**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**
One Ashburton Place: Room 503
Boston, MA 02108

MARIE BARRAL,
Appellant

*v.*

G1-17-204

CITY OF WORCESTER,
Respondent

Appearance for Appellant: *Pro Se*
Marie Barral

Appearance for Respondent: William R. Bagley, Jr., Esq.
City of Worcester
455 Main Street: Room 109
Worcester, MA 01608

Commissioner: Christopher C. Bowman

DECISION ON RESPONDENT'S MOTION TO DISMISS

On October 6, 2017, the Appellant, Marie Barral (Ms. Barral), pursuant to G.L. c. 31, § 2(b), filed an appeal with the Civil Service Commission (Commission), contesting the decision of the City of Worcester (City) to bypass her for original appointment to the position of police officer. On October 17, 2017, the City filed a Motion to Dismiss the Appellant's appeal on the grounds that the appeal was not timely filed with the Commission. On October 31, 2017, I held a pre-hearing conference which was attended by Ms. Barral and counsel for the City. Based on the information presented, the following appears to be undisputed, unless otherwise noted:

1. On April 25, 2015, Ms. Barral took and passed the civil service examination for police officer, administered by the state's Human Resources Division (HRD).
2. On October 2, 2015, HRD established an eligible list of candidates for firefighter in Worcester.
3. On June 16, 2016 and August 18, 2016, HRD sent Certification No. 03894 to the City from which the City could appoint thirty-two (32) police officers.
4. Ms. Barral was ranked 54th among those willing to accept appointment on Certification No. 03894.
5. The City ultimately appointed thirty-eight (38) candidates from Certification No. 03894, ten (10) of whom were ranked below Ms. Barral.
6. On March 1, 2017, the City provided HRD with proposed reasons to bypass Ms. Barral for appointment.[1]
7. By letter dated April 9, 2017, HRD notified Ms. Barral that it had approved the City's reasons for bypass.
8. HRD's April 9, 2017 letter stated in relevant part: "You have a right to appeal this determination by filing your appeal, in writing within sixty calendar days of receipt of this notice, with the Civil Service Commission, One Ashburton Place, Room 503, Boston, MA 02108. Please file a copy of this correspondence and all enclosures with your appeal to the Civil Service Commission (website: www.mass.gov/csc)."
9. Since October 1, 2000, the Commission has had a rule requiring that bypass appeals must be filed within sixty (60) days of receipt of the approved bypass reasons.

[1] The City is one of a handful of communities still subject to a consent decree regarding the appointment of police officers. These communities, unlike "non-consent degree communities" have not been delegated the responsibility of approving bypass reasons by HRD.

10. Bypass appeals filed with the Commission must be accompanied by a $25 filing fee. Absent a filing fee, the appeal is not docketed and is returned to the Appellant, reminding them of this requirement.
11. According to Ms. Barral, on June 2, 2017, she forwarded a letter (with no appeal form or filing fee) expressing her desire to appeal to: "The Commonwealth of Massachusetts; Human Resources Division – Civil Service Commission; One Ashburton Place, Room 503, Boston, MA 02108."
12. The Human Resources Division is a separate state agency with a mailing address of One Ashburton Place: Room 301, Boston, MA 02108.
13. The Commission keeps a record of all appeals filed, including those appeals filed (but not docketed) without a filing fee.
14. The Commission has no record of receiving correspondence form Ms. Barral on or around June 2, 2017.
15. On October 6, 2017, Ms. Barral filed an appeal with the Commission, with a $25 filing fee.
16. The October 6, 2017 appeal was docketed by the Commission and a pre-hearing conference was held on October 31, 2017.

*City's Argument in Favor of Motion to Dismiss*

The City argues that the Appellant's appeal is not timely as it fails to meet the Commission's sixty (60)-day statute of limitations regarding bypass appeals. The City argues that the Appellant's bypass appeal was filed almost six (6) months after the Appellant was notified that HRD was accepting the City's reasons for bypassing her.

*Appellant's Argument in Opposition to Motion to Dismiss*

The Appellant argues that she was confused by the appeal language in the bypass letter; that she was unaware of the bypass appeal form available on the Commission's website; and / or the filing fee requirement. Further, the Appellant argues that she received conflicting information regarding who her appeal should be mailed to.

*Analysis*

The Commission, by administrative rule, has established a 60-day period for taking an appeal from the approval by HRD of a bypass under G.L. c. 31, § 2(b). Here, the Commission did not receive an appeal from the Appellant until almost six (6) months after receiving notification of the approved bypass reasons, making it approximately four (4) months late.

Even viewing all of the evidence in favor of the Appellant, and assuming that she mailed correspondence on June 2nd, the first address on that correspondence is the Human Resources Division (HRD), contrary to the explicit instructions on the bypass letter stating that the appeal must be forwarded to the Civil Service Commission. Further, that correspondence did not include the required filing fee, which, even if it was received by the Commission, would not have been docketed absent the filing fee.

*Conclusion*

Ms. Barral's appeal with the Commission is not timely. For this reason, her appeal under Docket No. G1-17-204 is hereby ***dismissed***.

Civil Service Commission

*/s/ Christopher Bowman*
Christopher C. Bowman
Chairman

By a vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman, Stein and Tivnan, Commissioners) on November 9, 2017.

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. 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:
Marie E. Barral (Appellant)
William R. Bagley, Jr., Esq. (for Respondent)