



**STATE OF NEW JERSEY**

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

In the Matter of Chief, Finance and  
Accounts (M0257U), City of Newark

CSC Docket No. 2018-3178

Request for Enforcement

**CORRECTED**

**ISSUED: April 4, 2023 (DASV)**

Fidelia N. Uzoukwu Odutola requests enforcement of the decisions of the Civil Service Commission (Commission), which were rendered on July 26, 2017 and March 27, 2018 regarding the failure of the City of Newark (Newark) to properly dispose of the November 2, 2016 certification (OL161266) of the Chief, Finance and Accounts (M0257U), Newark, eligible list.

By way of background, effective June 1, 2015, Newark provisionally appointed, pending open competitive examination procedures, Charles Kairu to the title of Chief, Finance and Accounts. As a result, the open competitive examination for Chief, Finance and Accounts (M0257U), Newark was announced with a closing date of April 25, 2016. A total of 24 applicants applied for the subject written examination that resulted in a list of six eligibles promulgating on October 27, 2016 with an expiration date of October 26, 2019. It is noted that Odutola, a nonveteran resident of Newark, achieved a passing score of 80.010 and was ranked number one on the list. The provisional appointee, Kairu, a non-resident, achieved a passing score of 72.860 and ranked number six on the list. The names of the six eligibles on the list were certified on November 2, 2016 (OL161266), which had a disposition due date of February 2, 2017. However, Newark did not dispose of the certification by the required disposition due date. Accordingly, on March 6, 2017 the Division of Agency Services (Agency Services)<sup>1</sup> issued Newark a “Notice of Violation” (Notice)

<sup>1</sup> Effective December 1, 2022, the State and Local Certification Units of Agency Services were transferred to the newly created Division of Human Resource Information Services. However, the former division’s name will be referred to in this decision for events prior to the effective date.

advising that certification OL161266 had not been disposed and returned to the Commission, to properly dispose and return the certification within 10 days of the Notice, and that failure to do so may result in an order of salary disapproval for the provisional incumbent, compliance costs, fines, and assessment of examination costs. Newark did not respond to the Notice or dispose of the subject certification. Therefore, on April 24, 2017, Agency Services issued Newark a Salary Disapproval Order advising that disbursement of compensation to the employee serving provisionally in the subject title was disapproved and that the disapproval would continue until the violation was corrected.

On June 6, 2017, Agency Services referred the matter of Newark's failure to respond to the Salary Disapproval Notice to the Commission for compliance.<sup>2</sup> Thereafter, a letter, dated June 14, 2017,<sup>3</sup> was sent to Newark by staff from the Division of Appeals and Regulatory Affairs (DARA) advising that the matter of its failure to dispose of certification OL161266 and the Salary Disapproval Order had been referred to the Commission for review and provided it the opportunity to supplement the record. Newark did not respond or otherwise provide any information or argument for the Commission to review in the matter. Therefore, in *In the Matter of Chief, Finance and Accounts (M0257U), City of Newark* (CSC, decided July 26, 2017), the Commission ordered Newark to immediately dispose of the November 2, 2016 certification of the Chief, Finance and Accounts (M0257U) eligible list pursuant to *N.J.A.C. 4A:4-4.2(c)2i* by making a permanent appointment of a reachable and interested eligible; immediately remove Kairu, against whom the salary disapproval was issued; and remit \$1,000 in compliance costs within 30 days from the issuance of the decision.

Since it was determined that Newark failed to return the certification for proper disposition by August 25, 2017, on October 12, 2017, Agency Services referred the matter of its non-compliance to the Commission for enforcement. By letter dated October 17, 2017, DARA advised Newark that a request for enforcement of the order to properly dispose of the subject certification had been received and provided it the opportunity to submit supplemental information for the Commission to review. Newark did not respond or otherwise provide any information or argument for the Commission to review in the matter. By letter dated October 25, 2017, Odutola responded stating that she had invoked her "Right of First Refusal," requested to be appointed to the Chief, Finance and Accounts title, and noted that the Commission had granted Newark an inordinate amount of extension beyond the previous orders to comply. Although it was anticipated that the Commission would review the enforcement request at one of its remaining meetings in 2017, due to a lack of a quorum, this matter was not reviewed by the

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<sup>2</sup> By letter dated May 22, 2017, Odutola contacted this agency regarding the process required to enforce the Salary Disapproval Order.

