B-13

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Kenneth Immersi,
Fire Fighter (M2554M),
City of Newark

CSC Docket No. 2014-2292

List Removal Appeal

ISSUED: OCT 0 3 2014 (DASV)

Kenneth Immersi, represented by Charles M. Grossman, Esq., appeals the attached decision of the Division of Classification and Personnel Management (CPM), which upheld the removal of his name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement.

The open-competitive examination for Fire Fighter (M2554M), City of Newark, was announced with a closing date of March 31, 2010 and was open to residents of Newark. Applicants were required to maintain continuous residency up to the date of appointment. *See N.J.A.C.* 4A:4-2.11(e)1. The appellant, a nonveteran, passed the subject examination and ranked 78 on the resulting eligible list, which promulgated on December 13, 2011 and expires on December 12, 2014.[1] The second certification of the eligible list was issued on July 23, 2012 containing the names of 126 eligibles. The appellant was listed in the 17th position on the certification. In disposing of the certification, the appointing authority requested the appellant's removal for his failure to meet the residency requirement. It submitted a copy of the appellant's Motor Vehicle Services Address Change History, dated March 15, 2013, indicating that on December 23, 2009, the appellant changed his address from a Baldwin Street, Bloomfield, location to a Mount Vernon Avenue, Bloomfield, address. On December 27, 2011, the appellant then updated his address from Mount Vernon Avenue, Bloomfield, to North 7th Street in Newark,

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[1] The Fire Fighter (M2554M), City of Newark, eligible list was scheduled to expire on December 12, 2013. However, the list was extended for one year.

which is listed as the appellant's current address. The appellant appealed to CPM, asserting that he has resided in Newark since January 2010. However, he used his parents' address at Mount Vernon Avenue in Bloomfield to receive his mail. CPM found that, pursuant to the appellant's address change history, the appellant established the Mount Vernon Avenue location as both his mailing and residential address. Further, CPM indicated that the record did not contain official government documentation which demonstrated that the appellant maintained residency in Newark prior to December 27, 2011. Therefore, CPM determined that the appointing authority presented a sufficient basis to remove the appellant's name from the subject eligible list.

On appeal to the Civil Service Commission (Commission), the appellant argues that CPM disregarded the information he submitted, including his County of Essex Voter Registration Card, which lists the appellant's North 7Th Street, Newark, address and has a registration date of March 6, 2000. The appellant claims that he has voted in Newark on a number of occasions during the relevant time. However, it is noted that the appellant does not include his voter profile or other evidence that he has in fact voted in Newark. Moreover, the appellant relies on the submission presented to CPM. He indicates that from February 2009 to December 31, 2009, he lived with his parents at Mount Vernon Avenue in Bloomfield. However, he moved to a basement apartment on North 13th Street in Newark on January 1, 2010. He entered into a two-year lease from January 1, 2010 to January 1, 2012. The appellant submits a copy of the lease, which provides that the monthly rent was $400 to be paid in cash and includes all utilities. However, in December 2011, there was a serious flood and he had to move. The appellant moved to an apartment on North 7th Street in Newark and submits a copy of that lease, which was from January 1, 2012 through December 31, 2012. The lease was signed on December 27, 2011. It is noted that the lease agreement referred to the appellant's address at the time as the North 13th Street location. The appellant also presents a copy of the lease renewal from January 1, 2013 to December 31, 2013. Further, he states that he currently lives at that apartment with his girlfriend.

Regarding his driver's license, the appellant indicates that when he moved to North 13th Street, he "simply did not bother to change his address" because he often went to his parents' home and used their address for his credit cards and for work-related matters, such as paychecks. The appellant notes that his mother suffered a stroke in 2004 and his father worked at night. He would often visit his mother to check on her condition. Additionally, the appellant indicates that he did not have his own mailbox with a key when he lived in the basement apartment at North 13th Street. He argues that it is not unusual for individuals to use their parents' address since "safety, security and convenience explain such behavior." The appellant states that he eventually changed his address on his driver's license on December 27, 2011 to North 7th Street, as he was about to sign the lease at that location. The apartment was in "a more secure and safe building." The appellant submits a copy

of his driver's license, which was issued on December 27, 2011 and reflects his current address at North 7th Street. Moreover, the appellant acknowledges that he updated his driver's license on December 23, 2009 to reflect an address change from Baldwin Street, Bloomfield, to Mount Vernon Avenue, Bloomfield. He explains that, at that time, he "had no interest or thought of" applying for a Fire Fighter position with the City of Newark. The appellant further states that "[s]ince it was for a two year period he thought he would just wait until that license expired and then use whatever current address he was at."

