



POLICE DEPARTMENT

April 12, 2021

-----X
In the Matter of the Charges and Specifications :

- against - :

Police Officer Eliu Feliciano :

Tax Registry No. 930133 :

Housing PSA 1 :

Case Nos.

2018-18576

2018-19371
-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

David Green, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent:

Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

Disciplinary Case No. 2018-18576

1. Said Police Officer Eliu Feliciano, while assigned to the Patrol Borough Bronx, on or about and between January 2015 and September 2016, engaged conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, having taken responsibility for paying the Patrol Borough Bronx's Optimum cable television account, wrongfully used the money he collected for bill payments for personal or other unauthorized use.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

2. Said Police Officer Eliu Feliciano, while assigned to the Patrol Borough Bronx, on or about and between January 2015 and September 2016, engaged conduct prejudicial to the good order, efficiency, or discipline of the Department, in that, having taken responsibility for paying the Patrol Borough Bronx's Optimum cable television account, wrongfully failed to make timely payments, resulting in the account's delinquency in the amount of \$2,113.52.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2018-19371

1. Said Police Officer Eliu Feliciano, while assigned to Patrol Borough Bronx, on or about June 2, 2014, knowing that a written instrument contains a false statement or false information, said Police Officer offered or presented it to a public office or public servant with the knowledge or belief that it would be filed with, registered, or recorded in, or otherwise become a part of the records of such public office or public servant, in that said Police Officer wrongfully filed documents registering "EF Sports, Inc." with the New York State Division of Corporations falsely indicating that Person A was a member of the board of said corporation, when he was not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

N.Y. Penal Law Section 175.30

OFFERING A FALSE
INSTRUMENT FOR FILING IN
THE SECOND DEGREE

2. Said Police Officer Eliu Feliciano, while assigned to Patrol Borough Bronx, the 41st Precinct, or the Candidate Assessment Division, on or about multiple occasions between June 2014 and July 2018, engaged in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations or promises, and so

obtained property from one or more of such persons, in that said Police Officer obtained free or discounted usage of venues by falsely representing to one or more persons teams participating in EF Sports, Inc. were associated or otherwise sanctioned by New York City or other governmental agencies, when they were not.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

N.Y. Penal Law Section 190.60

SCHEME TO DEFRAUD IN THE
SECOND DEGREE

3. Said Police Officer Eliu Feliciano, while assigned to Patrol Borough Bronx, on or about multiple occasions between March 13, 2015, and August 5, 2015, with intent to obtain a benefit or deprive another person of a benefit, committed an act relating to his office but constituted an unauthorized exercise of his official functions, knowing that such act was unauthorized, in that said Police Officer wrongfully utilized his official Department e-mail for personal business, including business related to EF Sports, Inc.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

P.G. 203-06, Page 2, Paragraph 15

PERFORMANCE ON DUTY –
PROHIBITED CONDUCT
GENERAL REGULATIONS

N.Y. Penal Law Section 195.00(1)

OFFICIAL MISCONDUCT

4. Said Police Officer Eliu Feliciano, while assigned to the Candidate Assessment Division, on or about July 17, 2018, during an official Department interview conducted pursuant to the provisions of Patrol Guide Section 203-08, wrongfully made incomplete, inaccurate, or misleading statements about expenses charged to the bank account for EF Sports, Inc. and use of Department e-mail for non-official purposes.

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

PUBLIC CONTACT –
PROHIBITED CONDUCT
GENERAL REGULATIONS

REPORT AND RECOMMENDATION

The above-named member appeared before me on March 10 and 11, 2021. Respondent, through his counsel, entered a plea of Guilty to both specifications in Case No. 2018-18576, and pleaded Not Guilty to the charges under Case No. 2018-19371. The Department called Sergeant Maricruz Crespo as its witness, and introduced hearsay statements of retired officer Person A

█ and civilian █ Person B █ Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find as follows:

Case No. 2018-18576: Pleaded Guilty

Case No. 2018-19371: Not Guilty

Recommended penalty: Twenty (20) vacation days.

