



STATE OF NEW JERSEY

In the Matter of Senior Housing Assistance Technician (M0319P), Paterson Housing Authority

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

CSC Docket No. 2014-1829

Request for Appointment Waiver

ISSUED: AUG 01 2014 (JET)

The matter of whether the Paterson Housing Authority should be granted permission not to make an appointment from the July 31, 2013 certification for Senior Housing Assistance Technician (M0319P) has been referred to the Civil Service Commission for review.

The record reveals that on January 4, 2010, the appointing authority provisionally appointed Hipolito Aponte, pending open competitive examination procedures, to the subject title. The examination was announced with a closing date of December 4, 2012. The examination resulted in an eligible list of seventeen individuals which promulgated on February 7, 2013 and expires on February 6, 2016. On July 31, 2013, a certification was issued which contained the names of 15 eligibles, which had a disposition return date of December 23, 2013. Aponte's name did not appear on the certification.

On December 10, 2013, the appointing authority returned the certification to the Division of Classification and Personnel Management (CPM) and requested that it be cancelled as it does not currently have a use for the title. Specifically, the appointing authority indicated that the only provisional serving in the title, Hipolito Aponte, resigned from the position. The appointing authority also indicated that after a review of the duties and responsibilities for the position, the subject title was not appropriate and another title would be more suitable. 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.

Thereafter, the matter was referred by CPM to the Division of Appeals and Regulatory Affairs (DARA), and the appointing authority was advised that it could request a waiver of the appointment requirement. 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. The appointing authority was afforded an opportunity to present arguments why such an assessment should not occur, but no further submissions were received.

Official personnel records indicate that Hipolito resigned effective March 15, 2013. A review of agency records indicates that there are currently no employees serving provisionally pending open competitive examination procedures with the appointing authority in the title of Senior Housing Assistance Technician.

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 for a valid reason such as fiscal constraints.

In the instant matter, the examination for the subject title was generated as a result of the provisional appointment of Hipolito Aponte. However, after a complete certification was issued, the appointing authority returned it and requested its cancellation. It stated that there was no longer a provisional appointee serving in the subject title, as Mr. Hipolito, the only provisional employee, resigned effective March 15, 2013. The appointing authority also explained that the subject title was not appropriate based on the duties and responsibilities of the position. Accordingly, 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, 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 this agency for the costs of the selection process. While two of the primary activities of this agency include administering the examination process and providing the names of eligible candidates to the jurisdictions under the Civil Service system, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists and candidates have needlessly expended their effort and money to take the examination with hopes of being considered for a permanent appointment. While the Commission recognizes that the only provisional employee in the subject position resigned from employment, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or

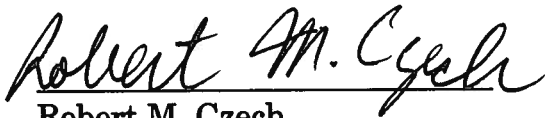
prior to its processing. Furthermore, the fact that the appointing authority no longer wishes to utilize the subject title is not sufficient justification to waive the costs. Therefore, although the appointing authority has shown sufficient reason for not making an appointment from the subject eligible list, under these circumstances, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. Thus, 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 a waiver of appointment requirement be granted. Additionally, the 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 30th DAY OF JULY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

Inquiries
and
Correspondence

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

c: Irma Gorham
Kenneth Connolly
Dan Hill
Beth Wood
Joseph Gambino

