



POLICE DEPARTMENT

February 11, 2008

MEMORANDUM FOR: POLICE COMMISSIONER

Re: Police Officer Roberto Assencao  
Tax Registry No. 917254  
Police Service Area No. 9  
Disciplinary Case No. 82374/06  
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The above-named member of the Department appeared before me on November 8, 2007, charged with the following:

1. Said Police Officer Roberto Assencao, assigned to PSA 9, on or about April 4, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Officer upon being informed that a person known to the Department, whom said Officer<sup>1</sup> reasonably believed to be engaged in, was likely to engage in or was actually to have engaged in criminal activities, possessed said Officer's PBA card and a Mini Police Shield bearing said Officer's shield number, and said Officer failed to immediately cause the confiscation of said PBA card and Mini Police Shield. (*As amended*)

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED CONDUCT  
GENERAL REGULATIONS

2. Said Police Officer Roberto Assencao, assigned to PSA 9, on or about and between May 10, 2005 and May 10, 2006, did knowingly associate with a person or organization reasonably believed to be engaged in, was likely to engage in or was actually to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 2 - PUBLIC CONTACT-PROHIBITED CONTACT  
GENERAL REGULATIONS

3. Said Police Officer Roberto Assencao, assigned to PSA #9, on or about April 6, 2006, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that said Officer entered into a telephone conversation with an Investigator known to the Department for the purpose of convincing the Investigator not to issue a traffic violation to a third person known to the Department who

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<sup>1</sup> So in original.

said Officer reasonably believed to be engaged in, was likely to engage in or was actually to have engaged in criminal activities.

P.G. 203-10, Page 1, Paragraph 5 - PUBLIC CONTACT-PROHIBITED CONDUCT

The Department was represented by Stephen Bonfa, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

### DECISION

The Respondent is found Not Guilty of Specification Number 1 and Guilty of Specification Number 2. Specification Number 3 was dismissed upon the Department's motion made on August 30, 2007.<sup>2</sup>

### EVIDENCE

#### The Department's Case

The Department called Sergeant Paul Valerga as its witness.

#### Sergeant Paul Valerga

Valerga was assigned as an investigator in Group 27 of the Internal Affairs Bureau. He testified that an investigation was opened into the Respondent for possible

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<sup>2</sup> The uncontested evidence at trial shows that the Respondent did not try to dissuade a member of the service from issuing a traffic summons.

criminal association. Valerga's testimony was based on his review of the case folder on this matter.

Valerga stated that on December 2, 2005, the Respondent's Integrity Control Officer, Sergeant Lauredo, called IAB, and reported that someone claiming to be with the "U.S. Customs Department" had visited the home of the Respondent's mother and had sought to speak with the Respondent. Valerga further testified that Special Agent Samuels of Immigration and Customs Enforcement (ICE) had called the Respondent and went to his home. Valerga believed that the Respondent told Lauredo about the visit from Samuels.

Valerga testified that Detective Miles of IAB called Samuels on December 2, 2005. Valerga noted that "the only reason" IAB "would have reached out to" Samuels was because of the information provided by the Respondent. Valerga testified that the next day, December 3, 2005, Samuels called back in reference to the Respondent. Valerga stated that on December 15, 2005, Sergeant Pits from IAB spoke to Samuels.

Valerga testified that Samuels was conducting a narcotics investigation. According to Samuels, the Respondent's uncle, [REDACTED], and the Respondent's family friend, [REDACTED], were involved in a narcotics conspiracy. Samuels stated that the Respondent was not a target in the investigation. Valerga believed that the Respondent's mother and [REDACTED]'s mother were very close, and stated that [REDACTED] was a childhood friend of the Respondent. Valerga stated that [REDACTED] was a retired member of law enforcement, possibly in the Housing area.

Valerga stated that according to Samuels, ICE contacted the Respondent because they thought he might have some helpful information. IAB attempted to assist Samuels

in having the Respondent "comply with any directives he needed to be done," and also helped with background information on "any type of association" that the Respondent had with [REDACTED] or [REDACTED]. Samuels told the Respondent that the Respondent did not have to inform the Department of ICE's contact with him. Valerga described Samuels as "kind of wishy-washy about the whole situation," noting that Samuels said, "look, we contacted you guys in the past when we wanted to talk to a non-subject, and you guys sort of blew us off." Thus, according to Valerga, Samuels had not wanted to inform IAB of what was going on.

According to Valerga's file, Samuels related that the Respondent said he had to "go through the chain of command for this." According to the file, Lauredo reported that Samuels told the Respondent, "don't tell the job." Samuels also told Pits that when the Respondent found out that Caraballo was the target of an investigation, he said, "look, I'm not going to talk to him any more," and wanted to change his phone number so [REDACTED] could not get in touch with him. Samuels "probably told" the Respondent not to change his number because "it would be like you are keying him off" or "notifying him something is going on." Samuels characterized the Respondent as very forthcoming and helpful to the ICE investigation.

Valerga agreed that "[i]t could very well be" that ICE was worried that if a Department member "all of a sudden stopped taking [REDACTED]'s calls" and "cut off all contact with him," it might "tip off" [REDACTED] that "somebody was closing in." Valerga testified that Samuels did not allow IAB to interview any of the sources in the ICE investigation "to see the level of cooperation or the level of understanding between Officer Assencao and anybody else involved in the case." Valerga was certain that ICE

was "very worried about confidentiality in this case." Valerga "would assume" that ICE would "definitely not" want the Respondent to inform [REDACTED] or [REDACTED] of the federal investigation. Valerga agreed that from an Internal Affairs perspective, "[i]t probably wouldn't be good for" the Respondent to tell his uncle and friend about the investigation.

Valerga concurred that the criminal-association investigation into the Respondent was prompted by the Respondent's call to IAB about his conversation with federal authorities. "Apparently," the Respondent had several contacts with [REDACTED], who had a criminal history. Valerga believed that in 1987, [REDACTED] was arrested for criminal possession of a weapon, and in 1998 he was arrested for criminal sale of narcotics and criminal sale of a weapon. Further, during [REDACTED]'s incarceration for his 1998 arrest, he made two phone calls, each lasting seven to eight minutes, to the Respondent's residence. The Respondent was one of ten persons on a prison list of people [REDACTED] was approved to call. Between May 10, 2005, and May 10, 2006, there were several communications between [REDACTED] and the Respondent.

Valerga testified that on April 4, 2006, in order to get evidence against the Respondent regarding the alleged criminal association, IAB officers, including Detective Patel and Sergeant Conde,<sup>3</sup> "decided to go undercover as regular cops." Valerga maintained that although IAB knew from the Respondent's statements to ICE that he knew [REDACTED], ICE "wanted to confirm," noting that "statements can be retracted."

The IAB members followed [REDACTED] and conducted a car stop on him after he made an illegal U-turn. The idea, Valerga believed, was to see if [REDACTED] would "say,

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<sup>3</sup> Valerga testified that according to press reports, Conde was being investigated at the time of trial for possibly revealing confidential information.

listen, my cousin, my brother, my uncle, whoever is working on the job . . .” [REDACTED] presented a 2006 Patrolmen’s Benevolent Association (PBA) card and mini-shield. Both items were marked with Shield Number 111, the Respondent’s shield number. A black wallet labeled “family member” was also displayed.

[REDACTED] told the officer that pulled him over that he could call the Respondent, who [REDACTED] said was his cousin, because he was on duty at the time. The Respondent was called using [REDACTED]’s cell phone.<sup>4</sup> Valerga believed that the Respondent spoke to the IAB member. The IAB officer “basically” informed the Respondent that they had pulled someone over who was displaying the Respondent’s PBA card and mini-shield. The Respondent “basically” replied that [REDACTED] was his cousin “or was close, but do what you’ve got to do” (see RX-D, Worksheet on Car Stop, signed by Patel, Renna, and Capt. Thompson). The IAB members asked [REDACTED] to take everything out of his wallet except the PBA card and mini-shield, took those items to their car and photographed them, and returned the items to [REDACTED].

Valerga testified that the PBA card that [REDACTED] was carrying was unsigned. He explained that a member of the Department is supposed to sign the back of the PBA card and put down the name of the person it was issued to. This is done to ensure that the card is given specifically to one individual.

