

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

GEORGE L. MONIZ, JR.
Appellant

v.

Docket No. G1-06-297

CITY OF TAUNTON,
Respondent

Appellant's Representative:

Pro Se
George Moniz



Respondent's Representative:

Robert M. Spiegel, Esq.
Deutsch Williams
99 Summer Street
Boston, MA 02110

Commissioner:

Donald R. Marquis

DECISION ON RESPONDENT'S MOTION TO DISMISS

Procedural Background

Pursuant to G.L. c. 31, §2 (b), the Appellant, George Moniz (hereafter "Appellant" or "Moniz"), appealed the decision of the City of Taunton (hereafter "the City" or "Appointing Authority") claiming that he was bypassed for a Gardener/Laborer position. On March 14, 2007, the City submitted a Motion to Dismiss. Although invited to do so by the Civil Service Commission, the Appellant did not submit an Opposition to the Motion.

Factual Background

In the fall of 2006, an opening arose for the position of Gardener/Laborer within the City's Department of Parks, Cemeteries and Public Grounds; a Labor Service position. The Appellant's name was on the Labor Service list for the position and he was interviewed by the Commissioner of the Department, the City's Human Resources Director and the General Foreman on October 10, 2006. He was informed by letter dated November 2, 2006 that the Department had accepted an internal lateral transfer to fill one slot and that the other position had been filled from other top candidates on the Labor Service list.

Respondent's Grounds for Dismissal

The Respondent asserts that, during the interview, the Appellant stated that he owned his own laundry business and did not have someone available to cover his business if he was hired for the Gardener/Laborer position. The City contends that the Department had vacancies and needed someone who could commit to a start date and the Appellant could not do so as he had not arranged for someone to cover his business. The Respondent further asserts that the Appellant did not have the requisite experience for the position, as he had very little relevant experience and, in fact, did not meet the requirement of providing proof of having one year of verifiable work experience as a Laborer/Gardener.

The Respondent alleges that the person hired for the position from the labor service list had over twenty (20) years of landscaping experience which was directly relevant to the position, as well as being among the top three persons on the Labor

Service list and the unanimous selection by the three interviewers. Finally, the Respondent maintains that the Appellant had a poor prior work history with the City's School Department. Evidence in the form of affidavits submitted by the Commissioner of the Department and the City's Human Resources Director shows that the City sustained its burden of proving that there was reasonable justification for bypassing the Appellant.

Conclusion

For all the aforementioned reasons, the Respondent's Motion to Dismiss is allowed and the Appellant's appeal filed under Docket G1-06-297 is hereby ***dismissed***.

Civil Service Commission

Donald R. Marquis,
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, and Marquis, Commissioners) [Taylor and Guerin, Commissioners absent] on July 5, 2007.

A true copy. Attest:

Commissioner

A motion for reconsideration may be filed by either party within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with GL c. 30A, s. 14(1) for the purpose of tolling the time of appeal.

Pursuant to GL c. 31, s. 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under GL c. 30A, s. 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 to:
George Moniz
Robert M. Spiegel, Esq.