ANALYSIS

Respondent appeared before this Court in connection with two separate matters:

Case No. 2018-18576 (Payment of Command's Cable Bill)

The first case stems from Respondent's responsibility, at Patrol Borough Bronx, to collect money from several offices within the building to pay their cable bill. For more than nine years, Respondent, the community affairs officer, handled this role, collecting cash from approximately five offices and paying the Optimum bill. However, it is alleged that from January of 2015 to September of 2016, Respondent used the money he collected for personal use, and failed to pay the cable bill in a timely manner. Respondent has pleaded guilty to those charges, with an explanation of the circumstances surrounding his failure to pay.

Respondent testified that he took on the task in 2007, which he inherited from a previous community affairs officer. Essentially, there were five rooms in the building that had their own cable boxes; Respondent collected cash from them every month, and gave them each a receipt. He paid the bill from his personal account by telephone, through an automated system, and used the cash he collected for himself. At some point, he started collecting every six months instead of monthly, and eventually switched to collecting the money annually. (Tr. 146-48, 181-83)

Respondent admitted that from January of 2015 to September of 2016, there was a delay in his payments to the cable company, even though he continued to collect money from the five offices. Respondent explained that he was sick during that time-period, with ulcers that caused him to be in and out of the hospital for several days. He asked his sergeant to reassign the cable collection duties, but that request was denied. Respondent attempted to set up an automatic payment plan with the cable company, whereby the money for the bill would automatically be deducted from his personal checking account. He believed that he had successfully set up this method of payment, but later learned that attempt had been unsuccessful. When he eventually discovered that the account was delinquent for 21 months in an amount totaling approximately \$2,100.00, he worked out a plan with his sergeant to pay off the amount owed in installments, which he did. According to Respondent, the sergeant reassured him that it was a simple error, and that nothing would come of it. (Tr. 148-50, 188-89, 193-95)

This matter, including Respondent's explanation for his actions, will be addressed further in the penalty section below.

Case No. 2018-19371 (EF Sports)

The second matter involves EF Sports, a company that Respondent created in 2013. EF Sports organized a number of basketball teams in the Bronx and arranged for tournament play, with the money raised to be donated to charitable causes. Many of the players on these teams were members of city agencies, such as the NYPD, the FDNY, and NYCHA. Respondent filed papers, dated June 2, 2014, with the New York Department of State, Division of Corporations, to register the company as a not-for-profit corporation, which granted EF Sports tax-exempt status as a charitable organization. The company existed until Respondent disbanded it in late 2016.

It is alleged that when he filed the paperwork for the company, Respondent listed Person A Caldero as one of three directors of the corporation, without Caldero's permission. At the time,

Person A was an MOS who worked with Respondent, but has since retired. It also is alleged that Respondent engaged in a scheme to defraud in that he falsely represented that the teams in the league were associated with, or sanctioned by, New York City, thereby obtaining free or discounted use of venues for the games. A third allegation is that Respondent committed official misconduct by wrongfully utilizing his Department email for personal business, while a fourth charge alleges that Respondent wrongfully made incomplete, inaccurate, or misleading statements at his Department interview on July 17, 2018. Respondent has denied each of these accusations.

Sergeant Maricruz Crespo of the Training Bureau testified that in June of 2016, while assigned to IAB, she became involved in the investigation into the EF Sports matter. Sergeant Crespo reached out to **Person B** who had a role in the management of EF Sports, before resigning from the company. She also had been involved in a personal relationship with Respondent, but that, too, had ended. Initially, **Person B** told Sergeant Crespo that she wanted to speak with an attorney before being questioned. On June 22, 2016, **Person B** agreed to speak with Sergeant Crespo by telephone. (Tr. 68-70, 131-33)

Person B informed the Department Advocate that she would not be willing to testify at this trial; instead, a recording of her telephone interview, along with the accompanying transcript, were introduced as Dep't Exs. 2 & 2A. In that conversation, **Person B** confirmed that she had previously been engaged to Respondent. She also stated that she was part of EF Sports, and that she and Respondent had separate company bankcards. **Person B** claimed that when she asked about certain charges on the account that did not seem to be part of the company's charity work, Respondent stated that that they were, in fact, for EF Sports activity, and then he took her name off the bank account. Following this exchange, she sent Respondent a resignation letter relinquishing her position with EF Sports. **Person B** sent a copy of her letter to the other Board

member. **Person A** a UMOS who worked with Respondent; **Person A** also resigned, leaving only Respondent. Sergeant Crespo asked **Person B** to submit documents that might assist in the investigation. **Person B** also agreed to reach out to **Person A** to let him know that the sergeant wished to speak with him as well. When asked whether Respondent used his position as a police officer in order to solicit money for the company, **Person B** answered that she was not sure, since Respondent, himself, handled getting donations and booking venues on his own. (Dep't. Ex. 2A at 4, 8-11, 16-17)

Person B provided Sergeant Crespo with a copy of her resignation letter, dated March 1, 2016 (Dep't. Ex. 6). She also provided a copy of the not-for-profit incorporation papers, dated June 2, 2014, which were filed with New York State (Dep't. Ex. 4). On the fifth page of that document, it states that a minimum of three individuals must be named as directors; the three listed were Respondent, **Persons A and B**

Person A a retired MOS, could not be located by the Department Advocate for this trial. Instead, a recording of his official Department interview on July 10, 2018, along with the accompanying transcript, were introduced as Dep't. Exs. 3 & 3A. In that interview, **Person A** stated that he and Respondent worked together as community affairs officers at Patrol Borough Bronx from 2014-2016. He was familiar with EF Sports, but claimed that he was not involved with the company in any way, and did not know that he was named as a director. When **Person B** and Respondent broke up in 2016, she told **Person A** he was listed as a director. In a letter to Respondent dated March 16, 2016 (Dep't. Ex. 7), **Person A** stated that he had just been informed that he was a member of EF Sports, that he had no prior knowledge of that involvement, and asked that his name be removed from the company's records. **Person A** handed the letter to Respondent, who told **Person A** that he was not part of the company. Respondent acknowledged receipt of **Person A**'s letter by signing it, and writing on it, "accept form." (Dep't. Ex. 3A at 4-9)

Sergeant Crespo also obtained additional documents from Person B. Dep't. Ex. 5 is a packet of screenshots from social media featuring various EF Sports events. The posts feature Person B as "Team NYCHA," "NYPD Ballers," "FDNY Bravest," "NYPD Finest," as well as other team names that do not include references to city agencies. Similarly, Dep't. Ex. 8 contains copies of flyers that were used to promote the tournament games, featuring many of the same team names. Dep't Exs. 9 & 10 are solicitation packets sent from EF Sports to two companies trying to obtain their sponsorship. The promotional material notes that community members from the NYPD, FDNY, Department of Sanitation, and Department of Education will be participating in the games.

According to Sergeant Crespo, Person B also provided bank records of EF Sports (Dep't. Ex. 11). Group 2 of IAB did a separate financial analysis of the records (Dep't. Ex. 13), breaking down which purchases were made by Respondent and which were made by Person B. Sergeant Crespo highlighted certain expenditures made on Respondent's bankcard, such as a \$29.00 charge to JetBlue, as well as purchases from Apple iTunes, a number of restaurants, and an optician. As discussed below, Respondent was asked about a number of these purchases at his official Department interview. Respondent also was questioned about several emails that were retrieved from his Department email (Dep't. Ex. 12); those emails include a screenshot of the EF Sports logo, and some of Respondent's personal mortgage papers. (Tr. 78-79, 89-96, 101-03, 127-28)

