



*Matter of Senior Community Relations Aide (M2417N), Atlantic City* (CSC, decided June 5, 2013).

The appointing authority returned the certification on September 19, 2013, indicating that Sodha was removed from the title and hiring a new employee to the subject title would have caused a financial burden. Further, the appointing authority indicated in a personnel action form signed on July 5, 2013, that it was appointing Sodha to the lower level non-competitive title of Community Service Aide effective August 11, 2013.<sup>3</sup> 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*. On October 16, 2013, the Division of Classification and Personnel Management (CPM) advised the appointing authority of the need to seek an appointment waiver in this matter. The appointing authority responded that it was currently experiencing a budgetary crisis and therefore it would not be prudent to hire a new employee at that time. The appointing authority stated that the impact of Casino Tax appeals made it difficult to replace Mr. Sodha and therefore it moved him to a lower title. Consequently, the appointing authority presents that due to its budget complications, it is requesting an appointment waiver.

Thereafter, the matter was referred by CPM to the Division of Appeals and Regulatory Affairs (DARA). DARA acknowledged the request of Atlantic City for a waiver of the appointment requirement and the assessment of costs in the above matter. Moreover, it 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. Although the appointing authority was advised that it could submit reasons why costs of the selection process should not be assessed, it 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 in Atlantic City.

## 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.

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<sup>3</sup> A movement from the title of Senior Community Service Aide to Community Service Aide represents a demotion.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Jayesh Sodha to the subject title. However, after a complete certification was issued, the appointing authority returned the certification and indicated that Sodha was appointed to the non-competitive title of Community Service Aide. 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 change in title 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.

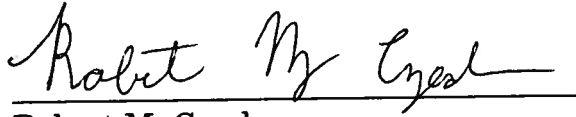
### ORDER

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.

The Civil Service Commission further orders that the costs incurred in the compliance process, as ordered in *Senior Community Relations Aide (M2417N), Atlantic City, supra*, in the amount of \$1,000 pursuant to *N.J.S.A.* 11A:10-3 and *N.J.A.C.* 4A:10-3.2(a)5, be remitted within thirty (30) days of the issuance of this order. However, since the appointing authority separated the provisional appointee within 30 days of the issuance of the Commission's prior order and given its financial problems due to casino tax appeals, the Commission will not assess a fine at this time for the failure to remit the required compliance costs. However, if the \$1,000 compliance cost is not remitted within 30 days of the issuance of this order, it is ordered that fines be assessed in the amount of one hundred dollars (\$100.00) per day, beginning on the thirty-first day following the issuance of this order and continuing each day of continued violation, up to a maximum of ten-thousand dollars (\$10,000.00). This matter will be referred to the Office of the Attorney General for enforcement and for recovery of fines as assessed herein if full compliance is not effected within thirty days.

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 30<sup>th</sup> DAY OF JULY, 2014



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals and  
Regulatory Affairs  
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P.O. Box 312  
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Attachment

c: Arthur Liston  
Kenneth Connolly  
Beth Wood  
Joseph Gambino



5. No such appeal was taken, and no proper disposition of the certification was received; the salary disapproval, therefore, became a final administrative action.
6. By not properly disposing of this certification, the appointing authority is in violation of Civil Service law and rules.

In the instant matter, the appointing authority has refused to properly dispose of the certification issued to fill the vacancy occupied by a provisional employee. The appointing authority has not contested or appealed the findings of the Certification Manager. The payment of salaries for which there is a disapproval is illegal and contravenes Civil Service law and rules.

The appointing authority, despite being given the opportunity, did not submit any arguments or documentation for the Commission's review.

### ORDER

The Civil Service Commission orders the appointing authority to immediately dispose of the outstanding certification by either vacating the position or making a permanent appointment of a reachable and interested eligible. Additionally, the appointing authority is ordered to immediately separate Sodha who is currently serving provisionally pending open competitive examination procedures in the subject title. Such disposition must be filed with the Certification Manager on or before thirty (30) days from the issuance of this order. If no proper disposition is made within this time period, the Civil Service Commission orders the constructive appointment of the interested eligible. See *N.J.A.C. 4A:10-2.1(a)3*; *In the Matter of Battalion Fire Chief (PM1640E), Deputy Fire Chief (PM1423H), Atlantic City*, Docket No. A-229-87T7 (App. Div. December 8, 1988).

The Civil Service Commission further orders that the costs incurred in the compliance process be assessed against the appointing authority in the amount of \$1,000, pursuant to *N.J.S.A. 11A:10-3* and *N.J.A.C. 4A:10-3.2(a)5*, to be remitted within thirty (30) days of the issuance of this order. In the event the appointing authority fails to make a good faith effort to fully comply with this order within this time frame, it is additionally ordered that fines be assessed in the amount of one hundred dollars (\$100.00) per day, beginning on the thirty-first day following the issuance of this order and continuing each day of continued violation, up to a maximum of ten thousand dollars (\$10,000.00). See *N.J.S.A. 11A:10-3*; *N.J.A.C. 4A:10-2.1(a)2*; *In the Matter of Fiscal Analyst (M1351H), West New York*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). This matter will be referred to the Office of the Attorney General for enforcement and for recovery of illegal payments and fines as assessed herein if full compliance is not effected within thirty days.

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 5<sup>th</sup> DAY OF JUNE, 2013**



**Robert M. Czech  
Chairperson  
Civil Service Commission**

**Inquiries  
and  
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**c: Jayesh Sodha  
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Kenneth Connolly  
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Beth Wood**