



STATE OF NEW JERSEY

In the Matter of Antonio Salters,
Township of Hillside,
Fire Department

CSC Docket No. 2021-1827
OAL Docket No. CSV 04898-23

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

ISSUED: APRIL 11, 2024

The appeal of Antonio Salters of the bypass of his name on the eligible list for Fire Fighter (M1838W), Township of Hillside, was heard by Administrative Law Judge Matthew G. Miller (ALJ), who rendered his initial decision on February 28, 2024. No exceptions were filed.

Having considered the record and the attached ALJ's initial decision, and having made an independent evaluation of the record, the Civil Service Commission (Commission), at its meeting on April 10, 2024, accepted and adopted the ALJ's Findings of Fact and Conclusions and his recommendation to uphold the bypass and dismiss the appellant's appeal.

By way of background, in *In the Matter of Antonio Salters* (CSC, decided November 17, 2021), the Commission denied the appellant's appeal of the bypass of his name on the eligible list for Fire Fighter (M1838W), Township of Hillside. The appellant then filed an appeal with the Superior Court of New Jersey, Appellate Division. Upon its review, the Appellate Division vacated the Commission's decision. Citing the four-step test articulated in *Jamison v. Rockaway Township Board of Education*, 242 N.J. Super. 436 (App. Div. 1990), the court remanded the matter back to the Commission in order to develop a more fulsome record through a hearing to determine whether the reasons for the appellant's bypass were pretextual/improper and whether the bypassing would have occurred regardless of the improper motives. See *In the Matter of Antonio Salters*, Docket No. A-1265-21 (App. Div. April 13, 2023). Thereafter, in accordance with the court's opinion, the

appellant's appeal was transmitted to the Office of Administrative Law for a hearing.

As set for in the initial decision, the ALJ found that the Mayor, who is the appointing authority, bypassed the appellant because he interviewed poorly, was not truthful about being a "lifelong" resident of Hillside, and was possibly involved in his father's criminal case. The ALJ also found that the Mayor's dislike of the appellant's father and the appellant's political alignment with his father were not considered in his bypass. The ALJ's findings were based on his assessment of the credibility of the witnesses, notably, finding the Mayor's testimony credible in that she bypassed the appellant for the foregoing legitimate, non-discriminatory/non-retaliatory reasons and the appellant's testimony not credible about his living arrangements and education.

The Commission acknowledges that the ALJ, who has the benefit of hearing and seeing the witnesses, is generally in a better position to determine the credibility and veracity of the witnesses. *See Matter of J.W.D.*, 149 N.J. 108 (1997). "[T]rial courts' credibility findings . . . are often influenced by matters such as observations of the character and demeanor of the witnesses and common human experience that are not transmitted by the record." *See also, In re Taylor*, 158 N.J. 644 (1999) (quoting *State v. Locurto*, 157 N.J. 463, 474 (1999)). Additionally, such credibility findings need not be explicitly enunciated if the record as a whole makes the findings clear. *Id.* at 659 (citing *Locurto, supra*). The Commission appropriately gives due deference to such determinations. However, in its *de novo* review of the record, the Commission has the authority to reverse or modify an ALJ's decision if it is not supported by sufficient credible evidence or was otherwise arbitrary. *See N.J.S.A. 52:14B-10(c); Cavalieri u. Public Employees Retirement System*, 368 N.J. Super. 527 (App. Div. 2004). In this matter, the Commission finds nothing in the record to question those determinations or the findings and conclusions made therefrom.

Consistent with *N.J.A.C. 4A:4-4.8(a)3*, an appointing authority has selection discretion under the "Rule of Three" to appoint a lower ranked eligible absent any unlawful motive. In this case, after a full hearing, the reasons for the appellant's bypass were not pretextual nor was an unlawful motive found. Therefore, the Commission agrees with the ALJ's recommendation to uphold the appellant's bypass and dismiss his appeal.

ORDER

The Civil Service Commission finds that the action of the appointing authority in bypassing the appellant on the eligible list for Fire Fighter (M1838W), Township of Hillside, was justified. The Commission therefore dismisses the appellant's appeal.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 10TH DAY OF APRIL, 2024

Allison Chris Myers

Allison Chris Myers
Chairperson
Civil Service Commission

Inquiries
and
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Attachment



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. CSV 04898-23

AGENCY DKT. NO. 2021-1827

**IN THE MATTER OF ANTONIO SALTERS,
TOWNSHIP OF HILLSIDE, FIRE DEPARTMENT.**

Brian P. Matousek, Esq., for appellant Antonio Salters (Grayson and Associates,
L.L.C., attorneys)

Kenneth B. Goodman, Esq., for respondent Township of Hillside Fire Department
(O'Toole Scrivo, L.L.C., attorneys)

Record Closed: January 26, 2024

Decided: February 28, 2024

BEFORE **MATTHEW G. MILLER, ALJ**:

STATEMENT OF THE CASE

Appellant, Antonio Salters, an applicant for the position of firefighter in the Township of Hillside, appeals the February 4, 2021, decision to bypass him for hiring despite multiple hires being made amongst persons lower on the list of eligibles.¹ Respondent Township of Hillside Fire Department alleges that it complied with the law and that the reasons for not hiring appellant were not pretextual.

¹ https://www.nj.gov/csc/seekers/jobs/announcements/eligible_lists.html (last accessed February 2, 2024).

PROCEDURAL HISTORY

The record shows that on December 4, 2020, Antonio Salters² was certified as an eligible candidate for a firefighter position in the Township of Hillside (“Hillside”) and was ranked fourth on the list of eligibles. He submitted an employment application for the position on January 4, 2021, and was subsequently interviewed by Hillside’s mayor, the Hon. Dahlia O. Vertreese.

By letter dated February 4, 2021, Mayor Vertreese sent a letter to Douglas Ferrigno, the acting chief of the Hillside Fire Department, recommending against Antonio’s appointment. This recommendation came despite Antonio being ranked fourth on the list of eligibles and thirteen candidates being hired. Antonio filed an appeal of the decision with the Civil Service Commission (CSC) and on November 22, 2021, his appeal was denied, In the Matter of Antonio Salters, Fire Fighter (M1838W), Township of Hillside (CSC Docket No.: 2021-1827, November 22, 2021). (C-1.)

Salters appealed that decision and in the case of In re Salters, 2023 N.J. Super. Unpub. LEXIS 550 (App. Div. April 13, 2023), the Appellate Division vacated the decision and remanded it to the CSC for the development of “a more fulsome record . . . at a hearing.” (C-2.)

The CSC granted that hearing on May 24, 2023 and the case was transmitted to the Office of Administrative Law on June 2, 2023 for a hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to-15; N.J.S.A.52:14F-1 to -13. An initial conference took place on July 7, 2023, and was followed by another conference on August 24, 2023. The hearing opened on November 20, 2023, and concluded on November 29, 2023. The record remained open until January 26, 2024, for the submission of post-hearing arguments and closed that day.

² Since there are three male members of the Salters family who play key roles in this case, for the sake of clarity they will be referred to by their given names: Antonio (applicant/appellant), Anthony (father) and Michael (brother).

KEY PERSONNEL

Antonio Salters - appellant and unsuccessful job applicant, son of Anthony Salters, brother of Michael Salters

Anthony Salters - father of Antonio Salters and Michael Salters

Michael Salters - successful job applicant, brother of Antonio Salters, son of Anthony Salters

Dr. Shana Burnett - mother of Antonio Salters, former spouse of Anthony Salters

Hon. Dahlia O. Vertreese - mayor of Hillside and appointing authority

Douglas Ferrigno - then acting chief of the Hillside Fire Department

TESTIMONY

For Respondent:

Hon. Dahlia Vertreese, Mayor, Township of Hillside. Mayor Vertreese was elected mayor of Hillside in 2017, began serving in January 2018 and was re-elected in 2021. She is currently employed as a labor relations specialist for Local 68 of the International Union of Operating Engineers.

Mayor Vertreese has knowledge of Antonio's application and that he was on the List of Eligibles, but was not sure what rank he was. Thirteen firefighters were hired off of that list. Since taking office, she personally interviewed every prospective employee and the police would perform background checks on each of them.

She was aware of Antonio before this episode. She testified that after leaving management, she was an AP History teacher at University High School in Newark and knew Antonio from the Newark school system. His mother (Dr. Shana Burnett), whom she knew "very well" (T1 at 14:22-24), was the vice principal at the George Washington Carver Elementary School in Newark, and she worked with her when she brought charges against school employees. She was also friendly with her outside the job, and testified that Ms. Burnett was very proud of Antonio and how well he was doing. She and Ms.

Burnett had mutual friends and had “gone out to dinner, comedy clubs, things like that.” (T1 at 16:1-3).

Mayor Vertreese knew that Antonio took classes off-campus at a college, but that his diploma says University High School. In reviewing his job application, she saw his dates of attendance at University to be December 2010 through June 2014. She knew that he lived with his mother on Osborne Terrace in Newark. Mayor Vertreese also knew that Ms. Burnett had remarried and moved, and further knew that Antonio was a Newark resident and that his brother Michael had also applied to be a Hillside firefighter (and that he was actually hired off the list of eligibles).

Mayor Vertreese testified that Antonio was appointed to the Hillside Board of Education (BOE) when there was a vacancy, and she attended his swearing-in ceremony. Antonio then ran for re-election, but she did not endorse either him or his opponents. This occurred during COVID. She could not recall if he won or not.

She recalled Antonio’s interview, and since this was the first firefighter hire “in a long time”, she was particularly looking for honesty and integrity. Mayor Vertreese testified that her mother was a nurse (and later an administrator) at United Hospital, and her father was a Newark police officer who was removed from his position because of issues with the administration. Household conversations “were always about integrity and making sure that you don’t do anything, or make decisions that would cause a question of your integrity.” (T1 at 31:17-25.) These qualities were important to her, particularly in these areas of public employment such as police officers, firefighters, etc. (T1 at 32:7-20.)

Mayor Vertreese also interviewed Michael, but as for Antonio, she testified that he was not engaged during his Zoom interview and her impression was that he felt that “I was wasting his time.” He was aloof, and she felt that he treated the interview like a formality and “didn’t seem excited for the opportunity.” (T1 at 33:18 – 34:1.) She also questioned the “lifelong resident of Hillside” answer. She knew it was not truthful because he graduated from University High School and he lived with his mother in Newark. She felt that it was simply unnecessary to lie about that since you did not have to be a lifelong

resident to get the job and she did not find that “he had the honesty, integrity or candor” for the job. (T1at 35:16-20.) The residency issue was also a red flag.

As to the racial breakdown of the new firefighter hires, Mayor Vertreese estimated that about seventy percent were people of color and that number did not include the hire of Portuguese descent.

In contrast to Antonio, Michael was very enthusiastic and engaged during his interview. He said that he lived with his grandparents in Hillside but had a Newark high school diploma and she knew this to be true. Her impression was that Antonio was not being truthful, while Michael’s interview was “really good.” It seemed like Michael “really wanted the job and Antonio did not.” (T1 at 43:22-23.) Michael was offered the job, accepted the offer and is currently employed as a Hillside firefighter.

Mayor Vertreese testified that there was a pending federal criminal case involving Anthony and that the indictment, which she read on the Department of Justice (DOJ) website, included an allegation that Anthony had sent Antonio an email requesting that he falsify information on his Free Application for Federal Student Aid (FAFSA) form concerning income. Between that and the interview, she decided to bypass him.