<sup>3</sup> A corrected letter noting Kairu, *not* Odutola, as the provisional appointee, was issued on June 21, 2017.

Commission until March 27, 2018 in *In the Matter of Chief, Finance and Accounts (M0257U), Newark* (CSC, decided March 27, 2018). In that case, the Commission once again ordered Newark to properly dispose of the certification and, in addition to the \$1,000 in compliance costs, fined Newark \$10,000 pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-2.1(a)2*. It also ordered Newark to remove Kairu from the position within 30 days of the issuance date of the decision and to make a permanent appointment of a reachable and interested eligible on the list. The Commission noted that Odutola had expressed her interest in the subject position in a letter to this agency dated May 22, 2017.

The matter was again before the Commission for enforcement after its March 27, 2018 determination. Odutola filed the request in letters dated May 7, 2018 and May 8, 2018. Newark was then notified by letter dated May 9, 2018 that should it seek a waiver of the appointment requirement, it could be assessed for the costs of the selection process in the amount of \$2,048. It was also advised that the \$1,000 fee assessed in conjunction with the original salary disapproval and the \$10,000 fine were still outstanding. In that regard, in reviewing agency records, it was revealed that Newark terminated Kairu's provisional appointment and appointed him to the unclassified title of Municipal Treasurer effective October 23, 2017.<sup>4</sup> It is noted that for reasons unexplained, a November 28, 2017 letter from Newark requesting an appointment waiver was discovered that was not part of the record during the Commission's review of the enforcement request that it granted on March 27, 2018. Specifically, in the November 28, 2017 letter, Newark requested a waiver of the appointment requirement for the subject certification and the costs associated with the selection process. It returned the certification as "cancelled" and signed it on December 5, 2017. Moreover, the appointing authority stated that the provisional employee, *i.e.*, Kairu, was no longer in the title and Newark was under budgetary constraints. Further, the appointing authority asserted that a City-wide layoff plan was implemented "to deal with the budget problems and [it] can no longer afford to hire additional staff."<sup>5</sup> It also submitted that Newark was receiving transitional aid from the Department of Community Affairs and instituted a hiring freeze in accordance with a Memorandum of Agreement with the department.

In her request for enforcement, Odutola claimed that, although Kairu's title changed to Municipal Treasurer, he was still serving as a Chief, Finance and Accounts. She submitted that she was the highest ranked interested eligible on the certification and should receive a retroactive appointment to the issuance date of the certification and back pay, reiterating that she was exercising her "Right of First Refusal."

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<sup>4</sup> Kairu received the appointment to Municipal Treasurer with the same salary as his provisional appointment to Chief, Finance and Accounts.

<sup>5</sup> Agency records do not indicate that a layoff was implemented in Newark in 2016 or 2017.

In response, the appointing authority indicated that Newark was under State fiscal monitoring at the time Kairu was recruited, requiring his employment as Municipal Treasurer to be authorized by the Division of Local Government Services, Department of Community Affairs.<sup>6</sup> It was the appointing authority's intention to appoint Kairu to that title. The appointing authority noted that Kairu is a Certified Public Accountant and a Registered Municipal Accountant. However, "unbeknownst" to the appointing authority at the time, the City code directed that the City's Chief Financial Officer not only be the Director of the Department of Finance, but also serve as the Municipal Treasurer. Thus, since the appointing authority argued that it was precluded by the City code from placing Kairu in the Municipal Treasurer title, it "had to find a title whereby the work was similar until [it] could get the City code changed." Thereafter, the City code was amended, and the requirement that the Chief Financial Officer also serve as Municipal Treasurer was removed. Subsequently, Kairu was appointed as a Municipal Treasurer. The appointing authority emphasized that Kairu had been performing the work of a Municipal Treasurer "since his first day of employment with the City and continues to perform that function today."

