

B-29



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Christopher Chin,
Cape May County Sheriff's
Department

CSC Docket No. 2014-2361

Acknowledgment of Settlement

ISSUED: **NOV 20 2014** (CSM)

The parties request that the Civil Service Commission acknowledge the attached settlement reached between the Cape May County Sheriff's Department and Christopher Chin, which provides for his separation from employment effective August 1, 2013 by way of disability retirement or resignation in good standing.

By way of background, Chin was removed effective January 8, 2013 and he appealed the matter of his removal to the Civil Service Commission (Commission) which transmitted the matter to the Office of Administrative Law (OAL) as a contested case. In his July 1, 2013 initial decision, the Administrative Law Judge (ALJ) recommended upholding Chin's removal and the parties filed exceptions and cross exceptions to the initial decision for the Commission to consider. At its December 4, 2013 meeting, the Commission adopted the ALJ's recommendation and upheld Chin's removal. *See In the Matter of Christopher Chin* (CSC, decided December 4, 2013). Subsequently, on March 28, 2014, Chin filed for reconsideration, arguing that the parties agreed to settle the matter on December 2, 2013 and he requested that the Commission's decision upholding his removal be vacated. However, by letter dated April 25, 2014, Commission staff advised the appellant that in accordance with *N.J.A.C. 4A:2-1.6(a)*, his petition for reconsideration was untimely. Chin then filed a lawsuit in Superior Court, Law Division, seeking to vacate the Commission's decision and implement the settlement. Thereafter, the parties agreed to transfer the matter of the settlement to the Commission for consideration.

The settlement provides, in pertinent part, that Chin will terminate his employment with the Cape May County Sheriff's Department effective August 1, 2013 by way of disability retirement, or, if a disability retirement is denied by the

Police and Firemen's Retirement System, by way of resignation in good standing. The settlement also indicates that all non-working time from Chin's initial suspension to the August 1, 2013 disability retirement or resignation in good standing date will be treated as a leave of absence without pay.

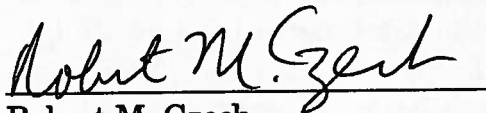
In the instant matter, a settlement was reached between the parties. The policy of the judicial system strongly favors settlement, and this policy is equally applicable in the administrative area. *See Nolan v. Lee Ho*, 120 N.J. 465 (1990); *Honeywell v. Bubb*, 130 N.J. Super. 130 (App. Div. 1974); *Jannarone v. W.T. Co.*, 65 N.J. Super. 472 (App. Div. 1961), *cert. denied*, 35 N.J. 61 (1961). A settlement will be set aside only where there is fraud or other compelling circumstances. *See Nolan, supra*. In this matter, no such compelling circumstances exist. Accordingly, the Civil Service Commission vacates its decision of December 4, 2013 and acknowledges the settlement agreement in this matter.

ORDER

Therefore, the Civil Service Commission vacates its decision of December 4, 2013 and acknowledges the settlement agreement, and orders that pertinent terms contained therein be implemented.

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 19TH DAY OF NOVEMBER, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

Attachments

**c: Christopher Chin
Jessica L. Arndt, Esq.
William Blaney, Esq.
Joseph Gambino**

NOTICE: This is a very important legal document, and you should thoroughly review and understand the terms and effect of this document before signing it. By signing this Settlement Agreement and General Release, you will be completely releasing the County of Cape May from all liability to you. Therefore, you should consult with an attorney before signing this Settlement Agreement and General Release. You have twenty-one (21) days from the date of distribution of these materials to consider this document. If you have not returned a signed copy of this Settlement Agreement and General Release by that time, we will assume that you have elected not to sign the Settlement Agreement and General Release. If you choose to sign the Settlement Agreement and General Release, you will have an additional seven (7) days following the date of your signature to revoke the Settlement Agreement and General Release, and the Settlement Agreement and General Release shall not become effective or enforceable until the revocation period has expired.