A recording of Respondent's Department interview on July 17, 2018 was admitted into evidence, along with the accompanying transcript (Dep't. Exs. 1 & 1A). Sergeant Crespo could not recall what she said to Respondent's attorney prior to the interview regarding the subject matter of the inquiry. (Tr. 119-20, 125) At the start of the interview, which lasts just over ninety minutes, Sergeant Crespo does not inform Respondent and his attorney as to the specific nature

of the allegations; instead, she merely refers to the investigation as being "DRV other," a general reference to a violation of Department rules. (Dep't. Ex. 1A at 2)

The interview begins with a general discussion about Respondent's work as a community affairs officer, before transitioning to questions about EF Sports. When Sergeant Crespo presses Respondent for specific information as to when the company was created and when it was "legitimized," Respondent's counsel accuses the sergeant of badgering his client, and says that he, the attorney, does not understand the question. Sergeant Crespo responds that the attorney does not need to understand the question. At one point, as Respondent is being questioned about whether the company kept business ledgers to account for money coming in and going out, Respondent and his attorney ask for a recess to speak privately; Sergeant Crespo continues to ask several additional questions before granting the recess. (Dep't. Ex. 1A at 14-17, 25-28)

After a brief recess, the questioning continues, with a focus on EF Sports' board members. Respondent explains that Kemraj, as co-owner, mostly handled the administrative aspect of the company; Kemraj asked Person A to be on the board and she filled out the names on the paperwork that was filed, but that it was done with Respondent's knowledge. (Dep't. Ex. 1A at 29-30, 35-39)

Sergeant Crespo asks Respondent a number of questions about EF Sports' business expenses back in 2015. The sergeant references specific business transactions, including a hotel charge, restaurant charges, Apple iTunes purchases, an optician expense, and a charge to JetBlue, and asks if they were business expenses. For many of these transactions, Respondent answers that he is "not 100 percent sure" what precisely they were for, but that he could check his records or consult with his tax accountant in order to provide a more complete response. He also notes that since he and Person B each had their own bankcard, it is difficult to remember who was

responsible for particular transactions. Respondent is able to recall details of some of the larger expenses, such as for the purchase of uniforms.¹ (Dep't. Ex. 1A at 57-68, 92-98)

Respondent also is asked about use of his Department email. He initially states that he does not believe he has used it to conduct personal business, but that he is not sure, and would have to go through his emails to be certain. Sergeant Crespo shows Respondent a mortgage assistance email from 2015, which Respondent acknowledges was personal business, perhaps connected to a home modification he was doing at the time. She shows Respondent an email with the EF Sports logo, which Respondent also acknowledges, even though he cannot specifically recall sending it. (Dep't. Ex. 1A at 86-92, 98)

Sergeant Crespo testified that she spoke with individuals from companies with whom EF Sports did business, as well as from venues that hosted league games. According to Sergeant Crespo, "most of the people I spoke to had no knowledge that [Respondent] was an officer, and if they did, they said [he] did not mix business with pleasure." The individual donors she interviewed stated that "they did donate items, but they didn't see him in uniform." According to Sergeant Crespo, IAB contacted the Bronx County District Attorney's Office, which in turn referred IAB to the Albany County District Attorney, who decided not to proceed with charges against Respondent. (Tr. 96-101, 103-05)

Respondent testified that he started EF Sports because he has "basketball in his blood," having played in high school, college, and for a while in Puerto Rico before joining the NYPD. He created EF Sports with the goal of bringing community members and public servants together through basketball. From his experience as a community affairs officer, Respondent observed a disconnect between people and city workers, and he hoped that bringing them together would

¹ Sergeant Crespo conceded that Respondent has not faced any charges alleging that he misused company funds. (Tr. 130)

encourage better relationships while also spurring interest in possible public service career paths for young people. (Tr. 152-54)

Some of the teams that participated in this league were made up mostly of employees from city agencies, such as the NYPD and FDNY, while other teams were comprised of local adolescents. Each team chose its own name; Respondent, himself, named the NYPD Ballers, which was the team he played on. Respondent insisted he never represented to anyone that the teams in the league were officially sanctioned by any city agency, never used his status as an MOS to secure discounted or free items, and he never received any complaints about the team names. Indeed, two teams in his league, the NYPD Ballers and the NYPD Finest, played games against the official NYPD Commissioner's League teams. (Tr. 154-55, 163-64, 174-78, 210-17, 240, 250-55)

