

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

JOHN HASOMERIS,
Appellant

G2-14-112

v.

CITY OF BROCKTON,
Respondent

Appearance for Appellant:

Nelson Carneiro
Mass. Laborers' District Council
7 Laborers Way
Hopkinton, MA 01748

Appearance for Respondent:

Karen Fisher, Esq.
City of Brockton
Law Department
45 School Street
Brockton, MA 02302

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On May 16, 2014, the Appellant, John P. Hasomeris (Mr. Hasomeris), filed an appeal with the Civil Service Commission (Commission), contesting the City of Brockton (City)'s decision to not select him for provisional promotion to the position of Supervisor of Building Maintenance, an official service position.

On August 5, 2014, I held a pre-hearing conference at the offices of the Commission, which was attended by Mr. Hasomeris, his union representative and counsel for the City.

The position of Supervisor of Building Maintenance is an "official service" position that the City filled through a provisional promotion.

Mr. Hasomeris argued that the process was unfair because the promoted candidate is allegedly a childhood friend of the City's Superintendent of Buildings (who made the appointment) and that it was not in compliance with civil service law because the promoted candidate was not qualified, as, according to the Mr. Hasomeris, he had no supervisory experience, a prerequisite of the job. More broadly, Mr. Hasomeris argued that he deserved the

promotion because he had filled-in and served in the position in question for 1800 hours over the past several years.

The City stated that the process was consistent with civil service law and that the promotion was consistent with basic merit principles. In regard to the supervisory experience, the City argued that the selected candidate does indeed have supervisory experience, in addition to numerous certifications, etc. that make him the most qualified candidate for the position, although it is not required to show that as part of a provisional promotion.

Via a Procedural Order issued on August 11, 2014, I provided the City with thirty (30) days to file a Motion to Dismiss. I advised the City to attach an affidavit from the selected candidate in regard to whether he actually has supervisory experience, something not mentioned on his resume. I provided Mr. Hasomeris with thirty (30) days thereafter to file a reply to the City's motion.

On September 2, 2014, I received the City's Motion to Dismiss, which included multiple attachments including a sworn affidavit from the selected candidate attesting to his prior supervisory experience. Mr. Hasomeris did not file a reply to the City's Motion.

Based on the statements of the parties, the City's Motion and the documents submitted, it appears that the candidate provisionally promoted was a permanent civil service employee in a next lower title of Carpenter¹. Further, based on the affidavit of the selected candidate, he appears to have the required qualifications, including supervisory experience.

The City's provisional promotion here is consistent with civil service law under G.L. c. 31, § 15.

Further, based on the documents submitted, it appears that Mr. Hasomeris is a *provisional* civil service employee in the title of provisional Electrician. (See Attachment B to City's Motion to Dismiss). As such, he is not eligible for a provisional *promotion* as, under Section 15 of Chapter 31, only a "civil service employee" with permanency may be provisionally promoted, and once such employee is so promoted, she may be further provisionally promoted for "sound and sufficient reasons" to another higher title for which she may subsequently be qualified, only if there are no qualified permanent civil service employees in the next lower title. See Kasprzak v. Department of Revenue, 18 MCSR 68 (2005), on reconsideration, 19 MCSR 34 (2006), on further reconsideration, 20 MCSR 628 (2007); Glazer v. Department of Revenue, 21 MCSR 51 (2007); Asiav v Department of Conservation and Recreation, 21 MCSR 23 (2008); Pollock and Medeiros v. Department of Mental Retardation, 22 MCSR 276 (2009); Pease v. Department of Revenue, 22 MCSR 284 (2009) & 22 MCSR 754 (2009); Poe v. Department of Revenue, 22 MCSR 287 (2009); Garfunkel v. Department of Revenue, 22 MCSR 291 (2009); Foster v. Department of Transitional Assistance, 23 MCSR 528 (2010) ; Heath v. Department of Transitional Assistance, 23 MCSR 548 (2010).

For these reasons, Mr. Hasomeris's appeal under Docket No. G2-14-112 is hereby *dismissed*.

¹ Carpenter is a labor service title which can be filled permanently without the need for a civil service examination.

Civil Service Commission

/s/ Christopher Bowman

Christopher C. Bowman

Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Ittleman and Stein, Commissioners [McDowell – Absent]) on October 30, 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:

Nelson Carneiro (for Appellant)

Karen Fisher, Esq. (for Respondent)

John Marra, Esq. (HRD)