

STATE OF NEW JERSEY

In the Matter of Senior Community Relations Aide (M2417N), Atlantic City

CSC Docket No. 2014-1544

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Appointment Waiver

ISSUED: JUL 3 0 2014 (SLK)

The matter of whether Atlantic City (Atlantic City) should be granted permission not to make an appointment from the February 28, 2012 certification for Senior Community Relations Aide (M2417N), has been referred to the Civil Service Commission (Commission) for review.

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The record reveals that on October 13, 2011, the appointing authority provisionally appointed Jayesh Sodha, pending open competitive examination procedures, to the subject title. The examination was announced with a closing date of November 22, 2011. The examination resulted in an employment roster of seven eligibles which promulgated on February 23, 2012 and expires on February 22, 2015. It is noted that Sodha had a rank of 7 on the subject eligible list and the 6 other eligibles tied at the rank of 1. On February 28, 2012, certification OL120332 was issued and Sodha's name was in the 7th position on the certification.

After several notices were sent to the appointing authority indicating that it was in violation of Civil Service law for failure to dispose and return the certification, on June 5, 2013, the Commission ordered the appointing authority to immediately dispose of the outstanding certification by either vacating the position or making a permanent appointment of a reachable and interested eligible. Additionally, the appointing authority was ordered to immediately separate Sodha from the subject title. Further, the appointing authority was ordered to pay \$1,000 in compliance costs and was advised that it could potentially be fined. See In the

¹ The Senior Community Relations Aide title was consolidated into the Senior Community Service Aide title effective February 9, 2013.

² The appointing authority has not remitted the required costs.

Matter of Senior Community Relations Aide (M2417N), Atlantic City (CSC, decided June 5, 2013).

The appointing authority returned the certification on September 19, 2013, indicating that Sodha was removed from the title and hiring a new employee to the subject title would have caused a financial burden. Further, the appointing authority indicated in a personnel action form signed on July 5, 2013, that it was appointing Sodha to the lower level non-competitive title of Community Service Aide effective August 11, 2013.3 It is noted that the appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration. See N.J.A.C. 4A:10-2.2(a)1. On October 16, 2013, the Division of Classification and Personnel Management (CPM) advised the appointing authority of the need to seek an appointment waiver in this matter. The appointing authority responded that it was currently experiencing a budgetary crisis and therefore it would not be prudent to hire a new employee at that time. appointing authority stated that the impact of Casino Tax appeals made it difficult to replace Mr. Sodha and therefore it moved him to a lower title. Consequently, the appointing authority presents that due to its budget complications, it is requesting an appointment waiver.

Thereafter, the matter was referred by CPM to the Division of Appeals and Regulatory Affairs (DARA). DARA acknowledged the request of Atlantic City for a waiver of the appointment requirement and the assessment of costs in the above matter. Moreover, it was advised that if an appointment waiver was granted, it could be assessed for the costs of the selection process in the amount of \$2,048. Although the appointing authority was advised that it could submit reasons why costs of the selection process should not be assessed, it did not respond.

A review of agency records indicates that there are no other employees recorded as serving provisionally pending open competitive examination procedures in the subject title in Atlantic City.

CONCLUSION

In accordance with N.J.S.A. 11A:4-5, once the examination process has been initiated due to the appointment of a provisional employee or due to an appointing authority's request to fill a vacancy, the appointing authority must make an appointment from the resulting eligible list if there are three or more interested and eligible candidates. The only exception to this mandate may be made for a valid reason such as fiscal constraints.

³ A movement from the title of Senior Community Service Aide to Community Service Aide represents a demotion.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Jayesh Sodha to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Sodha was appointed to the non-competitive title of Community Service Aide. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both N.J.S.A. 11A:4-5 and N.J.A.C. 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the civil service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. In this regard, the change in title of a provisional is insufficient to support a waiver of the costs of the selection process. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be granted. Additionally, the Civil Service Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this order.

The Civil Service Commission further orders that the costs incurred in the compliance process, as ordered in Senior Community Relations Aide (M2417N), Atlantic City, supra, in the amount of \$1,000 pursuant to N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-3.2(a)5, be remitted within thirty (30) days of the issuance of this order. However, since the appointing authority separated the provisional appointee within 30 days of the issuance of the Commission's prior order and given its financial problems due to casino tax appeals, the Commission will not assess a fine at this time for the failure to remit the required compliance costs. However, if the \$1,000 compliance cost is not remitted within 30 days of the issuance of this order, it is ordered that fines be assessed in the amount of one hundred dollars (\$100.00) per day, beginning on the thirty-first day following the issuance of this order and continuing each day of continued violation, up to a maximum of ten-thousand dollars (\$10,000.00). This matter will be referred to the Office of the Attorney General for enforcement and for recovery of fines as assessed herein if full compliance is not effected within thirty days.

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 30th DAY OF JULY, 2014

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries

Henry Maurer

and

Director

Correspondence

Division of Appeals and Regulatory Affairs

Civil Service Commission Written Record Appeals Unit

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Attachment

c: Arthur Liston

Kenneth Connolly

Beth Wood

Joseph Gambino

ACTION REQUIRED



ANSN

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Senior Community Relations Aide (M2417N), Atlantic City

CSC Docket No. 2013-2398

Salary Disapproval

DL12033 D

ISSUED:

JUN 0 5 2013

(JET)

The appointing authority's failure to dispose of the certification for Senior Community Relations Aide (M2417N), Atlantic City, while a provisional is serving in the title, has been referred to the Civil Service Commission (Commission) for enforcement.

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The Commission has reviewed the salary disapproval issued against the salary of Jayesh Sodha and has made the following findings of fact:

- Sodha is currently serving provisionally in the title of Senior Community Relations Aide.
- 2. There is a vacancy for the title of Senior Community Relations Aide and an outstanding certification was issued on February 28, 2012 from the M2417N eligible list.
- 3. The certification has not been properly disposed of and the appointing authority was advised of the required date of disposition.
- 4. The Certification Manager issued a Notice of Salary Disapproval to the appointing authority and afforded it an opportunity to appeal such action to the Commission.

- 5. No such appeal was taken, and no proper disposition of the certification was received; the salary disapproval, therefore, became a final administrative action.
- 6. By not properly disposing of this certification, the appointing authority is in violation of Civil Service law and rules.

In the instant matter, the appointing authority has refused to properly dispose of the certification issued to fill the vacancy occupied by a provisional employee. The appointing authority has not contested or appealed the findings of the Certification Manager. The payment of salaries for which there is a disapproval is illegal and contravenes Civil Service law and rules.

The appointing authority, despite being given the opportunity, did not submit any arguments or documentation for the Commission's review.

ORDER

The Civil Service Commission orders the appointing authority to immediately dispose of the outstanding certification by either vacating the position or making a permanent appointment of a reachable and interested eligible. Additionally, the appointing authority is ordered to immediately separate Sodha who is currently serving provisionally pending open competitive examination procedures in the subject title. Such disposition must be filed with the Certification Manager on or subject title. Such disposition must be filed with the Certification Manager on or before thirty (30) days from the issuance of this order. If no proper disposition is made within this time period, the Civil Service Commission orders the constructive appointment of the interested eligible. See N.J.A.C. 4A:10-2.1(a)3; In the Matter of Battalion Fire Chief (PM1640E), Deputy Fire Chief (PM1423H), Atlantic City, Docket No. A-229-87T7 (App. Div. December 8, 1988).

The Civil Service Commission further orders that the costs incurred in the compliance process be assessed against the appointing authority in the amount of \$1,000, pursuant to N.J.S.A. 11A:10-3 and N.J.A.C. 4A:10-3.2(a)5, to be remitted within thirty (30) days of the issuance of this order. In the event the appointing authority fails to make a good faith effort to fully comply with this order within this authority fails to make a good faith effort to fully comply with this order within this time frame, it is additionally ordered that fines be assessed in the amount of one hundred dollars (\$100.00) per day, beginning on the thirty-first day following the issuance of this order and continuing each day of continued violation, up to a issuance of the order and continuing each day of continued violation, up to a maximum of ten thousand dollars (\$10,000.00). See N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2; In the Matter of Fiscal Analyst (M1351H), West New York, Docket No. 4A:4347-87T3 (App. Div. February 2, 1989). This matter will be referred to the Office of the Attorney General for enforcement and for recovery of illegal payments and fines as assessed herein if full compliance is not effected within thirty days.

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 5th DAY OF JUNE, 2013

Robert M. Czech

Chairperson

Civil Service Commission

Inquiries and

Correspondence

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