

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, SS.

**CIVIL SERVICE COMMISSION**

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

CARLOS TORRES,  
Appellant

v.

G1-06-152

BOSTON POLICE DEPARTMENT,  
Respondent

Appellant's Attorney:

*Pro Se*  
Carlos Torres

[REDACTED]

Respondent's Attorney:

Tsuyoshi Fukuda, Esq.  
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Commissioner:

Christopher C. Bowman

**DECISION**

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Carlos Torres (hereafter "Torres" or Appellant") seeks review of the Personnel Administrator's decision to accept the reasons of the Boston Police Department (hereafter "Appointing Authority", "City" or "BPD"), bypassing him for original appointment to the position of police officer. A pre-hearing was held on September 25, 2006 and a full hearing was held on May 2, 2007 at the offices of the Civil Service Commission. One tape was made of the hearing.

## **FINDINGS OF FACT:**

Nine (9) exhibits were entered into evidence at the hearing. Based on these exhibits and the testimony of the following witnesses:

### *For the Appointing Authority:*

- Robin Hunt, Human Resources Director, Boston Police Department;
- Sergeant Detective Norman Hill; Boston Police Department;

### *For the Appellant:*

- Carlos Torres, Appellant;

I make the following findings of fact:

1. The Appellant is a twenty-five (25) year old male from Dorchester. He graduated from Jeremiah Burke High School, completed an academic program through the “Year Up” program and attended Cambridge College. (Testimony of Appellant; Exhibit 6)
2. The Appellant has two children, age 7 and 5, and he lives with their mother. (Testimony of Appellant)
3. The Appellant has been employed as an IT professional at State Street Bank for the past two years. (Testimony of Appellant; Exhibit 7)
4. The Appellant took an open examination for the position of police officer in 2005 and received a score of 75. (Stipulated Fact)
5. On December 12, 2005, the Appellant’s name appeared on Certification 251239 for the position of full-time Spanish-speaking police officer for the Boston Police Department. (Stipulated Fact)

6. The Boston Police Department filled seventeen (17) Spanish-speaking police officer positions from Certification 251239. A total of 84 candidates were selected as part of this overall hiring cycle. Two (2) of the candidates selected for appointment were ranked below the Appellant on the above-referenced Certification. (Stipulated Facts)
7. On May 22, 2006, the Boston Police Department notified the state's Human Resources Division (HRD) that it was bypassing the Appellant for appointment for the following reasons: a) In December 2002, the Appellant was terminated from a prior employer after an allegation of sexual harassment; and b) In November 2002, the Appellant was charged with a domestic assault and battery against his girlfriend, who is the mother of children. (Stipulated Facts; Exhibit 1)
8. The above-referenced reasons for bypass were discovered as part of a background investigation completed by the Boston Police Department of all potential applicants. (Testimony of Hunt and Hill and Exhibits 6 and 7)
9. All BPD recruit applications, including the background investigations, are reviewed by a "roundtable" consisting of several members including Robin Hunt, the Director of Human Resources for the Boston Police Department, and Sergeant Detective Norman Hill, Commander of the Recruit Investigations Unit. (Testimony of Hunt and Hill)
10. The roundtable team has the option of conducting an additional "discretionary interview" with an applicant if they determine that additional information or clarification regarding the applicant is needed. The Appellant did not receive a discretionary interview. (Testimony of Hunt and Hill)

*2002 Termination from Prior Employer after Sexual Harassment Allegation*

11. The Appellant worked at the retail store Office Max for four 4 (four) years and was eventually promoted to the position of Assistant Manager in 2002. (Testimony of Appellant)
12. As part of his application for employment with the Boston Police Department, the Appellant checked a box on the application indicating that he “left a job by mutual agreement under unfavorable circumstances” as a result of “false harassment accusation; never charged; never arrested.” (Exhibit 6)
13. On January 30, 2006, a detective responsible for conducting the Appellant’s background investigation for the Boston Police Department spoke to the Appellant about the above-referenced statement on his application. This detective submitted a 2 ½ page memorandum regarding this conversation to Sergeant Detective Norman Hill, Commander of the Recruit Investigations Unit, the same day. (Exhibit 5)
14. The above-referenced 2 ½ page memorandum outlines the Appellant’s account of events that occurred the day after Thanksgiving in 2002 while he was on duty as Assistant Manager at Office Max, as conveyed to the detective. According to the memorandum, the Appellant stated that a 16-year old female employee came into the store to get her paycheck on the day in question. According to the memorandum, the Appellant told the detective that, after handing the employee her paycheck, she hugged the Appellant and left the store. Shortly thereafter, a police officer from the Dedham Police Department arrived to investigate a complaint filed by the employee’s aunt in which she alleged that the Appellant harassed her niece. One week later, the Appellant was terminated from his employment. (Exhibit 5)