Teams paid dues to participate in the league, and money was also raised through sponsorships. Respondent testified that these funds were used to pay expenses connected with running the league, such as referee fees, and to purchase uniforms and trophies. EF Sports used the surplus money for charitable purposes, such as purchasing food, books, and winter clothing to donate to people. (Tr. 155-56, 161)

According to Respondent, he brought Person B in as a "co-CEO" to help handle the administrative work of the company, while he dealt with the basketball aspects. It was her idea to incorporate the company as a not-for-profit, and she filled out the paperwork. He and Person B were engaged to be married, but in December of 2015, Respondent ended their relationship. Respondent described an incident that contributed to the break-up, where he felt that Kemraj had disciplined his five-year-old son in an inappropriate way. Person B also made a comment that if they had their own children, they would be more important than Respondent's son. Person B told him that he had embarrassed her, her father, and her culture with the break-up, and that he would

pay spiritually or with his job. After he ended their relationship, Respondent noticed that Person B had withdrawn more than \$1,500.00 from the EF Sports account, and he asked her about it; she stated that since their personal relationship was ending, she wanted to secure her share of the money she had spent. Respondent cancelled her access to the company bank account, and Person B resigned on March 1, 2016. (Tr. 157-61, 165-68, 209-10, 240-45)

Respondent described Person A as a close friend. Person B also was friendly with Person A, and she was the one who arranged for him to be a board member. Person A came to him with a letter stating that he wanted to be removed from the company, Respondent signed the letter at Person A's request. Respondent testified that his personal relationship with Person A ended when Person A found out from Person B that Respondent had told Person A that Person A was cheating on his wife. (Tr. 162-64, 217-20)

Respondent admitted that he used his Department email for personal use, as illustrated by the EF Sports logo and personal mortgage papers in Dep't. Ex. 12. He denied, however, that this minimal use constituted an unauthorized exercise of his official functions, amounting to official misconduct. He explained that he could not view the logo on his phone, so he sent it to his work email to view on a larger screen. The refinance papers were time-sensitive, so he used his work email to send them to the bank in a timely manner. (Tr. 168-69)

According to Respondent, prior to the start of his Department interview, which occurred on July 17, 2018, his attorney spoke with the IAB investigators and then asked Respondent about whether he had stolen time. There was no mention of EF Sports, and so the questions about the company were unexpected. Respondent testified that he used the recess to give his attorney some background information about EF Sports, and then Respondent answered Sergeant Crespo's questions to the best of his ability. It was not Respondent's intention to impede the investigation; he could not recall all of the transactions that he was asked about, and offered to

retrieve records that would enable him to respond more accurately to the specific transactions in question. Similarly, he did not deny using his work email for personal use; rather, he was unable, at that time, to recall whether he had used his Department email for personal purposes, and answered accordingly. (Tr. 170-74, 230-36)

Respondent faces four specifications in connection with the EF Sports matter. In the first three, the Department Advocate has charged Respondent with engaging in serious criminal conduct in violation of the New York State Penal Law. The fourth specification charges Respondent with incomplete, inaccurate, or misleading statements at his Department interview.

Specification 1 charges Respondent with Offering a False Instrument for Filing in that he falsely indicated that **Person A** was a board member of EF Sports on the papers Respondent filed to register the company as a not-for-profit corporation. Section 175.30 of the Penal Law states that a person is guilty of offering a false instrument for filing when, knowing that a written instrument contains false information, he presents it to a public office knowing that it will be filed. The main evidence supporting this count comes from **Persons A and B** neither of whom appeared to testify. Instead, the Department Advocate relied on their hearsay statements, introducing previously recorded interviews with each of them. It is well-settled that hearsay is admissible in administrative proceedings, and may form the sole basis for a finding of fact. The hearsay, however, must be carefully evaluated to determine whether it is sufficiently reliable. It is preferable to have testimony from a live witness, where opposing counsel has the opportunity to cross examine, and the court can observe the witness's demeanor. In the absence of live testimony from **Persons A and B** here, this tribunal carefully considered their prior statements.