She also rejected two other candidates based on interviews and said that the third person on the list had a great interview, but had downplayed his role in an old altercation to the point where she deemed him to be untruthful.

Mayor Vertreese testified that race played literally no role in her decision and that she was unaware of any political activities of the brothers, other than Antonio’s service on the BOE. She did testify that while the BOE is non-partisan in theory, in reality it is not and contested elections are amongst different factions of the Democratic Party since there is no effective Republican Party in Hillside.

On cross-examination, Mayor Vertreese testified that she lives in Hillside and her two sons went to grade school there, but both currently attend St. Benedict’s Prep in Newark, a parochial school. She has one child in elementary school in Hillside. The

basis of her information concerning Antonio's residence is personal knowledge of both him and his parents, even though she conceded that she had never personally seen him at the Newark address.

She was also aware that Anthony had also been involved in some legal matter involving failing to return a rental car, which he told her he needed in order to visit Antonio in Newark.

As for Antonio's application, Mayor Vertreese testified that she may have had it prior to the interview, but she did not specifically remember. That day, she conducted two to four interviews, but did not recall exactly how many. She believed that Antonio was at work and she was at home when the interview was conducted. She asked the same questions of everyone, and it was not her job to elicit additional information from the applicant, so she did not follow up on the "lifelong resident" issue.

She was looking for candor and did not feel that she got it from him. She testified that she is the appointing authority, not the fire chief. However, a police background check is performed and the fire chief could express his opinion, but he did not here. The only discussion with the chief was about the two or three candidates that were bypassed, and that wasn't even by name.

Mayor Vertreese testified that the chief did not respond to her February 4, 2021, rejection letter. She performed the additional research herself by conducting a simple Google search. She knew that Anthony had been indicted in 2018 and it had been reported in the media, but other than her stating "that's what I've been telling you about," it was not that big a deal. The first she knew about the connection to Antonio was when she read the indictment online. Her decision was based on the interview, the residency answer and the indictment. She did not feel the need to follow up with him, but simply decided that he would be bypassed. She has performed research like this on other candidates and felt that there was nothing wrong with doing it here, and she thinks it's good practice, since in politics she would get blamed for a bad hire.

She did not feel that the entanglement with his father's case was, in and of itself, disqualifying, but it was the totality of the circumstances. She knew that Antonio had not been indicted, and while she never saw the FAFSA, Mayor Vertreese reiterated that she did read the indictment itself.

Mayor Vertreese testified that Anthony supported her candidacy in 2017. In 2019 he was the Democratic chair of Hillside, and their dispute began when she was unwilling to engage in certain behaviors that would potentially impugn her integrity. For those reasons they ended up as political opponents. The issues started in mid-2019 and she feels that Anthony believes that he is the *de facto* mayor.

There has been vindictive behavior since then, and she has now been sued three times (all of which were dismissed). Initially, it made her upset, but ultimately she believes that she's just a "different mayor" who wanted to "move in a different direction."

Mayor Vertreese conceded that Antonio's position on the BOE was a political one, but she did not endorse any candidates in races he was involved in since it was not her job as mayor. However, she has endorsed candidates in the last two school board elections.

She testified, "I had a pretty good relationship with Antonio." She saw him at an event in New Orleans and actually gave him a hug and did not think he would continue Anthony's politics.

In 2019, Mayor Vertreese and Anthony were on opposing teams in the Democratic district leader election. While she was not running directly against Anthony, one of her teammates was. She noted that Michael would campaign for his father, but was not a candidate.

All of the firefighter interviews were conducted via Zoom and she did not feel that it was difficult for her to determine demeanor via video; in fact, sometimes candidates seemed more comfortable than they did during in-person interviews. Interviews have been conducted in person since the renovated city hall opened in November 2022. While

she had no specific recollection of how long Antonio's interview was, all of them lasted about ten to fifteen minutes.

The focus of the mayor's testimony then shifted to a discussion of how a "lifelong" resident of Hillside is defined. The mayor testified that residents can be "prickly" about what the term means. She moved to Hillside twenty years ago and does not consider herself a lifelong Hillside resident, although she considers her children to be.

Thirteen firefighters were hired. Antonio was fourth on the list and he stayed on the list, but she bypassed him using the "rule of three"; she saw no need to remove him, and she wasn't keeping tally of the rankings, but was simply trying to find the best-qualified candidates.

Three were dropped from the list, but she could not recall who the lowest-ranked candidate hired was (although she did not dispute that it was number thirty-six).

Mayor Vertreese confirmed that she could render an unbiased opinion in the decision to hire Antonio and her decision was both unbiased and not politically motivated. She noted that she hired Michael and actually likes Anthony personally, but that being said, "I just can't do business with him."

She noted that she also hired Andrea Hyatt's son, whose mother is her very vocal opponent on the town council.

She also confirmed that the DOJ information was from their public website and that St. Benedict's is a private school.

When questioned about her statement concerning Antonio having not lived in Hillside for "half his life," she clarified that he had attended Newark public schools when he was younger (before University High School).

She also re-confirmed that she did not know of Antonio's involvement in Anthony's case until she read the indictment.

For Appellant:

Dr. Shana Burnett, mother of Antonio Salters. Dr. Burnett testified that she is Antonio's mother. She holds undergraduate degrees and received an Ed.D. from Kean University in 2018. She has been a vice principal in the Newark school system for sixteen to seventeen years and held a variety of positions before then. She testified that she has been married three times and was married to Anthony for one year about twenty-seven years ago. She had one child with him, Antonio, who only lived with her for the first year of his life and thereafter lived with Anthony in Hillside. She lived with Anthony and Antonio in Newark for that year. She has never lived on [REDACTED] Terrace in Newark, but only on [REDACTED] Street and [REDACTED] Parkway.

