The City of New York

POLICE DEPARTMENT

June 18, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer George Mastrokostas
Tax Registry No. 935263
Police Service Area 2
Disciplinary Case No. 2010-2403

The above-named member of the Department appeared before the Court on September 17, 2014, October 27, 2014, October 29, 2014 and December 9, 2014, charged with the following:

1. Said Police Officer George Mastrokostas, while assigned to the 70th Precinct, while on-duty, at a location within the vicinity of the 70th Precinct, on or about eight (8) occasions between November 11, 2008, and February 4, 2009, failed to follow DARP procedures by allowing a non-DARP towing company to remove motor vehicles from the scene of various accidents, when said tow truck was not dispatched by the Communication[s] Section. *(As amended)*

P.G. 217-09, Page 2, Paragraph 6 DIRECTED ACCIDENT RESPONSE PROGRAM

2. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at a location within the vicinity of the 70th Precinct, on or about eight (8) occasions between November 11, 2008, and February 4, 2009, failed to follow DARP procedure by not issuing a notice of violation to an unauthorized towing company when it appeared at the scene of various motor vehicle accidents and towed said vehicles from the scene. *(As amended)*

P.G. 217-09, Page 4, Additional Data – DIRECTED ACCIDENT RESPONSE PROGRAM

3. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at a location within the vicinity of the 70th Precinct, on or about eight (8) occasions between November 11, 2008, and February 4, 2009, failed to follow DARP procedure by not requesting an authorized DARP towing company and allowing a non DARP towing company to remove vehicles from the scene of various motor vehicle accidents. *(As amended)*

P.G. 217-09, Page 2, Paragraph 3, – DIRECTED ACCIDENT RESPONSE PROGRAM Paragraph 6 and Note

4. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at a location within the vicinity of the 70th Precinct, on or about eight (8) occasions between November 11, 2008, and February 4, 2009, failed to give a proper radio disposition to the Communications Section by not informing the Communications Section that a vehicle was towed from the scene. *(As amended)*

P.G. 217-09, Page 4, Additional Data – DIRECTED ACCIDENT RESPONSE PROGRAM

5. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at various locations within the vicinity of the 70th Precinct, on or about eight (8) occasions between November 11, 2008, and February 4, 2009, upon responding to the scene of a motor vehicle accident, failed to make proper Activity Log entries in his Department-issued Activity Log, as required.

P.G. 212-08, Page 1, Paragraph 1, Subsection 5 – ACTIVITY LOGS

6. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at various locations within the vicinity of the 70th Precinct, on or about three (3) occasions between February 2, 2009, and February 4, 2009, upon responding to the scene of a motor vehicle accident, made an inaccurate entry in a Police Accident Report by documenting that a vehicle had not been towed from the scene of an accident when, in fact, it had.

P.G. 206-03, Page 1, Paragraph 9 – VIOLATIONS SUBJECT TO COMMAND DISCIPLINES

7. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at various locations within the vicinity of the 70th Precinct, on several occasions between the dates of January 20, 2009, and February 4, 2009, did engage in improper use of his personal cellular telephone. *(As amended)*

P.G. 203-06, Page 1, Paragraph 17 – PERFORMANCE ON DUTY – PROHIBITED CONDUCT

8. Said Police Officer George Mastrokostas, while assigned as indicated in Specification #1, while on-duty, at various locations within the vicinity of the 70th Precinct, on several occasions between January 20, 2009, and February 4, 2009, conducted personal business while on Department time by utilizing his personal cellular telephone. *(As amended)*

P.G. 203-06, Page 1, Paragraph 17 – PERFORMANCE ON DUTY – PROHIBITED CONDUCT

The Department was represented by David H. Green, Esq. Department Advocate's Office. Respondent was represented by Angelo G. MacDonald, Esq., Pappalardo & Pappalardo LLP.

Respondent pleaded 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 Specification Nos. 1, 2, 4, 5 and 7, Guilty in Part of Specification Nos. 3 and 6, and Not Guilty of Specification No. 8.

