



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of Martin Carluccio,
Housing Inspector (M0443T),
Paterson

CSC Docket No. 2017-3854

List Removal Appeal

ISSUED: MARCH 29, 2018 (SLD)

Martin Carluccio appeals the removal of his name from the eligible list for Housing Inspector (M0443T), Paterson, on the basis of an unsatisfactory background report.

The open-competitive examination for Housing Inspector (M0443T) was announced with a closing date of July 7, 2015. The resultant eligible list of two names promulgated on December 3, 2015 and expires on December 2, 2018. On January 27, 2017, the appellant, as the last remaining non-veteran eligible on the list, was certified to the appointing authority. In disposing certification, the appointing authority requested the appellant's removal. Specifically, the appointing authority submitted an Instant Verification, Inc. report which noted that the appellant was arrested on October 30, 1996 and charged with aggravated assault and possession of a weapon for an unlawful purpose, he was found guilty of criminal attempt-aggravated assault and sentenced to five years' probation. On March 24, 2000, the appellant's probation was revoked and he was sent to State prison for a term of three years.

On appeal to the Civil Service Commission (Commission), the appellant initially notes that he possesses a current and valid Home Improvement Contractor's license.¹ The appellant also asserts that he possesses a Certificate Suspending Certain Employment, Occupational Disabilities or Forfeitures from the New Jersey State Parole Board as evidence of rehabilitation for purposes of seeking

¹ The license was issued June 24, 2016 and is valid through March 31, 2018.

public employment. *See In the Matter of Martin Carluccio*, 426 *N.J. Super.* 15 (App. Div. 2012). As a remedy, the appellant requests a retroactive appointment to February 8, 2017, the date he complete the preemployment paperwork.

Despite an opportunity to do so, the appointing authority submitted no response.

CONCLUSION

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 shall have the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove the appellant's name from an eligible list was in error.

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, firefighter or correction officer and other titles as determined by the Commissioner. Additionally, pursuant to *N.J.S.A.* 11A:4-10, an appointing authority may only question an eligible for a law enforcement, fire fighter or correction officer title as to any arrest.

Furthermore, *N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for an appointment.

While *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 recognize that an eligible may be removed from an employment list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought, the position at issue in this matter is Housing Inspector. In this regard, the

appointing authority fails to provide any explanation as to how the appellant's conviction, which occurred nearly 20 years ago, adversely relates to the position of Housing Inspector. Further, the appellant possesses a current and valid Home Improvement Contractor's license and the appointing authority has not identified any additional issues with his background. Moreover, the appellant has presented evidence of rehabilitation via presentation of his Certificate from the State Parole Board. Accordingly, the appointing authority has not presented a sufficient basis to remove the appellant's name from the eligible list for Housing Inspector (M0443T), Paterson.

However, the Commission does not agree that the appellant is entitled to an appointment. In this regard, it is noted that the subject certification was incomplete, as it only contained the appellant's name, rendering it incomplete which did not require that the appointing authority was required to make a permanent appointment. Moreover, 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.

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 27TH DAY OF MARCH, 2018



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