



B-141

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Robert  
Rivera, Passaic County

CSC Docket No. 2015-1340

Request for Enforcement

ISSUED: FEB - 5 2015 (CSM)

Robert Rivera, a Housing Assistant Technician, Bilingual in Spanish and English, with Passaic County, petitions the Civil Service Commission (Commission) for enforcement of the March 26, 2014 decision which ordered his reinstatement and back pay.

By way of background, the petitioner was removed effective December 29, 2010 on charges of incompetency, inefficiency or failure to perform duties, inability to perform duties, conduct unbecoming a public employee, neglect of duty, and other sufficient cause. Specifically, it was asserted that the appellant conducted an inspection of a rental unit owned by a personal friend and passed the unit despite it being in violation of various Department of Housing and Urban Development (HUD) regulations and standards, which resulted in a tenant improperly paying utility expenses for another rental unit. The appointing authority also asserted that the appellant failed to disclose his relationship with the landlord and other relatives, passed a number of housing units that should not have been passed, offered rents over the average comparison for the area, was a no-show for a number of scheduled inspections which he passed without performing a proper inspection, and took excessive time doing inspections. Upon the appellant's appeal, the matter was transmitted to the Office of Administrative Law (OAL) for a hearing as a contested case. In her initial determination, the Administrative Law Judge (ALJ) concluded that the appointing authority had only proven the charges of failure to perform duties and neglect of duties and recommended modifying the removal to a 90 working day suspension. Upon its review, the Commission adopted the ALJ's determination regarding those charges but also found that the appointing authority sustained its burden of proof with respect to the charge of conduct unbecoming a

public employee. Therefore, the Commission modified the appellant's removal to a 120 working day suspension, granted mitigated back pay, and ordered his immediate reinstatement.

In his request for enforcement, the petitioner states that in early June 2014, he met with representatives of the appointing authority and asserts that it was made clear to him that he was not going to be reinstated under any circumstances. Therefore, he requested all back pay and benefits that had accrued since his termination in December 2010. In a June 12, 2014 letter from his former attorney, the appointing authority was reminded of his desire to return to work in compliance with the Commission's order and explained issues concerning gaps in his search for employment as part of his back pay mitigation efforts. However, notwithstanding the Commission's order, the appellant states that he has not been reinstated.

In response, the appointing authority, represented by Joseph Hannon, Esq., presents that upon receipt of the Commission's decision, the parties began the process of sorting out the issues of back pay, but given that the petitioner had been out of work for over three years, it was not a simple calculation. Therefore, by letter dated June 9, 2014, it advised this agency that it did not consider the decision final because the matter of back pay had not yet been resolved. Subsequently, by letter dated June 12, 2014, the petitioner submitted a request for reinstatement and a meeting was set up for June 23, 2014 to discuss back pay and the petitioner's "future." At the meeting, the appointing authority states that the parties mutually agreed that the petitioner would not return to work despite the Commission's decision and the parties would negotiate a mutual agreeable separation. To this end, the petitioner was requested to submit all information concerning his mitigation and a formal demand for settlement for the appointing authority to consider. Although documentation was subsequently provided regarding his mitigation efforts, the petitioner never provided an offer of settlement. The appointing authority maintains that the petitioner's request contains misrepresentations, as it was decided by all parties involved, including the petitioner, that despite the Commission's determination, it would be in the best interest to negotiate a settlement and not reinstate him. The appointing authority states that it remains willing to resolve this matter within the terms it discussed.

In reply, the petitioner states that there was never an agreement made at the June 23, 2014 meeting and the appointing authority clearly indicated that it did not want him to return to work. Rather, he asserts that he indicated that he sought his back pay and that he wanted to be compensated for future income, with yearly increases, had he been working until the age of 65. If the appointing authority could not accept this, then the petitioner states that he indicated that he would seek enforcement of the Commission's decision. Therefore, the appellant requests reinstatement, back pay and benefits in accordance with the Commission's decision.

## CONCLUSION

*N.J.A.C.* 4A:10-1.1(b) states that no appointing authority shall fail to comply with an order of the Commission.

In the present matter, it appears that settlement negotiations began after the Commission's decision ordering the petitioner's reinstatement was received by the parties. While the Commission acknowledges and enforces settlement agreements to allow for the resolution of matters properly before it, it has no ability to compel compliance to a purported verbal agreement for a matter that was never before it. Thus, whatever the parties may or may not have agreed to do at their June 23, 2014 meeting cannot be acted on by the Commission. However, in no uncertain terms, the Commission's March 26, 2014 decision ordered the petitioner's immediate reinstatement. The terms discussed at the June 23, 2014 settlement meeting are irrelevant to this proceeding. The only relevant issue is that the appointing authority has not reinstated the appellant in accordance with the Commission's order. Accordingly, the petitioner's request for enforcement of the Commission's March 26, 2014 with respect to his reinstatement and award of back pay is granted.

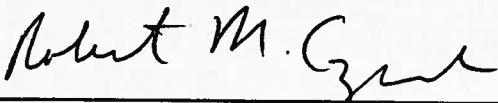
## ORDER

Therefore, it is ordered that Robert Rivera's request for enforcement be granted.

Additionally, in the event that the appointing authority has not made a good faith effort to comply with this decision within 30 days of its issuance, the Commission orders that a fine be assessed against the appointing authority in the amount of \$100 per day, beginning on the 31<sup>st</sup> day of issuance of this decision and continuing each day of continued violation, up to a maximum of \$10,000.

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 4<sup>TH</sup> DAY OF FEBRUARY, 2015



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Civil Service Commission

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