SEPARATION AGREEMENT AND GENERAL RELEASE

This Separation Agreement and General Release (the "Agreement") is made this _____ day of _____, 2013 by and between the County of Cape May, (hereinafter collectively referred to as the "County") and Christopher Chin, (hereinafter referred to as the "Employee").

WITNESSETH

WHEREAS, the County has provided the Employee with a Preliminary Notice of Disciplinary Action dated December 5, 2012;

WHEREAS, the Preliminary Notice of Disciplinary Action dated December 5, 2012, involves Employees' incompetency, inefficiency, or failure to perform duties, conduct unbecoming of a public employee, neglect of administrative duty, and inappropriate and unauthorized use and possession of a cellular phone or electronic device in violation of N.J.A.C. 40A:14-147; N.J.A.C. 4A:2-2.3(a)(1), (6), (7), (12), CMCSO SOP 708, 218, 815; CMCSO Rules and Regulations 4.1.7, 4.1.8, 4.2.1.(a), and 4.4.4, and 4.12.5;

WHEREAS, said Preliminary Notice of Disciplinary Action seeks the Employees' removal from employment with the County;

WHEREAS, the Employee has the right to a disciplinary hearing and an appeal process with regard to the aforementioned charges under the provisions of Title 4A of the New Jersey Administrative Code;

WHEREAS, Employee appealed his removal from employment with the County to the New Jersey Civil Service Commission, which in turn, sent the matter to the New Jersey Office of Administrative Law for a hearing;

WHEREAS, the County and Employee participated in a hearing at the New Jersey Office of

Administrative Law in front of the Honorable W. Todd Miller, A.L.J.;

WHEREAS, on July 1, 2013 the Honorable Judge W. Todd Miller, A.L.J., determined that the Employees' removal from employment with the County was appropriate;

WHEREAS, the Employee filed an EEOC Notice of Charge of Discrimination (Charge Number 846-2013-01421) alleging discrimination based on Race, National Origin, and Disability;

WHEREAS, the County and Employee have agreed that it is in both their best interests that Employee's employment with the County shall terminate by way of a disability retirement or a resignation in good standing in accordance with the terms and conditions set forth in this Agreement;

WHEREAS, disputes have arisen between the County and Employee as to his rights to certain benefits and payouts he is entitled to receive under purported contracts, collective bargaining agreements and County policies, as well as, any other potential claims he may have against the County;

WHEREAS, the County and Employee wish to resolve these disputes in order to effectuate an orderly disability retirement or a resignation in good standing of the Employee and to avoid the cost and uncertainty of additional litigation;

NOW, THEREFORE, in consideration of the mutual promises and representations herein contained, and intending to be legally bound, the parties understand and agree as follows:

1. **Disposition of Charges.** Employer agrees to dismiss the charges presented in the Preliminary Notice of Disciplinary Action dated December 5, 2012.
2. **Separation from Employment.** Employee, along with this Agreement, represents to the County that he has filed the appropriate paperwork seeking a disability retirement effective August 1, 2013. Employee and the County agree that Employee's employment with the County shall terminate effective August 1, 2013 by way of said retirement, or if said retirement is denied, by way of a resignation in good standing (hereinafter the "Separation Date"). All non-working time from his initial suspension and termination to August 1, 2013, shall be treated as an unpaid leave of absence. Should Employee be ultimately denied a pension from the New Jersey Police and Firemen's Retirement System, he shall be considered to have resigned in good standing on the Separation Date. Under no circumstances will Employee return to employment with the County; including, but not limited to, circumstances where Employee recovers from or resolves the medical issues, which give rise to the application for a disability retirement.
3. **Neutral Reference.** Employee should direct inquiries and reference checks from any potential future employers to the Cape May County Warden. Said inquiries and/or reference

checks will be responded to with Employee's dates of employment, last pay rate, and the fact that his separation was by way of a resignation in good standing. Access to Employee's personnel file by prospective future employers will be in accordance with applicable law and County policy. Access to Employee's internal affairs files by prospective employers will be in accordance with law, the County's applicable policy, and the New Jersey Attorney General's Guidelines.

