

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

**SUFFOLK, ss.**

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

**JON E. BANUK,**

*Appellant,*

**CASE NO. G1-17-002**

v.

**CITY OF QUINCY,**

*Respondent.*

Appearance for Appellant:

Jon E. Banuk, Pro Se

Appearance for Respondent:

Janet S. Petkun, Esq.  
Office of the Solicitor - Quincy City Hall  
1305 Hancock Street  
Quincy, MA 02169

Commissioner:

Paul M. Stein

**DECISION**

The Appellant, Jon E. Banuk, appealed to the Civil Service Commission (Commission), acting pursuant to G.L.c.31,§2(b), to contest his bypass by the City of Quincy (Quincy) for appointment as a full-time permanent firefighter with Quincy Fire Department (QFD).<sup>1</sup> The Commission held a pre-hearing conference on January 24, 2017, followed by a full evidentiary hearing on February 27, 2017, both at the offices of the Commission in Boston. The full hearing was digitally recorded.<sup>2</sup> Fifteen exhibits (Exh.1 through Exh.15) were received in evidence. On March 6, 2017, Quincy submitted a Proposed Decision.

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<sup>1</sup> The Standard Adjudicatory Rules of Practice and Procedure, 801 CMR §§1.00, *et seq.*, apply to adjudications before the Commission with Chapter 31 or any Commission rules taking precedence.

<sup>2</sup> Copies of the CDs of the full hearing were provided to the parties. If there is a judicial appeal of this decision, the plaintiff in the judicial appeal becomes obligated to use the CDs to supply the court with the stenographic or other written transcript of the hearing to the extent that he/she wishes to challenge the decision as unsupported by the substantial evidence, arbitrary and capricious, or an abuse of discretion.

## **FINDINGS OF FACT**

Based on the Exhibits entered into evidence and the testimony of the following witnesses:

*Called by the Appointing Authority:*

- Helen Murphy, Quincy Director of Human Resources
- Dennis Maloney, Sergeant, Quincy Police Department

*Called by the Appellant:*

- Jon E. Banuk, Appellant

and taking administrative notice of all matters filed in the case, pertinent law and reasonable inferences from the credible evidence, a preponderance of evidence establishes these facts:

1. The Appellant, Jon F. Banuk, grew up in Weymouth, MA and graduated from Weymouth High School in 2010. He now resides in Quincy MA on “A Street” [redacted], where he rents a room in a private residence of a family friend. (*Exhs. 4, 6, 10 & 12; Testimony of Appellant*)

2. On June 13, 2010, Mr. Banuk entered military service with the U.S. Marine Corps. He trained and served on active duty as an Infantry Rifleman for four years. He attained the rank of Corporal (E-4). He was deployed to Afghanistan, earned the Marine Corps Good Conduct Medal, and was separated with an Honorable Discharge on June 13, 2014. (*Exhs. 2, 4 & 6; Testimony of Appellant*)

3. Mr. Banuk’s home of record at the time of his entry into military service was his parent’s residence in Weymouth. Upon discharge, he returned to Weymouth and lived for a period of several months with his parents before relocating to Quincy. (*Exhs. 2 & 4; Testimony of Appellant & Sgt. Maloney*)

4. While still in the Marine Corps and stationed at Camp LeJeune, NC, Mr. Banuk applied for a job with the City of Quincy. The application was actually completed by Mr. Banuk’s father, who is a QFD Firefighter. The application lists a residence on “M Street” [redacted] in Quincy as Mr. Banuk’s address at that time. (*Exh.1 & 4; Testimony of Appellant & Sgt. Maloney*)

5. Quincy hired Mr. Banuk as a laborer in the Quincy Highway Department, effective September 22, 2014. For the position he was hired to fill, no background investigation was required or performed. He currently remains employed in that position. (*Exhs. 4 & 6; Testimony of Appellant, Murphy & Sgt. Maloney*)

6. Mr. Banuk took and passed the September 2014 civil service examination for municipal firefighter. He claimed residency preference in Quincy based on the (correct) understanding that, as a returning veteran, he could claim residence either in the city or town where he resided when he entered military service or the city or town where he established residence within 90 days upon release from active duty. Specifically, Mr. Banuk claimed to have moved on September 1, 2014 from Weymouth to the M Street address in Quincy (the address he had listed on his February 2014 Quincy employment application). (*Stipulated Facts; Exhs. 1, 4, 6 & 14; Testimony of Appellant & Maloney*)

7. On November 1, 2014, the Massachusetts Human Resources Division (HRD) established the eligible list for the position of Quincy firefighter, listing Mr. Banuk as a Quincy resident (and a disabled veteran) as he had claimed. (*Stipulated Facts; Exh. 3; Testimony of Appellant & Murphy*)

8. On June 8, 2016, pursuant to a requisition from Quincy, HRD issued Certification #03878 for appointment of 16 (later expanded to 27) QFD Permanent Full-Time Firefighters from the November 1, 2014 eligible list. (*Stipulated Facts; Exh. 3; Testimony of Murphy*)

9. Mr. Banuk's name appeared on Certification #03878 in 7<sup>th</sup> place, tied with three other candidates. (*Stipulated Facts; Exh. 3*)

10. On or about June 24, 2014, with his father's assistance, Mr. Banuk completed and submitted his "Pre-Employment Candidate Questionnaire to the QFD. The application, in which

Mr. Banuk certified, under oath, that he had “personally given the answers to each question herein and I do solemnly swear that every answer is true and correct to the best of my knowledge.” The application listed his addresses for the ten years preceding the date of the application as follows:

2005 to 06/13/10	[redacted], Weymouth MA
06/13/10 to 06/13/14	USMC Camp LeJeune, Jacksonville NC
06/12/14 to 09/01/14	[redacted] Weymouth MA
09/01/14 to 03/15	[#] M Street, Quincy MA
03/15 to 01/16	[#] A Street, Quincy MA
01/16 to 04/16	[#] U [redacted] Street Quincy MA
04/16 to Present	[#] A Street, Quincy MA

*(Exhs.4 & 6; Testimony of Appellant)*

11. The Quincy Police Department conducted the background investigations of all candidates who submitted pre-employment applications. The process included an interview with the applicant; CJIS (Criminal Justice Information System) inquiries into criminal, driving and licensing history; and interviews with employers and neighbors. Verification of the candidate’s claim of Quincy resident was one focus of the investigation. *(Exh. 6: Testimony of Maloney)*

12. The QFD uses the Quincy Police Department to perform background investigations on all candidates, including Mr. Banuk. *(Exh. 6; Testimony of Murphy & Sgt. Maloney)*

13. On July 13, 2014, Quincy Police Sergeant Dennis Maloney, along with Quincy Police Sergeant Ralph Willard met with Mr. Banuk for his initial interview at the police station. During this interview, Sgt. Maloney focused on certain deficiencies that he noted in the application and provided Mr. Banuk with an opportunity to supplement the application to supply the missing information. The deficiencies included omitting information about a prior dating/marriage relationships, absence of a copy of his H.S. diploma and a copy of his auto excise tax bill and failure to list any neighborhood references in Quincy. *(Exh. 6; Testimony of Sgt. Maloney)*

14. Sgt. Maloney's background investigation report contains the following details about the interview:

I asked Jon about his residence and his understanding of it regarding civil service. Jon stated that . . . upon returning home [from military service] in June of 2014 he lived in Weymouth with his parents until he moved into his Aunt [name redacted]'s house at [#] M[redacted] Street in Quincy. . . .