Valerga explained that a mini-shield was a small version of a police shield, about the size of a quarter, that a member of the Department can purchase. It is branded with the member’s shield number, and may be given to family or friends. It can be used by a motorist, or made into jewelry.

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<sup>4</sup> The worksheet stated that [REDACTED] made the call to the Respondent.

An Official Department Interview of the Respondent was conducted on May 10, 2006. Valerga stated that the Respondent's remark during the car stop that [REDACTED] was his cousin was "not completely true," but that the Respondent "clarified" at the Official Interview that [REDACTED] was "a very close friend, not blood." Valerga stated that between April 10, 2006, and the Official Interview the next May, the Respondent called [REDACTED] at least twice. The Respondent related at the interview that one of these calls was in reference to a christening for [REDACTED]'s child and going to restaurants to try out food for a possible reception. The Respondent added at the Official Interview that ICE told him "not to really back away fully from this guy, not to make it obvious that something is going on." The Respondent was instructed by Lieutenant Renna not to have contact with [REDACTED] but if he did, he was to contact IAB. Valerga believed that the Respondent made such reports.

The Respondent further stated at the Official Interview that since April 4, 2006, the Respondent did not collect, or cause to be collected, the PBA card and mini-shield. Valerga believed [REDACTED] had not yet been arrested at the time of the Official Interview.

Valerga's understanding of Specification Number 1 was that once the Respondent learned that [REDACTED] had a PBA card and mini-shield, the Respondent "should have at that point asked that those items be confiscated." Valerga did not have any knowledge that the Respondent "was officially told by anyone prior to the car stop" to retrieve the PBA card and mini-shield. Valerga did not believe that the Respondent was ever questioned about the non-retrieval.

The Respondent's Case

The Respondent called Reynaldo Torres as a witness, and he testified in his own behalf.

The Respondent

The Respondent has been a member of the Department for 11 ½ years and was assigned in Police Service Area 9 his entire career. The Respondent testified that he lived in [REDACTED]. In 1998, the Respondent stated, he lived with [REDACTED]. He moved out [REDACTED] in 1999.

The Respondent testified that in early December 2005, investigators from Immigration and Customs Enforcement came to his [REDACTED] house [REDACTED] around 7:00 a.m. The Respondent's sister called the Respondent and told him the investigators had been to his mother's house.

On December 2, 2005, the Respondent testified, he called the investigators, who stated that he was not in trouble, but that they wanted to speak to him. The Respondent told the agents that he was going to call a lawyer and notify the Department, because that was what he was obligated to do and because he was worried about being implicated in the investigation. Also, the Respondent asserted, he was unsure whether the person he was speaking to was actually an agent. The investigators said it was unnecessary to notify the Department because the Respondent was "not really the subject." The Respondent felt his obligation to the Department overrode the direction of the ICE agent.

The Respondent testified that he called a PBA attorney, who, after calling the ICE agent, told the Respondent that ICE just wanted to speak to him and thought he would have helpful information. The Respondent stated that he told his ICO, Sergeant Eddie



Lauredo, during his next tour about the information from ICE. Lauredo said that he would notify IAB, which he did.

The Respondent stated that he went to the ICE offices in Manhattan on December 8, 2005, and was interviewed by Special Agent Jason Samuels. A PBA attorney was also present. The ICE investigators told the Respondent that his uncle, [REDACTED] had been arrested, that there was a serious ongoing investigation, and that they wanted to know if the Respondent could "identify the subjects." The ICE agents also mentioned [REDACTED] as being "part of the investigation," and the Respondent gave them some information about him. The agents did not want the Respondent to inform anybody about the investigation, and warned him that he would get in trouble if he did.

The Respondent testified that he told the ICE agents "now knowing that something like this is going on, I am going to change my cell phone number." The agents responded "well, that doesn't work for us. We don't want him to be suspicious that anything is going on." The agents told the Respondent to "carry on casually," and "try and distance yourself from him, but don't make it so obvious."

The Respondent described [REDACTED] as someone he grew up with and a close family friend, "somebody in the family home during holidays, birthdays . . . deaths in the family." Until he found out about the ICE matter, the Respondent characterized his relationship with [REDACTED] as very friendly.

