

B-16



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Rayvonn E. Mercado,  
Fire Fighter (M2554M),  
City of Newark

CSC Docket No. 2014-2456

List Removal Appeal

ISSUED: OCT 03 2014 (DASV)

Rayvonn E. Mercado, represented by Jeffrey J. Berezny, Esq., appeals the removal of his name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement.

The open-competitive examination for Fire Fighter (M2554M), City of Newark, was announced with a closing date of March 31, 2010 and was open to residents of Newark. Applicants were required to maintain continuous residency up to the date of appointment. See N.J.A.C. 4A:4-2.11(e)1. The appellant, a nonveteran, passed the subject examination and ranked 149 on the resulting eligible list, which promulgated on December 13, 2011 and expires on December 12, 2014.<sup>1</sup> The second certification of the eligible list was issued on July 23, 2012 containing the names of 126 eligibles. The appellant was listed in the 88<sup>th</sup> position on the certification. In disposing of the certification, the appointing authority requested the appellant's removal for his failure to meet the residency requirement. It submitted a Rental/Lease Agreement, dated April 19, 2013, signed by the appellant and his wife, Jennifer Mercado, as lessees to a townhouse in Union, New Jersey. The agreement listed the appellant, his wife, and two minor children as the occupants of the unit. The appellant appealed the removal of his name to CPM, arguing, among other things, that he was a resident of Newark, but his wife and children moved to Union due to two recent home invasions in their Newark home.

<sup>1</sup> The Fire Fighter (M2554M), City of Newark, eligible list was scheduled to expire on December 12, 2013. However, the list was extended for one year.

CPM referred the matter to the Civil Service Commission (Commission) for direct review.

On appeal, the appellant reiterates the arguments he submitted to CPM and certifies that his primary residence is located in Newark and he has continuously resided there since May 2007 in a property that is owned by him. He was also born in Newark and attended high school there from 1995 through 1999. The appellant submits numerous documents, such as tax return transcripts, letters regarding work, union dues receipt, his pay stub, his motor vehicle driver's abstract, voter registration information,<sup>2</sup> credit card statements, mortgage statements, a check from his checking account, home security statements, a jury duty receipt and check, and utility bills which reflect his Newark address and are dated between December 2010 and December 2013. However, most of the documents are dated in 2012 and 2013. The appellant explains that the Union townhouse is "merely a temporary residence" for his wife and two children because of the home invasions which occurred in 2012 and 2013. Specifically, the first incident occurred on November 1, 2012. The Mercado family was not at home, but they were robbed of some jewelry and electronics. It is noted that the Newark property is owned by the appellant and Kyle J. Richardson, a Fire Fighter with the City of Newark since October 26, 2006. The appellant and Richardson have owned the home since April 25, 2007, and the property's bills are in both of their names. The appellant submits a notarized statement from Richardson verifying that the appellant lives in the Newark property. Richardson also attests to the foregoing incidents and to the appellant's character, stating that "[any one] of us put in the same situation would have done the same thing to give their family and themselves peace of mind." According to the police report for the November 1, 2012 burglary, Richardson was at the property when the police were called to the scene and his wife had been at the house earlier but did not notice that the rear door window was broken. The second incident occurred on the evening of March 23, 2013. The appellant states that he and his family were at home and he was able to ward off the intruder, who climbed through the bathroom window. The appellant also notes that their cars are parked in the backyard and have been "ransacked numerous times."

Thus, the appellant asserts that, because his wife was afraid to remain in the house, she and the two children, who were two and a half years old and seven months at the time, moved to Union. His wife had resided in the Newark home beginning in February 2010 and their infant children lived there from birth until April 2013. Additionally, the appellant certifies that he was "required" to sign the lease for the Union townhouse because his wife was unable to secure the townhouse based solely on her credit. It is noted that, in a notarized letter dated May 17, 2013

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<sup>2</sup> The appellant submits a voter registration application, dated April 15, 2013, with his Newark address. He also presents his voter profile, which indicates a previous registration date of November 4, 2008. The appellant voted in a general election on November 4, 2008 in Irvington, New Jersey.

