

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOSEPH BANKS,
Appellant

G1-14-185

v.

LEXINGTON POLICE DEPARTMENT,
Respondent

Appearance for Appellant:

Pro Se
Joseph Banks

Appearance for Respondent:

Melissa R. Murray, Esq.
Collins, Loughran & Peloquin, P.C.
320 Norwood Park South
Norwood, MA 02062

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On August 1, 2014, the Appellant, Joseph Banks (Mr. Banks), filed a bypass appeal with the Civil Service Commission (Commission), contesting his non-selection by the Lexington Police Department (LPD) to the position of permanent, full-time police officer.

On August 1, 2014, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Banks and counsel for the LPD. Based on the documents submitted and the statements of the parties, it is undisputed that:

- Mr. Banks’s name appeared on Certification No. 01567 tied for third among those candidates who signed the Certification as willing to accept appointment if selected.
- While another candidate tied for third was appointed, no candidate ranked below Mr. Banks was appointed.

The Commission has consistently held that selection from a group of tied candidates is not a bypass. See Kallas v. Franklin Sch. Dep’t, 11 MCSR 73 (1996) (“It is well settled civil service law that a tie score on a certification ... is not a bypass for civil service appeals”); Bartolomei v. Holyoke, 21 MCSR 94 (2008) (“choosing from a group of tied candidates does not constitute a bypass”); Coughlin v. Plymouth Police Department, 19 MCSR 434 (2006) (“the Commission ...

continues to believe that selection among a group of tied candidates is *not* a bypass under civil service law’) (*emphasis in original*); Edson v. Town of Reading, 21 MCSR 453 (2008) (“When two applicants are tied on the exam and the Appointing Authority selects one, the other was not bypassed”), decision affirmed by Superior Court, see Edson v. Civil Serv. Comm’n, Middlesex, Sup. Ct. No. 08-CV3418-F ((2009); see also Cotter v. Boston, 193 F. Supp. 2d 323, 354 (D. Mass. 2002), 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 tied candidates, no actionable ‘bypass’ has taken place in the parlance of the Civil Service Commission.”)

LPD subsequently filed a Motion to Dismiss seeking to dismiss Mr. Banks’s appeal. No reply was received from Mr. Banks.

For all of the reasons cited in LPD’s motion, including that no bypass occurred here, Mr. Banks’s appeal under Docket No. G1-14-185 is hereby ***dismissed***.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman, McDowell, and Stein, Commissioners) on October 2, 2014.

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:

Joseph Banks (Appellant)
Melissa R. Murray, Esq. (for Respondent)
Patrick Butler, Esq. (HRD)