She testified that before this incident she had a "working relationship" with Mayor Vertreese, and denied that there was a social relationship. She never told her where Antonio was living.

On cross-examination, she testified that she has lived on [REDACTED] Avenue in Newark since approximately 2017. At some point, probably before 2010 (when Antonio started high school), she lived on [REDACTED] Lane in Somerset, N.J. Antonio never lived with her there, nor did he ever live with her in Plainfield. She testified that she does not know if Anthony is the Democratic Party chair of Hillside or if he actually lived in Orange.

Dr. Burnett testified that Antonio attended Delbarton ("somewhere in Essex County") at the beginning of his freshman year of high school but graduated from University High School (UHS). When Antonio was at UHS, she was the vice principal at Dr. George Washington Carver Middle School in Newark. She knew that Mayor Vertreese worked in the district office but was unaware of her title. She also testified that she knew that the mayor was a teacher at UHS when Antonio was attending but did not know what she taught. She did not recall whether they ever discussed Antonio during this time and admitted that she "may have seen her a couple of times in passing."

Dr. Burnett reiterated that she has never resided on [REDACTED] Terrace in Newark.

She testified that she is "somewhat familiar" with the residency requirements to attend Newark public schools and knew that out-of-district students can attend "if they are homeless." She has no knowledge of Antonio living in Orange, and denied that he ever lived in Somerset.

She recalled that Antonio was on the Hillside Board of Education but did not know how he obtained his seat. She did know that his tenure was short, and she further recalled that she spoke with the mayor (who appeared happy, as well) at his swearing-in.

When asked if she "socialized" with the mayor, Dr. Burnett asked, "What is socialized?" She admitted to having seen the mayor at a mutual friend's birthday party about ten years ago where they briefly exchanged pleasantries.

She knew that Antonio had lost his bid for re-election to the BOE and was not aware of the mayor having any role in that.

Dr. Burnett again denied that Antonio resided with her after the first year and knew him to live at [REDACTED] Street in Hillside.

On re-direct examination, she testified that Antonio attended the Robert Treat Academy magnet school in middle school and the Warren Street School (both in Newark) earlier in his educational career. Anthony took care of his education, and she had no say in that.

Antonio Salters, appellant. Antonio Romeo Salters testified that he is twenty-seven years old and was born in Livingston. He has three siblings; both he and Michael (age thirty-two) are biological children of Anthony.

He confirmed that he attended Delbarton for a semester before transferring to UHS. He then graduated from Montclair State University with degrees in political science and philosophy and attended Syracuse Law School for a year. He then worked at the Union County counsel's office for three months before being employed as a social worker

in Bergen County for slightly over two years. He then became a property manager in 2021, supervising about twenty-five properties.

Antonio testified that his parents were divorced early in his life (maybe in 1997) and that he lived at [REDACTED] Street in Hillside since the divorce. He was unsure about any custody agreement, but definitely lived with his father. He has never lived on [REDACTED] Terrace in Newark, and neither did his mother.

Antonio testified that during grade school he attended the Harriet Tubman School, Warren Street School, and the Robert Treat Academy (all in Newark), but also the Cook School in Plainfield and the Franklin Elementary School in Somerset.

From 2010 to 2014, his mother lived on [REDACTED] Street and [REDACTED] Parkway in Newark, as well as on [REDACTED] [REDACTED] Lane in Somerset. He has never lived with her after that first year. He played recreation basketball and soccer in Hillside.

Antonio testified that he is a Democratic district leader for a specific area in Hillside. He ran for BOE in 2020 but testified that he did not remember who his opponents were, although he remembered that the mayor endorsed them.

Anthony is the Democratic chair of Hillside and he recalled that Anthony endorsed the mayor in the mid-2010s. Since then, Anthony has endorsed other mayoral candidates and his current relationship with the mayor is adversarial, as is his. He testified that the mayor is a vocal detractor of his father and that began shortly after she was elected. His brother Michael is not involved in politics.

Antonio testified that he was a member of the BOE from January through December 2020, but again stated that he did not remember the names of his opponents for re-election.

Regarding the firefighter's job, he testified that he was "excited about the position" and was looking to help people. He testified that he received the December 28, 2020, letter from the Hillside Fire Department and followed its instructions in submitting his

application in-person on January 6, 2021. He did not list Delbarton on his application because he did not feel that it was relevant. He testified that all of the information on his application was truthful. He is registered to vote in Hillside and has lived at the Chapman address for twenty-four years. He has no criminal or adverse motor-vehicle history.

After submitting the application, Antonio sat with a panel of three firefighters for about ten to fifteen minutes. This was recorded. He then met via Zoom with the mayor on January 14, 2021 for about fifteen minutes. He was in the basement of his house and was wearing a suit. He testified that the mayor's demeanor was neutral and they just said hello and started with the interview.

Antonio considers himself to be a lifelong resident of Hillside and there was no follow-up by the mayor concerning that assertion. He testified that it appeared to him that the mayor had read his application since she mentioned his job as a social worker. The interview ended with a simple "goodbye," and he confirmed that he was both "enthusiastic" and "excited" about the job. The mayor did not ask any follow-up questions and he was not asked about Anthony's criminal matter or the college application and was not given an opportunity to discuss or explain those issues. There was no discussion about his honesty or candor or his demeanor/enthusiasm. He wore a suit because he was taking the position seriously and wanted the job.

To his knowledge, the mayor has never visited his house in Hillside or his mother's house in Newark.

On cross-examination, Antonio testified that for part of his senior year in high school he took classes at Essex Community College (ECC) because he already had enough credits to graduate. He then attended Montclair State and lived off-campus when he was at Syracuse. He was not aware of the cost of the ECC program. He received financial aid at Montclair State, but his father took care of the FAFSA and he did not know who completed it.

