



POLICE DEPARTMENT

April 28, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Rasequr Malik
Tax Registry No. 938921
104 Precinct
Disciplinary Case No. 2012-7096

The above-named member of the Department appeared before me on November 21, 2013, charged with the following:

1. Police Officer Rasequr Malik, assigned to the 104th Precinct, while off duty in the confines of the 107th Precinct, on or about and between October 13, 2010 and January 30, 2011, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activity.

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

2. Police Officer Rasequr Malik, assigned to the 104th Precinct, on or about October 13, 2010, while off-duty in the confines of the 107th Precinct and having become aware of an unusual occurrence, did thereafter fail and neglect to request the response of a patrol supervisor of the precinct of occurrence and failed to remain at the scene as required. (*As amended*)

P.G. 212-32, Page 1, Paragraphs 1 and 2 – OFF DUTY INCIDENTS
INVOLVING UNIFORMED
MEMBERS OF THE SERVICE-
COMMAND OPERATIONS

P.G. 212-09, Page 1, Paragraphs 1 and 2 – UNUSUAL OCCURRENCE
REPORTS-COMMAND
OPERATIONS

The Department was represented by Jessica Brenes, Esq., Department Advocate's Office, and Respondent was represented by John Tynan, Esq.

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

Respondent is found Guilty of both Specifications.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Jun Zhen and Sergeant Jessie Pan.

Lieutenant Jun Zhen

Zhen, an eleven-year member of the Department was promoted to the rank of sergeant on August 5, 2009 and promoted to the rank of lieutenant on April 26, 2013. For 20 years he has lived in [REDACTED] New York. For about the last ten years he has owned a two family residence and has tenants.

On October 12, 2010, at about 9:00 or 10:00 p.m., his doorbell rang. Two male Indians spoke to Zhen through his window. They told Zhen that there was a dispute about whether Zhen owned the house related to "a clerical problem." Although Zhen told them that he had a deed, the men insisted that he call their office. They supported their

claim by referring to the names of the people involved with Zhen's closing. Zhen then became "a little intrigued" and took the phone number from them.

The next day, at about 12 p.m., Zhen called the number and spoke with a Person A. Person A asked to meet but was "evasive" about his business address and said he was not going to be in his office. Zhen agreed to meet Person A an hour later.

Zhen and Person A spoke on the sidewalk outside of Zhen's house. Respondent was present, standing about 3 or 4 feet away from Person A.

Zhen testified that Person A told him "that he owned a rental management company and that somebody had hired him to collect rent from my property, somebody by the name of Jun Zhen who was leaving the country and he needed somebody to manage his rent." Zhen told Person A that he was Jun Zhen and "there must have been a mistake."

Person A showed Zhen a business contract he had with someone named Jun Zhen. Zhen told Person A, "[I]t's pretty obvious to me that you're probably trying to run a scam because I own the property." Person A replied that he was an honest business man and was there with a cop, indicating Respondent next to him.

Zhen identified himself as a sergeant and asked for identification from the two men. He saw Respondent's Department identification card (ID) and showed him his own ID. Then he asked Respondent to step away and spoke with him about 20 feet away from Person A. Zhen explained to Respondent that it was "really obvious that this guy just gave me a fake contract" and was pretending to collect rent for the owner. He asked Respondent "what he was doing, and why is he coming along with a person who's trying to scam me."

Respondent said that Person A was “just somebody he knew from the neighborhood and that he was not involved.” Person A “asked him to come along because there was some kind of business dispute where this person was claiming to be the owner of the house.” When questioned how he was going to help Person A, he said, “[W]ell, he knows I'm a police officer, I help people in the neighborhood, and people call me for all kinds of help, and it was to –I guess, to ID the person.”

Then Zhen went back to ask Person A more probing questions. Person A continued to deny he was involved in a scam until Zhen threatened to arrest him. Person A explained that they rarely saw someone come out of his home and pick up mail so they thought his house was a good target. When Zhen asked about Respondent, Person A indicated Respondent was not involved. Zhen then watched Person A drive away in a SUV with Respondent in the front passenger seat. Zhen indicated that during this entire interaction Respondent was not waiting in the car, but on the sidewalk. Zhen testified that while he asked Person A probing questions Respondent was 20 feet away.

A week later, Zhen's neighbor told him two male Indians wearing Homeland Security raid jackets were looking through his back window. The men told the neighbor they were looking for a sweatshop. Zhen then reported to the Department both what his neighbor told him and his earlier interaction with Person A. He did this because he “needed to report possible corruption.” When asked why he did not report this incident with Person A right away, Zhen testified, “I didn't feel like the officer [Respondent] was involved at all and I also felt like, you know, I wasn't --it was a scam that didn't go the right way and I thought this guy may have done it for the first time; I didn't think it was

prosecutable.” Because of this incident, Zhen received a Schedule B Command Discipline and forfeited three vacation days for failing to take police action.

