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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE
ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Assistant
Comptroller (M0351T), Plainfield

CSC Docket No. 2017-18

Appointment Waiver

ISSUED: **DEC 14 2016** (SLK)

Plainfield requests permission not to make an appointment from the January 8, 2016 certification for Assistant Comptroller (M0351T).

The record reveals that on January 1, 2015, the appointing authority provisionally appointed Diane Sherry, pending open competitive examination procedures, to the subject title. The examination resulted in an employment roster of 14 eligibles, including Sherry, which promulgated on December 31, 2015 and expires on December 30, 2018. On January 8, 2016, a certification was issued which contained the names of 14 eligibles.

The appointing authority returned the certification on June 27, 2016, indicating that Sherry was removed from the title and no permanent appointment was made from the certification. 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*. The appointing authority also requested an appointment waiver indicating that the position was being abolished due to budget cuts. On July 21, 2016, the Division of Appeals and Regulatory Affairs acknowledged Plainfield's request for a waiver in the above matter. Moreover, the appointing authority 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 and that it could submit reasons why costs of the selection process should not be assessed. The appointing authority, despite being provided the opportunity, 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 with Plainfield.

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.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Diane Sherry to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Sherry was removed from the subject title. Consequently, since there is no provisional serving in the title at issue, there is sufficient justification for an appointment waiver.

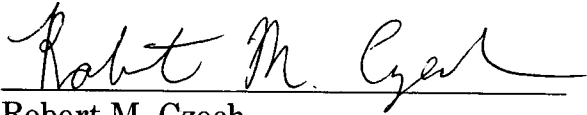
Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives permission not to make an appointment, it can be ordered to reimburse for the costs of the selection process. While administering examinations 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 removal 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.

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 7th DAY OF DECEMBER, 2016



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