Antonio is aware of Anthony's indictment and that it concerns his FASFA. He reiterated that he had no role in either preparing or submitting it and he never discussed it with his father.

Antonio testified that he did not remember when he attended the Franklin School, but it may have been in third and fourth grade. He claims that his father dropped him off and picked him up every day. He had no relatives in Franklin.

He testified that he played Bidy basketball when he was six to eight years old in Hillside and "rec" soccer in his early teens.

Antonio started as a district leader in January 2023. He did not recall the mayor taking a specific position against him but felt that she supported the other slate of BOE candidates by encouraging people to attend a Zoom town hall. There were no in-person events during the BOE campaign in 2020 and he never asked the mayor for help. He was aware that Anthony endorsed the mayor in 2017.

The 2021 mayoral election pitted Mayor Vertreese against Nancy Mondello, but he did not know when Ms. Mondello announced her candidacy. Andrea Hyatt also ran, but Antonio testified that he was unaware of the mayor's relationship with her. He was aware, however, that Hyatt's son was hired as a firefighter in the same class as him and his brother. He has no thoughts on that but knew that the mayor and Hyatt were political opponents.

Exhibit J-E listed the only questions that were asked during the interview.

Antonio further testified that he was not involved in Hillside politics while in law school, but at this point he does work on campaigns and with other candidates.

He has seen aggressive conversations between his father and the mayor and they have campaigned extensively against each other. He felt that this had gone beyond the political to the personal.

On re-direct examination, Antonio confirmed that Anthony's criminal case is still ongoing.

RESPONDENT'S POSITION

Respondent argues that the evidence clearly "establishes that the decision to bypass appellant was not based on any unlawful motive." More specifically:

The record demonstrates that the Appointing Authority's decision was not based on race, an alleged political animus between Mayor Vertreese and Appellant's father, or improper consideration of a federal indictment concerning Appellant's father. The record demonstrates that the Appointing Authority properly exercised her discretion to bypass Appellant.

[Resp't's Br. at 1-2.]

It is further argued that the decision to bypass Antonio was consistent with N.J.A.C. 4A:4-4.7(a)(1) and N.J.A.C. 4A:4-6.1(a)(6), as well as the "rule of three." In re Foglio, 207 N.J. 38, 45 (2011); see also N.J.S.A. 11A:4-8; N.J.A.C. 4A:4-4.8(a)(3). In support of this position, respondent argues that the testimony of both Dr. Burnett and Antonio lacked credibility and that the evidence clearly contradicted many of their assertions, demonstrating that "Mayor Vertreese had good cause to believe that Antonio lacked the moral character necessary of a firefighter."

APPELLANT'S POSITION

Appellant argues that respondent has failed to carry its burden of proof and that the weight of the credible evidence demonstrates that Mayor Vertreese illegally retaliated against Antonio due to her "serious disagreements in how [his] father conducted his political affairs." Appellant's Br. at 9.

It is argued that with Antonio having met his burden to demonstrate that his bypassing was retaliatory, respondent has failed to demonstrate by a preponderance of

the evidence “that the Appointing Authority would have taken the same action, regardless of retaliatory intent.” Antonio points out that;

If this Court were to remove the Hillside residency issue and the Mayor’s subjective lack of enthusiasm argument, the Appellant undoubtedly appears to be a perfect candidate to become a Hillside Firefighter. Nevertheless, because the Mayor had a clear political agenda against the Appellant, she needed to create, a non-existent residency issue and was further protected by the pure subjective interview issues, which in the Mayor’s mind could not be challenged.

[Appellant’s Br. at 11.]

Appellant points to Atkinson v. Parsekian, 37 N.J. 143 (1962), Bornstein v. Metropolitan Bottling Co., 26 N.J. 263 (1958), In re Crowley, 193 N.J. Super. 197 (App. Div. 1984), In re Brown, 458 N.J. Super. 284 (App. Div. 2019), and Jamison v. Rockaway Township Board of Education, 242 N.J. Super. 436 (App. Div. 1990), in support of his contentions.

APPLICABLE LAW

Civil service employees’ rights and duties are governed by the Civil Service Act and regulations promulgated pursuant thereto. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.A.C. 4A:1-1.1. The Act is an important inducement to attract qualified people to public service and is to be liberally applied toward merit appointment and tenure protection. Mastrobattista v. Essex Cnty. Park Comm’n, 46 N.J. 138, 147 (1965).

The New Jersey Constitution requires that “[a]ppointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive” N.J. Const. art. VII, § 1, ¶ 2.

As succinctly detailed in Foglio:

In the case of a vacancy, the Civil Service Act provides for an examination process. N.J.S.A. 11A:4-2. When an examination is announced, minimum qualifications for the position must be posted. N.J.A.C. 4A:4-2.1. After the examination, an eligible list is published ranking all passing candidates by score, with special ranking rules for veterans and for tie scores. N.J.A.C. 4A:4-3.2. That list remains in force for three years, although the Commission may extend or delay the date of its expiration. N.J.A.C. 4A:4-3.3(b). When an appointing authority requests a list of candidates for a vacant position, the Commission will issue a certification "containing the names and addresses of the eligibles with the highest rankings on the appropriate list." N.J.A.C. 4A:4-4.2(a). A complete certification consists of "three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment." N.J.A.C. 4A:4-4.2(c)(2).

[207 N.J. at 44.]

The system is designed to protect applicants and public employees from political interference/retaliation and promote their fair treatment. DiBuonaventura v. Washington Twp., 462 N.J. Super. 260, 269 (App. Div. 2020).