It is undisputed that **Person A**'s name is listed as one of the board members in the papers filed with the State (Dep't. Ex. 4). The form indicates that at least three members must be named

as directors, and the three people listed are Respondent, **Persons A and B**. It also is conceded that **Person A** presented a letter of resignation to Respondent, dated March 16, 2016, in which he stated that he had no prior knowledge of involvement with the company, and asked that his name be removed (Dep't. Ex. 7). What is in dispute is whether Respondent did, in fact, list **Person A**'s name as a director despite knowing that the information was false.

In his statement, **Person A** claimed that he was not involved with EF Sports and did not know he was named as a director. He stated that he first found out about it from **Person B** after she and Respondent had separated. **Person B** in her statement, also said **Person A** did not know he was listed as a board member. Respondent, meanwhile, stated that it was **Person B** who arranged for **Person A** to be listed as a director, and that it was done with **Person A**'s knowledge.

After considering the totality of the evidence presented, I am not persuaded by the hearsay accounts of **Persons A and B**. **Person B** merely made a general statement that **Person A** did not know that he was listed as a board member, without any follow-up questions being asked of her. She was not questioned, for instance, on whether she, herself, played any role in **Person A** being named as a director, and how it was that his name was listed in the papers that were filed. By not appearing for trial, she also did not have to face questions about how her relationship with Respondent ended, and whether she harbored any animosity against Respondent that might have affected her credibility. Similarly, **Person A** did not appear, and did not have to respond to questions about whether **Person B** had approached him about being a board member. He also did not have to face questions as to what conversations he had with **Person B** about the state of the company in March of 2016 that might have influenced **Person A** to try to distance himself from EF Sports at that time.

Respondent, meanwhile, testified in a detailed, compelling manner about what transpired, and I credit his account. Respondent persuasively explained that **Person B** handled much of the

company's administrative matters, that it was she who arranged for Person A to be listed as a director, and that it was done with Person A's knowledge. Persons A and B were friends – indeed, Person B even offered to act as an intermediary between Caldero and Sergeant Crespo in order to put them in touch with each other – and so it is logical and plausible Person B did, in fact, arrange for Person A to be named as a board member.

As such, the record has failed to establish, by a preponderance of the credible evidence, that Respondent wrongfully filed papers listing Person A a board member, while knowing that information to be false. Accordingly, I find Respondent not guilty of Specification 1.

Specification 2 charges Respondent with engaging in an ongoing scheme to defraud in that he falsely represented that the teams participating in the league were sanctioned by the City, thereby obtaining free or discounted use of venues for league games. Section 190.60 of the Penal Law states that a person is guilty of a scheme to defraud “when he engages in a scheme constituting a systematic ongoing course of conduct with intent to defraud more than one person or to obtain property from more than one person by false or fraudulent pretenses, representations, or promises, and so obtains property from one or more such persons.” The section also notes that the prosecution must prove the identity of at least one person from whom the accused so obtained property.

The Department Advocate points to the flyers, social media posts, and sponsorship materials to illustrate that the league was promoted as officially sanctioned (Dep't Exs. 5, 8, 9 & 10). For instance, many of the teams included city agencies as part of their names, such as NYPD Ballers, NYPD Finest, FDNY Bravest, and Team NYCHA. There are Instagram posts that include mentions of these team names.

However, the credible evidence did not establish that Respondent falsely promoted the teams or games as being sanctioned by the City. Respondent credibly explained that he never

promoted the teams in the league as being officially sanctioned by any city agency, nor did he in any way misrepresent the nature of the league. Rather, Respondent's laudable goal in creating the league was to promote relations between community and City employees, and even to inspire young people to consider pursuing careers in public service. Each team chose its own name; since there were many agency employees on some of the teams, they named themselves accordingly. Respondent received no complaints that he was misrepresenting the league; indeed, EF Sports teams such as NYPD Ballers and FDNY Bravest actually played games against teams in the official NYPD Commissioner's league.

There was no evidence presented that pointed to any particular person who Respondent defrauded with false representations. Rather, Sergeant Crespo, the IAB investigator, noted that she spoke with a number of businesses who dealt with EF Sports, and most of them had no knowledge that Respondent was a police officer. According to Sergeant Crespo, there was no indication that Respondent was "mixing business with pleasure."

As such, I am not persuaded that Respondent acted with an intent to defraud. The credible evidence has failed to establish that Respondent engaged in an ongoing scheme whereby he obtained free or discounted use of basketball venues based on intentional misrepresentations about the league. Accordingly, I find Respondent not guilty of Specification 2.

Specification 3 charges Respondent with committing official misconduct by using his Department email for personal business. Section 195.00 of the New York State Penal Law states that a public servant is guilty of official misconduct when, with intent to obtain a benefit, he knowingly commits an act relating to his office that constitutes an unauthorized exercise of his official functions. The New York Court of Appeals has noted that the official misconduct statute is "intended to encompass flagrant and intentional abuse of authority by those empowered to enforce the law." See *People v. Feerick*, 93 N.Y.2d 433 (1999).

In support of this accusation, the Department Advocate introduced into evidence a logo for EF Sports, as well as some mortgage papers from 2015, which were retrieved from his Department email. Respondent acknowledged and explained the emails in question. With respect to the EF Sports Logo, he was having difficulty viewing the logo on his phone, so he sent it to his Department email. The mortgage papers were time sensitive, which is why he used his Department email to send them.

Under these circumstances, the record has failed to establish that Respondent's use of his Department email constituted official misconduct. Even if Respondent's use of his Department email here constituted an error in judgment, it did not rise to the level of a flagrant and intentional abuse of authority. Accordingly, I find Respondent not guilty of Specification 3.

Specification 4 charges Respondent with wrongfully making incomplete, inaccurate, or misleading statements during his official Department interview on July 17, 2018. A misleading statement is one that is intended to misdirect the fact finder and materially alter the narrative; it can include making repeated claims of "I don't remember" when a reasonable person under similar circumstances would recall the information. An inaccurate statement is one in that the MOS knows, or should know, includes incorrect material information.

The Department Advocate focuses on two portions of the interview: questions about EF Sports' business expenses, and questions regarding Respondent's use of his Department email. To be sure, Respondent did answer a number of questions by stating that he was not sure about the information being requested. However, it is important to keep in mind that the interview took place in July of 2018, while the questions were about matters that occurred back in 2015. Also, access to the account was shared with **Person B** which further added to the uncertainty. As such, I credit Respondent's explanation that he was unsure regarding the specific business

expenses, and wanted to review his records or consult with his tax accountant in order to provide more accurate responses.

Similarly, it was not unreasonable that when asked a general question about whether he ever used his Department email for personal use, Respondent initially said he did not believe so, but would have to go through his emails in order to be certain. When shown a pair of specific emails, one with an EF Sports logo and one involving mortgage papers, Respondent acknowledged that these related to personal business, even if he could not specifically recall sending them. At trial, Respondent again acknowledged that these were personal emails, and was able to provide further details. As noted in the discussion of Specification 3, above, Respondent was having difficulty viewing the logo on his phone, so he forwarded it to his Department email in order to view the logo on a larger screen. He also explained that the mortgage papers were time sensitive, and so he used his work email to send them.

Under the circumstances presented here, the credible evidence has failed to establish that Respondent wrongfully made incomplete, inaccurate, or misleading statements. After carefully reviewing the interview, and considering the testimony at trial, I find that Respondent was not intending to mislead his questioners. Rather, when asked questions about expenses and emails that occurred several years earlier, he genuinely was uncertain as to the details, and answered accordingly. I am not convinced that a reasonable person with inadequate notice and preparation would have been able to recall the specific information requested. As such, I find Respondent not guilty of Specification 4.

PENALTY

In order to determine an appropriate penalty, this tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's

employment record also was examined. *See* 38 RCNY § 15-07. Information from Respondent's personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent, who was appointed to the Department on July 1, 2002, has no disciplinary record. He has been awarded one medal for Meritorious Police Duty.

The Department Advocate has recommended that Respondent be dismissed from the Department based on the totality of his actions, including engaging in misconduct that constitutes a crime, which carries a presumptive penalty of termination. However, Respondent has been found not guilty of the four specifications involving EF Sports, leaving only the two mitigation counts involving his failure to pay the stationhouse's cable bill in a timely manner, and so a lesser penalty is warranted here.

On the one hand, it is concerning that Respondent, after he changed his collection routine to once-per-year, allowed the cable bill to lapse for a period of approximately 21 months. After collecting money from various offices within the command, Respondent was responsible for making sure that the bills were paid accordingly, and there must be some accountability for his carelessness in doing so.

However, under the specific circumstances presented here, I am not persuaded that Respondent was intentionally letting the bills lapse so he could spend the money collected for personal expenses. It would have been inevitable that such a course of conduct would come to light with a disruption in service, making it unrealistic that Respondent would have acted in this way with any expectation of avoiding detection. Rather, Respondent, who came across as genuine on the witness stand, credibly explained that after successfully collecting the money and paying the bills for approximately eight years without incident, he became careless in his collection duties during the time in question. Respondent believed he had set up an auto-

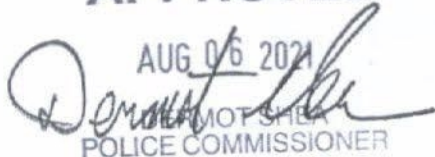
payment plan for the cable bills, but did not pay enough attention to recognize that he had failed to do so successfully, and so the bills remained unpaid. There was no indication that Respondent received notice that the account had lapsed and simply ignored it. During the time in question, Respondent was in and out of the hospital for several days due to an ulcer, which reasonably could have contributed to his lack of attention to his bill-paying responsibilities. To his credit, once he was made aware of the lapse, Respondent entered into a payment plan, whereby he paid off all of the money due. At trial, Respondent accepted responsibility for his misconduct.

There is no clear presumptive penalty in the Guidelines for an offense such as this, and there is no precedent that is directly on point. The record did not prove that this was a situation where Respondent collected money from colleagues and intentionally misused the money for personal expenditures. Somewhat more analogous is *Disciplinary Case No. 2016-16558* (Sept. 19, 2017), where a 10-year police officer with no disciplinary record forfeited fifteen (15) vacation days for failing to register his personal vehicle in a timely manner, and thereafter operated his car without insurance. That respondent explained that the insurance lapse was an innocent mistake stemming from miscommunication with his ex-partner, whom the respondent expected to pay the insurance. Although the facts there are in certain ways different from those presented here, that case does provide some guidance on an appropriate penalty range for a situation where an MOS, through neglect, fails to keep up with the payment of bills.

Taking into account the totality of the facts and circumstances in this matter, including the length of time in which the bills were unpaid, I recommend that Respondent forfeit twenty (20) vacation days.

APPROVED

AUG 06 2021


DONALD SHEEHAN
POLICE COMMISSIONER

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 ELIU FELICIANO
TAX REGISTRY NO. 930133
DISCIPLINARY CASE NOS. 2018-18576 & 2018-19371

Respondent was appointed to the Department on July 1, 2002. On his three most recent annual performance evaluations, Respondent twice received 4.0 overall ratings of "Highly Competent" for 2013 and 2015, and received a 3.5 overall rating of "Highly Competent/Competent" for 2014. He has been awarded one medal for Meritorious Police Duty.

Respondent has no disciplinary history. In connection with the instant matters, Respondent was placed on Level 1 Discipline Monitoring on July 12, 2019; that monitoring remains ongoing.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials