

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

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

MARK TOBIN,
Appellant

G1-16-18

v.

BOSTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Philip O'Brien, Esq.
1864 Centre Street, Suite 5
West Roxbury, MA 02137

Appearance for Respondent:

Meryum Khan, Esq.
Boston Police Department
1 Schroeder Plaza
Boston, MA 02120

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On February 4, 2016, the Appellant, Mark Tobin (Mr. Tobin), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection by the Boston Police Department (BPD) for original appointment as a police officer.

On February 23, 2016, I held a pre-hearing conference which was attended by Mr. Tobin, his counsel and counsel for the BPD.

The parties agreed that Mr. Tobin took the police officer examination on June 15, 2013 and received a score of 98. On April 27, 2015, Mr. Tobin's name appeared on Certification No. 02742 and he was tied in the 50th rank with many others. The parties also agreed that no person ranked below 50th was appointed.

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. Crt. No. 08-CV3418 (2009); Bartolomei v. Holyoke, 21 MCSR 94 (2008); Coughlin v. Plymouth, 19 MCSR 434 (2006); Kallas v. Franklin School Dep't, 11 MCSR 73 (1998); Servello v. Dep't of Correction, 28 MCSR 252 (2015); See also Thompson v. Civil Service Comm'n, Suffolk Superior Crt. No.

MICV 1995-5742 (1996) (concluding that selection among tied candidates does not present a bypass); 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); 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")

Since no candidate ranked below Mr. Tobin was appointed to the position of police officer, there was no bypass and no requirement that the BPD provide Mr. Tobin with reasons for his non-selection, as would be the case under civil service law and rules had a bypass actually occurred.

Further, Mr. Tobin has not presented any evidence (or allegation) that any tie-breaking method used by BPD discriminated against any candidate based on his / her political affiliation, race, color, age, national origin, sex, marital status, handicap, or religion. (See G.L. c. 31, § 1, Definition of Basic Merit Principles.)

For these reasons, Mr. Tobin's appeal under Docket No. G1-16-18 is hereby *dismissed*.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on March 17, 2016.

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:

Philip O'Brien, Esq. (for Appellant)
Meryum Khan, Esq. (for Respondent)