In reply, Odutola stated that while it was true that appointments required authorization from the Division of Local Government Services, it "did not mean that the [Commission]/City of Newark guidelines could be circumvented. Indeed, the Monitoring team inquired into the appointment of this position and were provide[d] with promises to comply that never materialized." Moreover, Odutola indicated that there was a City residency requirement and Kairu did not reside in Newark. Further, she noted that the Chief, Finance and Accounts title "and the other two (2) titles do not require the specific designations mentioned but only as a substitute for educational requirements." Further, Odutola argued that Newark's "lack of knowledge/and or preparation" could not provide a remedy for circumvention. She contended that "the clearest demonstration of efforts" to circumvent Civil Service rules was the appointing authority's acknowledgement that Kairu "has maintained the same work portfolio" since the examination for Chief, Finance and Accounts (M0257U) was announced. Lastly, Odutola stated that the termination of Kairu's provisional appointment on October 23, 2017 did not result in a Chief, Finance and Accounts appointment on October 23, 2017 for another eligible, and thus, the appointing authority remained noncompliant.

In her most recent submission, dated September 19, 2022, Odutola requested that the matter be referred to the Office of Administrative Law (OAL) for a hearing so that she may be appointed to the subject position with "full back pay." She maintained that individuals are being appointed from "this list" with the latest

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<sup>6</sup> The appointing authority's response was dated May 21, 2018.

appointment in July 2022 but stated that the title was changed several times and the position now utilizes a Municipal Treasurer title.<sup>7</sup>

Agency records reveal that Kairu resigned from his unclassified position of Municipal Treasurer with Newark effective December 10, 2021. Moreover, on January 22, 2020, the appointing authority returned the subject certification to this agency and appointed Oluyinka Fadahunsi, the eligible ranked number three. The appointing authority bypassed Odutola and the second ranked eligible. Fadahunsi is assigned to the Department of Child and Family Wellbeing and Odutola and Kairu's positions are in the Department of Finance. The subject certification was available for use in "All Departments," and the certification was considered disposed on January 23, 2020. Additionally, agency records indicate that Fadahunsi had taken a demotion, effective July 2, 2018, from a Fiscal Officer position. She was considered serving in the Chief, Finance and Accounts title provisionally pending qualifying examination. However, rather than appointing Fadahunsi permanently by way of the qualifying examination, Newark utilized the subject certification as noted above and appointed Fadahunsi to Chief, Finance and Accounts retroactively to February 2, 2017, the date that the certification was due.

## CONCLUSION

Initially, it is noted that Odutola's request for enforcement was presented to the Commission at its July 18, 2018 meeting. The request was held at that time since the Commission lacked a quorum of three members to decide the case.<sup>8</sup> The matter was then held for a possible global settlement of Odutola's complaints in State and federal court. However, the Commission was deemed not a party in the State proceedings, and the federal court matter is still pending. Given that no settlement has been reached which would impact the within matter, no federal court has stayed this matter, and no other reason has been presented to hold the matter pending those proceedings, the Commission shall make its final determination.

Odutola requests a hearing in this matter. However, requests for enforcement are generally treated as reviews of the written record. *See N.J.S.A. 11A:2-6(b)*. Hearings are granted in those limited instances where the Commission determines that a material and controlling dispute of fact exists which can only be

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<sup>7</sup> The November 2, 2016 certification was the only certification of the subject eligible list, which, as indicated above, expired on October 26, 2019. Thus, it is unclear what appointment was made in July 2022 and to what title, as referenced by Odutola. Nonetheless, appointments made from other eligible lists are not germane to this appeal and will not be addressed. Further, to the extent that Odutola is claiming that a Municipal Treasurer is misclassified, she has not identified an incumbent serving in that title nor does agency records reveal one as Kairu has since resigned.

<sup>8</sup> As one of the three members of the Commission recused herself in this matter, the Commission could not act. However, a fourth Commissioner was confirmed by the State Senate on January 9, 2020 and attended the Commission meeting on January 29, 2020.

resolved through a hearing. *See N.J.A.C. 4A:2-1.1(d)*. No material issue of disputed fact has been presented which would require a hearing at the OAL. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). Rather, as set forth below, Odutola's request for enforcement is moot.