INTRODUCTION

This case involves alleged violations of the Directed Accident Response Program, or DARP. DARP is a Department procedure designed to eliminate or reduce the corruption hazard that comes with towing vehicles from accident scenes. The dangers include officers giving business to friends or associates who operate tow trucks, at worst, in exchange for payment. Because auto insurance pays for tow work, there is the possibility of trucks towing vehicles that do not need it. Finally, there is the spectre of organized crime involvement in the towing industry.

For these reasons, DARP provides for the licit and fair provision of towing services. Every precinct has a list of pre-approved and vetted tow truck operators. If a tow is needed, the officer at the accident is to inform the central radio dispatcher, who assigns a tow operator from the rotating list. The DARP companies have contracts with the city to provide towing services.

The allegations against Respondent flow from his relationship with another officer. Police Officer Gregory Markov, and Markov's [redacted], Person A.

Respondent and Markov were assigned to the 70 Precinct in Brooklyn and often were partnered together. Person A was the co-owner of Izabelle's Collision, an auto body shop on Coney Island Avenue within the confines of the 66 Precinct but just bordering the 70 Precinct.[1] It was undisputed that Izabelle's was not a DARP operator.

The Department alleged that Respondent violated the DARP procedure on eight occasions, mostly when he was working with Markov. Respondent for the most part is charged with being complicit in the violation of the DARP procedure. He is not charged with, for example, initiating a process in which Izabelle's Collision illicitly became the tow operator.

The evidence against Respondent generally was circumstantial. This included statements and testimony from the motorists involved in the accidents, phone records indicating contact between Respondent and Person A, the Police Accident Reports (PAR), and statements from Person A and Markov.

FACTS

November 11, 2008

This accident took place in the area of Duryea Avenue and Beverly Road. The PAR (Department's Exhibit [DX] 1, PAR no. 2629) was prepared by Markov. Sergeant Stephen Williams, who testified as an investigator in the Internal Affairs Bureau (IAB) examination of this entire matter, stated that Markov and Respondent were partners on this date. The PAR indicated that both vehicles were towed to Izabelle's. Respondent claimed not to recall the incident.

[1] The name of the body shop was spelled variously throughout the transcript. This report and recommendation will use the accurate spelling used in Markov's case (*Case No. 2010-2425* [Mar. 4, 2015]), except where necessary to note that a witness actually used a different but similar name.

One of the motorists involved in this incident, [redacted], testified at Respondent's trial. [redacted] stated that on the day in question he was rear-ended on Ocean Avenue near Avenue J by an SUV making an illegal U-turn. The driver fled the scene. [redacted] called 911 and the police arrived in 20 to 25 minutes. It was one police vehicle with two officers inside. [redacted] communicated with both officers, when they were both inside and outside the car while the PAR was being filled out. [redacted] also testified in Markov's trial but admitted here that he was unable to identify him there. He also did not recognize Respondent here. [redacted] agreed that the officer to whom he spoke had dark hair. Counsel for Respondent indicated for the record that he was bald. The officer to whom [redacted] spoke was the recorder.

[redacted] determined that his car was inoperable and told one of the police officers. The other officer was not too far away. A tow truck appeared on the scene and the tow truck and the officers were present at the scene at the same time.

[redacted] testified that the tow truck that arrived on scene ultimately towed his car to Izabelle's Collision. [redacted] conceded that his receipt from the tow, DX 18, stated that the operator was Primo Collision & Towing. The car was towed, however, to Izabelle's. It was undisputed that Primo was on the DARP rotation list for the 66 and 70 Precincts (see DX 19, list). Williams, however, noted that Primo's tow of Charles's car was a violation of the Patrol Guide because Respondent did not request it via Communications and therefore the truck should not have been at the scene.

[redacted] was present when his car was hooked up to the tow truck. The police officers might have been in the process of doing their report and were probably 15 to 25 feet away from his car. One of the officers told [redacted] that the tower or body shop was a good place. [redacted] was not sure if the officer who told him this was the same officer doing the paperwork.

Williams stated that Markov and Respondent were partners on this date. The PAR for the accident (DX 2, PAR no. 2812) was signed by Markov. The PAR gave no indication that [redacted] vehicle was towed. Respondent confirmed in his testimony that Markov prepared the PAR.

