

B-9



STATE OF NEW JERSEY

In the Matter of Ezzedin Bautista,  
Sheriff's Officer (S9999R), Essex  
County

FINAL ADMINISTRATIVE  
ACTION  
OF THE  
CIVIL SERVICE COMMISSION

CSC Docket No. 2017-17

List Removal Appeal

ISSUED: **DEC 22 2016** (SLK)

Ezzedin Bautista, represented by Jeffrey J. Berenzy, Esq., appeals the attached determination of the Division of Agency Services (Agency Services) upholding the removal of his name from the eligible list for Sheriff's Officer (S9999R), Essex County, on the basis that he falsified his application.

The appellant took the open competitive examination for Sheriff's Officer (S9999R), achieved a passing score, and was ranked on the subsequent eligible list. The appointing authority indicated that the appellant falsified his application. Specifically, it represented that in response to Question 39 on his application, asking if he had ever been arrested for any violation of a criminal law, he responded "No." However, his Criminal Case History lists two arrests. Further, in response to Question 41 asking if had ever been fingerprinted for any reason, he answered "Yes," a prior Sheriff's Officer applicant. However, his Criminal Case History shows he was also fingerprinted during his two arrests. Moreover, in response to Question 30 asking if he ever had a judgment held against him, he answered "No." However, a review of his Lexis Nexis report yielded 17 judgments filed against him. Additionally, he was charged with Simple Assault in June 2010 and August 2012 and he had Temporary Restraining Orders (TRO) filed against him in October 1995, June 1997, May 1999, and August 2012. It is noted that the two arrests and the four TROs were dismissed.

On appeal, the appellant states that he truthfully answered "Yes" to Question 41 and was fingerprinted in 2010 for a prior Sheriff's Officer application. Then, in response to Question 42, he indicted two arrests where he was fingerprinted. Consequently, he argues that he did not make a false statement as he assumed that Internal Affairs Division personnel would obviously know that he was fingerprinted for the two subject arrests that he listed. With regard to Question 39 which asked if he had ever been arrested for a criminal violation, the appellant presents that he thought that the dismissed domestic relation charges were not criminal within the meaning of the question and he revealed these arrests in response to Question 42. Additionally, in response to Question 43 asking if he had ever been issued a TRO, he again mentioned the August 2012 incident. In reference to Question 30 which asked if there was ever a judgment held against him, he states that he did not answer "No," as alleged by the appointing authority, but instead answered "N/A" because he thought that his question pertained only to outstanding and unpaid judgments. He represents that he only had one judgment against him, a \$3,239 judgment by Discover Bank in 2012, which was fully satisfied in or about September 2013. The appellant contends that he did not believe that this question pertained to Landlord-Tenant proceedings. The appellant indicates that there were approximately 12 proceedings against him from 2000-2009, all of them were settled, and many of them were the result of proceedings being wrongly filed in violation of the Servicemember's Civil Relief Act while he was away on active military duty. The appellant provides that all of these proceedings involved the same rental property and landlord. Additionally, the appellant states that in response to Question 31 asking if he ever defaulted on a loan or had property repossessed, he did answer "Yes" and gave details.

With respect to his criminal history, the appellant states that the two arrests and prior restraining orders were issued against him due to his wife becoming emotional over private family matters and all the charges were dismissed. In support, he submits a certification from his wife that states that he was completely innocent. The appellant reiterates that the 2010 arrest involved an incident where he and his wife were arguing in public after they ran out of gas on the highway and a witness misinterpreted the situation and called 911 and he was wrongfully charged with simple assault. Similarly, he represents that in 2012, he and his wife had an argument over a private domestic incident at a VFW Post function, she got emotional and called the police, and the charge was dismissed. He highlights that he has been in the Air Force Reserve for 21 years which included 6 deployments in the Middle East and has received 17 awards and decorations for his service, his education as a graduate from Mapua Institute of Technology in the Philippines, his 70 college credits from Patts College of Aeronautics, and his employment as a Driver for Essex County Hospital since February 2013. He also attaches multiple letters of recommendation from individuals who have served in either law enforcement or the military.

In response, the appointing authority reiterates that the appellant failed to indicate that he was fingerprinted in conjunction with his two arrests.

## 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 Commission to remove an individual from an eligible 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.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime;
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement shall prohibit an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer, firefighter or judiciary titles and other titles as the Chairperson of the Civil Service Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. See *Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the Civil Service Commission to remove an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

*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, there is a valid basis to remove the appellant's name from the subject list. While it is questionable as to whether the alleged falsification of his application is sufficient to remove the appellant's name from the list, his background clearly provides a basis for removal from the list. A review of the Domestic Violence Central Registry and appellant's Criminal History Detailed Records indicates that the appellant was issued TROs in October 1995, June 1997, May 1997, arrested for Simple Assault in July 2010, and was arrested for Simple Assault and received a TRO in August 2012. While the appellant argues that he is completely innocent in these five separate Domestic Violence incidents as evidenced by the fact that all of the TROs and charges were dismissed, it cannot be ignored that the appellant engaged in behavior where his wife felt compelled to file TROs on three separate occasions between 1995 through 1999. Moreover, there was a fourth incident in 2010, where a third-party witness, after observing the appellant's behavior, felt compelled to call the police and the police arrested the appellant for assault. Thereafter, there was a fifth incident which took place in 2012, where his wife again felt compelled to call the police and the police arrested the appellant for assault and his wife filed for a TRO against him. Further, it is noted that the fourth and fifth incidents took place only one and three years prior to the September 2013 closing date.

