

SJC revives 25-year-old discrimination lawsuit by Worcester police officers

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WORCESTER – The Supreme Judicial Court has breathed new life into a lawsuit dating to 1994 in which two black police officers alleged the department’s promotional process was discriminatory.

“We’re confident this will turn out in our favor,” Harold L. Lichten, the officers’ attorney, said regarding an Oct. 22 ruling that orders the Worcester Superior Court to reconsider the case.

Lichten has said in the past that his clients, Andrew Harris and Spencer Tatum, could be owed as much as \$1 million apiece in backpay and interest should they prevail.

Both officers retired as the case wended its way through the courts over decades, and Harris died in September 2018. His estate would be in line to collect should the men ultimately win.

“As long as I can keep fighting this, I’m going to keep fighting it, because I know that I’m right,” Harris [told the T&G eight months before his death](#).

Harris and Tatum first accused the department of discriminatory promotional practices in 1994, arguing, as other officers have in other cities, that their department’s reliance on state civil service exams had a racially disparate impact against minority applicants.

The city knew minority officers tended to score lower on the exams, their lawyer argued, but continued to use them anyway, amounting to a system whose impact was discriminatory.

The Massachusetts Commission Against Discrimination in 2011 ruled that the city intentionally discriminated against minority officers, and suggested Harris and Tatum might have been promoted a decade before had city officials not given “incomplete and inaccurate” testimony.

The city appealed that ruling in 2011 within MCAD, and then, when MCAD [affirmed its ruling in 2015](#), appealed that to Worcester Superior Court.

In a January 2018 ruling, Worcester Superior Court Judge James Gavin Reardon Jr. overturned MCAD's ruling, relying on a recent decision in a separate federal lawsuit in which Tatum, but not Harris, was a plaintiff.

Reardon opined that the federal case – in which the judge found for Worcester and several other cities accused of bias – was sufficiently related to the MCAD appeal, and that the law had therefore been settled in Worcester's favor.

The SJC disagreed, finding that the federal case – which concerned a later promotional exam Tatum took – was not similar enough to the 1994 dispute. It ordered the 1994 case be remanded back to Worcester Superior Court so that a judge could re-consider the MCAD's ruling on its merits.

Lichten said a judge on remand will only be able to overturn MCAD's ruling on a determination that the agency made a legal error. He said he believes MCAD's decision was a sound one that will not be overturned.

The city's top lawyer, David M. Moore, wrote in a statement that the city "is confident that, in the end, the courts will agree that the city followed civil service procedures and, most importantly, that the city did not engage in any unlawful discrimination during the 1992-1994 police sergeant promotional process."

Worcester and other similarly sued cities have argued that they promoted officers based strictly on who scored highest on a statewide exam. If minority applicants had scored high enough, they've said, they would have been promoted.

The issue has led to competing decisions in federal court, with two different federal judges in Massachusetts reaching separate conclusions based on the unique circumstances of their cases.

At the time Judge Reardon made his decision, the U.S. Appeals Court had affirmed the federal ruling in the city of Worcester's favor on the separate case in which Tatum was a plaintiff. It had not yet decided whether to take up an appeal in the competing case in which a federal judge ruled against the city of Boston.

The U.S. Appeals Court declined to accept that appeal this April, meaning that the ruling against Boston police stands. Lichten, who represents the Boston officers in that case, recently completed a bench trial on damages and is awaiting an award.

Lichten said the city of Worcester never made a serious effort to settle the 1994 case, something he finds "amazing."

He said the city, between 1992 and 2001, only promoted one minority officer. Additionally, the MCAD's decision from 2011 found the city had ignored an agreement it forged in 1988 to promote minority officers with lower scores over three years.

Should the officers ultimately prevail, the interest in the case would be "astronomical," said Lichten, who has been a labor lawyer for 35 years.

“I’ve never had a case in my life that had 10 years of interest, never mind 20 or 22 years of interest,” he said.

Lichten said that, based on its prior actions, he anticipates the city would appeal any adverse ruling from the Worcester Superior Court.

He said it’s unfortunate neither Tatum nor Harris was ever promoted.

“I think they would have made the city proud,” he said.

Harris, who served the department for 33 years and retired in 2013, was **remembered in his obituary as an “honorable man with a great spirit and a big heart.”**

He was 61.