



STATE OF NEW JERSEY

In the Matter of Jose Arias, Jr.,
Sheriff's Officer (S9999R), Union
County

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

CSC Docket No. 2017-3855

List Removal Appeal

ISSUED: JUNE 20, 2018 (CSM)

Jose Arias, Jr., represented by Daniel J. Zirrith, appeals the appointing authority's request to remove his name from the eligible list for Sheriff's Officer (S9999R), Union County, on the basis of falsification of his employment application.

In disposing of the March 13, 2017 certification, the appointing authority requested the removal of the appellant's name, contending that the appellant had falsified his employment application. Specifically, the appointing authority presented that question #85 of the application asked candidates if they had ever had any wage assignments or judgments against them, either pending or in the past and the appellant responded "no." However, the appointing authority claimed that the appellant had three judgments against him in Union County Superior Court Special Civil Part.

On appeal, the appellant states that no judgments have been entered against him. In support, with respect to a December 30, 2015 case, he presents that the court's Archival Management Information System, Case/Location List finds that the matter was dismissed, and no judgment was entered in this matter. Regarding an July 26, 2016 matter, the court's Automated Case Management System, Disposition Inquiry states that the case was dismissed without prejudice. With respect to an April 27, 2016 matter, the appellant states that the disposition in this matter was defaulted by the clerk. In this regard, he presents that pursuant to court rules, when a matter is defaulted by the clerk, the party against whom affirmative relief is sought failed to appear, plead or otherwise defend as provided by the rules. However, pursuant to another rule, an entry of "Judgment by Default" requires a separate application by the plaintiff following the entry of default by the clerk to

obtain a judgment. In the appellant's case, he claims that there is no evidence or indication that a default judgment was ever entered by the clerk or the court. Regardless, the appellant states that he never received a copy of the complaint against him that Vine Street Holdings was seeking to institute legal proceedings against him and he paid all the required rent payments. Additionally, the appellant provides various letters of recommendations attesting to his character. Therefore, the appellant requests that he be retroactively appointed to the subject position and receive back-pay and benefits. It is noted that the appellant copied the appointing authority on his submissions to the Civil Service Commission (Commission), but it has not provided a response in this matter.

CONCLUSION

N.J.A.C. 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)6, allows the removal of an eligible's name from an employment list when he or she has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his or her name from an eligible list was in error.

In the instant matter, the appointing authority removed the appellant's name from the subject list claiming that he did not disclose that he had three judgments against him. In his appeal, the appellant has provided documentation from the court that two of the matters were dismissed. With respect to the April 27, 2016 case, the record clearly indicates that the appellant defaulted and that Vine Street Holdings prevailed in that matter. While it is understandable that a party prevailing in a matter could be confused with receiving a favorable judgment, as pointed out by the appellant, an order of judgement by default requires a separate application that did not occur in this case. Further, although the appellant provided it this information in his appeal submission, the appointing authority has not rebutted his assertion that no judgements were in fact entered against him. Therefore, there is no basis on which to remove the appellant's name from the subject list.

The appellant requests a retroactive appointment, back pay, and benefits in this matter. However, a review of the record indicates that the appellant's appointment is not mandated since he has not established veterans preference and there is no evidence that he was subjected to a medical or psychological examination. Additionally, a review of the certification indicates that the appointing authority could have exercised its discretion and bypassed the appellant. However, based solely on equitable considerations, given that the subject list expired on March 22, 2017, the Sheriff's Officer (S9999R), Union County eligible list should be revived at the time the appointing authority next requests a certification

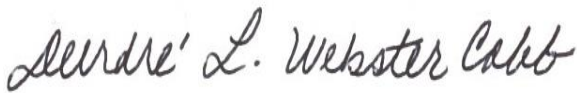
and the appellant's name be added to the certification for prospective employment opportunities.

ORDER

Therefore, it is ordered that this appeal be granted.

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
20TH DAY OF JUNE, 2018



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