However, merely because a candidate is on the eligible list, "no right accrues" to the person, Foglio, 207 N.J. at 59, and there is no "vested right to appointment," ibid., (quoting In re Crowley, 193 N.J. Super. at 210).

These principles eventually led to the adoption of the "rule of three." Id. at 45; N.J.S.A. 11A:4-8. For over a century, the rule has governed both the certification of candidates to the appointing body and the appointing body's hiring discretion. Foglio, 207 N.J. at 45 (citing L. 1908, c. 156, § 21).

Under the "rule of three", after the Commission certifies a list of at least three candidates, the appointing authority has the discretion to select any of the top three candidates; there is no presumption in favor of the highest-ranked candidate. N.J.S.A. 11A:4-8; see also N.J.A.C. 4A:4-4.8(a)(3). The purpose of the rule is "to limit, but not to eliminate, discretion in hiring." Foglio, 207 N.J. at 46. "While ensuring that competitive examinations winnow the field of candidates, the Rule of Three does not stand as 'an

immutable or total bar to the application of other important criteria' by a government employer." Ibid. (quoting Terry v. Mercer Cnty. Bd. of Chosen Freeholders, 86 N.J. 141, 150 (1981)).

With the amendment of N.J.A.C. 4A:4-4.8(b)(4) in 2017, the appointing authority no longer has to routinely provide a "statement of reasons" as to why a candidate was bypassed when it selects a lower-ranked candidate. However, when the decision is appealed, such as here, " the appointing authority would remain obligated to demonstrate merit-based criteria for the bypass during the appeal process." 44 N.J.A.R. 137(a).

However, an appointing authority retains discretion to bypass a higher-ranked candidate "for any legitimate reason based upon the candidate's merit." In re Hruska, 375 N.J. Super. 202, 210 (App. Div. 2005); see also In re Crowley, 193 N.J. Super. at 214 (an appointing authority can bypass a higher-ranked candidate for any "legitimate reason"). Indeed, an appointing authority has "broad discretion" to consider a wide range of subjective factors. Terry, 86 N.J. at 150. It is only prohibited from using discriminatory reasons to make its decision—for example "anti-union animus or discrimination based on . . . race, ancestry, or gender." Foglio, 207 N.J. at 47 n.5.

Important here is that it has been recognized that "the performance of the applicants in the give-and-take of an interview" is a legitimate hiring consideration for the employer. Foglio, 207 N.J. at 49. Further, the making of a false statement of any material fact or any attempted deception or fraud at any point during the process is also a valid reason for bypass. N.J.A.C. 4A:4-6.1. In fact, the list of reasons included in this Code section is not inclusive and includes a catchall "other sufficient reasons" clause. N.J.A.C. 4A:4-6.1(a)(9).

A higher-ranked candidate challenging a bypass bears the burden of establishing by a preponderance of the evidence that the appointing authority's bypass decision was motivated by discrimination, retaliation, or other improper motive. See N.J.A.C. 4A:2-1.4(c). Once the candidate makes a prima facie showing, the burden of production—but not the burden of persuasion—shifts to the authority to present a legitimate, non-discriminatory reason for the decision. Jamison, 242 N.J. Super. at 445. Should the

authority meet its burden, the candidate can still prevail if the candidate shows that the articulated reasons are pretextual or that an improper motive was more likely responsible. Ibid. If the candidate meets that burden, the candidate has established a presumption of discriminatory or retaliatory intent, and the burden shifts to the authority. Id. at 446. The authority must then prove that the action would have taken place regardless of the discriminatory or retaliatory motive, usually by showing that the other candidates had better qualifications. Ibid.

The CSC recently reiterated this procedure in In the Matters of Nicole Barlow-Griffin and Darring Villegas, Chief Juvenile Detention Officer (PC3776D), Bergen County, 2023 N.J. CSC LEXIS 237 (May 24, 2023). Citing to Jamison, it confirmed that the burden of proof follows this basic format in cases involving, as here, alleged retaliatory motivation in failing to hire an otherwise qualified candidate:

1. The initial burden of proof rests on the complainant, who must establish retaliation by a preponderance of the credible evidence.

If the complainant meets that burden, then,

2. The burden of going forward (i.e., articulating a legitimate non-retaliatory reason for the decision) then shifts to the respondent.

At this point, the burden of proof still rests with the complainant, and,

3. He must show that the proffered reasons are pretextual or that the improper reason more likely motivated the employer.

If the complainant succeeds in meeting this burden, he has established a presumption of discriminatory or retaliatory intent. Then,

4. The burden of proof shifts to the employer to prove that the adverse action would have occurred regardless of the discriminatory or retaliatory motive.

APPELLATE DIVISION DECISION

In remanding this case to the CSC (and ultimately, the OAL), the Appellate Division (C-2) made the following findings:

1. that Antonio made a prima facie showing of retaliation, thereby satisfying Step 1 of the Jamison test (as outlined above), noting that there was "an air of pretextuality not easily disregarded"³; and
2. that Hillside proffered legitimate, non-discriminatory reasons for bypassing him for the position, thereby satisfying Step 2 of the Jamison test.

That brings us to Steps 3 and 4, where the court determined that a full hearing was necessary to determine whether the reasons for the bypass were pretextual/improper (Step 3) and whether the bypassing would have occurred regardless of the improper motives (Step 4).

In reality, what needs to be determined is Step 3. If I find that the reasons that Antonio was bypassed were pretextual/improper, there is no legitimate question that with him placing fourth on the list of eligible candidates and with thirteen applicants being hired, he would have been hired.

The court also provided some additional guidance, noting that respondent had seemingly "cherry picked" the reasons for the non-hiring in its arguments, "ignoring the mayor's unsupported allegations of an 'entanglement' in criminal conduct and lying for financial gain." Id. at *12. However, it also noted that it would not "venture an opinion on this limited record as to whether a retaliatory reason more likely motivated the employer," but rather left that to, ultimately, me. Id. at *13 (citing Jamison, 242 N.J. Super. at 445).