January 15, 2009

One of the motorists involved in this accident, [redacted], testified that he was driving west on Avenue O that afternoon and hit a van crossing Avenue O on 16th Street. The whole front end of [redacted]' vehicle was damaged and the car was not drivable. The other motorist's vehicle seemed to be operable.

Upon the arrival of the police 10 to 15 minutes later, [redacted] said, he saw two police officers in the car but only one exited the vehicle. [redacted] had a conversation with him. He was approximately 5'10" tall with black or dark brown hair. It was not Respondent. The officer asked Jacobs whether he was okay and if he needed a tow truck. [redacted] said that he did [redacted] did not interact with the second officer, who did not even get out of the car.

A tow truck arrived on the scene about 20 to 30 minutes later, after his conversation with the officer. [redacted] recalled the name on the side of the tow truck was "Elizabeth's" but later confirmed it was Izabelle's upon the Advocate's prefatory. [redacted] was familiar with the tow company because he would drive by them with some frequency. He remembered that they were located on Coney Island Avenue near Avenue C and Cortelyou Road. It was undisputed that this was the location of Izabelle's. [redacted] spoke to the tow truck operator but did not think that the police officer was present for the conversation, although the officers still were present when the tow truck was on the scene.

[redacted] described the tow operator as stocky with brownish head hair and no facial hair. He was a white male with a Russian accent. His name might have been Leo. [redacted] later met up with him at Izabelle's. He did not indicate to J[redacted] what his title was at the company but [redacted] assumed that he was the owner.

The cellular telephone records for Respondent (DX 11), secured as part of the IAB investigation, indicated that Person A called Respondent at 1509 and 1510 hours on January 15, 2009 (P. 114-AE). Williams did not know if there was actual communication between Respondent and Person A, or if Person A left a message.

Williams testified that Markov and Respondent were partners on this day. The PAR for the accident (DX 3, PAR no. 137) was signed by Markov. The PAR stated that [redacted]s vehicle was not towed. The time on the report was 1510 hours. Respondent confirmed in his testimony that Markov prepared the PAR but did not recall the incident.

January 20, 2009

Williams testified that Respondent was Markov's partner on the day Markov prepared the PAR for this accident (DX 4. PAR no. 206). The PAR stated that the accident took place at 0750 hours. The PAR stated that no vehicles were towed from the scene, Avenue L between East 18th and East 19th Streets. The motorists, however, [redacted] and [redacted], both told IAB (DX 12 & 13a-b, transcripts, respectively), that Izabelle's towed their cars. [redacted] identified Markov from a photo array and provided a physical description of Person A.

On this date there were two phone calls between Person A and Respondent at 0749 hours, one at 0758 hours, and four at 0800 hours. Williams indicated that this multiplicity of calls could have indicated that a voicemail was left or that more than one cell tower picked up a single call.

January 27, 2009

Williams testified that Respondent was Markov's partner on the day Markov prepared the PAR for this accident (DX 5, PAR no. 282). The accident took place at 1400 hours according to the PAR, on A venue H between East 14th Street and Argyle Road. The PAR stated that there were no tows. One of the motorists involved, however, Person B, told IAB (DX 14) that he had his car towed by East Coast Collision, at his request. This was a non-DARP tow company.

February 2, 2009

Police Officer Robert Campbell testified that he was partners with Respondent on this date. Generally, Respondent preferred to be the operator, but either of them could have prepared the paperwork for a given accident. Campbell also knew Person A as a tow operator, and a friend of Markov and Respondent.

Campbell testified that on February 2, 2009, at approximately 0950 hours, he and Respondent responded to an accident in the vicinity of Dorchester Road and East 18th Street. He testified that Respondent filled out the PAR (DX 6, no. 327), which indicated that the vehicles were not towed. Campbell claimed not to recall if there w as a tow of the vehicles. The motorists, however, Person D and Person E, both gave statements to IAB (DX17 & 15.respectively) and stated that their vehicles were towed. Person D did not know the name of the tow company but said that it was located in the vicinity of Coney Island A venue and Cortelyou Road. Person E stated that the officers contacted a company, Izabelle's Collision, to do the tow.