On cross-examination, Zhen acknowledged that Respondent did not say anything while Zhen spoke with Person A. Respondent was standing aside in the background “at the initial point of contact” until Zhen asked him to step away to talk. Zhen testified, “I honestly didn’t think he [Respondent] was involved” and agreed that Respondent appeared bewildered.

Zhen agreed that as the “IAT” sergeant, he supervised patrol officers who would call him to help them decide what to do for certain incidents. Zhen conceded he never told Respondent not to hang out with Person A or to report him.

Sergeant Jessie Pan

Pan, a ten-year member of the Department currently assigned to IAB, Field Services Division, began investigating Respondent on December 23, 2011 for failure to notify IAB, criminal association and fraud. Before this investigation was assigned to Pan, it was assigned to Sergeant Sanjeev Gopaul. As part of her investigation, Pan interviewed Respondent, the victim of the crime (Zhen), reviewed the phone records of Respondent and Person A, and conducted surveillance on Respondent and Person A. Pan conducted surveillance of Respondent to “verify if the Respondent still had ... contact with the defendant, Person A.” During this surveillance, which involved 11 observations of Respondent and 6 of Person A, Pan did not see any contact between the two of them.

Pan interviewed Respondent once on March 13, 2012 at the Queens North Investigations Unit, in the presence of two other officers, Lieutenant Thatam and Deputy Inspector Pena. During this interview, Respondent told Pan that he knew Person A by the name "Roomy." Pan never interviewed Person A, who was previously interviewed by the earlier investigator, Gopaul. Pan interviewed Zhen, who told Pan that he was the victim of an attempted crime. The crime was a scam against his property committed by Person A, who was associated with Respondent. Pan concluded that Person A tried to scam Zhen by presenting "false documents." Those documents claimed that Zhen authorized him to collect rent on Zhen's property. Because of the investigation, Person A was arrested in January 2012 and convicted of possession of a false instrument, and sentenced to a \$750 fine and 10 days of community service. Pan testified she did not find any evidence that Respondent was involved in this scam.

Pan testified that in reviewing Respondent's cell phone records, she saw eight phone calls made between Respondent and Person A on October 13, 2010. The October 13 meeting of Zhen, Person A and Respondent occurred at approximately 1300 hours; three of the phone calls between Respondent and Person A occurred before the meeting and the remaining occurred afterwards. The first call after the meeting was placed by Person A at 1625 hours, lasting 11 minutes and the last call that day, also placed by Person A, was at 2352 hours, lasting 54 minutes.

Pan added that Respondent's phone records revealed an additional seven phone calls between Respondent and Person A on October 15, 2010, two days after the incident. The shortest of these calls lasted a mere 7 seconds and the longest call on October 15, 2010 lasted 32 minutes and 45 seconds. Respondent's phone records also

detailed another three calls on October 16, 2010, two of which were placed by Respondent and one placed by Person A. These calls occurred at 2213 hours lasting 57 seconds, 2315 hours lasting 8 seconds, and 2328 hours lasting 27 minutes and 42 seconds, respectively. Person A placed an additional phone call to Respondent on November 17, 2010 at 1613 hours, which lasted 34 seconds. Person A placed another call to Respondent on December 20, 2010, which lasted 13 minutes and 47 seconds. Finally, Person A called Respondent on January 30, 2011, at 2306 hours, lasting 2 minutes and 51 seconds.

Pan stated that during her official Department interview of Respondent, he initially denied having "any contact with Person A after the incident" on October 13, 2010. However, once Respondent was presented with his phone records detailing his contact with Person A, Respondent "couldn't remember" if he had phone contact with Person A, but if he did it was "only because of his [REDACTED]." Pan's investigation also concluded that Respondent and Person A knew one another for approximately one month before the incident on October 13, 2010.

On cross-examination, Pan confirmed that the official Department interview she conducted with Respondent was on March 13, 2012, 17 months after the incident with Zhen and 14 months after the last recorded phone contact with Person A. Pan testified that at his Department interview, Respondent stated a number of times that he could not remember certain answers because the incident occurred a long time ago. Pan never interviewed Respondent's [REDACTED] during her investigation.