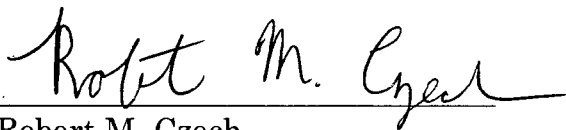
The appellant's multiple adverse encounters with law enforcement and the court system demonstrate his disregard of the law. This is unacceptable for applicants who seek positions in law enforcement. The public expects Sheriff's Officers to present a personal background that exhibits respect for the law and rules. In this regard, the Commission is mindful that a Sheriff's Officer is a law enforcement employee who must help keep order and promote adherence to the law. Sheriff's Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. See *Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also *In re Phillips*, 117 N.J. 567 (1990). Therefore, in reviewing the totality of Mr. Bautista's background, it is appropriate to remove his name from the list based on an unsatisfactory background for the subject title. Consequently, the issue of the appellant's alleged falsification of his application need not be decided since the Commission has upheld the removal of his name on other grounds. Accordingly, the appellant has not met his burden of proof in this matter and the appointing authority has shown sufficient cause for removing his name from the Sheriff's Officer (S9999R) eligible list.

### ORDER

Therefore, it is ordered that this appeal be denied.

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 21<sup>st</sup> DAY OF DECEMBER, 2016



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

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

Attachment

c: Ezzedin Bautista  
Jeffrey J. Berezny, Esq.  
Armando Fontoura, Sheriff  
Evelyn Osorio  
Kelly Glenn



STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
AGENCY SERVICES  
P. O. Box 313  
Trenton, New Jersey 08625-0313

Chris Christie  
*Governor*  
Kim Guadagno  
*Lt. Governor*

Robert M. Czech  
*Chair/Chief Executive Officer*

June 7, 2016

Daniel J. Zirrih

**RE: Removal of Name from Eligible List – Ezzedin Bautista**

**Title: Sheriffs Officer**  
**Jurisdiction: Essex County**  
**Symbol: S9999R**

**Certification No: OL141183**  
**Certification Date: 9/11/14**

Dear Mr. Zirrih:

This is in response to your correspondence contesting the removal of your client's name from the above-referenced eligible list.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)6, which permits the removal of an eligible candidate's name from the eligible list if the eligible "Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process."

In support of its decision, the Appointing Authority provided copies of selected pages of your client's application to Essex County and other documents which indicate that your client was untruthful when he responded to several questions on the application. Question 39 asks if the candidate has ever been arrested, indicted, or convicted for any violation of the criminal law in New Jersey or any other state; your client responded, "No." The Appointing Authority submitted documentation indicating that your client was arrested twice, once on June 6, 2010 for Simple Assault and again on August 25, 2012 for Simple Assault. Question 41 of the application asks if the candidate has ever been fingerprinted for any reason prior to submitting his application; your client responded, "No." The Appointing Authority states that your client was fingerprinted during the two arrests previously mentioned. Question 30 of the application asks if the candidate if he has ever filed for bankruptcy, had a wage garnishment or judgment held against him or currently pending against him; your client responded, "No." The Appointing Authority states that a review of his Lexis Nexis report shows that your client has or had seventeen (17) judgments filed against him.

In support of your client, you state that your client misinterpreted and/or unintentionally answered those questions incorrectly and did reveal the information in other questions of the application, proving that there was no intent to hide the information.

You further argue that the arrests were as a result of minor private family matters and that all charges were dismissed, therefore he shouldn't be removed due to an Unsatisfactory Criminal Record.

Your client was removed by the Appointing Authority because of falsification of the application; it has been held that a candidate's name may be removed from an eligible list based on falsification of the employment application when the withheld information is material to the position sought, not whether there was any intent to deceive on the part of the applicant.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your client's name to the eligible list. Therefore, the Appointing Authority's decision to remove your client's name has been sustained and the appeal is denied.

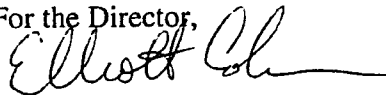
In accordance with Merit System Rules, this decision may be appealed to the Division of Appeals and Regulatory Affairs (DARA), within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.

Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Appeals Record Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,



Elliott Cohen  
Human Resource Consultant  
Local Placement Services

Armando Fontoura, Sheriff  
Sheriff's Office - 2nd Fl Room 204  
50 Nelson Place  
Newark NJ 07102

