



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

February 1, 2018

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Sean Brady**
Tax Registry No. 950103
6 Precinct
Disciplinary Case No. 2017-17718

Police Officer Eric Whelan
Tax Registry No. 954420
Midtown North Precinct
Disciplinary Case No. 2017-17717

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on October 31, 2017, and was charged with the following:

DISCIPLINARY CASE NO. 2017-17718

1. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did fail and neglect to reside in one of the approved resident counties, to wit: said Police Officer resided in [REDACTED] [REDACTED]

P.G. 203-18, Page 1, Paragraph 1

**RESIDENCE
REQUIREMENTS**

2. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer registered his vehicle in New York State while residing in [REDACTED].

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

POLICE OFFICER SEAN BRADY
POLICE OFFICER ERIC WHELAN

DISCIPLINARY CASE NO. 2017-17718
DISCIPLINARY CASE NO. 2017-17717

3. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer caused false entries to be made in a Department record(s), to wit: said Police Officer reported to the Department that he resided in [REDACTED] [REDACTED] which was false.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

DISCIPLINARY CASE NO. 2017-17717

1. Said Police Officer Sean Brady, assigned to the 18^h Precinct, on or about and between September 6, 2014 and February 15, 2017, while in New York State, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Whelan allowed his residential address to be used as Police Officer Sean Brady's, Tax No. 950103, address.

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

**PUBLIC CONTACT –
PROHIBITED CONDUCT**

In a Memorandum dated December 4, 2017, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Sean Brady Guilty of all Specifications in Disciplinary Case No. 2017-17718 and Police Officer Eric Whelan Guilty of the sole Specification in Disciplinary Case No. 2017-17717. Having read the Memorandum and analyzed the facts of this matter, I approve the findings and the penalty for Police Officer Whelan. However, for Police Officer Brady, I approve the findings but disapprove the penalty.

In consideration of the totality of the issues and circumstances in this matter, I deem that a period of monitoring is warranted. Therefore, Police Officer Brady's disciplinary penalty shall be the forfeiture of thirty (30) vacation days and the imposition of one (1) year dismissal probation.


James P. O'Neill
Police Commissioner

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POLICE DEPARTMENT CITY OF NEW YORK

December 4, 2017

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Sean Brady
Tax Registry No. 950103
6 Precinct
Disciplinary Case No. 2017-17718

Police Officer Eric Whelan
Tax Registry No. 954420
Midtown North Precinct
Disciplinary Case No. 2017-17717

Charges and Specifications:

Disciplinary Case No. 2017-17718

1. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did fail and neglect to reside in one of the approved resident counties, to wit: said Police Officer resided in [REDACTED]
[REDACTED]

P.G. 203-18, Page 1, Paragraph 1 - RESIDENCE REQUIREMENTS

2. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer registered his vehicle in New York State while residing in [REDACTED]

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

3. Said Police Officer Sean Brady, assigned to the 6th Precinct, on or about and between September 6, 2014 and March 6, 2017, while both on and off duty and at a location known to the Department, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer caused false entries to be made in a Department record(s), to wit: said Police Officer reported to the Department that he resided in [REDACTED] which was false.

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

Disciplinary Case No. 2017-17717

1. Said Police Officer Eric Whelan, assigned to the 18th Precinct, on or about and between September 6, 2014 to February 15, 2017, while in New York State, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that Police Officer Whelan allowed his residential address to be used as Police Officer Sean Brady's, Tax No. 950103, address.

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

Appearances:

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

For Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

Hearing Date:

October 31, 2017

Decision:

Respondent Brady: Pleaded Guilty
Respondent Whelan: Pleaded Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on October 31, 2017. Respondents, through their counsel, entered pleas of Guilty to the subject charges 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

Respondents, having pleaded Guilty, are found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

In September, 2014, Respondent Brady moved back in with his parents in [REDACTED]. He did not inform the Department that he was residing out of state; rather, he claimed that he was living [REDACTED] in [REDACTED]. Respondent Whelan, a former roommate who lived at the [REDACTED] location, allowed Respondent Brady to list it as his residence even though he wasn't really living there. This arrangement remained in effect until early 2017, when the Department officially questioned Respondent Brady regarding these events.