Zhen told Pan he did not think Respondent was involved in any misconduct with Person A on October 13, 2010. Zhen stated that Respondent took no active role in

Person A's scam. Also, Zhen failed to report the incident until a week later. Only after his neighbors told him about "suspicious activities" on October 14, 2010, did Zhen then report the incident to his commanding officer and to IAB. None of this additional information related to Respondent.

At the end of her investigation, Pan recommended that Zhen be charged on four counts: failure to report an unusual occurrence, failure to notify IAB, failure to take police action, and computer misuse. This last charge was because Zhen used a Department computer to look into Person A's license plate number. Zhen received a command discipline for his misconduct in this incident.

Pan explained that the phone records she used in her investigation were those of Respondent's cell phone.

On redirect examination, Pan explained the phone used by Person A in the phone records was Person A's cell phone. The Department introduced Department Exhibit (DX) 2, Person A's cellular phone records, provided by the cellular phone carrier MetroPCS. Pan identified these records as the ones she used in the course of her investigation of Respondent. The Assistant Department Advocate (Advocate) explained that Pan had marked on DX 2 the dates of the calls between Respondent and Person A.

Respondent's Case

Respondent testified on his own behalf.

Respondent

Respondent, a ten-year member of the Department, was born in Dhaka, Bangladesh. He is married to Person B and has one son, who is over three years old. His wife is a famous actress and model in Bangladesh. The man named Person A is known to Respondent as [REDACTED]. Respondent heard that his son was born in the United States and that Person B was trying to take their son to Bangladesh. Respondent wanted to learn where Person B was and when she was leaving.

He met [REDACTED] in September 2010, around the time Respondent's son was born and when he was estranged from his wife. [REDACTED] approached Respondent in a local restaurant and claimed to be friends with Person B's family. [REDACTED] offered to help. Respondent did not know where [REDACTED] lived. Respondent's brother knew [REDACTED] and confirmed that [REDACTED] was involved with real estate.

Respondent's car had broken down, so on October 13, 2010, [REDACTED] agreed to drop Respondent off at the [REDACTED] Street train station. On the way to the train station, [REDACTED] stopped at [REDACTED] where he said he wanted to speak to someone. Respondent testified, "He said he was doing short sale or some foreclosure was going on." The building was a one or two family house. Respondent was sitting inside [REDACTED]'s car when [REDACTED] got out and talked to an Asian man. While they were talking Respondent was "opposite side of that place on the street inside the car" about 15 to 20 feet away. After about five minutes, Respondent thought he might have gotten out of the car and "was just standing there."

The male Asian [Zhen] approached and they had a two minute conversation. Zhen did not show him his own Department identification, but told him he was a sergeant and asked for Respondent's identification. Zhen "said he was confused" and "at that time

that he submitted some paper about short sale or something . . . and he's going to get back to me." Respondent testified, "I remember he said he's going to do – he's going to check out the paper or he's going to, like – he's going to check out his paper or something and after – after their conversation was over, he left." Then he went back to talk to [REDACTED] for five or ten minutes.

Respondent stated that Zhen did not tell him that [REDACTED] was trying to commit a fraud or engage in a scam. After Respondent and [REDACTED] left, [REDACTED] told Respondent that the sergeant was "a phoney and he's lying about it."

After that day [REDACTED] never asked Respondent to come along with him on any trips and never showed him any other documents related to his real estate ventures.

From October 13, 2010 through January 2011 Respondent was calling [REDACTED] to find out about having a meeting with his wife and when his wife and son were leaving the country. When asked whether he believed [REDACTED] was involved in any criminal activity, Respondent replied, "I wasn't sure." In the end, [REDACTED] never helped him contact his wife.

On October 13, 2010, he did not call a patrol supervisor to Zhen's home to try to determine what was going on:

"[b]ecause the person, the male Asian, he said he is a sergeant, he did not tell me -- I did not offer -- I did not talk, I was 20 feet away, and he did not tell any crime was involved, anything was involved, and I committed any crime or he did not give me any -- he did not give me, like, a total output of the conversation because it was taking place far away and he was -- he told me that he has the paper and he's going to do his own thing and he's going to get back to me. He took my ID and the phone number."

On cross-examination, Respondent clarified that [REDACTED] offered to pick him up on October 13 to get some food at a restaurant and to call his wife on speakerphone. On the

way to the train station, [REDACTED] wanted to stop to look at some property regarding “a short sale or foreclosure.” While Respondent stayed in the car, [REDACTED] spoke with Zhen for about seven or eight minutes.

Respondent did not recall saying during his official Department Interview on March 13, 2012 that the sergeant showed him his ID. Respondent claimed he had “a high fever” during the interview. The sergeant wrote his name down. When asked if he remembered saying during his interview that Zhen told him “that he never authorized anybody to do the short sale,” Respondent replied that he was under “so much pressure from four different investigator [sic],” that he could not remember after 17 months and that “they push me to the edge, they’re not going to let me go until I have. I want to get it over with the GO-15.”

Respondent explained that the sergeant did not show him the paper that he said he was going to verify. Respondent did not remember saying during his interview that his talk with the sergeant made him think that something was not right with [REDACTED]

When he was back in the car with [REDACTED], he asked [REDACTED] what was the conversation with the sergeant about. [REDACTED] told him that the sergeant was lying. Respondent explained, “At that time I did not realize he was lying to me because I did not see the paper, I wasn’t part of the conversation between them, I was far away. And whatever the conversation I had with the sergeant, he did not tell me exactly what was going on.”

The Advocate read the following excerpt from his Department interview to refresh Respondent’s recollection:

QUESTION: Don’t embellish on it, just tell what [REDACTED] said, if anything, in the car on the way to the restaurant.

ANSWER: He said that it's a bank foreclosure house and the other party, he was lying. But I think whatever that something wasn't right because he's saying something -- [REDACTED] was saying something. I told him I don't want to talk to you, just drop me off to [REDACTED] where I was going to the restaurant.

Q: Okay. Did you think the sergeant was doing something wrong?

A: After he showed me his ID, his police ID, I thought that he was telling me the truth.

Q: So he said that something was wrong and you're saying that after the sergeant ID'd himself?

A: Yeah, no, sir, not right or wrong but I was thinking that this guy, he's --

Q: This guy who?

A: [REDACTED] is not something -- not telling me the truth."

When asked if he remembered these answers, he replied,

I could not recall at all. I was pressurized, I was there looking -- they are talking to me for four, five hours conversation, I wanted to like -- I could not recall, I was -- I had a bad headache, I -- really bad fever and I was like -- I was very, like, exhausted.

Respondent confirmed that he did not rely on other people to decide whether a crime has been committed.

FINDINGS AND ANALYSIS

Specification No. 1

Specification No. 1 charges that Respondent, between October 13, 2010 and January 30, 2011, while off duty within the 107th Precinct, did knowingly associate with a person reasonably believed to be engaged in, likely to engage in or to have engaged in criminal activity.

This charge arose from an incident that occurred on October 13, 2010 in [REDACTED], Queens involving Respondent, Lieutenant Jun Zhen, and a man Respondent knew as "[REDACTED]" While Respondent remained mostly in the background, [REDACTED] showed Zhen a fraudulent document and claimed to be a representative of the landlord in Zhen's

building who was collecting the rent. Unbeknownst to [REDACTED], the tenant he was trying to scam, Zhen, was not only the landlord of the building but a sergeant with the Department.

There was no dispute that, after this incident on October 13, 2010, about 18 calls were made between Respondent and [REDACTED] from October 13 through January 30, 2011. Respondent explained that he only telephoned [REDACTED] because he hoped that [REDACTED] would help him contact his wife. The Advocate argued that Respondent was able to contact his wife while he was calling [REDACTED]. However, the Advocate never demonstrated that Respondent had any other motive to speak with [REDACTED] but to reconcile with his wife and see his newborn son.

The issue before this tribunal is whether, after the incident on October 13, Respondent reasonably believed that Roomy was engaging in, had engaged in, or was likely to engage in criminal activity.

Respondent first met [REDACTED] when [REDACTED] approached Respondent in a local restaurant in September 2010. Respondent had heard that his estranged wife, Person B, a model and actress in Bangladesh, was planning to leave the country with his son. [REDACTED] claimed to know Person B's family and offered to help Respondent find and contact her.

Respondent testified that on October 13, 2010, since his car had broken down, [REDACTED] agreed to drop him off at the train station. On the way to the station, [REDACTED] stopped at [REDACTED]. He told Respondent he had to speak with someone about a "short sale or foreclosure." From inside [REDACTED]'s car, Respondent watched [REDACTED] get out of the car and talk with an Asian man [Zhen]. After the two men spoke, Zhen

approached Respondent and told Respondent he was a sergeant.¹ Zhen told him something about "going to check out his paper." Then Zhen returned to talk with

██████.

During his official Department interview on March 13, 2012, Respondent stated that the sergeant [Zhen] showed him his ID. Zhen also wrote his name down and told Respondent "that he never authorized anybody to do the short sale."

While Respondent's testimony about what Zhen said about ██████'s documents was vague and disjointed, Zhen's testimony was clear and credible. Zhen testified that he told Respondent that it was "really obvious that this guy just gave me a fake contract" and was pretending to collect rent for the owner. He asked the officer "what he was doing, and why is he coming along with a person who's trying to scam me." According to Zhen, Respondent said that ██████ "asked him to come along because there was some kind of business dispute where this person was claiming to be the owner of the house." Respondent explained to Zhen that people in his neighborhood who know he is a police officer call him for all kinds of help.

Zhen's indication to Respondent that Respondent should not be involved with ██████ was corroborated by Respondent's statements during his official Department interview. During this interview, Respondent said that when ██████ got back in the car with Respondent, ██████ told Respondent that the sergeant was lying. "But," Respondent stated, "I think whatever that something wasn't right... I told him I don't want to talk to you, just drop me off to ██████." Respondent also stated that after the sergeant showed him his ID, he believed that the sergeant was telling the truth and that Roomy was lying.

¹ Zhen is now a lieutenant.

From Respondent's own testimony it is clear that Respondent understood that [REDACTED] was involved in something "wrong" and was lying to him. After he spoke with Zhen, he knew that [REDACTED] had used him as a police officer to assist in some kind of scam. Respondent had just learned and seen enough that he should have reasonably believed that [REDACTED] had just been engaged in or was likely to engage in criminal activity.

Therefore, Respondent is found Guilty of Specification No. 1.

Specification No. 2

Specification No. 2. alleges that on October 13, 2010, Respondent, while off-duty and within the 107th Precinct, after having become aware of an unusual occurrence, did then fail to request the response of a patrol supervisor of the 107th precinct and then failed to remain at the scene.

A week later Zhen's neighbor told him there were two Indian men in Homeland Security raid jackets looking through Zhen's back window. The men told the neighbor they were investigating whether there was a sweatshop in the building. Zhen felt he then "needed to report possible corruption." He reported to the Department both what his neighbor told him and the incident with [REDACTED] the week before.

Zhen received a Schedule B Command Discipline with the forfeiture of three vacation days for failing to notify IAB about the incident with [REDACTED] on the day it occurred, for failing to take police action that day and for misusing a Department computer to search for [REDACTED]'s vehicle license and registration.

Just as the off-duty sergeant was required to report the incident, so was Respondent. After they spoke with each other, Respondent understood that [REDACTED] was

trying to use him to scam Zhen. Then both Zhen and Respondent should have remained at the scene and notified the Department.

Respondent is found Guilty of Specification No. 2.

PENALTY

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 July 11, 2005. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended a penalty of 20 vacation days. Respondent should have reported the incident on October 13, 2010. After the incident, he should have reasonably suspected that [REDACTED] had criminal aspirations and should have known that Respondent, as a police officer, should avoid any further association with [REDACTED]. However, his continued contact with [REDACTED] was not as serious as criminal associations warranting a 20 vacation day penalty.

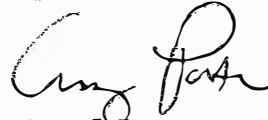
Precedent for case penalties for 15 vacation days include *Case No. 7296/12* (April 30, 2013), *Case No. 3517/11* (January 23, 2013), *Case No. 2316/10* (January 17, 2012). In the aforementioned cases, the police officers knew that the person they were associating with had a criminal record or had been arrested for a crime. In this case, Respondent did not hear the details of [REDACTED]'s attempt to commit fraud, nor was he able to review the fraudulent document [REDACTED] presented to Zhen. Respondent never learned that [REDACTED] had ever been arrested for a crime or had a criminal record.

The only reason Respondent called [REDACTED] was to try to reconcile with his wife, or at least see her and his child before they left the country. His association with [REDACTED] which was restricted to telephone conversations, involved no criminal activity.

Finally, there is case precedent from decisions in 2011 and 2010 for 10 day penalties for criminal association. *See Case No. 145/09* (July 12, 2011), *Case No. 85249/09* (January 21, 2010), *Case No. 85899/09* (September 29, 2010).

For the foregoing reasons, a minimal penalty of ten vacation days is recommended.

Respectfully submitted,



Amy J. Porter

Assistant Deputy Commissioner – Trials

APPROVED

JUL 23 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER RASEQUR MALIK
TAX REGISTRY NO. 938921
DISCIPLINARY CASE NO. 2012-7096

In 2013, Respondent received a rating of 4.0 “Highly Competent” on his annual performance evaluation. In 2012 and 2011, he received a rating of 3.5, “Competent/Highly Competent.” [REDACTED]

[REDACTED]. Respondent has no prior formal disciplinary record.

For your consideration.



Amy J. Porter
Assistant Deputy Commissioner – Trials