



POLICE DEPARTMENT

December 20, 2013

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Andres Borges
Tax Registry No. 938093
40 Precinct
Disciplinary Case No. 2011-5618

The above named member of the Department appeared before Claudia Daniels-DePeyster, Assistant Deputy Commissioner Trials,¹ on August 6, 2013, charged with the following:

1. Said Police Officer Andres Borges while assigned to the 40th Precinct, on or about and between February 24, 2010, and August 24, 2011, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit said Police Officer on several occasions assisted and/or requested the assistance of other members of the service to prevent the processing and adjudication of several summonses issued to various individuals.

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

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

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 mitigation record has been prepared and is available for the Police Commissioner's review.

¹ Due to ADCT Daniels-DePeyster's long-term absence, this Report and Recommendation is submitted by Deputy Commissioner – Trials, Martin G. Karopkin.

DECISION

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

SUMMARY OF EVIDENCE IN MITIGATION

Respondent was appointed to the Department on July 11, 2005. His permanent assignment is the 40 Precinct, but he is temporarily assigned to the Yankee Stadium Detail. He is on full-duty status.

In April 2010, Respondent was contacted by Police Officer Brian McGuckin, his Patrolmen's Benevolent Association (PBA) delegate, who asked Respondent to give him one of the summonses Respondent had issued earlier that day to a member of the service's family member so that McGuckin could "take care of [it]." Respondent gave McGuckin all three summonses he had issued that day so that McGuckin could "take out" the one relating to the member of the service's family member. Respondent did not know what happened to the summonses after McGuckin took them.

Respondent recalled that one of the drivers he stopped, on the date of the incident, told him that her son was "on the job," but she was unable to provide a PBA card or other proof showing she had family in the service. Respondent testified that the PBA card acts as a courtesy, and the holder of the card is usually given a warning when pulled over instead of a summons. Respondent acknowledged that if the female driver that day had shown a valid PBA card, he would never have issued her the summons. Respondent testified that courtesy was extended regularly within the 40 Precinct to fellow officers and supervisors, and it was common knowledge that it happened on a regular, consistent basis. Furthermore, Respondent stated that he was never told to stop granting these

courtesies to drivers and other members of the service, nor had he received any training that he should not extend such courtesies.

Respondent explained that an officer can order a number of PBA cards, which include the officer's shield number, the signature of the officer and the signature of the person who has received the card. Respondent has never received any type of benefit for extending a courtesy, nor did he ask for any benefits from McGuckin for turning over the summonses. As a police officer, Respondent has written approximately over 500 summonses and has made over 50 arrests.

On cross-examination, Respondent confirmed that the procedure in the 40 Precinct requires officers to place a copy of their summonses in a box located on the front desk of the command, near the desk officer. The purpose of placing the summonses in the box is to allow them to be processed for adjudication.

Respondent testified that, in 2010, he usually waited until the end of his tour to place his summonses in the box. Respondent acknowledged that when he was contacted by McGuckin around April 10, 2010, he understood that McGuckin wanted him to either remove the summons from the box, or if it had not yet been placed in the box, to not drop it in. Respondent stated that he was contacted by McGuckin before the end of his tour and after speaking with McGuckin, Respondent made sure the summonses he had issued that day were not placed in the box for processing.

Respondent admitted that the discretion extended toward persons with PBA cards usually occurred before putting "pen to the summons" and starting "to write that summons out." Because Respondent was not shown a PBA card by the female driver he had pulled over on the date of the incident, he did not extend this discretion. Respondent

agreed that based on his training and experience, once a summons has been written out, an officer's duty is to place the summons in the box. Respondent admitted that by making sure the summons in question did not make it into the box, he helped McGuckin stop its processing.

When asked in an August 2011 official Department interview if within an eighteen month period, he had helped anyone else regarding a summons, he admitted that he had once helped out a friend. Respondent admitted that he did this by contacting a delegate with the intention of stopping the processing of the summons issued to his friend.

On re-direct examination, Respondent testified that when he attempted to help out his friend with the summons by contacting a delegate, he did not have any expectations of what the outcome would be.

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.

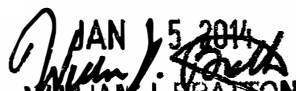
Respondent has admitted to "fixing" traffic tickets on two occasions. In the first instance, he did so at the request of a union delegate and in another instance, he did it as a favor for a friend. He has not offered any mitigating factors beyond the claim that this was common practice at the time.

The fact that many others engaged in this conduct did not make it appropriate or legal. The Department has recommended a penalty that is consistent with numerous other similar cases that have been adjudicated in this forum and approved by the Police Commissioner. This penalty reflects the serious nature of this misconduct. Consequently, this Court recommends that Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to Section 14-115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. In addition Respondent should forfeit five (5) suspension days to be served and twenty-five (25) vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials

APPROVED


JAN 15 2014
WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ANDRES BORGES
TAX REGISTRY NO. 938093
DISCIPLINARY CASE NO. 2011-5618

In 2012, Respondent received an overall rating of 3.5 “Highly
Competent/Competent” on his a [REDACTED] hly
[REDACTED]
[REDACTED] disciplinary record.

For your consideration.


Martin G. Karopkin
Deputy Commissioner – Trials