He [said that he] lived on M Street until March of 2015. He then moved to [#] A[redacted] Street Quincy. I asked him who he lived with there and he said it was a friend of his Father's named Viki and he did not know her last name. I asked if he had his own room there and he stated that he did and there were several other people living in the house and they were foreign exchange students. In January of 2016 he moved to [#] U [redacted] Street Quincy where he lived with a friend of his Fathers [name redacted] . . .for four months and then moved back to [#]A] Street where he lives now.

Included in his application was a hand written note stating that he did not have a copy of his . . . excise tax bill and when I asked him why he stated . . . his Father had paid the excise tax bill and he did not have a copy. I asked him to obtain a copy of both.

We then moved on to the References section and I asked him how he knew each person that he listed. Every person he gave he described as a "friend of his Fathers". When I asked why he did not put down anyone . . . that he "hung out with" he stated he didn't know that's what he was suppose[d] to do. I then asked him for three references of people who he knows and hangs out with which he provided.

We then moved on to the Neighborhood References section. I asked him . . . why he listed three people who live in Weymouth as his neighbors. He stated that he does not know any of his neighbors in Quincy.

*(Exh. 6; Testimony of Sgt. Maloney)*

15. Sgt. Maloney's investigation of Mr. Banuk's residence included interviews with three neighbors on [M] Street in Quincy where Mr. Banuk reported to have lived with his aunt from September 2014 until March 2015. He showed them a picture of Mr. Banuk and asked if they knew him or had seen his pick-up truck with "oversize wheels". None of the people to whom he spoke remembered seeing Mr. Banuk or the truck. *(Exh. 6; Testimony of Sgt. Maloney)*

16. Sgt. Maloney also went to the [A] Street address and spoke to the homeowner who confirmed that Mr. Banuk did live at that address, along with several foreign exchange students, where he stayed most nights. The homeowner knew the aunt of Mr. Banuk who lived on [M]

Street. It was the aunt who directed Mr. Banuk to the homeowner of [A] Street. (*Exh. 6; Testimony of Sgt. Maloney*)

17. As to Mr. Banuk's references, Sgt. Maloney received positive comments about him from the neighbors and family friend in Weymouth, all of whom recommended Mr. Banuk for the job of a Quincy firefighter. Sgt. Maloney attempted to contact the three additional references that Mr. Banuk said at the interview were personal friends he "hung out with", but none of them returned his phone calls. (*Exh. 6; Testimony of Sgt. Maloney*)

18. On or about August 26, 2016, Sgt. Maloney made a CJIS record check on Mr. Banuk which disclosed (1) a 1990 Chevrolet K1500 pick-up truck purchased in 2012 and registered to Mr. Banuk which listed his parents' home as his mailing address; (2) a Massachusetts driver's license issued to Mr. Banuk with a mailing address at [# U] Street, Quincy<sup>3</sup>; and (3) a License to Carry (LTC) firearms Identification Card (FID) issued to Mr. Banuck by the Weymouth Police Department on 4/23/2014, which listed his current street address [as of 8/26/2106] at [#A] Street. (*Exhs. 7, 9 & 10*)

19. Sgt. Maloney's background investigation report concluded with the following summary, which stated, in part:

Positive

Veteran

No criminal history

Excellent financial history

Negatives

Unable to verify residency

Failed to fill out the application completely and accurately (Handwriting did not match his)

(*Exh. 6*)

20. On or about November 28, 2016, after meeting with the Quincy Police Chief, Sgt. Maloney, HR Director Murphy and others, Quincy Mayor Koch accepted the recommendations

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<sup>3</sup> Mr. Banuk's license shows an issue date of 5/26/2015 and an address at [# M] Street, Quincy (*Exh. 8*)

to appoint twenty-seven candidates to the position of Permanent Full Time QFD Firefighters, twenty-five of which were ranked below Mr. Banuk on Certification #03878, all of whom qualified for Quincy residency preference. The decision to bypass Mr. Banuk was based on the inability to verify his residency in Quincy and issues about his diligence in completing the application. (*Stipulated Facts; Exhs. 3, 6 & 11; Testimony of Murphy and Sgt. Maloney*)

21. Mr. Banuk was not the only candidate who was disqualified for having been unable to verify that he/she was a Quincy resident within the relevant period for claiming residency preference. Four or five other candidates were disqualified for this reason as well. (*Testimony of Murphy*)

22. By letter dated November 30, 2016, Ms. Murphy informed Mr. Banuk that he had been bypassed for appointment to the QFD for the following two reasons:

- Failed to establish/meet residency requirements
- Failed to complete and accurately fill out GFD application

This appeal duly ensued. (*Stipulated Facts; Exhs. 11 & 12*)

23. At the Commission hearing, Mr. Banuk produced the following additional documents:

- Mr. Banuk's voting record from 2010 through 2016 showing that (1) Mr. Banuk voted in Weymouth in the January 19, 2010 Special State Election, the September 14, 2010 State Primary and the November 4, 2014 State General Election; and (2) he voted in Quincy in the September 24, 2015 and November 3, 2015 Local Elections and in the November 8, 2016 State General Election. (*Exh. 15*)
- A Sullivan Tire and Auto Service Invoice dated June 11, 2015, showing the installation of four tires with 37x13.5x17 tires on a 1997 Chevrolet K1500 registered to John Banuk of Weymouth (Mr. Banuk's father). (*Exh. 13*)<sup>4</sup>

24. Mr. Banuk testified that he brought no furniture or personal possessions from Weymouth when he initially moved to Quincy, other than clothing. He did not pay rent to his aunt at [M]

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<sup>4</sup> Mr. Banuk's father purchased the 1997 Chevrolet for him in 2012 to replace Mr. Banuk's 1990 truck. Mr. Banuk produced the invoice to show that did not have "oversized" tires on the truck until after he moved from [M] Street, contrary to what he had told Sgt. Maloney, but had 16" wheels with smaller tires. (*Testimony of Appellant*)

Street. He attributed the fact that none of the neighbors in Quincy knew him was due to his customary daily routine, i.e., leaving early for work and going directly to Weymouth after work before returning to Quincy late at night. At the [U] Street address, he slept on a blow-up mattress. At [A] Street, he described his room as a “squad bay” shared with the foreign exchange students. (*Testimony of Appellant*)

25. Mr. Banuk testified that he had bank records that would show his Quincy addresses. I left the record open for one week to receive that evidence, but none was forthcoming. (*Testimony of Appellant*)

### **APPLICABLE CIVIL SERVICE LAW**

The core mission of Massachusetts civil service law is to enforce “basic merit principles” described in Chapter 31 for “recruiting, selecting and advancing of employees on the basis of their relative ability, knowledge and skills including open consideration of qualified applicants for initial appointment” and “assuring that all employees are protected against coercion for political purposes, and are protected from arbitrary and capricious actions.” G.L.c.31, §1. The mechanism for ensuring adherence to basic merit principles in hiring and promotion is the provision for regular competitive qualifying examinations, open to all qualified applicants, from which eligible lists of successful applicants are established, ranking them according to their scores on the qualifying examination, along with certain statutory credits and preferences, which then may be used by appointing authorities to make civil service appointments based on a “certification” of candidates according to their standing on the applicable eligible list. G.L.c. 31, §§6 through 11, 16 through 27. In general, each position must be filled by selecting one of the top three most highly ranked candidates who indicate they are willing to accept the appointment, which is known as the “2n+1” formula. G.l.c.31,§27; PAR.09.



In order to deviate from the rank order of preferred hiring, and appoint a person “other than the qualified person whose name appears highest”, an appointing authority must provide written reasons – positive or negative, or both – consistent with basic merit principles, to affirmatively justify bypassing a lower ranked candidate in favor of a more highly ranked one. G.L.c.31,§1,§27; PAR.08. A candidate who has been bypassed for appointment in favor of a lower ranked candidate may appeal to the Commission for a de novo review. G.L.c.31, §2(b).