The Respondent admitted that he knew [REDACTED] was incarcerated in state prison, not Rikers Island, for a drug-related offense in 1998, but continued to socialize with and call him after that date. The Respondent asserted that the Respondent's family "understood it maybe he was using drugs," but after "all this started I learned it was for

selling drugs." He saw [REDACTED] every one to two weeks, but less than he used to because now they both had their own families. Between May 10, 2005, and December 8, 2005, the Respondent stated, he would "run into him" perhaps 15 to 20 times "like at bars and clubs and stuff like that I would say." He characterized these encounters as incidental: "I would run into him, he would run into me. Two friends that hang out together. That's it." [REDACTED] did not come to the Respondent's home during this time, but the Respondent could not say for his mother's home. The Respondent asserted that he had never been to [REDACTED]'s house.

The Respondent explained that he was given two PBA cards by the union for free, and that additional cards cost one dollar each. He generally gave them to family and "close family friends." The Respondent stated that for the PBA cards he gave to family members, he signed them and put down the name of the recipient. The Respondent testified that he gave out several mini-shields to his family and friends after his Police Academy graduation party around March 1997. He admitted he gave a mini-shield to [REDACTED] then. The mini-shield was not contained in a wallet. The Respondent also stated that he gave [REDACTED] a PBA card every year until he was informed of the Customs investigation. He believed he gave [REDACTED] a card for 2005.

The Respondent asserted that when he heard about the ongoing ICE investigation, he "made it my business not to run into" [REDACTED] "and to avoid his phone calls" as much as possible. He did occasionally speak to [REDACTED] when the Respondent "just answered my phone without looking to see who it was," and told [REDACTED] "I'm at work, I'm busy." The Respondent testified that he did not tell [REDACTED] that he did not want to be friends or that he did not want to talk to [REDACTED] anymore because the agents told the

Respondent "not to give the heads up to anybody." The Respondent admitted that [REDACTED] called him the day before his Official Interview. [REDACTED] was in a restaurant near where the Respondent worked, sampling food for a christening party for [REDACTED]'s child.

The Respondent denied giving [REDACTED] a 2006 PBA card, even though [REDACTED] would call him, leave voice messages, and would ask about the new cards. The Respondent asserted that when he did answer, he would tell [REDACTED] "no, I am busy, I gotta go." The Respondent stated that he did give PBA cards to his wife, mother, brothers and sisters.

The Respondent maintained that he gave his older brother Reynaldo Torres two PBA cards each year, including 2006. The Respondent stated, "That was just something I always did," and observed that Torres, who owned and operated a courier company, kept one card in his wallet and one in his van. He did not give his brother any instructions or restrictions regarding the cards.

The Respondent testified that on April 4, 2006, while on duty, he received a phone call from [REDACTED]. He denied giving [REDACTED] his work schedule. [REDACTED] told the Respondent that he had been pulled over after making a U-turn. [REDACTED] told the Respondent that the officer wanted to speak with him. The officer, who said he worked in Auto Crime, asked the Respondent if [REDACTED] was his cousin, and the Respondent answered affirmatively. The officer told the Respondent that [REDACTED] showed him a 2006 PBA card and a mini-shield. The Respondent replied, "okay, you know, do what you got to do." He did not ask that [REDACTED] be given any courtesy due to the ongoing investigation.

The Respondent admitted that [REDACTED] was not actually his cousin, and that he "gave a stronger relationship than just a friend" and "did not correct the stronger bond of relationship between" him and [REDACTED]

At the time of the phone call, the Respondent testified, he did not know where [REDACTED] got the 2006 card. Subsequently, however, the Respondent asked his brother if he gave [REDACTED] a card, and his brother said he did. When the Respondent asked his brother why he did that, his brother answered that he did not think anything of it, and thought he would get a third card from the Respondent. The Respondent asserted that he had not told his brother about the ICE investigation against [REDACTED]

The Respondent admitted that asking the officers to take the items from [REDACTED] "wasn't something that came to me at the time." The Respondent asserted that he did not consider asking the officers to take away the PBA card and mini-shield from [REDACTED] because, first, he believed based on his training as a Police Officer that it would constitute a confiscation of [REDACTED]'s property. Second, the Respondent said, he "wasn't going to explain" to the officers who pulled [REDACTED] over "what was going on, and I didn't want to give [REDACTED] any reason to continue to call me seeking a reason why it was taken away from him. The Respondent claimed that based on his knowledge of [REDACTED], "[h]e would have repeatedly called me and ask how come did they take it, why did they take it, when am I going to get it back." The Respondent admitted, however, that asking the officers to take the items from [REDACTED] "wasn't something that came to me at the time." He also admitted that he did not tell the officer that he did not give [REDACTED] a 2006 PBA card. The Respondent did not ask his brother to get the card back either.

The Respondent added that after becoming aware of the ICE investigation, he did not take action to retrieve any of the prior PBA cards or the mini-shield from [REDACTED] because the agents directed him "not to do anything out of the ordinary."

The Respondent testified that at his Official Department Interview, a Lieutenant ordered him to break off contact with [REDACTED]. When the Respondent asked what he should do "if some event turns up where I do bump into him," the Lieutenant said to call the IAB action desk. He denied that IAB told him during the Interview to attempt to get the PBA card or mini-shield back from [REDACTED]. The Respondent testified that he told IAB he could not recall whether he spoke to [REDACTED] when he called in 1998. He stated that in 1998, his brothers [REDACTED] were close to [REDACTED] and that his mother had a "conversational relationship" with him.

The Respondent asserted that he called the IAB action desk twice. The first occurrence was after the Respondent went to an "establishment" on Queens Boulevard called Side Tracks. He believed [REDACTED] did not frequent the place, but [REDACTED] was there when the Respondent visited. [REDACTED] asked the Respondent "what's going on with your uncle and stuff like that," but the Respondent told him he didn't know anything. The Respondent testified that the second incident was a similar occurrence.

The Respondent asserted that he also called ICE after these encounters. He contended that "[i]f I came upon any information that would help their investigation, on my own time I would pick up the phone and call them." The Respondent stated that he called ICE once to let Samuels know that [REDACTED] was going to the Dominican Republic. The Respondent testified that because the Respondent himself went to the Dominican Republic there or four times a year, he "didn't want no misconceptions that I

was going there to meet with him or anything like that.” These calls took place after the Respondent’s Official Department Interview.

The Respondent testified after he learned from the ICE agent that [REDACTED] had been arrested, he asked [REDACTED]’s brother, a “hospital cop” named [REDACTED], to retrieve the PBA card and mini-shield from [REDACTED]. Morales later called the Respondent, and said “they took it away from him.” The Respondent stated that he did not know where the items were currently.

The Respondent claimed that he did not know until speaking to a PBA attorney on December 8, 2005, that Police Officers were prohibited from associating with persons with a criminal history, “a rule now in the patrol guide.” The Respondent asserted that prior to his Official Interview, no one from the Department told him he could not associate with [REDACTED]. He admitted that he did not tell his ICO or the Department members at his Official Interview that ICE instructed him to distance himself from [REDACTED] but not to break all contact with him. The Respondent asserted that his failure to tell IAB about ICE’s directive “wasn’t something I willingly held back,” but “just didn’t think of it at the time.”

Reynaldo Torres

Torres, the Respondent’s brother, worked as a self-employed courier of health and beauty supplies. He testified that his brother gave him PBA cards since he became a Police Officer, two each year. Torres stated that he kept one card in his vehicle and one in his wallet. He did not remember whether the Respondent signed the back of the cards.

considered the Respondent's cooperation with the ICE agents and his efforts to disassociate himself from [REDACTED] once the Respondent learned of the investigation. I have also considered the fact that the Respondent immediately informed his ICO once he was contacted by ICE about this narcotics investigation involving his friend and uncle. Under the totality of the circumstances, I recommend a penalty of the forfeiture of 15 vacation days.

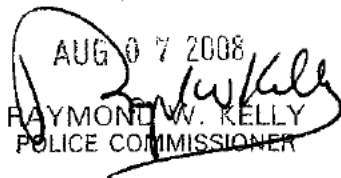
Respectfully submitted,



David S. Weisel

Assistant Deputy Commissioner – Trials

**APPROVED**



AUG 07 2008  
RAYMOND W. KELLY  
POLICE COMMISSIONER