

Term 

NOTICE: Decisions issued by the Appeals Court pursuant to its rule 1:28 are primarily addressed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, rule 1:28 decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28, issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent.

COMMONWEALTH OF MASSACHUSETTS APPEALS COURT

BOSTON POLICE DEPARTMENT vs. ROBERT CHERNESINO [\[FN1\]](#) & another. [\[FN2\]](#)

←12-P-1355→

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

This is an appeal from a judgment of the Superior Court dismissing as moot the Boston police department's (BPD) complaint challenging a decision of the Civil Service Commission (commission). We affirm.

Background. The following facts are drawn from the findings of the commission and other documents of record. After successful completion of the required civil service examination, Robert Chermesino was considered for appointment as a Boston police officer. An investigation by the Boston police recruit investigations unit into Chermesino's background ensued. That investigation disclosed the following. On August 9, 1993, Chermesino admitted to sufficient facts on a charge of larceny over \$250 (auto parts). The case was continued without a finding and Chermesino was placed on probation for six months until February 9, 1994. Second, Chermesino had a poor driving record, which included four speeding violations and two incidences of license suspension. Chermesino was required to participate in a National Safety Council safe driver course, after which he incurred additional motor vehicle infractions. In addition, Chermesino had been terminated from his employment at Poly Esta's in 1997 for failure to report for a scheduled shift. Following the investigation, the BPD obtained permission from the Commonwealth's Human Resource Division (HRD) to 'bypass' Chermesino, see G. L. c. 31, § 27, and proceeded to appoint other candidates. Chermesino then appealed his bypass to the commission. After an evidentiary hearing, the commission issued a decision concluding that the BPD did not have reasonable justification to bypass Chermesino and ordered the BPD to place Chermesino at the top of the eligibility list. The BPD complied and in late January or early February of 2011, the BPD sent Chermesino notice by postcard that he was on the certification list. By this time, however, Chermesino had received and accepted an offer from the Dedham police department (Dedham) for the position of patrol officer. [\[FN3\]](#) In light of his acceptance of Dedham's offer, Chermesino no longer wished to be considered for a position with the BPD, and did not return the postcard or sign the certification list as the BPD had requested. Moreover, during the course of these proceedings, Chermesino submitted an affidavit stating that, in addition to declining the BPD's offer of employment, he did not wish to pursue any other employment opportunities with the BPD. Nonetheless, the BPD pursued its challenge to the commission's decision by commencing this action.

As noted, the commission filed a motion to dismiss the BPD's complaint on grounds of mootness. The BPD opposed the motion, stating that 'it must challenge the Commission's decision since it undermines the credibility of the Department's screening process.' A judge of the Superior Court allowed the motion, declining to exercise his discretion to address the merits.

Discussion. We discern no abuse of discretion on the part of the Superior Court judge in declining to reach the merits. There was no longer any controversy between the parties, and the BPD no longer had a 'personal stake' in the outcome. See *Blake v. Massachusetts Parole Bd.*, 369 Mass. 701, 703 (1976) ('Ordinarily, litigation is considered moot when the party who claimed to be aggrieved ceases to have a personal stake in its outcome'). We are not persuaded by the BPD's argument that, despite Chermesino's expressed lack of interest in working for them, the BPD remains aggrieved because it has a vested interest in a court rendering a judgment as to the commission's circumscribed authority. This so-called aggrievement is merely a theoretical dispute. The BPD believes it has been aggrieved because the commission overstepped its authority. The fact remains, however, that the BPD has already complied with the commission's order and, more importantly, Chermesino, who is now gainfully employed by a different police department, has made no attempt to revive his candidacy for a position with the BPD. [\[FN4\]](#) See *Lockhart v. Attorney Gen.*, 390 Mass. 780, 783-784 (1984) ('Where a moot issue has become a 'theoretical dispute,' . . . [the court will] decline[] to decide the issue').

Nor are we persuaded by the BPD's claim that this case falls within an exception to the mootness doctrine. We acknowledge that, on occasion, our courts have exercised their discretion 'to resolve issues of public importance which, although moot, [are] capable of repetition, yet evading review.' *First Natl. Bank of Boston v. Haufler*, 377 Mass. 209, 211 (1979) (citations omitted). Here, however, the issue whether the BPD was reasonably justified in bypassing Chermesino is not capable of repetition.

Conclusion. The BPD has not demonstrated that the Superior Court judge abused his discretion in dismissing the BPD's complaint as moot. Accordingly, we affirm the judgment of dismissal.

So ordered.

By the Court (Grasso, Graham & Vuono, JJ.),

Entered: October 25, 2013.

[FN1.](#) We spell the defendant's name as it appears in the Superior Court docket. The correct spelling is 'Chermesino,' which we shall use herein.

[FN2.](#) Massachusetts Civil Service Commission.

[FN3.](#) The offer was subject to Chermesino's successful completion of training at a police academy. Chermesino later entered the Massachusetts Bay Transportation Authority's police academy and began working as a police officer in Dedham upon his graduation.

[FN4.](#) Indeed, according to the commission, Chermesino is not eligible to revive his candidacy because the certification list upon which his name appeared has expired.

END OF DOCUMENT

 Term

Adobe Reader is required to view PDF images.