February 4, 2009: Accident A

PAR number 364 (DX 8) indicated an accident time of 0725 hours. The accident occurred in the area of East 13th Street and Elm Avenue. The driver of one of the vehicles fled the scene and left the car. The PAR, which was prepared by Respondent, stated that the vehicle was towed by Izabelle's. The vehicle of the other motorist, Person C, was not towed. Person C, however, was interviewed by IAB (DX 16) and stated that the officers seemed well acquainted with the tow operator.

February 4, 2009: Accident B

One of the motorists involved in this accident, [redacted], testified that she was involved on this day in a vehicular accident in the vicinity of Avenue O and East 14th Street. The roads were extremely icy that day, and sometime between 0730 and 0830 hours she skidded into a school bus. The front of her car was demolished and the vehicle no longer was operable.

The police arrived a few minutes after another woman called 911. [redacted] interacted with only one of the two officers. She could not say that Respondent looked familiar to her.

The officer suggested to [redacted] that her car be towed to "Isabella," which she also confirmed was Izabelle's Collision after the Advocate clarified. This officer was male. He told [redacted] that Izabelle's would take care of everything.

[redacted] testified that an Izabelle's tow truck had arrived on the scene even before the police arrived. [redacted] recalled that the driver was male and had a Russian accent.

The PAR for the accident (DX 7, PAR no. 358) was signed by Respondent. The PAR stated that [redacted]'s vehicle was not towed. The time on the report was 0815 hours.

Phone Records for February 4, 2009

The phone records for this day revealed a call between Person A and Respondent at 0800 lasting about 17 seconds, and two calls from Person A to Respondent at 0831 hours, one lasting 27 seconds and another lasting 31 seconds. Respondent claimed that he did not recall who his partner was on this day.

Izabelle's Collision

Williams, the IAB investigator, testified that there was an initial complainant that started the investigation. Markov's telephone records revealed hundreds of telephone calls between Markov and Person A.

Williams testified that a motorist did not have the option of requesting a non-DA RP tow truck. If a police officer observed a non-DARP tower attempting to remove a vehicle involved in a collision, the officer must issue a summons known as an LD-6 summons, or possibly seize the tow truck.

Respondent's Statements to IAB

Williams interviewed Respondent and testified that Respondent was not able to provide an explanation as to why a non-DARP tow company towed vehicles from the scene of the collisions.

Respondent also told Williams that between December 2008 and Febru ary 2009, he had his vehicle (the title to which actually was held by his father) repaired at Izabelle's. But the relationship between Respondent and Person A soured because Respondent was not satisfied with the work.

Phone Records in General

Williams testified that between January 2, 2009, and April/May 2009, there were 346 calls between Respondent and Person A, almost all from Person A to Respondent. This would, however, include the very short calls that could have been the instances of multiple cell towers picking up one call. During Person A's interview with Williams, Person A told Williams that he used police scanners to determine the location of the collisions.

Activity Log Entries and LD-6 Summonses

It was undisputed that Respondent did not make any memo book entries for the incidents in question, nor did he issue any LD-6 summonses to non-DARP trucks.

Respondent's Testimony

Respondent testified that when he and Markov used to respond to motor vehicle collisions, Markov generally initiated the PAR as he generally was the recorder. Respondent asserted that he would initiate DARP whenever necessary.

Respondent said that he would spend about 10 to 15 minutes at the scene of an accident. If he requested a tow truck it would take another half hour and he would have to wait at the scene for the truck to arrive.

Respondent contended that on the days where he was the operator and Markov prepared the PARs, Respondent would just play on his phone, read the newspaper, eat breakfast, and essentially wait for him to finish. Respondent stated that his partner could handle a minor two-car collision without Respondent intervening. Respondent said, however, that he also would "block the road, if needed; if there were minor accidents, just move them off to the side; maybe sweep a little bit of glass off the street." Respondent claimed the Patrol Guide did not specify

that both officers were responsible for ensuring that DARP was complied with. He testified that he did not make Activity Log entries because he mostly responded to summonses and not jobs.