It is well established that, 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 for a list 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. In the instant matter, the Chief, Finance and Accounts (M0257U) examination and resulting eligible list were generated as a result of the provisional appointment of Kairu. As set forth in the Commission's prior decisions, Newark failed to return the certification of the subject eligible list and Kairu's salary was disapproved. Kairu's provisional appointment was then terminated on October 23, 2017, and he was appointed as a Municipal Treasurer. Odutola alleged that Kairu was still serving as a Chief, Finance and Accounts. Newark responded that since his initial appointment, Kairu had been performing the duties of a Municipal Treasurer.

Based on the foregoing, it would be impossible to determine whether Kairu was actually performing the duties appropriate to his title without a position classification review. In other words, the fact that his provisional appointment was terminated does not necessarily provide a sufficient basis to grant a waiver of the appointment requirement from the subject certification given that Kairu's position classification had been in dispute. However, Kairu has since resigned his Municipal Treasurer position with Newark, and as such, a position classification review of his position cannot be performed. Moreover, Newark returned the subject certification, albeit in an untimely manner, and appointed an interested and reachable eligible. Further, it is emphasized that Odutola does not have a vested right to an appointment. Although she was ranked number one on the subject certification and indicated her interest in the position on May 22, 2017, the appointing authority may bypass her as a nonveteran pursuant to the "Rule of Three," which it did by appointing the third-ranked eligible effective February 2, 2017. In that regard, *N.J.S.A. 11A:4-8*, *N.J.S.A. 11A:5-6*, and *N.J.A.C. 4A:4-4.8(a)3i* allow an appointing authority to select any of the top three interested eligibles on an open competitive list, provided that disabled veterans and then veterans shall be appointed in their order of ranking ("Rule of Three"). 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). Accordingly, as an appointment was made from the November 2, 2016 certification (OL161266) of the Chief, Finance and Accounts (M0257U), Newark, eligible list and the certification was deemed disposed, Odutola's request for enforcement of the Commission's decisions rendered on July

26, 2017 and March 27, 2018 regarding Newark's failure to properly dispose of the subject certification is now moot.

It is emphasized that although an appointment has been made from the subject certification, it does not in any way diminish the egregiousness of the Newark's actions. The appointing authority is still under the obligation to remit the \$1,000 in compliance costs that the Commission previously assessed for the Salary Disapproval Order. The appointing authority must also remit the \$10,000 fine previously assessed for its noncompliance. Although it has been discovered that the appointing authority requested an appointment waiver by letter dated November 28, 2017, it did not do so for over a year after the subject certification was issued on November 2, 2016. It also took the appointing authority over three years to dispose of the certification. The certification was originally due back to this agency on February 2, 2017, but it was not actually properly returned until January 22, 2020. The Commission is not persuaded by Newark's argument that it had to "find a title" for Kairu until such time as it could get the City code changed. In this regard, Kairu was provisionally appointed on June 1, 2015 and the change in the City code apparently was made by the Municipal Council on October 11, 2017, more than two years later. Further, although Fadahunsi has been given a retroactive date of appointment to February 2, 2017, her title was not changed until July 2, 2018. As set forth in the prior decisions, the Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A. 11A:10-3; N.J.A.C. 4A:10-2.1(a)2. See In the Matter of Fiscal Analyst (M1351H), Newark*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Therefore, under these circumstances, it is still appropriate to fine Newark \$10,000 for its failure to adhere to the timeframes for the proper disposition of the subject certification.

### **ORDER**

Therefore, it is ordered that the request for enforcement be dismissed as moot. Additionally, it is ordered that the \$1,000 in compliance costs assessed for the Salary Disapproval Order and the fine in the amount of \$10,000 previously assessed against Newark for its failure to adhere to timeframes set forth by the Commission be paid by Newark no later than 30 days from the date this decision is issued.

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 1<sup>ST</sup> DAY OF FEBRUARY, 2023

*Allison Chris Myers*

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