Moreover, the appellant submits notarized statements from Joseph Ferraro, a Town of Kearny Fire Fighter; Michael Del Vecchio, a Trooper 2, and Shannon Chapman, a former neighbor who lives on the second floor at the North 13th Street location, who have personal knowledge of where the appellant was living at the time. Specifically, Chapman indicates that while the appellant was living at North 13th Street from January 1, 2010 to December 2011, they became close friends and frequently barbequed together in the summer months. She also states that during the winter months, the appellant helped her and the landlord shovel the driveway and clean their cars when it snowed. He also helped "fix things around the house and manage[d] the upkeep of the outside." Additionally, Ferraro and Del Vecchio, long-time friends of the appellant, were frequent visitors of the appellant at North 13th Street during his residence there. They would watch football on Sundays or "hang out" and have dinner during the week. Del Vecchio also states that he helped the appellant move into the basement apartment. After the apartment became flooded in December 2011, he assisted the appellant move to a new apartment on North 7th Street. Furthermore, the appellant presents the affidavits of his former landlord, Robert Catalano, and his parents, Joseph and Angela Immersi. Catalano states that the appellant resided in the basement apartment of his home residence at North 13th Street and paid $400 in rent. He also indicates that "after the events of December 2011, [his] basement became flooded and it became almost uninhabitable. Mr. Immersi resided there as long as he possibly could before finding a new apartment at . . . North 7th street in Newark in that same month." Mr. and Mrs. Immersi confirm that the appellant did not live at Mount Vernon Avenue, where they reside, from January 2010 to December 2011. The appellant also presents copies of his utility bills, dated 2013, which was requested of him during the investigation of his background and reflect his North 7th Street address. Therefore, the appellant maintains that the appointing authority has not met its burden in removing his name from the subject eligible list.

In response, the appointing authority, represented by Emily Truman, Assistant Corporation Counsel, contends that the appellant's primary residence from March 31, 2010 to December 27, 2011 was not located in Newark based on the investigation of his background. It indicates that the appellant reported that he lived in Newark on North 13th Street from January 2010 until December 2011 and then on North 7th Street from January 2012 to the present. However, the

appointing authority asserts that the investigation disclosed numerous inconsistencies, such as in the appellant's Motor Vehicle Services Address Change History which revealed that he resided in Bloomfield from December 2009 to December 2011. Further, it emphasizes that the North 13th Street address is not listed at all in the appellant's motor vehicle records. Moreover, it claims that the address change history "raises significant credibility issues." In this regard, the appointing authority states that the appellant changed his address to the Mount Vernon Avenue, Bloomfield, location on December 23, 2009, but allegedly he moved to Newark on January 1, 2010. It argues that "[i]t is not logical for someone to update their residency with the DMV eight (8) days before moving, and then fail to update their address once they have moved." Furthermore, the appointing authority reiterates that the North 13th Street address is not listed on any official documents, beyond what was reported by the appellant and his "friend,[2]" Catalano, who also lives at the North 13th Street location. Rather, the appointing authority submits copies of the appellant's 2010 and 2011 tax return, which reflect his Mount Vernon Avenue, Bloomfield, address. Moreover, it presents the appellant's TransUnion credit report, dated April 16, 2013, which does not list the North 13th Street address as a place of residence. Additionally, the appointing authority highlights the fact that all of the documentation that the appellant presents indicates only the North 7th Street address. It also asserts that the notarized statements in the record are from the appellant's "friends."

Further, the appointing authority indicates that the appellant's parents live at the Bloomfield address and they have a much stronger relationship with the appellant than a friend who lives with him at the North 13th Street, Newark, location. Additionally, given his mother's condition and the appellant's admission that he checks up on her, the appointing authority maintains that it is doubtful that the appellant resided in Newark from the March 31, 2010 examination closing date. It states that "short of his desire" to become a Fire Fighter in Newark, there is "zero information" to demonstrate that the appellant would otherwise live in Newark.

In reply, the appellant advises that he has been appointed as a Fire Fighter with the Town of Kearny. Personnel records indicate that the appointment was effective March 3, 2014. The appellant also states that he completed academy training on May 15, 2014. Additionally, he claims that the Town of Kearny "made the same investigation" as to his residency and "reviewed the same documents." The Town of Kearny investigators also came to his Newark home. He disputes any claim made by the City of Newark that its investigator came to his home and he was not there and never answered the door.

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[2] The appointing authority presents a section of the appellant's employment application in which he named Catalano as an individual he has resided with from January 2010 to December 2011 at the North 13th Street location. The appellant also referred to Catalano as a friend.

CONCLUSION

N.J.A.C. 4A:4-2.11(c) provides that where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;

2. Whether time actually spent in the claimed residence exceeds that of other locations;

3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

See e.g., In the Matter of Roslyn L. Lightfoot (MSB, decided January 12, 1993) (Use of a residence for purposes of employment need and convenience does not make it a primary legal residence when there is a second residence for which there is a greater degree of permanence and attachment). *See also, In the Matter of James W. Beadling* (MSB, decided October 4, 2006). Moreover, *N.J.A.C.* 4A:4-2.11(e)1 states that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. Additionally, *N.J.A.C.* 4A:4-4.7(a)7 provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an

eligible list. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

Pursuant to the standards set forth in *N.J.A.C.* 4A:4-2.11(c), the appellant has presented convincing evidence that he has resided continuously in Newark since the March 31, 2010 examination closing date. He presents leases for the North 13th Street basement apartment where he resided from January 2010 through December 2011 and for the North 7th Street apartment from January 2012 to the present. The validity of the North 13th Street lease has not been rebutted. Rather, it has been confirmed by Catalano through his affidavit. Regardless of whether Catalano is the appellant's friend, he verifies that the appellant lived there and rented the basement apartment.[3] Additionally, Chapman also lives in that location and confirms the appellant's residence and activities at that location. The Commission finds her statement credible and corroborated by the notarized statements of Ferraro and Del Vecchio, which the Commission also finds to be credible. Further, the appellant's parents submit an affidavit, swearing that the appellant did not live at Mount Vernon Avenue from January 2010 through December 2011. Moreover, notwithstanding that the appellant obviously has a closer relationship to his parents than to his landlord and friends, nothing in the record demonstrates that the appellant actually spent more time in the Bloomfield residence during the relevant time period which would invalidate his residency status in Newark. As indicated in the foregoing statements and affidavits, the appellant resided, socialized, and helped maintain the property at North 13th Street. The Commission is also not convinced that if the residency requirement was eliminated, the appellant would not remain in Newark. He has continuously lived there since January 1, 2010, prior to the March 31, 2010 closing date, despite being recently appointed as a Fire Fighter in the Town of Kearny. There is nothing in the record which questions his current residency at North 7th Street in Newark.

With respect to the appellant's driver's license, 2010 and 2011 tax returns, and credit report, there is no dispute that the appellant did not list his North 13th Street address on these documents. However, the appellant provides an explanation as to why he did not do so. His mailing address was his parents' home because he did not have his own mailbox with a key at the basement apartment. Moreover, although the appointing authority questions the timing of the appellant's address change on December 23, 2009, the appellant explains that he was not interested in applying for a Newark Fire Fighter position at that time and decided to "wait until that license expired" to change it. It is emphasized that the appellant need only be a resident of Newark as of the March 31, 2010 examination closing

[3] Since the rent included the utilities, the fact that the appellant does not provide such documents is not detrimental to his appeal.

date. Further, regardless of its strength, the appellant's explanation is not inconsistent and the weight of the evidence in the record demonstrates that the appellant was in fact a resident of Newark since the examination closing date.