4. Waiver of Any Claim for Benefits and/or Emoluments of Employment. The County and Employee agree that the Employee shall not be entitled to any compensation, back pay, front pay, separation allowance, vacation pay, holiday pay, sick pay, personal leave pay and/or any other form of payment, benefit, or emolument of employment from the County other than what is specifically set forth in this Agreement. Furthermore, Employee agrees that he will not be entitled to and will waive any potential claim he might have with respect to any type of prescription or healthcare benefits that the County provides Employees who resign or retire.

5. Release of Claims. Employee, for himself, his heirs, executors, administrators, successors, and assigns, hereby releases and forever discharges the County and its departments, political subdivisions, successors, and assigns, and their respective past, present and future representatives, council members, commissioners, officers, agents, employees, citizens, insurance carriers, successors, and assigns, and the estate(s) of his from any and all action, causes of action, lawsuits, claims, charges, debts, sums of money, accounts, covenants, contracts, controversies, agreements, promises, trespasses, damages, liabilities, judgments, executions, and/or demands of any nature whatsoever, whether in law or in equity, or with any individual, agency, organization, or governmental body, whether known or unknown, which Employee ever had, now has, or can, shall, or may have under any contract, tort or common law theory, and/or under any Federal, State, local statute, including but not limited to: the Age Discrimination in Employment Act, 29 U.S.C. §621 et seq., as amended by the Older Worker's Benefit Protection Act, specifically §626; Title VII of the Civil Rights Act of 1964 and 1991, as amended, 42 U.S.C. § 2000e, et seq. and laws amended thereby; the Civil Rights Act of 1966, 42 U.S.C. §1981, et seq.; the Civil Rights Statutes contained in 42 U.S.C. §§1983, 1985 and 1986 and any related laws; the Americans with Disabilities Act (ADA), 42 U.S.C. §12101, et seq.; the Federal Family and Medical Leave Act, 29 U.S.C. §2601, et seq.; the Employee Retirement Income Security Act, 29 U.S.C. §1001, et seq.; the Rehabilitation Act of 1973, 29 U.S.C. § 791, et seq.; the Equal Pay Act, 29 U.S.C. § 206(d); the New Jersey Conscientious Employee Protection Act, N.J.S.A. §34:19-1, et seq.; the New Jersey Family Leave Act, N.J.S.A. §34:11b-1, et seq.; the New Jersey Wage and Hour Law, N.J.S.A. §34:11-56a, et seq.; the New Jersey Wage Payment Law, N.J.S.A. §34:11-4.1, et seq.; the New Jersey Law Against Discrimination N.J.S.A. § 10:5-1; the New Jersey Civil Rights Act N.J.S.A. §10:6-1 et seq. and any other Federal, State or local equal employment opportunity laws, regulations, or ordinances; or under a theory of negligence; interference with contract/business advantage, fraud; intentional infliction of emotional distress; and/or any other duty or obligation of any kind or description. This release shall apply to all

known, unknown, unsuspected, and anticipated claims, liens, injuries, and damages up to and including the day of the date of this Agreement. Notwithstanding anything stated anywhere else in the Agreement, Employee does not release any claims for worker's compensation benefits.