Respondent testified that Markov introduced him to Person A. Respondent described his relationship with Person A as a "hello and goodbye" acquaintance. In December 2008 or January 2009, Respondent testified, his vehicle was struck in an accident and he took it to Izabelle's Collison for the body work. But Respondent had an "on going thing" with the shop because the vehicle was not made drivable. During this issue, Respondent and Person A exchanged phone numbers and they had "numerous" conversations about the condition of the vehicle. Izabelle's had the car for about a week and a half to two weeks. Because of his dissatisfaction with the condition of the car, Respondent said he spoke to Person A for "at least a month or so." Respondent believed that he only made two outgoing calls to Person A in the relevant time period.

Respondent also testified that Person A contacted him about tickets that a radio station was offering. Respondent had gone to school for communications and knew many of the disc jockeys at this station. The tickets were for an anniversary show taking place in the fall of 2009.

Respondent asserted that Person A used a police scanner to listen to tow jobs, but agreed that he did not observe police scanners in any of the tow trucks that responded to the scenesof the accidents.

Respondent was aware that there were many non-DARP tow trucks in the confines of the 70 Precinct that would respond to accidents. When they responded, Respondent said he would "yell at them" and tell them not to come around. Respondent recalled only one occasion where an Izabelle's tow truck showed up at an accident. Respondent told the operator to leave. Respondent also spoke to Person A about it and told him, "Do not think this friendship will be anything other than a friendship."

FINDINGS AND ANALYSIS

Whether Respondent is guilty of the specifications turns on whether he knew or should have known that Izabelle's Collision or another non DARP operator was the tow operator at the accidents in question. Because Izabelle's was not on the 66-70 Precincts' DARP list, the radio dispatcher could not have told Respondent that Izabelle's would be responding. Therefore, if Izabelle's came to an accident scene, Respondent would have known it was not authorized.

Credibility Generally

The motorists' statements were straightforward and voluntary. They themselves were not accused of wrongdoing. In fact, they did not necessarily know that they were accusing anyone of wrongdoing by implicating any officers in a violation of DARP. There is no reason to doubt their credibility. In contrast, Respondent claimed to have little to no memory of any of the incidents. Therefore he had little credibility in this regard. As such, the tribunal credits the motorists' version of events.

P ARs Prepared by Respondent

For the accidents of February 2, 2009 (Person D-Person E), February 4, 2009 [A] (Person C), and February 4, 2009 [B] (Gutwein), Respondent prepared the PARs. In the Person D and [redacted] incidents, Respondent wrote that there was no tow. The motorists, however, stated to IAB or testified at trial that Izabelle's Collision towed their vehicles. Schulgasser stated that in his accident, where Respondent wrote that the other vehicle was towed by Izabelle's, the officers appeared to be well-acquainted with the tow operator. This is strong evidence that Respondent knew Izabelle's was the tow operator.

Further, there was early-morning phone contact between Person A and Respondent on February 4, 2009, around the time of those accidents. The Court rejects Respondent's claim that the hundreds of calls in the time period in question in this case related merely to outstanding personal auto-body work, or tickets to a radio station event.

The latter scenario is illogical and just not worthy of belief. The concert was long after the calls in question and Respondent gave no explanation why he and Person A could have had such a major disagreement about his personal car, but Person A still felt okay calling him for concert tickets.

And the former scenario does not explain why, in the vast majority of the calls, Person A was calling Respondent. It was Respondent who should have been calling Person A angrily to complain about the unfinished work. The reality suggests that Person A, or other Izabelle's drivers, listened for tow jobs on police scanners and showed up to the scene, sometimes calling Respondent along the way.

In sum, the fact that Person A and Respondent spoke, and then Person A's tow company showed up at a tow job, suggests that Respondent knew Izabelle's responded to those jobs.