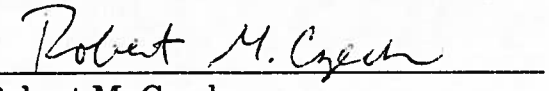
Accordingly, the appellant has met his burden of proof in this matter and the appointing authority has failed to present a sufficient basis to remove the appellant's name from the eligible list for Fire Fighter (M2554M), City of Newark. It is noted that since the appellant is not a veteran, his appointment is not mandated. Additionally, the appellant is subject to an updated background check and must successfully pass medical and psychological examinations prior to any appointment. Therefore, there is not a sufficient basis for a retroactive appointment. *See e.g.*, *In the Matter of John Tracy* (CSC, decided March 13, 2014) (The Commission denied an appellant's request for reconsideration of the remedies provided to him upon his restoration to a Fire Fighter eligible list, finding that the appellant was not a veteran and thus not entitled to a retroactive appointment). The Commission stresses that individuals whose names merely appear on a list do not have a vested right to appointment. *See In re Crowley*, 193 *N.J. Super.* 197 (App. Div. 1984), *Schroder v. Kiss*, 74 *N.J. Super.* 229 (App. Div. 1962). The only interest that results from placement on an eligible list is that the candidate will be considered for an applicable position so long as the eligible list remains in force. *See Nunan v. Department of Personnel*, 244 *N.J. Super.* 494 (App. Div. 1990).

ORDER

Therefore, it is ordered that this appeal be granted and the appellant's name be restored to the Fire Fighter (M2554M), City of Newark, eligible list, for prospective employment opportunities only. However, should the appellant not receive an opportunity to be considered for a position prior to the expiration of the eligible list, the list shall be revived and the appellant's name certified at the time of the next certification for Fire Fighter, City of Newark.

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 1st DAY OF OCTOBER, 2014



Robert M. Czech
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Attachment

c: Kenneth Immersi
Charles M. Grossman, Esq.
Emily Truman, Assistant Corporation Counsel
Michael Greene
Kenneth Connolly

Chris Christie
Governor
Kim Guadagno
Lt. Governor

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT
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Robert M. Czech
Chair/Chief Executive Officer

February 28, 2014

Charles M. Grossman
Pitman, Mindas, Grossman, Lee, and Moore
150 Morris Avenue
PO Box 696
Springfield NJ 07081

RE: Removal of Name from Eligible List – Kenneth Immersi

Title: Fire Fighter
Symbol: M2554M
Jurisdiction: Newark
Certification Number: OL130280
Certification Date: 07/23/12
Initial Determination: Removed – Outside of Residency Scope

Dear Mr. Grossman,

This is in response to your correspondence regarding the removal of your client's name from the Fire Fighter eligibility list in association with the certification cited above.

The Appointing Authority requested removal of your client's name in accordance with N.J.A.C. 4A:4-2.11(e)1, which permits the removal of an eligible candidate's name from the eligible list for failure to continuously maintain residency from the closing date of the examination announcement up to and including the date of appointment (March 31, 2010).

In support of its decision, the Appointing Authority provided a copy of Mr. Immersi's Motor Vehicle Services Address Change History, which indicates that between December 23, 2009 and December 27, 2011 Mr. Immersi had established [redacted] Mt. Vernon Ave, [redacted], Bloomfield, NJ 07003-3991 as both his mailing **and residential** address. Among the standards used to determine residency are the following paragraphs in 4A:4-2.11 (Residence standards):

> **5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable;** and

Based on this information, the Appointing Authority states that your client did not maintain continuous residency in the City of Newark.

Documentation submitted by, or on behalf of, Mr. Immersi does not include any official government documentation which establishes that your client had maintained a residence in Newark prior to December 27, 2011.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove Mr. Immersi's name has been sustained and the appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a $20 fee for appeals. Please include the required $20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director
Division of Appeals and Regulatory Affairs
Written Appeals Record Unit
PO Box 312
Trenton, NJ 08625-0312

Sincerely,
For the Director,

Elliott Cohen,
Local Placement Services

c: Julien X. Neals

Julien X. Neals
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