6. **Disclaimer of Liability.** This Agreement shall not in any way be construed as an admission by any party of any liability which all parties hereby disclaim.
7. **No Legal Action.** Employee represents that he will not file any additional complaint, claim or charge against any other party with any local, state or federal agency or court and will not do so at any time hereafter. Employee agrees to withdrawal any current complaint, claim or charge, including but not limited to his BEOC Notice of Charge of Discrimination (Charge Number 846-2013-01421) and Tort Claims Notice filed against the County, from the appropriate court or agency. Employee agrees that if any agency or court assumes jurisdiction of any complaint, claim or charge against the County, Employee will request such agency or court to withdraw from the matter and will refuse and/or return to the County any compensation related to the matter. This provision shall not affect any rights Employee may have under the applicable law to challenge the validity of his waiver of claims under the ADEA.
8. **Integration; Representation by Counsel.** It is understood between the parties that neither party has relied upon any representation, express or implied, made by any other party or their counsel or any of their representatives, and that this Agreement constitutes the entire understanding of the parties and cannot be modified except in writing signed by all of the parties hereto.

EMPLOYEE ACKNOWLEDGES THAT HE HAS BEEN ADVISED THAT HIS LEGAL RIGHTS AND RESPONSIBILITIES WILL BE AFFECTED BY EXECUTING THIS AGREEMENT AND HE ACKNOWLEDGES THAT HE HAS BEEN ADVISED TO CONSULT WITH AN ATTORNEY AND HAS DONE SO PRIOR TO EXECUTING THIS AGREEMENT.

9. **Waiver of Attorney Fees and Costs.** Employee agrees to waive any potential claim he may have with respect to attorney's fees and/or costs.
10. **Sovereignty.** In the event that any section or part of this Agreement shall be found to be void or unenforceable, such section or part shall be deemed to be surplusage and the remainder of the Agreement shall remain in full force and effect.
11. **Governing Law; Jurisdiction.** The parties agree that this Agreement shall be interpreted in accordance with the laws of the State of New Jersey and that any dispute involving the terms of this Agreement shall be brought in the Superior Court of New Jersey, Cape May County,

which the parties agree shall have exclusive jurisdiction of any such claims.

12. No Re-employment. Employee hereby waives any and all rights or claims which he may have to reinstatement, employment or reemployment with the County.

IN WITNESS WHEREOF, the parties hereto have caused this Settlement Agreement and General Release to be executed and signed the day and year first written above.

ATTEST:

BY:  1/7/14
County of Cape May Date

BY:  12-2-13
Christopher Chin Date

FILED

OCT 10 2014

Superior Court of New Jersey
~~County of Atlantic~~

CHRISTOPHER CHIN,

Plaintiff,

v.

STATE OF NEW JERSEY
CIVIL SERVICE COMMISSION,

Defendant.

: SUPERIOR COURT
: OF NEW JERSEY
:
: ATLANTIC COUNTY
: LAW DIVISION
:
: Civil Action
:
: Docket No.
: ATL-L-2541-14
:
: **CONSENT ORDER**
:

This matter having come before the Court upon the motion of John J. Hoffman, Acting Attorney General for the State of New Jersey, by Lisa Dorio Ruch, Deputy Attorney General, on behalf of defendant New Jersey Civil Service Commission, for a Consent Order in the above-captioned matter transferring this matter to the New Jersey Civil Service Commission, and the Court having considered the consent of counsel for defendant and for plaintiff, and for other good cause shown,

IT IS on this 10th day of Oct, 2014,

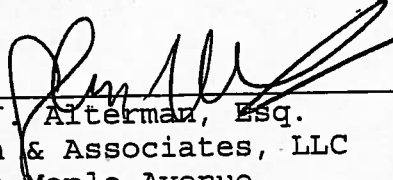
ORDERED that this matter is hereby transferred to the New Jersey Civil Service Commission.



JAMES P. SAVIO, J.S.C.

CONSENTED TO BY:

Attorney For Plaintiff Christopher Chin



Stuart J. Alterman, Esq.
Alterman & Associates, LLC
88 South Maple Avenue
Marlton, New Jersey 08053

Date: October 7, 2014

Attorney For Defendant
New Jersey Civil Service Commission
JOHN J. HOFFMAN
ACTING ATTORNEY GENERAL OF NEW JERSEY

By: 

Lisa Dorio Ruch
Deputy Attorney General

Date: October 3, 2014