CREDIBILITY

³ 2023 N.J. Super. Unpub. LEXIS 550 at *11 (quoting In re Brown, 458 N.J. Super. 284, 290 (App. Div. 2019)).

Credibility is obviously the most important factor here, not only for Mayor Vertreese, but for Antonio and Dr. Burnett as well.

Where facts are contested, the trier of fact must assess and weigh the credibility of the witnesses for purposes of making factual findings as to the disputed facts. "Credibility" is defined as: "The quality that makes something (as a witness or some evidence) worthy of belief." Black's Law Dictionary 463 (11th ed. 2019).

Credibility is the value that a finder of the facts gives to witness testimony. It requires an overall assessment of the witness' story in light of its rationality, internal consistency and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963).

Accordingly, credibility does not mean determining who is telling the truth but rather requires a determination of whose testimony is "worthy of belief" based upon numerous factors. Credibility is not based on who presented the most witnesses. Instead, it is "the interest, motive, bias, or prejudice of a witness [that] may affect his credibility and justify the . . . [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted). The process entails observing the witnesses' demeanor, evaluating their ability to recall specific details, evaluating the consistency of their testimony under direct and cross-examination, determining the significance of any inconsistent statements and otherwise gathering a sense of their candor with the court. Thus, "[c]redibility involves more than demeanor. It apprehends the overall evaluation of testimony in the light of its rationality or internal consistency and the manner in which it hangs together with other evidence." Carbo, 314 F.2d at 749.

DISCUSSION and FINDINGS OF FACT

As noted, there is no question that the credibility of the witnesses in this case plays a major part in the overall assessment of the case.

The key to this case, much more so than the credibility of Antonio and his mother, is the credibility of Mayor Vertreese. And I **FIND** her to be credible in her explanations that the bypassing of Mr. Salters was for legitimate, non-discriminatory/non-retaliatory reasons.

Her testimony reflected that three things contributed to her decision to bypass Antonio:

1. Interviewing poorly.
2. Lying about being a "lifelong" resident of Hillside.
3. His involvement in Anthony's criminal case.

The first of the three factors is actually the easiest to review, at least in this case, since it is both straightforward and subjective.

Mayor Vertreese described Antonio's interview as follows:

He was not very engaged in the interview. It was definitely a demeanor as if there was just run of the mill, as if I was wasting his time. His answers were, you know, very short and he just seemed really aloof and disengaged. Just like a technicality, or formality that he was participating in the interview.

[T1 at 33:9-14.]

She further testified that he failed to "embellish" or elaborate on any of his answers and failed to answer the questions "enthusiastically" and "didn't seem excited for the opportunity." (T1 at 33:22 – 34:1.)

Irrespective of the credibility issue, which will be discussed below, I have difficulty disputing the mayor's subjective impression of the interview. During his testimony I found Mr. Salters to be a very soft-spoken young man who presented with an unemotional affect. He had very little presence in the hearing room, and it seemed as if he were

fulfilling an obligation by attending the hearing as opposed to fighting for a job that he had really wanted and had been unjustly denied.

Nothing that occurred during the two days of this hearing led me to challenge Mayor Vertreese's expressed impression of Antonio's demeanor and desire.

As for the "lifelong resident of Hillside" issue, as well as Antonio's alleged involvement in his father's criminal case, Mayor Vertreese testified credibly that both of these issues were effectively tiles in a mosaic that worked against Antonio's candidacy. As she explained:

I am a former paralegal, that's my training, so I understand the difference between, you know, if it's smut, or, you know, gossipy websites versus the Federal Department of Justice, and coming from a background of law enforcement usually indictments don't happen unless they have evidence.

So, while it hasn't been adjudicated it was another issue in that he was not truthful during his interview, plus you have this entanglement, I don't know if it's true or not, but if it's true there was a falsification of documents. And then thirdly, as I said, it just was not a good interview and I think had . . . Antonio been more engaged, enthusiastic about the opportunity he would've been in a better situation, but as they all hung together, that's why he was bypassed and it was for no other reason. I had those concerns about his honesty, his candor and his lack of zeal for the position.

[T1 at 87:15 – 88:8]

While Mayor Vertreese was questioned/criticized for her additional personal research into Antonio's background, I **FIND** nothing inappropriate about it. I imagine that there are few modern employers who do not perform an internet search of prospective applicants' names and no argument was made that the mayor broke any rule or regulation in doing so. The fact that the check discovered Anthony's actual indictment and the fact that Mayor Vertreese became aware of the DOJ's accusation that Antonio had some role in the alleged crime does nothing to support the notion that his non-hiring was an act of

political retribution. In fact, as the mayor testified, it adds to the totality of the circumstances that would lead to his being passed over.

That being said, I **CONCLUDE** that both Antonio's and Dr. Burnett's credibility could very legitimately be brought into question. Very simply, I did not **FIND** Antonio credible concerning his living arrangements and education. His explanation for attending school in Somerset bordered on the outrageous, particularly his denial that he lived with his mother (when she was residing there), but rather commuted with his father, back and forth, from Hillside. No logical explanation was provided concerning why he attended school in Plainfield and his professed lack of knowledge as to why he attended high school in Newark instead of Hillside is similarly not worthy of belief.⁴

As for Dr. Burnett, while I **FIND** her loyalty to her son to be admirable, I did not **FIND** her testimony credible. She seemed to consciously avoid questions that challenged Antonio's narrative and then was less than convincing with the answers she ultimately did give.

Finally, as inferred above, the overriding, unspoken specter of Anthony hung over this entire proceeding. While he was in attendance on the first day of the hearing, neither side called him as a witness, and he did not testify. He was a topic that was danced around by all three of the witnesses. Mayor Vertreese testified as to his alleged malfeasance, but never quite got around to explicitly accusing him of criminal conduct, while Antonio essentially deferred to him during his testimony and Dr. Burnett did her best to support Antonio while attempting to (and largely successfully) politely conceal her true feelings about Anthony.

While this matter was referred to the OAL as a case about the mayor's potential retribution against Antonio due to her dislike of Anthony, in reality, what we saw was the result of Anthony's influence on Antonio. Ultimately, I **CONCLUDE** that the bypassing has nothing to do with the relationship between Anthony and the mayor, but much more to do with the results of the father-son relationship.

⁴ New Jersey's school residency requirements can be found at N.J.S.A. 18A:38-1 et seq.

Given the evidence supplied by the parties, as well as the witness testimony and further taking into account the direction supplied by the court in Jamison, I **FIND** the following **FACTS** to have been proven by a preponderance of the credible evidence:

1. That Antonio, for at least the vast majority of his life prior to attending Montclair State, lived with his mother in Newark or Somerset.
2. That Mayor Vertreese's consideration of the veracity of Antonio's assertion that he was a "lifelong resident of Hillside" was appropriate.
3. That by no reasonable definition of the phrase can Antonio have been considered a "lifelong resident of Hillside."
4. That Antonio's assertion that he was "a lifelong resident of Hillside" was, given its most generous interpretation, misleading.
5. That the mayor did not act improperly in conducting an internet search of Antonio's name.
6. That the mayor's concern regarding Antonio's possible entanglement in Anthony's case was not inappropriate.
7. That the mayor's testimony concerning Antonio's poor performance during the interview was credible.
8. That the mayor had no obligation during the interview to elicit additional details from Antonio about the answers supplied on his job application.
9. That Mayor Vertreese and Anthony are political adversaries and that there is also personal animosity between them.

10. That the mayor's dislike of Anthony was not a consideration in her decision to bypass Antonio on the list of eligibles.
11. That Antonio's political alignment with Anthony was not a consideration in Mayor Vertreese's decision to bypass him on the list of eligibles.
12. That the mayor's decision to bypass Antonio was for exactly the reasons that she expressed in her letter of February 4, 2021 (and confirmed in her testimony) and that those reasons were not pre-textual, discriminatory or improper.⁵

While I **FIND** that there is no question that Anthony's influence on this case was outsized, I also **FIND** that Mayor Vertreese's decision to bypass Antonio was for exactly the reasons she expressed and that those reasons were not pre-textual. I therefore **FIND** that Antonio has failed to demonstrate by a preponderance of the credible evidence that the proffered reasons for his bypassing were pretextual or improper.

While I appreciate the issues raised by Antonio, I also **CONCLUDE** that by hiring his brother Michael (who was the third lowest-ranked candidate that was ultimately hired) as well as the son of another political adversary for the firefighter position, the credibility of the mayor's assertion that politics did not play a role in Antonio's case is enhanced. It must also be noted that at the time of the bypass, Antonio's political role had been limited to a brief tenure as an interim member of the board of education who had lost his bid for election to a full term. By his own testimony, it was only after this employment issue that he became more actively involved in Anthony's political activities.

Ultimately, however, perhaps the key question to be asked in determining the outcome of this case is whether Antonio would have been bypassed if Anthony was not a political opponent of Mayor Vertreese. I **CONCLUDE**, based upon the testimony and evidence supplied during the hearing, that the answer to that question is "yes." It was a

⁵ The issue of race was not raised in the initial appeal before the Appellate Division and was effectively abandoned here. For the sake of completeness, I **FIND** that there was no evidence presented that demonstrated that Antonio's race played any role whatsoever in his being bypassed.

combination of a poor interview and significant credibility questions that led to Antonio being bypassed, not his parentage.

ORDER

Based on the foregoing, I hereby **ORDER** that the appeal of appellant, Antonio Salters, be and is hereby **DISMISSED**.

I hereby **FILE** my initial decision with the **CIVIL SERVICE COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **CIVIL SERVICE COMMISSION**, which by law is authorized to make a final decision in this matter. If the Civil Service Commission does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **DIRECTOR, DIVISION OF APPEALS AND REGULATORY AFFAIRS, UNIT H, CIVIL SERVICE COMMISSION, 44 South Clinton Avenue, PO Box 312, Trenton, New Jersey 08625-0312**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



February 28, 2024

DATE

MATTHEW G. MILLER, ALJ

Date Received at Agency:

February 28, 2024

Date Mailed to Parties:
MGM/sej

February 28, 2024

APPENDIX

WITNESSES

For Appellant:

Antonio Salters
Shana Burnett

For respondent:

Dahlia Vertreese

EXHIBITS

Court:

- C-1 In the Matter of Antonio Salters, Fire Fighter (M1838W), Township of Hillside (CSC Docket No. 2021-1827, November 22, 2021)
- C-2 In re Salters, 2023 N.J. Super. Unpub. LEXIS 550 (App. Div. April 13, 2023)

Joint:

- J-A Notification of Certification (December 11, 2020)
- J-B Letter of Interest from appellant to mayor (December 11, 2020)
- J-C Letter from fire chief to appellant, re: application process (December 28, 2020)
- J-D Employment Application of Antonio Salters (January 4, 2021)
- J-E Interview questions and handwritten notes of Mayor Vertreese
- J-F Letter from mayor to acting fire chief (February 4, 2021)
- J-G Appeal letter of Antonio Salters (January 26, 2021)
- J-H Certification of Eligibles List (December 11, 2020)

J-I Letter from Antonio Salters to Civil Service Commission (August 20, 2021)