



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matters of Stacey Falcone and  
Frank Timek, Police Lieutenant  
(PM0922S), Atlantic City

Bypass Appeals

CSC Docket Nos. 2017-149 and  
2017-252

ISSUED: SEPTEMBER 24, 2021

Stacey Falcone, represented by David J. Azotea, Esq., and Frank Timek, represented by Louis M. Barbone, Esq., appeal the bypass of their names on the July 14, 2016 certification of the Police Lieutenant (PM0922S), Atlantic City eligible list. As the appeals present similar issues, they have been consolidated.

The examination for Police Lieutenant (PM0922S), Atlantic City was announced with a closing date of July 21, 2014. The resultant eligible list of 32 names promulgated on February 26, 2015 and expired on February 25, 2019.<sup>1</sup> In disposing of the July 14, 2016 certification, Atlantic City bypassed Timek and Falcone, both non-veterans who were ranked sixth and seventh, respectively, and appointed the eighth ranked veteran eligible, effective July 21, 2016. These appeals ensued. Falcone argued, among other things, that her bypass was discriminatory. Timek argued, among other things, that his bypass was retaliatory. The disposition of the July 14, 2016 certification was recorded October 26, 2016. On November 9, 2016, a Memorandum of Understanding (MOA) went into effect between the Department of Community Affairs (DCA) and this agency shifting all aspects of civil service employment for Atlantic City employees to the Director of the Division of Local Government Services, DCA (Director). This action was pursuant to the Municipal Stabilization and Recovery Act (Act). *See P.L. 2016, c. 4, sec. 5.*

In a letter to this agency dated April 18, 2019, Timek wrote:

<sup>1</sup> The list was extended one year.

I understand . . . [Atlantic City] has been suspended from our [S]tate[']s [C]ivil [S]ervice [C]ommission due to . . . the [Act]. I also recognize my . . . appeal has been put on hold due to the same circumstance.

There are current negotiations for Atlantic City to be reintroduced to the [C]ivil [S]ervice [C]ommission[.] [W]hether we will be successful still remains to be seen. I only ask you file the attached paperwork . . . with my case so that if/when my appeal is resumed it can be used for consideration in its outcome.

In a letter dated August 14, 2019, the appellants were advised that the Civil Service Commission (Commission) had “no jurisdiction” to determine these appeals in light of the MOA and that the matters were considered “closed.”

An amendment to the Act was approved on June 24, 2021. *See P.L. 2021, c. 124.* It provided, among other things:

The authorities granted to the [D]irector by the Local Finance Board pursuant to this section shall extend to any and all actions that, in the exclusive discretion of the [D]irector, may help stabilize the finances, restructure the debts, or assist in the financial rehabilitation and recovery of the municipality in need of stabilization and recovery. Notwithstanding the provisions of any other law, rule, regulation, or contract to the contrary, except for the provisions of Title 11A, Civil Service as may be applicable to actions taken after the effective date of P.L.2021, c.124, the [D]irector shall have the authority to take any steps to stabilize the finances, restructure the debts, or assist in the financial rehabilitation and recovery of the municipality in need of stabilization and recovery . . .

*See P.L. 2021, c. 124, sec. 2.* On July 23, 2021, Falcone, alluding to the June 24, 2021 amendment to the Act, requested that her appeal proceed before the Commission. In response, these matters were reopened for the Commission’s review.

## CONCLUSION

Upon review, the Commission finds that these appeals must be dismissed. The appellants were advised, almost *two years* before Falcone’s request, that the Commission had “no jurisdiction” to determine these appeals. At that point, the appellants should have sought resolution in an appropriate alternate forum. However, there is no evidence that they did so. In *Atlantic City v. Civil Service Commission*, 3 *N.J. Super.* 57, 60 (App. Div. 1949), the court described the

circumstances in which a delay in asserting rights may be excusable. The court also described the circumstances under which the doctrine of laches should be applied:

Laches in a general sense is the neglect, for an unreasonable and unexplained length of time, under circumstances permitting diligence, to do what in law should have been done. More specifically, it is inexcusable delay in asserting a right . . . 30 C.J.S. Sec. 112, pp. 520, 521.

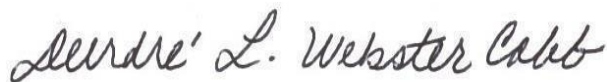
The Court in *Lavin v. Hackensack Bd. of Educ.*, 90 N.J. 145 (1982), added that the length of delay, reasons for delay, and changing conditions of either or both parties during the delay are the most important factors that a court considers and weighs in determining whether to apply laches. Here, it would appear that the appellants were awaiting the restoration of the Commission's authority over civil service employment for Atlantic City employees. This does not, however, excuse their lack of pursuit of their claims. When that authority would be restored could not have been known to the appellants in August 2019. Accordingly, the Commission declines to review these appeals on the merits now.

### ORDER

Therefore, it is ordered that these appeals be dismissed.

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

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 22 DAY OF SEPTEMBER, 2021



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Deirdre L. Webster Cobb  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Allison Chris Myers  
Director  
Division of Appeals and Regulatory Affairs  
Written Record Appeals Unit  
Civil Service Commission  
P.O. Box 312  
Trenton, New Jersey 08625-0312

- c. Stacey Falcone (2017-149)  
David Azotea, Esq.  
Frank Timek (2017-252)  
Louis M. Barbone, Esq.  
Alexis Waiters  
John Dominy, Esq.  
Division of Agency Services  
Records Center