When an appointing authority chooses only the highest ranked candidate(s) within the 2n+1 formula, there is no bypass, the appointing authority is not required to state the reasons for hiring the selected candidates, and the lower-ranked non-selected candidates have no right of appeal to the Commission; even candidates who are tied in rank are not considered bypassed even with when some, but not all of the tied candidates are hired, so long as no candidate ranked below a tied non-selected candidate was hired. See, e.g. Damas v. Boston Police Dep’t, 29 MCSR xxx (2016) and cases cited.

In selecting public employees, especially for the public safety sector, appointing authorities are vested with a certain degree of discretion. City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997). The role of the Commission is to determine "whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority." City of Cambridge v. Civil Service Comm’n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997). See also City of Leominster v. Stratton, 58 Mass.App.Ct. 726, 728, rev.den., 440 Mass. 1108 (2003); Police Dep’t of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den., 726 N.E.2d 417 (2000); McIsaac v. Civil Service Comm’n, 38 Mass.App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, rev.den., 390 Mass. 1102 (1983).

An action is "justified" if it is "done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law." Commissioners of Civil Service v. Municipal Ct., 359 Mass. 211, 214 (1971); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102 (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928) The Commission is guided by "the principle of uniformity and the 'equitable treatment of similarly situated individuals' [both within and across different appointing authorities]" as well as the "underlying purpose of the civil service system 'to guard against political considerations, favoritism and bias in governmental employment decisions.'" Town of Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. In deciding "whether there was reasonable justification" shown for an appointing authority's exercise of discretion, the Commission's primary concern is to ensure that the action comports with "[b]asic merit principles." G.L.c.31,§1. See Massachusetts Ass'n of Minority Law Enforcement Officers v. Abban, 434 Mass. 256, 259, (2001); Beverly v. Civil Service Comm'n, 78 Mass.App.Ct. 182, 188 (2010); City of Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 303-305, rev.den., 428 Mass. 1102 (1997); MacHenry v. Civil Serv. Comm'n, 40 Mass. App. Ct. 632, 635 (1995), rev.den., 423 Mass. 1106 (1996); Mayor of Revere v. Civil Service Comm'n, 31 Mass.App.Ct. 315, 321n.11, 326 (1991).

### **ANALYSIS**

Quincy has established by a preponderance of the evidence that it was reasonably justified to conclude that Mr. Banuk was not a permanent resident of Quincy as of September 13, 2014, the date by which he would have been required to establish such residency in order to claim a preference in hiring as a Quincy resident. Without such a preference, Mr. Banuk's proper place

on Certification #03878 was below all Quincy residents who were hired from that certification. Thus, his non-selection cannot properly be considered a bypass and, for that reason, the Commission must dismiss this appeal for lack of subject matter jurisdiction.

Quincy gives preference to candidates for civil service who have maintained a Quincy residence for a requisite period of time prior to taking a civil service examination, as authorized by statute (G.L. c. 31, § 58), and, in the case of military veterans, who can elect to claim as their residence, either the town from which they entered military service or any municipality in which the established permanent residence within 90 days after release from active duty. (*Exh. 14*)

Although the term “reside” is not specifically defined in Chapter 31, applicable Commission and judicial decisions have made it clear: “The term ‘reside’ is used to designate the physical location of the employee’s house or other dwelling place.” Doris v. Police Comm’r of Boston, 374 Mass. 443, 444 (1978). See, e.g., Hussey v City of Somerville, 29 MCSR xxx (2016); Campbell v. Abington Police Dep’t, 29 MCSR xxx (2016); Costa v. City of Brockton, 26 MCSR xxx (2013); Crete v. City of Lawrence, 18 MCSR 22 (2005). The existence of “strong ties” to a community and/or the “intention” to move there are not necessarily sufficient to establish a person to have “resided” in a community in which they do not then actively live full-time. See, e.g., French v. Town of Plainville, 28 MCSR 269 (2015); Gould v. City of Boston, 27 MCSR 353 (2014), and cases cited. “A temporary living place, such as...a relative's or friend's house or apartment, etc., is not a residence.” Human Resources Division, “Residency Preference Claim & Employment Location Selection Worksheet”, <http://www.mass.gov/anf/employment-equal-access-disability/civil-serv-info/forms-and-labor-applications/exam-forms/residency-preference-claim-and-employment>.