to the investigator of his background, the appellant explained that the property manager advised him that since his wife is married, his name must appear on the lease for the Union townhouse even if he would not be residing there. The appellant also stated that signing the lease provides him with an access card and "unlimited visits" to his family. Additionally, the appellant indicated that he "reacted in a way that any Fire Fighter, loving husband and caring father would, which is to make sure his family is safe. So [he] moved them out and [he] remain[s] in Newark to continue with the process of becoming a Newark Fire Fighter." Moreover, the appellant claims that he will remain a Newark resident regardless of whether he is appointed as a Fire Fighter. He emphasizes that he is a life-long Newark resident, a Newark property owner, and has "strong family ties in the community." Further, the appellant states that the appointing authority did not provide him with copies of all documentation sent to CPM as required by *N.J.A.C. 4A:4-4.7(b)*1 and 2. Rather, CPM provided the documentation. Thus, the appellant maintains that the appointing authority's request to remove his name from the subject eligible list must be denied.<sup>3</sup>

In response, the appointing authority, represented by Kenneth G. Calhoun, Assistant Corporation Counsel, asserts that the appellant did not maintain continuous residency in Newark from the March 31, 2010 examination closing date. The investigation of the appellant's background revealed that he maintained at least one different address outside of Newark, namely the Union townhouse. Additionally, the appointing authority emphasizes that the appellant has failed to present proof that he was "required" to sign the lease for the Union townhouse, such as a certification from his wife or the leasing agent. Further, it contends that nothing in the record demonstrates that the appellant was unable to find alternate housing in Newark. It claims that the appellant could have found suitable living arrangements within Newark only if he made an effort to search for one. Moreover, it notes that the appellant did not seek advice or counsel from the Newark Fire Department regarding how his family's move out of Newark would affect his residency. The appellant did not notify the investigator until weeks after he signed the lease for the Union townhouse. Further, notwithstanding that the appellant's

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<sup>3</sup> *N.J.A.C. 4A:4-4.7(b)* provides that "1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the appropriate Commission representative. 2. If the appointing authority fails to provide either the appropriate Commission representative or the eligible with copies of materials, the request for removal **may** be denied." [Emphasis added.] However, the appellant's argument fails since it is clear that *N.J.A.C. 4A:4-4.7(b)*2 does not require this agency to automatically deny a request for removal if an appointing authority fails to provide the required material to the candidate or this agency. Rather, it states that the Commission *may* deny such a request. Thus, even though the appointing authority did not submit the requested documentation to the appellant previously, the appellant received the documentation from CPM and the matter is now before the Commission with complete documentation. See *In the Matter of Joseph Branin* (MSB, decided April 6, 2005); *In the Matter of Irving Frederick Greivous* (MSB, decided May 19, 2004); *In the Matter of Michael Rubine, Police Officer (M5507T)*, North Bergen (MSB, decided September 10, 1998).

name is on the deed of the Newark property, the appointing authority underscores the appellant's disclosure in his May 17, 2013 letter that he has an access card and unlimited visits to his family in the Union townhouse. It argues that it is reasonable to believe that the majority of the appellant's time is spent with his family in Union given that the appellant is a "loving husband and a caring father to two infant children." The appointing authority indicates that the fact that the appellant continues to receive mail at his Newark address and his name remains on the deed are insufficient to demonstrate that he maintained continuous residency in Newark. It submits that the Union residence has a greater degree of permanence and attachment to the appellant because his wife and children live there. In addition, the appointing authority notes that since Richardson resides in the Newark property and can maintain the property, there is no need for the appellant to stay there. Therefore, given the concerns of the appellant's wife in living in Newark and the appellant's statements acknowledging that he remained in Newark to continue with the appointment process, the appointing authority contends that the appellant would not remain a resident of Newark if the residency requirement were eliminated, nor is it likely that he would remain a resident of Newark if he were appointed. Regarding the appellant's documentation, the appointing authority states that they are "self-proclaiming" or irrelevant as to the dates and provide no substantive proof that the appellant maintained continuous residency in Newark since March 31, 2010. Accordingly, the appointing authority requests that the appellant's appeal be denied.

In reply, the appellant submits a supplemental certification, stating that he attempted to have his wife move to another section of Newark, but she wanted to move to the Union townhouse. He reiterates that he does not reside in the Union townhouse. He only stays over on the weekends for two nights at most. The appellant presents the certification of his wife, who attests to the foregoing and the previous statements of the appellant concerning the burglaries. Specifically, she states that "fearing my safety and the safety of my children, I refused to continue to reside in Newark." The appellant also includes the certification of Sean O'Donnell, who is the leasing agent of the Union townhouse. O'Donnell confirms that in order for the appellant to have access to the townhouse community, it was required that his name be on the lease. Additionally, O'Donnell states that, for additional financial security, the landlord requested that another person be responsible for the lease. As a result, the appellant's name was placed on the lease. Therefore, the appellant maintains that he has a greater degree of permanence in Newark and spends more time there than any other location. He requests that he not be punished for the decision of his wife to move to Union.