Respondent Brady, who has been with the Department since July, 2011, testified that he has known Respondent Whelan for at least five or six years through a mutual friend. In 2012 they shared an apartment [REDACTED] for about one year, then moved to a different [REDACTED] apartment in 2013. In September, 2014, Respondent Whelan moved with his fiancée to a place [REDACTED] and Respondent Brady returned to his parents' home in [REDACTED]. Despite residing in New Jersey, Respondent Brady filed with the Department a change of address form listing the [REDACTED] address of Respondent Whelan as his residence. Respondent Brady did so with the agreement of Respondent Whelan, who held onto Respondent Brady's mail until he could pick it up. Respondent Brady also falsely registered his cars with the [REDACTED] address. (Tr. 10-13, 16, 19-20)

According to Respondent Brady, he continued to reside in [REDACTED], rent-free, until May, 2017. Respondent Brady admitted he was aware of the Department's residence requirements. He explained that in 2014, he was expecting his brother to return from his service with [REDACTED], and they were going to buy a house together. However, his brother was redeployed to [REDACTED] and so the living arrangements that

Respondent originally expected to last only a few months ended up stretching to more than two years. Two months after his Department interview in March, 2017, Respondent Brady moved temporarily to an apartment [REDACTED]. Five months later he moved into a house [REDACTED] with his brother. (Tr. 13-15, 18-19, 22) Respondent Brady estimated that his commuting time from [REDACTED] New Jersey to the 6th Precinct was about 60 minutes, whereas the commute from [REDACTED] during the day would only be about 45 minutes. (Tr. 21)

Respondent Whelan, who has been with the Department since January, 2013, testified that Respondent Brady asked if it was okay to list the [REDACTED] address as his residence while he searched for his own place. Respondent Whelan agreed to let him do so, even though Respondent Brady did not live there and did not have keys to the place. Respondent Brady occasionally came to [REDACTED] to pick up his mail, and they may have arranged to meet after work one time. Respondent Whelan admitted that he was aware of the Department's residence requirements, and explained that he was just trying to help out Respondent Brady. (Tr. 27-28, 31-34)

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent Brady was appointed to the Department on July 6, 2011 and Respondent Whelan was appointed on January 9, 2013. Information from their personnel records that was considered in making these penalty recommendations is contained in attached confidential memoranda. Neither Respondent has prior disciplinary history.

The Department Advocate recommends that Respondent Brady forfeit twenty-five (25) vacation days and be placed on one-year dismissal probation. With respect to Respondent Whelan, the Advocate recommends that he forfeit twenty (20) vacation days and be placed on one-year dismissal probation. The Advocate emphasizes the importance of being able to mobilize members of service rapidly and efficiently, and urges a renewed commitment to deterring residence offenses. Each Respondent, meanwhile, argues for a lesser penalty, one that does not include dismissal probation.

On the one hand, this tribunal is not sympathetic to Respondent Brady's explanation that he was waiting for his brother to return so that they could buy a house together. Respondent Brady disobeyed the residence requirement for over two years, opting instead to move back home and live rent-free. He also misrepresented where he was living, and enlisted the assistance of a fellow member of service in that deception. Respondent Whelan's culpability is less than that of his colleague, but he, too, must bear some responsibility for abetting what occurred here for more than two years.

Nevertheless, the Advocate's recommendation that each Respondent be placed on dismissal probation is excessive. Neither Respondent has any formal disciplinary history. Moreover, the case precedent does not support dismissal probation for this type of misconduct. Indeed, neither case cited by the Advocate included a penalty of dismissal probation. In *Disciplinary Case No. [REDACTED]* a 19-year officer with no disciplinary history agreed to forfeit 25 vacation days for residing in New Jersey for 10 years while claiming to be living in Staten Island. More recently, in *Disciplinary Case No. [REDACTED]* a 13-year officer with no disciplinary history negotiated a

plea of 20 vacation days for using a friend's address in Nanuet, New York while he was really residing in New Jersey for three-and-a-half years.

It is important that the Department's disciplinary system be administered in a way that is fair and even-handed. A loss of twenty (20) vacation days for Respondent Whelan, for his more limited role, should have considerable deterrent value. Similarly, a loss of thirty (30) vacation days for Respondent Brady adequately takes into account the aggravating factor of involving another member of service, while remaining consistent with the precedent. This approach reflects the Advocate's valid concerns regarding the misconduct in this case.

Accordingly, I recommend that Respondent Brady forfeit thirty (30) vacations days, and that Respondent Whelan forfeit twenty (20) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials





POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ERIC WHELAN
TAX REGISTRY NO. 954420
DISCIPLINARY CASE NO. 2017-17717

Respondent was appointed to the Department on January 9, 2013.

On his last three performance evaluations, Respondent received overall ratings of 3.5 "Highly Competent/Competent" for 2016, 2015 and 2014.

[REDACTED] Respondent
has no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials