

date, and he was a Senior Auditor for the Office of the State Auditor from July 2013 to December 2016.¹

On November 29, 2017, Point Pleasant's Borough Administrator e-mailed a representative from Agency Services asking how Santiago could be made permanent in the subject title. On December 11, 2017, the representative responded that the subject examination was just announced, and Agency Services was awaiting the results. Thereafter, Agency Services determined that five applicants were eligible and five were ineligible, including Santiago. Accordingly, on May 9, 2018, a notice of ineligibility was sent to Santiago indicating that he lacked the required experience for the subject examination. Agency records do not indicate that he appealed his ineligibility. Subsequently, on May 17, 2018 the list promulgated, and it expires on May 16, 2020. Thereafter, on May 21, 2018, certification OL180507 was issued containing the names of the five eligibles and indicating that Point Pleasant's disposition was due August 21, 2018. In response, in June and July 2018, the Borough Administrator e-mailed and called the Agency Services' representative twice asking how Santiago could be made permanent, but he did not receive a response. Thereafter, a September 24, 2018 notice of violation was sent from Agency Services to the Borough Administrator indicating that Point Pleasant failed to return the subject certification by August 21, 2018 and that if it did not return the certification within 10 days, action may be taken including the disapproval of Santiago's salary, as well as the assessment of fines, examination and compliance costs, and/or an eligible may be appointed from the subject certification. In reply, on September 27, 2018, the Borough Administrator called the Agency Services representative. After not receiving a response, on October 10, 2018, he contacted her supervisor. On October 16, 2018, the supervisor advised the Borough Administrator that he could appeal Santiago's ineligibility. Thereafter, on October 30, 2018, Agency Services sent the Borough Administrator notice that Santiago's salary was disapproved. In response, on November 13, 2018, Point Pleasant appealed Santiago's ineligibility for the subject examination and the disapproval of his salary.

On appeal, Point Pleasant asserts that it made diligent efforts to resolve the issues indicated by Agency Services, but its communications were unanswered. It believes it should not be held responsible for Agency Services' failure to communicate. Point Pleasant argues that Santiago is qualified for a position in the subject title, his salary should not be disapproved, and its appeal of the disapproval is timely.

¹ Personnel records indicate that Santiago was a Senior Auditor III OLS from July 2016 to January 2017, a Semi Senior Auditor OLS from June 2015 to July 2016, an Auditor OLS from June 2014 to June 2015, and an Assistant Auditor OLS from July 2013 to June 2014.

CONCLUSION

N.J.S.A. 11A:4-13(b) provides, in pertinent part, that provisional appointments shall be made only if the appointing authority certifies that in each individual case the appointee meets the minimum qualifications for the title at the time of appointment.

N.J.A.C. 4A:2-1.1(b) provides unless a different time period is stated, an appeal must be filed within 20 days after either the appellant has notice or should have reasonably have known of the decision, situation, or action being appealed.

N.J.A.C. 4A:4-2.3(b)2 requires applicants to possess all the requirements specified in an announcement for an open competitive examination by the closing date. *N.J.A.C.* 4A:4-6.3(b) provides that the appellant has the burden of proof in examination appeals.

N.J.A.C. 4A:4-4-8(c) provides that failure to dispose of a certification by the due date may result in constructive appointment or other remedial action as set forth in *N.J.A.C.* 4A:10-2.

Initially, it is noted that Santiago's notice of ineligibility was issued on or around May 9, 2018. Agency records do not indicate that Santiago appealed and Point Pleasant's appeal on his behalf was postmarked November 13, 2018. Accordingly, the appeal of Santiago's ineligibility for the subject examination is well past 20 days from when he received notice and therefore is not timely. Further, the subject announcement advised candidates to upload a copy of their college transcripts with their applications and failure to do so will result ineligibility. As Santiago did not upload his college transcript as required by the November 27, 2017 closing date, he was not eligible. Moreover, it was his responsibility to timely appeal his ineligibility.