### CONCLUSION

*N.J.A.C. 4A:4-2.11(c)* provides in pertinent part that where residence requirements have been established in local service, residence means a single legal

residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse or domestic partner (see section 4 of P.L. 2003, c. 246), a court order or other evidence of separation may be requested;
4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;
5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and
6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

*See e.g., In the Matter of Roslyn L. Lightfoot* (MSB, decided January 12, 1993) (Use of a residence for purposes of employment need and convenience does not make it a primary legal residence when there is a second residence for which there is a greater degree of permanence and attachment). *See also, In the Matter of James W. Beadling* (MSB, decided October 4, 2006). Moreover, *N.J.A.C. 4A:4-2.11(e)1* states that unless otherwise specified, residency requirements shall be met by the announced closing date for the examination. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. Additionally, *N.J.A.C. 4A:4-4.7(a)7* provides that discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residence is required is a cause for disqualification from an eligible list. *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 appellant asserts that his primary residence is located in Newark and he has continuously resided there since May 2007 in a property owned by him. The appointing authority disputes that the appellant's residency was continuous, as he signed a lease in April 2013 for a townhouse in Union where his family lives. *N.J.A.C. 4A:4-2.11(e)*<sup>1</sup> requires the appellant to maintain continuous residency from March 31, 2010 up to and including the date of appointment. Residence means a single residence. See *N.J.A.C. 4A:4-2.11(c)*. The record shows that the appellant maintains a **second** residence in Union with his wife and two minor children. Considering the factors set forth in *N.J.A.C. 4A:4-2.11(c)*, there is no dispute that the appellant has owned property in Newark since 2007 and only leases the Union townhouse. However, although the appellant states that he only signed the lease to gain access to the townhouse community to visit his family and for financial security purposes of the landlord, the appellant is listed as an occupant of the unit and he admits to staying at the location.<sup>4</sup> Thus, the appellant's argument that he does not reside in the Union townhouse is unpersuasive.

Moreover, it is questionable whether the majority of the appellant's time is spent in Newark. The appellant certifies that he spends only the weekends with his family in the Union townhouse. However, it is difficult to believe that he does not spend more time with his family considering his self-portrayal as a loving husband and a caring father who moved his family out of a dangerous neighborhood, notwithstanding the appellant's later characterization of the move as his wife's choice. Moreover, the appellant has obviously a closer relationship with his wife and children than he does with Richardson, who resides in the Newark property and is a co-owner. Further, given his wife's concerns regarding living in Newark and her refusal to continue to reside in Newark, it is highly unlikely that her living arrangement in Union is temporary, or alternatively, that she would ever return to Newark. Consequently, when their children are of school age, they would not be attending a school within the Newark School District. Thus, it is apparent that the appellant, who is not estranged from his wife or children, would not remain a resident of Newark if the residency requirement were to be eliminated. It is noted that although the appellant states that he began residing in the Newark property in May 2007 after he purchased the home in April 2007, he voted in Irvington in November 2008. This indeed casts doubt on the veracity of the appellant's statements. Therefore, given the totality of the circumstances, the appellant's property ownership and the documentation he submits on appeal do not provide sufficient evidence that his primary legal residence has continuously been located in Newark. As indicated in *Lightfoot, supra*, use of a residence for purposes of employment need does not make it a primary legal residence. See also, *In the Matter of Chad Batiuk*, Docket No. A-5593-05T5 (App. Div. September 28, 2007) (Appellant's convoluted residency saga was less than plausible and his use of a

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<sup>4</sup> The appellant would also be responsible for any delinquent rental payments.

claimed township address was found to be utilized to deceive the appointing authority).

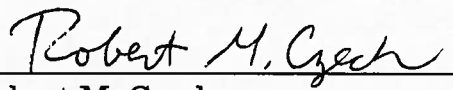
Therefore, under these circumstances, the appointing authority has presented a sufficient basis to remove the appellant's name from the Fire Fighter (M2554M), City of Newark, eligible list due to his failure to meet the residency requirement. Accordingly, the appellant has failed to meet his burden of proof in this matter.

### 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 1<sup>st</sup> DAY OF OCTOBER, 2014

  
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