



STATE OF NEW JERSEY

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

In the Matter of Business Manager
(M0132U), City of Newark

Appointment Waiver

CSC Docket No. 2019-749

ISSUED: MARCH 28, 2019 (ABR)

The City of Newark requests permission not to make an appointment from the October 6, 2017 certification for Business Manager (M0132U).

The record reveals that the appointing authority provisionally appointed, pending open-competitive examination procedures, Seth Wainer to the title of Business Manager, effective May 11, 2015. This provisional appointment generated an open-competitive examination announcement (M0132U) for the subject title with a closing date of March 8, 2016. The resulting eligible list of three names promulgated on November 17, 2016 and expired on November 16, 2018. The appointing authority took no action to obviate the need for examination at the time of the announcement or prior to the administration of the examination. On October 6, 2017, the names of three eligibles, including Wainer's name, were certified to the appointing authority from the subject eligible list. The appointing authority did not timely return the October 6, 2017 certification for disposition. On February 12, 2018, the Division of Agency Services (Agency Services) issued a Notice of Violation requiring prompt and proper disposition of the certification. Subsequently, on March 20, 2018, Agency Services issued a Salary Disapproval Order against the provisional. On August 4, 2018, the appointing authority returned the certification indicating that no appointments would be made since Wainer's provisional service was terminated, effective June 29, 2018. Thereafter, the appointing authority requested a waiver of the appointment requirement and costs based upon budgetary constraints and its termination of the provisional employee.

Thereafter, Agency Services referred the matter to the Division of Appeals and Regulatory Affairs (DARA). DARA acknowledged the appointing authority's request for an appointment waiver and advised it that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048. No further arguments were received.

A review of agency records reveals that there are currently no individuals serving in the subject title.

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 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. The only exception to this mandate may be made by the Commission for a valid reason such as fiscal constraints.

In the instant matter, the open-competitive examination for the subject title was generated as a result of Wainer's provisional appointment, pending open competitive examination procedures, effective May 11, 2015. However, after a complete certification was issued, the appointing authority requested an appointment waiver. In its request, the appointing authority states that Wainer's provisional service was terminated, effective June 29, 2018. Moreover, there is currently no individual serving in the subject title. Under these circumstances, the appointing authority has presented adequate justification for granting an appointment waiver.

Although the appointment waiver is granted, 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 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, effort and money to take these examinations in hopes of being considered for a permanent appointment. In the instant situation, although a valid reason for not making an appointment from the subject eligible list exists, the appointing authority has failed to provide a sufficient basis for not being charged for the costs of the selection process which produced the subject eligible list. Accordingly, although the request for a waiver is granted, it is appropriate that the appointing authority be assessed for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed 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 27TH DAY OF MARCH, 2019



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