

In the Matter of Administrative Analyst (M2311N), City of Long Branch
CSC Docket No. 2013-2360
(Civil Service Commission, decided February 12, 2014)

The matter of whether the City of Long Branch (Long Branch) should be granted permission not to make an appointment from the April 20, 2012 certification for Administrative Analyst (M2311N), has been referred to the Civil Service Commission for review.

The record reveals that on September 5, 2011, the appointing authority provisionally appointed Mauro Baldanza, pending open competitive examination procedures, to the subject title. The examination was announced with a closing date of January 5, 2012. The examination resulted in an employment roster of eleven eligibles which promulgated on April 12, 2012 and expires on April 11, 2015. It is noted that Baldanza was tied at rank 6 on the subject eligible list with four other eligibles and his name was listed in the 7th position on the certification that was issued on April 20, 2012.

The appointing authority returned the certification on October 5, 2012, indicating that Baldanza was removed from the title. 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 22, 2012, 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, despite being provided the opportunity, did not respond.

Thereafter, the matter was referred by CPM to the Division of Appeals and Regulatory Affairs (DARA). The referral was acknowledged by DARA, and the appointing authority was again 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. On August 12, 2013, the appointing authority responded by requesting an appointment waiver due to budgetary restraints. The appointing authority stated that it was unable to hire anyone from the certification, but that the provisional appointee to the subject title was appointed to another title in a different department. Further, it stated that its budget does not allow for another "slot".

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 with the appointing authority. However, a review of agency records also indicates that Baldanza, in addition to serving as Confidential Assistant,

received a temporary appointment to the subject title, and it was recorded as retroactive to September 5, 2010.

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.

Additionally, *N.J.S.A.* 11A:4-13(c) and *N.J.A.C.* 4A:4-1.7(a) provide, in pertinent part, that temporary appointments may be approved for positions in which the job assignment is for an aggregate period of not more than six months in a 12-month period. A temporary appointment for a maximum of 12 months may be approved for a position as a result of a short-term grant.

Further, *N.J.A.C.* 4A:10-2.1, provides, in pertinent part, that where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, *N.J.A.C.*, the Civil Service Commission (Commission) may issue an order of compliance, assess fines, or order the appointment from an outstanding list.

In the instant matter, the examination for the subject title was generated as the result of the provisional appointment of Mauro Baldanza to the subject title. Further, after a complete certification was issued, the appointing authority returned the certification and indicated that Baldanza was appointed to the unclassified title of Confidential Assistant, which is confirmed by agency records. However, agency records also indicate that, instead of removing Baldanza from the subject title, the appointing authority changed Baldanza's appointment type from a provisional to a temporary appointment. Consequently, Baldanza is now concurrently serving as both Confidential Assistant and in the subject title. Baldanza's temporary appointment to the subject title is not proper, as it would be greater than the six months permitted by *N.J.S.A.* 11A:4-13(c) and *N.J.A.C.* 4A:4-1.7(a). The appointing authority's change of Baldanza's appointment type from provisional to temporary does not establish that the appointing authority is unable to make an appointment from the certification due fiscal constraints. Instead, it appears that the appointing authority's actions may have been an attempt to circumvent Civil Service law rules. Therefore, the appointing authority has not properly disposed of the subject certification.

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 not properly disposed of the certification issued from a request by the appointing authority to appoint an individual to the subject title.

N.J.A.C. 4A:4-4.8(b) requires an appointing authority to notify CPM of the disposition of a certification by the disposition due date. Clearly, the appointing authority has violated this vital regulation. The Commission is specifically given the power to assess compliance costs and fines against an appointing authority, including all administrative costs and charges, as well as fines of not more than \$10,000, for noncompliance or violation of Civil Service law or rules or any order of the Commission. *N.J.S.A.* 11A:10-3; *N.J.A.C.* 4A:10-2.1(a)2. See *In the Matter of Fiscal Analyst (M1351H)*, Newark, Docket No. A-4347-87T3 (App. Div. February 2, 1989). Therefore, the appointing authority is ordered to return the certification for proper disposition within 30 days of receipt of this decision, with the required documentation. If, at any time, the appointing authority does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for each day of continued violation up to a maximum of \$10,000.

ORDER

Therefore, it is ordered that a waiver of the appointment requirement be denied. It is also ordered that the appointing authority remove Mauro Baldanza from his improper temporary appointment and properly dispose of the April 20, 2012 certification for Administrative Analyst (M2311N) within 30 days.

Furthermore, the Commission orders that the costs incurred so far 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 30 days of the issuance of this decision.

If, at any time, the appointing authority does not adhere to the timeframes for the proper certification disposition without an approved extension of time, it shall be assessed fines of \$100 per day for 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.