

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

CIVIL SERVICE COMMISSION

One Ashburton Place: Room 503
Boston, MA 02108

DANIEL B. THIBERT, JR.,
Appellant

v.

G1-16-053

CITY OF SOMERVILLE,
Respondent

Appearance for Appellant:

Pro Se
Daniel B. Thibert, Jr.

Appearance for Respondent:

Robert V. Collins, Jr., Esq.
City of Somerville
93 Highland Avenue
Somerville, MA 02143

Commissioner:

Christopher C. Bowman

ORDER OF DISMISSAL

On March 18, 2016, the Appellant, Daniel B. Thibert, Jr. (Mr. Thibert), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting his non-selection to the position of permanent reserve firefighter in the City of Somerville (City)'s Fire Department.

On April 12, 2016, I held a pre-hearing conference which was attended by Mr. Thibert, counsel for the City and the City's Fire Chief.

Based on the statements of the parties and the documents submitted, I find the following to be undisputed:

1. On April 26, 2014 and July 18, 2014, Mr. Thibert took and passed the civil service examination for firefighter, which was administered by the state's Human Resources Division (HRD).
2. On November 1, 2014, HRD established an eligible list of candidates for firefighter from the April and July 2014 examination.
3. On July 7, 2015, HRD sent Certification No. 03043 to the City from which it could appoint fifteen (15) permanent reserve firefighters.
4. There were multiple candidates in tied positions on the Certification and Mr. Thibert was tied for ninth among those willing to accept employment.
5. Mr. Thibert's rank was based in part on his qualification for a residency preference in Somerville.
6. But for his residency preference, Mr. Thibert's name would not have been among those within the so-called "2N+1" formula to be considered for appointment.
7. In order to qualify for the residency preference in Somerville, Mr. Thibert must have resided in Somerville during the one-year period prior to when the qualifying civil service examination was administered (April 26, 2013 – April 26, 2014).
8. The City did not appoint any person ranked below Mr. Thibert on the Certification, thus no bypass occurred.
9. The City sought and received approval from HRD to remove Mr. Thibert's name from the eligible list, stating that he was unable to verify his residency in Somerville during the period in question. This "PAR.09 removal" is effective for the life of the eligible list, thus preventing Mr. Thibert's name from appearing on any future

Certifications generated from the eligible list scheduled to expire on or about November 1, 2016.

10. At the pre-hearing conference, the City agreed to ask HRD to rescind the PAR.09 removal and restore Mr. Thibert's name to the eligible list.
11. If and when Mr. Thibert's name appears on a future Certification generated from this eligible list, he will still be required to show that he resided in Somerville during the one-year residency period.

Analysis

Based on the undisputed facts, no bypass occurred here as no person ranked below Mr. Thibert on the Certification was appointed by the City as a permanent reserve firefighter. Further, the City has agreed to rescind the PAR.09 removal request that was previously approved by HRD, ensuring that Mr. Thibert's name will appear on any Certification generated from the November 1, 2014 eligible list. In summary, Mr. Thibert is not an aggrieved person and there is currently no live dispute between the parties.

For these reasons, Mr. Thibert's appeal under Docket No. G1-16-053 is hereby

dismissed.

Civil Service Commission

/s/ Christopher Bowman
Christopher C. Bowman
Chairman

By vote of the Civil Service Commission (Bowman, Camuso, Ittleman, Stein and Tivnan, Commissioners) on April 28, 2016.

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)(I), 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. After initiating proceedings for judicial review in Superior Court, the plaintiff, or his / her attorney, is required to serve a copy of the summons and complaint upon the Boston office of the Attorney General of the Commonwealth, with a copy to the Civil Service Commission, in the time and in the manner prescribed by Mass. R. Civ. P. 4(d)

Notice to:

Daniel B. Thibert, Jr. (Appellant)

Robert Collins, Esq. (for Respondent)

Patrick Butler, Esq. (HRD)