Additionally, even assuming, *arguendo*, that Santiago had provided his college transcript and appealed in a timely fashion, Agency Services correctly determined that he is not eligible for the examination. Point Pleasant asserts that Santiago is "qualified" for the subject title and it made numerous inquiries to this agency to find out how he could be made permanent. A review of the of the job specification for the subject title indicates that four years of supervisory experience in accounting or certain related areas were needed to be eligible. At the time of Santiago's provisional appointment, his experience was in various unclassified Auditor positions (Senior Auditor III OLS, Auditor OLS, and Assistant Auditor OLS). It is noted that the career service position, Senior Auditor, is a non-supervisory position. A review of Santiago's application for the subject examination indicates he listed his experience prior to his provisional appointment as being a Senior Auditor from June 2013 to December 2013. He did not indicate that he had

any supervisory accounting experience. In other words, Santiago did not meet the eligibility requirements at the time of his provisional appointment because he did not possess the required supervisory accounting experience.

It is well settled that a provisional employee, whether provisional for one day, one year or seven years, does not have a vested right to a permanent position. While the requirements of *N.J.S.A. 11A:4-13(b)* allow for an appointing authority to certify that an appointee meets the minimum qualifications for the title at the time of appointment, the fact that the appointing authority erroneously determined that a provisional appointee satisfies the minimum qualifications for the title prior to an actual eligibility determination by this agency, does not automatically establish a presumption of eligibility when the examination is announced. See *In the Matter of Cynthia Bucchi, Maria D'Angelo, Rosalind R. James, Carla M. Lewis, and Rhonda McLaren, Management Assistant (PS5831F), Department of Education*, Docket No. A-1266-04T2 (App. Div. February 27, 2006). Accordingly, Point Pleasant should not have provisionally appointed Santiago to the subject title as he did not meet the minimum experience for eligibility. Further, while Point Pleasant complains that it made numerous attempts to this agency after it provisionally appointed Santiago asking how he could be made permanent, as he did not possess the required experience, he could not be made permanent.

Additionally, Point Pleasant did not return certification OL180507 and its disposition was due August 21, 2018. Therefore, on September 24, 2018, this agency sent Point Pleasant a notice of violation advising that it was in violation of Civil Service rules for failing to return the certification and that action may be taken against it including the disapproval of the payment of the salaries of all provisional incumbents serving in this title, the assessment of fines and compliance costs, and the appointment of an eligible from an outstanding certification. Accordingly, the payment of salary for which there is a disapproval is illegal and contravenes Civil Service law and rules.

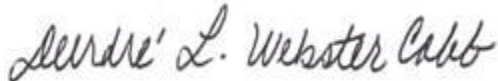
ORDER

Therefore, it is ordered that this appeal be denied. Further, the Commission orders Point Pleasant to immediately dispose of the outstanding certification by making a permanent appointment of a reachable and interested eligible. Additionally, Point Pleasant is ordered to immediately separate Santiago from the subject title. Such disposition must be filed with the Certification Manager on or before 30 days from the issuance of this order. If no proper disposition is made within this time period, the Commission orders the constructive appointment of the highest ranked 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).

However, in recognition that Point Pleasant did reach out to this agency in an attempt to resolve this issue, the Commission shall not assess compliance costs and fines against the appointing authority at this time. If Point Pleasant fails to make a good faith effort to fully comply with this order within 30 days from the issuance of this order, Agency Services shall refer this matter to the Division of Appeals and Regulatory Affairs for enforcement. The Commission warns Point Pleasant that failure to comply with this order shall subject it to compliance process being assessed against it 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 and fines being assessed in the amount of \$100 per day, beginning on the 31st day following the issuance of an enforcement order and continuing each day of continued violation, up to a maximum of \$10,000. 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), Jersey City*, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Further, this matter will be referred to the Office of the Attorney General for enforcement and for recovery of illegal payments and fines as assessed if full compliance is not effected within 30 days of an enforcement 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 17th DAY OF APRIL, 2019



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