

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

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

**MICHAEL HADAYA,**  
*Appellant*  
v.

**CITY OF FALL RIVER,**  
*Respondent*

**Case No.:** G1-12-264

**ORDER OF DISMISSAL**

On September 18, 2012, the Appellant, Michael Hadaya (Mr. Hadaya), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection for appointment to the position of police officer by the City of Fall River (City).

On November 9, 2012, a pre-hearing conference was held at the UMASS School of Law in North Dartmouth. At the pre-hearing, the parties agreed on the following:

- Mr. Hadaya took and passed a civil service examination for police officer in January 2011. He received a score of 98.
- Mr. Hadaya's name appeared on Certification No. 202623 which was used to appoint twenty (20) police officer candidates.
- None of the candidates selected were ranked below Mr. Hadaya on the Certification, although some were tied with Mr. Hadaya.

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. Ct. No. 08-CV-3418 (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). See also Thompson v. Civil Service Comm'n, Suffolk Superior Ct. 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 (1<sup>st</sup> 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 none of the candidates selected were ranked below Mr. Hadaya and because the appointment of a candidate tied with Mr. Hadaya does not constitute a bypass, Mr. Hadaya's appeal under Docket No. G1-12-264 is hereby *dismissed*.

Civil Service Commission

Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Ittleman, Marquis, McDowell and Stein, Commissioners) on January 10, 2013.

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)(1), 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 to:

John Long, Esq. (for Appellant)

Gary P. Howayeck, Esq. (for Respondent)