15. Exhibit 7 is a memorandum from the District Manager at Office Max to the Appellant stating the reasons for his termination, which the Appellant offered as evidence during the Commission hearing. Surprisingly, it appears that the City never sought and/or obtained this document as part of their investigation. The Office Max memorandum states in relevant part, “We have spoken to you and other witnesses and we have reviewed the police incident report. Based on the information available, it has been determined that your actions were inappropriate and in violation of the Anti-Harassment / Anti-Discrimination policy. As of today, your employment with Office Max is terminated”. (Exhibit 7)
16. The Boston Police Department was not able to locate any police incident report or other police or court documents related to this incident. (Exhibit 5)
17. Sergeant Detective Hill, a member of the roundtable team that reviews all recruit applications, testified before the Commission that he didn’t know whether or not the BPD investigator contacted Office Max to obtain further information regarding this incident and/or to confirm the reason for termination. (Testimony of Hill)
18. Sergeant Detective Hill testified before the Commission that the BPD investigator’s report regarding the Appellant’s termination from Office Max was a factor in bypassing the Appellant. Specifically, Mr. Hill testified that this incident, coupled with an incident detailed later in this decision, established a troubling pattern involving the Appellant’s poor treatment regarding women. (Testimony of Hill)
19. The Appellant testified before the Commission regarding the Office Max incident.
20. The Appellant’s testimony before the Commission regarding this Office Max incident is similar to the account in the BPD investigator’s memorandum with two notable

exceptions. During his testimony before the Commission, the Appellant testified that the female employee in question raised her shirt and exposed her stomach prior to initiating the hug. Further, the Appellant testified before the Commission that he had raised his arm to prevent the Appellant from hugging him, but that she proceeded to hug him anyway. (Testimony of Appellant)

*November 2002 Domestic Assault*

21. As referenced above, the City informed HRD that one of the reasons for bypass was that in November 2002 Mr. Torres was “*charged* with a domestic assault and battery...” (emphasis added) (Exhibit 1)
22. Although the City did not provide any evidence or testimony to show that the Appellant was ever *charged* with domestic assault and battery, the City did enter 3 exhibits related to a domestic violence incident in November 2002. (Exhibits 2, 3 and 4)
23. Exhibit 2 is a Boston Police Department Incident Report relating to an incident on November 20, 2002. There is no dispute that on the night of November 20, 2002, the Appellant’s girlfriend, the mother of his children, called the Boston Police Department regarding an incident with the Appellant. The incident report, completed by a Boston Police Officer who responded to the call, states, “victim...stated that the suspect...grabbed her and threw her on the floor. The victim and the suspect had a (sic) argument. Suspect fled the area in a white Honda Accord...victim was informed of her rights under 209A...refused medical attention at this time.” (Exhibit 2)
24. As part of his application process with the Boston Police Department, the Appellant asked his girlfriend, who called the Boston Police that night, to write a letter

explaining what happened that night. That letter, written in 2006, was submitted as Exhibit 3. According to the letter from the Appellant's girlfriend, "Carlos and I got into an argument and things were getting out of control so Carlos grabbed my arm and asked me to sit down. Carlos decided to leave the apartment to prevent the situation to get worst (sic)." (Exhibit 3)

25. The Appellant testified before the Commission regarding the November 20, 2002 incident. According to the Appellant, he had an argument with his girlfriend during the late afternoon of November 20, 2002. The police incident report indicates the call for assistance came in at 8:05 P.M. During his testimony, the Appellant first testified that, "there was a discussion, an argument; her and I were just getting in each others' faces; she got too close; I kind of held her arm; asked her to sit down; walked away." Asked by this Commissioner to walk through the events of that night again, the Appellant then stated that, "I grabbed her right arm; I told her that I was leaving and I left". Only after being asked by this Commissioner specifically what happened after he grabbed his girlfriend's arm did the Appellant finally acknowledge that he, "pushed her over toward the sofa." (Testimony of Appellant)

26. When asked during cross-examination if he has ever been involved with other incidents of domestic abuse, the Appellant stated unequivocally, "no". That unequivocal answer can not be reconciled with Exhibits 8 and 9, introduced by the City to refute the Appellant's testimony. (Testimony of Appellant and Exhibits 8 and 9)

27. Exhibit 8 is a November 11, 2005 Boston Police Department Incident Report that is disturbingly similar to the 2002 Incident Report. According to the 2005 incident

report, the Appellant allegedly “grabbed [his girlfriend] by the arm and dragged her into the living room and threw her on the couch.” (Exhibit 8)

28. Exhibit 9 is a July 9, 2006 incident report which indicates that the Boston Police Department was once again called to the home of the Appellant and his girlfriend after a heated argument between the two. Much like the 2002 incident, the Appellant had fled the home prior to the arrival of police. (Exhibit 9)

*Decision to Bypass*

29. Mr. Hill testified that the BPD reviews applications on a case-by-case basis and considers the “recency” and “severity” of the underlying incidents and/or charges. As referenced above, Mr. Hill testified that, taken together, the Office Max incident and the domestic violence incident for which they were aware of at the time, created a troubling pattern regarding his treatment of women which made the Appellant unsuitable to serve in the position of Boston Police Officer. (Testimony of Hill)
30. During their testimony, both Mr. Hill and BPD HR Director Robin Hunt stressed the awesome responsibility of Boston police officers and the need to select suitable candidates who can be entrusted with a deadly weapon. (Testimony of Hunt and Hill)
31. On June 15, 2006, the state’s Human Resource Division (HRD) approved the reasons proffered by the City in bypassing the Appellant. (Stipulated Fact)
32. The Appellant filed a timely appeal with the Civil Service Commission regarding HRD’s decision. (Stipulated Fact)

**CONCLUSION:**

The role of the Civil Service Commission 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." City of Cambridge v. Civil Service Commission, 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 the 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 Commission, 31 Mass. App. Ct. 315 (1991). G.L. c. 31, § 43.

Appointing Authorities are rightfully granted wide discretion when choosing individuals from a certified list of eligible candidates on a civil service list. The issue for the commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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." Watertown v. Arria, 16 Mass. App. Ct. 331, 334 (1983). See Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003). However, personnel decisions that are marked by political influences or objectives unrelated to merit standards or neutrally applied public

policy represent appropriate occasions for the Civil Service Commission to act. City of Cambridge, 43 Mass. App. Ct. at 304.

Mr. Torres is a long-time resident of Boston and attended Jeremiah Burke High School and completed a one-year certification in the “Year-Up” program, a much-acclaimed non-profit organization in Boston. He has two children and currently works as an IT professional in Boston. I don’t doubt his sincere desire to serve the City of Boston as a police officer.

Unfortunately, however, the Appellant’s background provides the City of Boston with reasonable justification for bypassing him for appointment as a police officer. In 2002, the Boston Police Department was called to the home of the Appellant and his girlfriend, who is the mother of his two children. The Appellant’s testimony regarding this incident was troubling on two fronts. First, his initial testimony was less than forthcoming, refusing to divulge that he pushed his girlfriend after grabbing her arm. Second, the Appellant seemed to lack any remorse or responsibility for this incident, baldly stating, in an apparent attempt to justify the violence, that “she got too close”. Further, the Appellant’s credibility was further undermined by falsely stating during cross-examination that he had not been involved in any other domestic incident since 2002, an assertion that is disputed by two subsequent police reports.

This lack of candor by the Appellant caused this Commissioner to doubt his entire testimony, including his version of events that led to his dismissal from Office Max after an allegation of harassment by a 16-year old female employee.

After considering all the testimony and evidence in the record, I conclude that the Boston Police Department had sound and sufficient reasons for bypassing the Appellant for selection as a police officer in the City of Boston and there is no evidence of inappropriate motivations or objectives that would warrant the Commission's intervention in this matter.

For all of the above reasons, the appeal under Docket No. G1-06-152 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on May 10, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:

Carlos Torres (Appellant)

Tsuyoshi Fukuda, Esq. (for Appointing Authority)

John Marra, Esq. (HRD)