



POLICE DEPARTMENT CITY OF NEW YORK

April 25, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Jonathan Oliveras
Tax Registry No. 943628
6 Precinct
Disciplinary Case No. 2016-16558

Charges and Specifications:

1. Said Police Officer Jonathan Oliveras, assigned to the 6th Precinct, while off-duty, on or about and between August 8, 2016 and October 16, 2016, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Oliveras, on numerous occasions, used a license plate not registered to his vehicle in order to drive his personal vehicle, thus operating a vehicle without insurance.

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

V.T.L. SEC. 319 – MOTOR VEHICLE FINANCIAL SECURITY ACT

Appearances:

For the Department: Anna Krutaya, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street – Suite 640
New York, NY 10038

Hearing Date:

March 23, 2017

Decision: Pleaded Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on March 23, 2017. Respondent, through his counsel, entered a plea of Guilty to the subject charge and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

This case involves Respondent's decision to take the license plate from a friend's car and affix it to his own personal vehicle at a time when the registration on Respondent's vehicle was suspended. Respondent testified that shortly before August 8, 2016, the insurance lapsed for his 2014 Hyundai Tucson due to a failure to pay the premium. Respondent explained that it was an innocent mistake stemming from miscommunication with his ex-partner, who Respondent expected to pay the insurance. As a result of the insurance lapse, the Tucson's registration was suspended by the Department of Motor Vehicle for approximately 110 days. (Tr. 9-10, 18)

Rather than make alternate travel arrangements during this time period, Respondent borrowed a license plate from a friend's car and placed it on his Tucson. Over the ensuing 70 days, Respondent, who lived approximately two blocks away from a subway station, chose to drive his Tucson, approximately five days per week. Respondent candidly acknowledged that he did this knowing full well that he was breaking the law, since his vehicle was not registered and was not covered by insurance

during this time period. Respondent admitted that he acted out of selfishness, in a way that reflected poorly on himself and on the Department. (Tr. 10-11, 13-16, 19)

Once his misconduct was discovered by the Department, Respondent immediately discontinued his use of the Tucson until his registration was restored. Respondent testified that he continued to make his insurance payments so that everything would be in order once the suspension period concluded. Reflecting back on his behavior, Respondent recognized that his actions were misguided, and insisted that in the future he would act differently in this situation, that he would place the car in a garage and use public transportation. (Tr. 12, 18-20)

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 10, 2007. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate recommends that Respondent forfeit 20 vacation days as an appropriate penalty. The Advocate emphasizes that this was not a one-time incident, that Respondent drove the uninsured vehicle five times per week over a 70 day period. Respondent made a conscious decision to engage in this irresponsible behavior, and to disregard the law for his own convenience.

In support of the 20-day recommendation, the Advocate cites *Disciplinary Case No. 12899/14* (September 9, 2015). There, a ten-year police officer with no prior disciplinary history negotiated a penalty of 25 vacation days for improperly operating his

personal vehicle while it was unregistered and uninsured. There, too, the respondent used a license plate that was registered to another vehicle. In that case, however, the respondent drove the car over a six-month period, and was involved in a car accident while driving that vehicle. The Advocate does acknowledge those differences in recommending the forfeiture of 20 days here rather than 25 days.

Counsel for Respondent argues for a lesser penalty of 10 days. In support of this recommendation, Counsel emphasizes that Respondent, a 10-year veteran of the Department with no formal disciplinary history, was candid and forthcoming about his poor decisions. Respondent was remorseful at trial, and effectively explained how he has learned from his mistakes. Counsel also notes that the original insurance lapse was the result of a mistake for which Respondent took responsibility, and for which he took immediate steps to remedy by continuing to pay the premiums due.

In further support of his 10-day recommendation, counsel suggests that the facts of this case are similar to those cases where a respondent improperly registers his vehicle in a location other than his resident county in order to obtain a reduced insurance rate. In both *Disciplinary Case No. 11428/14* (Feb. 27, 2015), and *Disciplinary Case No. 5132/11* (July 30, 2013), the respondents each negotiated a penalty of 10 vacation days for engaging in such conduct. Counsel argues that the misconduct in that type of case is even more serious, since it involves essentially stealing from the insurance company. The Advocate counters that in those cases, there might at least be insurance coverage in place for an accident victim.

This tribunal agrees with Counsel that some mitigation is warranted here. As the Advocate correctly acknowledges, the facts in this case are somewhat less egregious than

those present in *Disciplinary Case No. 12899/14*. Additionally, I found Respondent to be forthright in his acceptance of responsibility, earnest in his remorse for his misconduct, and genuine in his assertion that he has learned from the experience. After considering the totality of facts and circumstances in this matter, including Respondent's record with the Department, I recommend that Respondent's penalty be the forfeiture of fifteen (15) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

SEP 19 2017


JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JONATHAN OLIVERAS
TAX REGISTRY NO. 943628
DISCIPLINARY CASE NO. 2016-16558

Respondent was appointed to the Department on January 10, 2007. In his last three annual performance evaluations, Respondent received an overall rating of 4.0 "Highly Competent" on his 2016 and 2015 evaluations, and 4.5 "Extremely Competent/Highly Competent" on his 2014 evaluation. [REDACTED]

Respondent was placed on Level 1 Force Monitoring from November 11, 2015 to October 3, 2016 because he received three or more CCRB complaints in a one-year period. Respondent was also placed on Level 1 Discipline Monitoring on January 26, 2017 in connection with this case; that duty status remains ongoing. Respondent has no prior formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials