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STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Archivist (M0604S),
Elizabeth Public Library

CSC Docket No. 2017-852

Appointment Waiver

ISSUED: MAR 13 2017 (JET)

The Elizabeth Public Library requests permission not to make an appointment from the certification for Archivist (M0604S), Elizabeth Public Library.

By way of background, the examination was announced with a closing date of May 5, 2015. The resulting list of two eligibles promulgated on June 4, 2015 and will expire on June 3, 2018. A certification was issued on July 15, 2015 (OL150883) containing the names of the two eligibles. In disposing of that certification on December 7, 2015, the appointing authority indicated that one eligible was not interested and the other eligible did not respond to the notice of certification. Thereafter, the appointing authority provisionally appointed Brian Murray, pending open competitive examination procedures, to the subject title, effective December 1, 2015. Murray's name did not appear on the eligible list. As a result of Murray's provisional appointment, a certification was issued on March 17, 2016 (OL160293), which contained the name of the one eligible who indicated that he was not interested at the time the list was previously certified. Certification OL160293 has not been returned.

By way of letter dated August 30, 2016, the Division of Agency Services (Agency Services) notified the appointing authority that it did not properly dispose of the OL160293 certification, as the provisional was still serving in the subject title. However, Murray's provisional appointment was discontinued effective July 27, 2016. The appointing authority took no action to obviate the need for this examination at the time of the announcement or prior to its administration.

Moreover, the matter was initially filed with the Division of Appeals and Regulatory Affairs (DARA) as a salary disapproval request.

By way of letter dated September 14, 2016, the appointing authority stated, among other things, that no one is presently serving as an Archivist and the provisional employee's appointment was discontinued on July 27, 2016. By letter dated February 17, 2017, DARA acknowledged the appointing authority's request for an appointment waiver. Moreover, it advised that if its request were granted, it could be assessed for the costs of the selection process in the amount of \$2,048.

In response, the appointing authority argues that the two eligibles listed on the certifications were not selected for an appointment. Specifically, it explains that the subject position is a part-time position, and the number one ranked candidate on the OL160293 and the OL150883 certifications is only interested in a full-time position. Further, the number two ranked candidate on the OL160293 certification did not respond to the notice of certification or appear for an interview. Additionally, the provisional appointee who was serving in the position resigned without notice in July 2016. Thereafter, the appointing authority states that it determined that it was unnecessary to fill the position. As such, the appointing authority requests a waiver of the costs of the selection process.

A review of agency records reveals that there are currently no employees serving provisionally, pending open competitive examination procedures, in the subject title with the Elizabeth Public Library.

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.

In the instant matter, the examination for the subject title was generated due to the appointing authority's request to fill a position with the subject title. However, after the OL160293 certification was issued, the appointing authority requested cancellation of the certification since it had determined that it was not going to fill the position and the provisional appointee resigned without notice. As the appointed authority has determined that it will not fill the position and there is no longer a provisional appointee serving in the subject title, there is sufficient justification for an appointment waiver.

Although an appointment waiver is granted in this matter, both *N.J.S.A.* 11A:4-5 and *N.J.A.C.* 4A:10-2.2(a)2 state that if an appointing authority receives

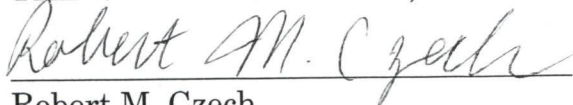
permission not to make an appointment, it can be ordered to reimburse the costs of the selection process. While administering examinations and providing the names of eligible job candidates to the jurisdictions under the Civil Service system are two of the primary activities of this agency, these costly efforts are thwarted when appointing authorities fail to utilize the resulting eligible lists to make appointments and candidates have needlessly expended their time, efforts and money to take these examinations in hopes of being considered for a permanent appointment. While the Commission recognizes that the only provisional employee in the subject position resigned from employment, the appointing authority did not take any action to obviate the need for the examination at the time of the announcement or prior to its processing. Furthermore, the fact that the appointing authority no longer wishes to utilize the subject title is not sufficient justification to waive the costs. Therefore, although the appointing authority has shown sufficient reason for not making an appointment from the subject eligible list, under these circumstances, it has failed to present a sufficient basis for not being charged for the costs of the selection process which produced it. Thus, although a waiver is granted, it is appropriate that the appointing authority be assessed \$2,048 for the costs of the selection process.

ORDER

Therefore, it is ordered that the request for a waiver of the appointment requirement be granted. Additionally, the Commission orders that the appointing authority be assessed for the costs of the selection process in the amount of \$2,048 to be paid within 30 days of the issuance of this 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 9th DAY OF MARCH, 2017



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