided a witness (Ms. Ngo) to support the contention that the woman was an angry former tenant but I find that testimony is not credible either. First, Mr. Tchakote's testimony contradicted the police report, the conversation the background investigator had with the 2008 woman, and the lengthy DSS report. The woman's daughter reported to the social worker that interviewed her that Mr. Tchakote was her mother's boyfriend and that they had been staying with Mr. Tchakote prior to the incident. She made these statements separate from her mother in the room with her. I find this evidence credible.

Mr. Tchakote is also Ms. Ngo's landlord. Here testimony came across as peculiarly coached. During her testimony his questioning was suggestive of answers he wanted the witness to give and was borderline testimonial. During Mr. Tchakote's own testimony he stated that the MBTA should have called his former girlfriend to testify so he could have the opportunity to prove she was mentally unstable. The MBTA background investigator did contact the woman in question during its investigation and she repeated the same story that she told police on the day of the incident. She also expressed fear of seeing Mr. Tchakote again and didn't want him



knowing where she resides at currently. The Appointing Authority conducted a reasonable investigation of the 2008 incident and was justified to rely on this investigation.

Mr. Tchakote also displayed a pattern of untruthfulness during the application process with the MBTA. Mr. Tchakote answered several questions that could be reasonably seen as avoiding the truth of the matter presented. On the MBTA application question 66, Mr. Tchakote was asked if he ever had been rejected for employment from a police agency and he only stated the Lowell Police Department. The investigator discovered that Mr. Tchakote either was rejected or withdrew from the Nashua, New Hampshire Police Department and the New Hampshire State Police. Mr. Tchakote was aware that he was denied employment with the Lowell Police Department because he was rejected by the Nashua Police Department. Mr. Tchakote also displayed a pattern of withdrawing from consideration whenever an investigator asked to discuss certain issues arising out of his background check. This was supported by testimony of Sgt. Spas and the documentary evidence (Exhibit 25).

Finally, Mr. Tchakote also was untruthful about being a subject of a DSS complaint and in his impossible explanation on how got the outdated application he returned and the statement he made to the Sgt. Spas. Although this is a relatively trivial falsehood, Mr. Tchakote repeatedly insisted that he received the outdated application when he signed the certification. Sgt. Spas knew this to not be true because the outdated application was not given out to any other candidate that signed that certification list. Every other candidate received the updated application.

All these incidences show a pattern of both domestic violence and the untruthful nature of the Appellant, Mr. Tchakote. The MBTA acted with reasonable justification when they decided to bypass Mr. Tchakote for employee to the position of MBTA Police Officer.

*Conclusion*

For all of the above reasons, appeal of Mr. Firmin Tchakote, under Docket No. G1-13-199 is hereby *denied*.

Civil Service Commission

Paul M. Stein

/s/ Paul M. Stein

Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, and Stein, Commissioners; McDowell [absent] on July 10, 2014.

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:

Firmin Tchakote (Appellant)

Wilson J. Castellanos, Esq. (Respondent)

John Marra, Esq. (HRD)