After carefully reviewing the documentary and testimonial evidence, I am persuaded that Quincy has shown by a preponderance of evidence that it was reasonably justified to conclude that Mr. Banuk did not qualify for Quincy veteran's preference on the November 2014 eligible list or on Certification #03878. There is a plausible case to be made that, at the time of the Commission hearing, Mr. Banuk was a permanent Quincy resident, having voted in three elections and maintaining a room where he spent the night "most days". His present status, however, is not relevant to the issue presented before the Commission. Mr. Banuk's right to claim Quincy residency preference for the November 2016 hiring turns on whether or not he had established himself as a permanent Quincy resident as of September 13, 2014, ninety days from the date he was discharged from the Marine Corps. The preponderance of the evidence did not show that he had done so.

The documentary evidence is, at best, inconclusive and, for the most part, tends to prove that Mr. Banuk still resided in Weymouth. His voting record shows that he continued to vote in Weymouth through November 2014, and that he did not begin voting in Quincy until September 2015. His personal motor vehicle continued to be registered in his father's name with a Weymouth address. He was unable to produce any mail, rent receipts, utility bills, bank records or tax bills showing a Quincy address.

Save for his current landlord at the [A] Street address (where he first lived no sooner than March 2015) none of the residents or neighbors at the places he lived in Quincy could vouch that he lived there.<sup>5</sup> He acknowledged that he did not pay rent to his aunt when he stayed with her at [M] Street. His explanation for not having an excise tax bill for his truck was that he father paid

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<sup>5</sup> I credit Mr. Banuk's testimony at the Commission hearing that he replaced the tires on his truck in June 2015, after leaving [M] Street. He may not have had "oversized" tires on the truck during the period he says he was living on [M] Street, but I still give Sgt. Maloney's opinion some weight that it was odd that not one neighbor on [M] Street ever noticed either him or his truck. (*Testimony of Appellant & Sgt. Maloney*)

it – the inference in the absence of that document is that the bill was issued by and paid to Weymouth, as that is where the truck must have been “domiciled” for tax and insurance purposes. Mr. Banuk’s LTC was issued by Weymouth and, with no record of any LTC issued by Quincy, the firearm was presumably, kept in Weymouth.

In sum, the evidence is more than ample persuasive proof that Mr. Banuk was, at least as of September 13, 2014, still resided in Weymouth, not in Quincy. As his claim for residency status on the November 2014 eligible list is flawed, Mr. Banuk was not properly ranked on Certification #03878; taking account of where he should be properly placed, his non-selection was not a bypass. Thus, this appeal must be dismissed for lack of jurisdiction.

As the Commission lacks jurisdiction over the appeal, it need not address the other reason stated for his non-selection, i.e., failure to properly complete the application.

## **CONCLUSION**

In sum, for the reasons stated herein, the appeal of the Appellant, Jon E. Banuk, in appeal G1-17-002, is *dismissed*.

Civil Service Commission  
/s/Paul M. Stein  
Paul M. Stein, Commissioner

By vote of the Civil Service Commission (Bowman, Chairman; Camuso, Ittleman [ABSENT], Stein and Tivnan, Commissioners) on December 21, 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)(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. 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:

Jon E. Banuk (Appellant)

Janet S. Petkun, Esq. (for Respondent)

John Marra, Esq. (HRD)