



POLICE DEPARTMENT

February 13, 2019

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Mohammed Ali :

Tax Registry No. 946731 :

Fugitive Enforcement Division :

Case No.

2016-16823
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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Javier Seymore, Esq.
Department Advocate's Office
One Police Plaza, 4th Floor
New York, NY 10038

For the Respondent: Michael Martinez, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:
HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038

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CHARGES AND SPECIFICATIONS

1. Said Police Officer Mohammed Ali, while assigned to the 68th Precinct, on or about May 25, 2016, while on-duty, in Kings County, did fail and neglect to properly process and voucher purported lost property given to said Police Officer by an individual known to the Department.

P.G. 218-26

PROCESSING FOUND PROPERTY

2. Said Police Officer Mohammed Ali, while assigned to the 68th Precinct, on or about May 25, 2016, while on-duty, in Kings County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer improperly gave purported lost property to an unlawful owner of said property.

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

GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before the Court on January 14, 2019. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After considering the evidence, I find mitigation is warranted, and recommend that Respondent forfeit ten (10) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

This mitigation hearing stems from Respondent's admitted failure to voucher found property, and his decision to leave the property with someone who was not the rightful owner. The parties to the hearing stipulated as to the essential facts of the incident.

On May 25, 2016, Respondent was the subject of a targeted integrity test.¹ Respondent was assigned to a solo fixed post, tasked with watching over a house of worship in the vicinity of

¹

[REDACTED]

68th Street and 5th Avenue in Brooklyn right before Ramadan. As part of the test, at about 0045 hours a female undercover officer approached Respondent at his post. She informed him that there had been a dispute between two delivery men less than one block away; after arguing, the two men had departed, leaving behind a cart of items on the sidewalk. Respondent walked to the area at 69th Street and 5th Avenue, and saw the items that had been left behind: 18 half-gallons of milk, and a plastic bag containing 13 cartons of cigarettes. There were no invoices with the items indicating to whom they belonged. The parties stipulated that the approximate value of the cigarettes was \$2,000, though there was no evidence presented that Respondent was aware of their exact value at the time of the incident.

Respondent testified that he decided to check nearby stores to try to ascertain the owner of the property. Respondent first went to a nearby bakery, but there was no one there with whom he could speak. Next, he entered two bodegas in the immediate vicinity, but workers at each store stated that they were not expecting a delivery. Respondent crossed the street to a third grocery store, where an employee stated that he had not ordered a delivery, "but maybe my boss ordered some merchandise." Since the store did sell items of this kind, Respondent was satisfied that this was most likely the correct location for the delivery, and allowed the grocery worker to take possession of the items. The worker emerged from the store, loaded the items onto a handcart, and brought them into the store. Before leaving the location, Respondent wrote down in his memo book the name, date of birth, and cell phone number of the worker, as well as the name, address, and telephone number of the grocery store (Resp. Ex. A). Respondent testified that he recorded this information in case there were a dispute later on about who should have received the merchandise. (Tr. 33-40, 46, 50)

Respondent acknowledged that he did not ask the grocery worker for proof of ownership of the items. He also could not recall doing any follow-up to determine whether that store was.

in fact, the rightful owner of the property. Respondent testified that his concern was to redirect his attention to the house of worship, which he did. (Tr. 47, 49-51, 54)

Approximately five months later, Respondent was the subject of an official Department interview about this incident. At that interview, Respondent was informed that he had failed the integrity test, since he had not vouchered the items as "found property" as required by the Patrol Guide. Specifically, section 218-26 requires a uniformed member of service who comes into possession of found property while on patrol to notify the patrol supervisor, and expeditiously invoice the property at the command. Respondent candidly admitted that he did not follow this procedure. He testified that he now understands that he should have called a supervisor to the scene and vouchered the property, and requested a replacement to watch the house of worship if necessary. (Tr. 41-42, 44, 60)

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 8, 2008. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no disciplinary record.

The Advocate seeks a penalty of the forfeiture of thirty (30) vacation days as well as one year of dismissal probation, while counsel for Respondent asks that Respondent be warned and admonished. A review of the relevant case precedent suggests that some forfeiture of vacation days is appropriate, but that a period of monitoring is not warranted. See *Disciplinary Case No. 2016-15047* (Aug. 11, 2016), where following an integrity test, a 17-year police officer with no disciplinary record negotiated a penalty of ten (10) vacation days for failing to notify her

supervisor of found property and failing to prepare the appropriate invoice. There, two individuals (undercover officers) argued over a found bag. The respondent asked them who owned the bag; when neither man answered, the respondent placed the bag into a garbage can and told the two men to leave. When one of the men returned and showed the respondent that there was money in the bag, the respondent let the man keep it. See also *Disciplinary Case No. 2016-15060* (July 19, 2016) (five-year officer with no disciplinary record negotiated a penalty of ten (10) vacation days for failing to take found property into police custody for vouchering that he was told by an undercover had been abandoned in a taxi cab).

The issue, then, is to determine an appropriate number of vacation days to be forfeited. On the one hand, it is undisputed that Respondent failed to follow the requirements of the Patrol Guide with respect to found property. Respondent did not call a patrol supervisor, nor did he make any efforts to invoice the property at his command. Instead, Respondent left the property with a grocery store worker who stated that it was "possible" that the items had been ordered by his boss. Respondent did so without taking any further steps to determine if the merchandise did, in fact, belong to that store; he did not obtain any proof of ownership from the store, nor did he recall taking any follow-up steps to confirm whether the store was the rightful owner. As noted by the Advocate, the steps taken by Respondent were inadequate, particularly given the value of this merchandise, which was estimated at approximately \$2,000.

However, there are several factors here that support mitigation. There was nothing in Respondent's conduct that suggested he was acting for personal gain or with a corrupt purpose. Rather, Respondent's concern was to deal with the property as expeditiously as possible so that he could return to his assignment of guarding a house of worship. Unlike the police officer in *Disciplinary Case 2016-15047* cited above, who initially chose to get rid of the property by tossing the bag into the garbage, Respondent took affirmative steps to secure the property and

locate the rightful owner, which he reasonably assumed to be one of the nearby businesses that sold such items. Indeed, Respondent entered three such stores before deciding to leave the property at the third grocery store, where the store worker gave some indication that the merchandise might have been ordered by his boss. To his credit, Respondent took the further step of writing in his activity log the contact information of the worker and store where he left the property, in case a dispute were to arise later with respect to the merchandise; Respondent's decision to make a record of his activity reinforces the conclusion that his intentions were good, and that he had no nefarious purpose in his handling of the merchandise.

Additionally, on the witness stand, Respondent accepted full responsibility for his conduct. He convincingly testified that he now understands the proper method for dealing with lost property, including notifying a patrol supervisor and vouchering the property.

In light of these factors, mitigation is warranted here. Taking into account the totality of circumstances in this matter, and balancing these facts with the relevant case precedent, I recommend that Respondent forfeit ten (10) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

APPROVED

MAY 15 2018


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 MOHAMMED ALI
TAX REGISTRY NO. 946731
DISCIPLINARY CASE NO. 2016-16823

Respondent was appointed to the Department on July 8, 2008. He received the following ratings on his last three annual performance evaluations: in 2014, he received an overall rating of 3.5 "Highly Competent/Competent"; in 2015, he received an overall rating of 3.0 "Competent"; and in 2016, he received an overall rating of 3.5 "Highly Competent/Competent." [REDACTED]

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials