



POLICE DEPARTMENT

October 4, 2011

MEMORANDUM TO: Police Commissioner

Re: Detective John Santiago
Tax Registry No. 937488
5 Precinct Detective Squad
Disciplinary Case No. 2010-2669

The above-named member of the Department appeared before the Court on July 21, 2011, charged with the following:

1. Said Detective John Santiago, while assigned to Narcotics Borough Bronx, on or about and between February 4, 2009 and August 14, 2009, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that on twenty-two (22) occasions, said Detective caused reports to be filed with the Department that contained inaccuracies and factually incorrect information regarding investigative work, and did not have corroborating documentation to prove that this investigatory work occurred.

P.G. 203-10, Page 1, Paragraph 5 GENERAL REGULATIONS

2. Said Detective John Santiago, while assigned to Narcotics Borough Bronx, on or about and between February 4, 2009 and August 14, 2009 while on-duty, made incomplete, incorrect and improper entries in his Department issued memobook.

P.G. 212-08, Pages 1 & 2, Paragraphs 1 & 2 ACTIVITY LOGS

The Department was represented by Rita Bieniewicz, Esq., Department Advocate's Office. Respondent was represented by Peter Brill, Esq., Karasyk & Moschella, LLP.

Respondent, through his counsel, pleaded Guilty to the subject charges and testified in

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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.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent

Respondent, a six-year member of the Department, was previously assigned to Narcotics Borough Bronx (NBBX). He had been responsible for more than 300 arrests and had assisted in well over 2,000.

While he was assigned to NBBX, Respondent's duties included investigating narcotics complaints, conducting buy-and-bust operations and observations of narcotics activity, and executing search warrants. Respondent conducted buy and-bust operations four to five times a week. He also consistently carried 10 to 15 kite investigations at any given time. Kites are complaints of drug sales generated through 911, 311 and the like.

Respondent described the process for conducting a kite investigation. After receiving a kite, two investigators conducted a 30-minute observation of the location in question. If that observation was "positive," the detective would attempt to identify "some of the players" through computer checks. Next, the detective would send out a confidential informant (CI) or undercover police officer (UC) "who is going to eventually step to that location and closeout your KITE either it's a positive or negative result" i.e., attempt to make a purchase. The process was often carried out on the same day and at the same time as a buy-and-bust.

Respondent admitted that a record of kite investigations – including location and time – should always be documented in an officer's Activity Log. Respondent stated, however, that he and other detectives were often so busy that they would merely “try to document as best we could. Most of the time we would document on scrap paper . . . and then later on transfer it over to our KITE [report] and then eventually try to make it back to our memo book it just doesn't happen that way.”

Respondent stated that for a buy-and-bust, only a supervisor or the arresting officer would take notes for everyone on the team. The notes would be distributed, and the officer was supposed to record them in his own Activity Log.

Further, Respondent explained that he used a template for documenting kite investigations, and sometimes copying and pasting would lead to error. For example, “sometimes you miss a time or a date, you miss a change when you transfer that work over and that leads to some inaccuracies.” Respondent insisted that he never made up any events or occurrences in his Activity Log. The errors that he made were merely clerical errors and not intentionally false statements.

Regarding the notes taken by UCs or CIs after they “stepped” to a kite location, Respondent testified that only “positive buys” were recorded. “[N]egative” results were not recorded. Furthermore, Respondent opined that if a result was not recorded, that person would not recall that particular investigation.

Respondent asserted that although each detective carried 10 to 15 kite investigations at any given time, there was a general consensus that each investigator could reasonably conduct “less than five” investigations at a time. He testified that “the problem is . . . you don't have time to sit down and actually do a whole entire investigation correctly because the amount of work

that comes in.” Respondent explained that his supervisors held him to deadlines for each investigation.

Respondent stated that his supervisors always reviewed and signed off on all of his reports. None of his cases were ever dismissed nor were any arrests voided due to his reporting errors.

Respondent testified that the movement logs for buy-and-busts often would not match what was listed on the kite reports because the log was filled out by the supervisor. This might not account for where Respondent went during observations that were occurring at the same time as the buy-and-busts.

On cross-examination, Respondent agreed that in his three years of police service prior to being assigned to NBBX, it was his practice to record all of his activities in his Activity Log. He stated that the difference between those three years and his time in NBBX was the amount of work he had and the time available to complete that work.

Respondent agreed that his Activity Log did not accurately reflect the activities that he conducted while he was assigned to NBBX. He admitted that he had written approximately 22 kite reports that contained discrepancies. He further admitted that he had been unable to clarify the discrepancies when previously given the opportunity to do so. Respondent stated that “[m]ost of those are clerical errors.”

Respondent admitted that for some tours, the entire team’s Activity Logs looked “pretty much the same because it’s all for the general template of the arresting officer that day.” Respondent’s Activity Log could show an arrest taking place at one location as a result of a buy-and-bust, when in fact he was doing something else.

When asked whether the kite reports or the movement logs were accurate, Respondent replied that the kites were accurate because they typically reflected his own scrap-paper notes.

Respondent recalled a specific kite report which indicated that a UC attempted a purchase on Morris Avenue at the exact same time that the UC's Activity Log stated he was attempting a buy at a separate location. Respondent explained that it could have been "basically another clerical error."

Respondent next testified about another incident that involved a "clerical error on the report." This specific instance involved a kite report of observations on White Plains Road at the same time that Respondent was signed in at court. Respondent did not remember going to court that day, and he insisted that the notation in his Activity Log stating that he was in court was incorrect.

On re-direct examination, Respondent stated that sometimes he would conduct observations on his way to and from court. In these instances, his Activity Log would not reflect these observations.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Education, 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on January 10, 2005. Information from his personnel folder that was considered in making this penalty recommendation is contained in the attached confidential memorandum.

Respondent has been found Guilty of filing inaccurate reports. He was assigned to Narcotics Borough Bronx as an investigator. He was responsible for conducting kites, which are

investigations into tips on narcotics activity. The kites, Respondent testified, required controlled narcotics buys, and an observation of the activity, before enforcement action could be taken.

Respondent, however, was also assigned to participate as a field team member on buy-and-bust operations. He testified that the kite investigations and buy-and-bust operations would happen roughly at the same time, due to the amount of work that everyone had to do.

Respondent stated that he would take notes on his kite observations, but only later would have to translate them into formal reports, and in the interim would have participated in a buy-and-bust.

Furthermore, he said, the supervisor was responsible for the movement logs indicating where members of the team were at any given time. If, Respondent asserted, that supervisor did not know that Respondent had gone somewhere else – Respondent apparently did not convey this information – the documentation was inaccurate and conflicted with what was put on the kites.

Respondent insisted, however, that the kites themselves were accurate. The notes for the buy-and-busts were taken by the arresting officer or supervisor, not Respondent, even if he was assigned to the team.

Respondent's view of Specification No. 1 was that he was responsible for the movement logs being factually incorrect, but that the kite reports were accurate. The Department's view was that without supporting documentation, Respondent could not possibly vouch for the accuracy of 22 kites, and that his method of recordkeeping made the truthfulness of the kites hopelessly muddled. Either way, Respondent caused inaccurate Department reports to be filed. It appears that Respondent simply did not care about the accuracy of his investigations.

The Department recommended a penalty of the forfeiture of 30 vacation days. It pointed to several "erroneous paperwork" cases in support of its argument. For example, there have been several cases in which a vice enforcement team made arrests for prostitution after an individual

agreed to paid sexual activity with a UC. These arrests were processed by the DA's Office through supporting deposition, meaning that the UC had to fill out a form stating the defendant's name, time, place and location of the incident, the activity agreed to, the consideration, and any other statements made by the defendant. The supporting deposition was faxed to the DA's Office, where a police officer wrote a criminal court complaint stating that she had been informed by the UC that the alleged conduct had occurred. The supporting deposition was a check-a-box form but still a sworn affidavit. To save time, the field team, including the UC, took it upon themselves to share responsibility for filling out all the arrest paperwork. In several instances, a member other than the UC signed the supporting deposition, writing down the UC's number. What this meant, in reality, is that someone other than the UC swore that he was the UC and had observed the alleged conduct.

In these cases, and other similar ones, the penalty imposed was 30 vacation days. See *Case Nos. 83627, 83632/08*, signed Jan. 12, 2010; *Case No. 84029/08*, signed Aug. 4, 2009; *Case No. 84026/08*, signed Mar. 30, 2009; *Case No. 84027/08*, signed Mar. 10, 2009. Respondent has pointed to nothing in his testimony that should result in a lower penalty. Even completing a single inaccurate DD-5 and search warrant application, unintentionally indicating that a member was present at a narcotics buy when he was not, inter alia, has led to a 30-day penalty. See *Case No. 85026/09*, signed July 19, 2011. Accordingly, the Court recommends that Respondent forfeit 30 vacation days as a penalty.

APPROVED

MAR 13 2012
Raymond W. Kelly
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,




David S. Weisel
Assistant Deputy Commissioner Trials

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner -- Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE JOHN SANTIAGO
TAX REGISTRY NO. 937488
DISCIPLINARY CASE NO. 2010-2669

In 2010, Respondent received an overall rating of 4.5 "Extremely Competent/Highly Competent" on his annual performance evaluation. He was rated 4.0 "Highly Competent" in 2009 and 2011. [REDACTED] Respondent has no prior formal disciplinary record.

For your consideration.


David S. Weisel
Assistant Deputy Commissioner [REDACTED] Trials