PARs Prepared by Markov With Phone Contact

For the accidents of January 15, 2009 ([redacted]), and January 20, 2009 ([redacted]), Markov prepared the PARs but there was phone contact between Respondent and Person A. The analysis is the same for the PARs Respondent prepared and had contact with Person A: the fact that Person A and Respondent had contact, and Izabelle's appeared, suggests that Respondent knew the non-DARP company was there.

PARs Prepared by Markov With No Phone Contact

For the accidents of November 11, 2008, December 10, 2008 ([redacted]), and January 27, 2009 (Person B), Markov prepared the PARs, and there was no noted phone contact between Person A and Respondent. In fact, for the [redacted] and Person B accidents, a different tow operator came.

But Respondent's claim that he mostly just sat in the police vehicle while Markov did all the work goes only so far. Officers are trained to be observant of their surroundings and are responsible for what occurs at a given job. Respondent's see no evil defense is rejected. It is just not possible that Respondent sat in the car for as long as 45 minutes and never saw Izabelle's, East Coast or Primo Collision show up at any of these accidents.

Specification No. 1.

The first specification charges that Respondent allowed "a non-DARP towing company" to remove the vehicles in question, "when said tow truck was not dispatched by the Communication Section." The evidence proved that Respondent was complicit in allowing the companies to remove the vehicles. In seven of the eight occasions charged, Izabelle 's or East Coast Collision were the tow companies and neither was on the DARP rotation list. On the eighth occasion, Primo Collision towed Charles's vehicle. Primo was on the DARP list for the 66 and 70 Precincts, but as the investigator pointed out. Respondent did not contact the Communications Section to request the tow and Primo was not dispatched by the radio dispatcher. Thus, Respondent is Guilty of Specification No. 1 as written.

Specification No. 2

The second specification charges that Respondent violated DARP by failing to issue an LD-6 summons as the notice of violation against the "unauthorized towing company" in question when it appeared at the scene of the accidents and towed the vehicles. All three companies on all eight occasions were unauthorized, either because they were not on the DARP list or were not dispatched by the Communications Section. The IAB investigator testified credibly that officers were required to issue LD-6 summonses in these situations. It was undisputed that he failed to do so. Therefore he is found Guilty.

Specification Nos. 3 & 4

Both of these specifications relate to Respondent's alleged failure to communicate with the Communications Section. The Court rejects Respondent's argument that because he was the operator and either Markov or Campbell the recorder for the incidents in question, he had no obligation to contact the dispatcher. The Advocate persuasively argued that both officers were responsible for the proper completion of the job. Respondent could not sit back and relax, and allow Markov to do everything while disclaiming all responsibility for any violations of the Patrol Guide, during something as quotidian as responding to a minor traffic accident. His lack of contact with the radio dispatcher thus cannot be excused. Cf. *Case Nos. 2011-6501, -6520 & 2012-7357*, p. 8 (Dec. 17, 2014) (recorder in conditions auto was found guilty of failing to notify radio dispatcher of beginning a vehicle pursuit, but supervisor and operator were not guilty of failing to do so "during such a tense and fast-moving incident.").

The third specification charges that Respondent violated DARP by not requesting a DARP company and by allowing a non-DARP company to remove vehicles. As the specification is written, the "and" is important. On all eight occasions, Respondent failed to

request a DARP company via radio. On seven, he allowed the non-DARP companies Izabelle's and East Coast to remove the vehicles. For the Charles accident, however, Respondent allowed Primo Collision to remove the motorist's vehicle. Primo was, in fact, on the DARP list.

Thus, Respondent is found Guilty in Part of Specification No. 3.

The fourth specification charges that Respondent failed to give a proper radio disposition to the Communications Section during the eight accidents in question, in that he failed to inform them that a vehicle was towed from the scene. It was undisputed that Respondent failed to do so and thus he is found Guilty.

Specification No. 5

Respondent is charged here with failing to make Activity Log entries for the accidents in question. He testified that he did not do so because he mainly was doing summons enforcement, not responding to jobs, and therefore put no jobs in his memo book. In fact, Respondent responded to jobs when he responded to the accidents. It is the most basic Department procedure that he was obligated to make a notation in his Activity Log about them. Therefore he is found Guilty of Specification No. 5.

Specification No. 6

The sixth specification charges Respondent with inaccurately stating for the three PARS of February 2, 2009, and February 4, 2009, that the vehicles were not towed. For all three accidents, there was credible testimony or statements from either the motorists that the vehicles were towed.

For the first and third accidents on those dates (Person D, Person E and [redacted], respectively), "N/A," not applicable, is written for whether and by whom the vehicles were

towed. For the second accident (Person C), however, it was undisputed that Person C's vehicle was not towed. That PAR, however, did list Izabelle's as towing the other vehicle, whose driver fled on foot. Therefore, Respondent is found Guilty in Part of this specification.

Specification Nos. 7 & 8

The final specifications relate to the phone records that uncovered Respondent's on-duty use of his cell phone while communicating with Person A. The seventh specification charges that Respondent engaged in "improper use of his personal cellular telephone." As noted supra, there was significant circumstantial evidence suggesting that Person A's modus operandi was to listen to a police scanner and dispatch Izabelle's trucks to accident scenes, while contacting Respondent on the phone. It was not necessary for the Department to prove that Respondent affirmatively helped Person A in this regard. In fact, this was never established. But even if Respondent merely was complicit in this scheme, it was improper for him to communicate with Person A on duty when he knew that Person A was trying to obtain business. Therefore, Respondent is found Guilty of Specification No. 7.

Specification No. 8 charges Respondent with conducting "personal business while on Department time" through use of his cell phone. It is indicated that this is a reference to Respondent's assertions that the calls between him and Person A were due to a disagreement about body work on Respondent's personal vehicle, and that Person A was at the same time pestering him for concert tickets.

Although the specification cites Patrol Guide §203-06 (17), that paragraph relates to recording by audio, video or still photography by use of a personal device. (16) bars usage of electronic or digital devices while on duty, but the following Note states that members may carry

cell phones "when conducting official Department related business, or on an assigned meal, or as otherwise authorized by competent authority."

Contrary to the Department's view, this provision does not totally bar non-Department use of a cell phone while on duty. Otherwise, any non-Department use would overshadow the permission given to carry the phone in the first place. Rather, the provision in the Patrol Guide allowing the carrying of cell phones was introduced in 2010 to liberalize policy concerning cell phone use. Previously, all cell phones were banned. The Department failed to produce sufficient evidence that Respondent's cell phone use was so excessive or abusive as to violate the Patrol Guide. Therefore he is found Not Guilty.

To the extent that Specification No. 8 refers to arrangements with Person A for towing services, it is dismissed as duplicative of Specification No. 7.

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 1, 2004. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department recommended termination as a penalty. After that recommendation was made, however, Markov's case was approved by the Police Commissioner. Markov received a penalty of 60 vacation days and was placed on one year of dismissal probation. The trial commissioner noted that termination was not supported by previous DARP cases in this tribunal. Further, there was no evidence that Markov benefitted financially or in any other tangible way from allowing Izabelle's Collision to receive towing jobs in violation of the law and Patrol Guide (*2425*, pp. 49-50).

In Respondent's case, there is a similar lack of tangible benefit. He simply was doing Person A a favor. Further, the evidence as a whole strongly suggested that Markov was the prime mover in steering towing business to Person A and Izabelle's in violation of DARP. Respondent literally was just along for the ride at times.

Therefore, the 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 Administrative Code §14-115 (d), during which time he is to remain on the force at the Police Commissioner's discretion and may be terminated at any time without further proceedings. The Court further recommends that Respondent forfeit 45 vacation days.

Respectfully submitted,

David S. Weisel
Assistant Deputy Commissioner – Trials

APPROVED

SEP 21 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GEORGE MASTROKOSTAS
TAX REGISTRY NO. 935263
DISCIPLINARY CASE NO. 2010-2403

Respondent received an overall rating of 4.0 "Highly Competent" on his last three annual evaluations in 2014, 2013 and 2012. [redacted] He has 11 medals for Excellent Police Duty, one medal for Meritorious Police Duty, one medal for Exceptional Merit, and one medal for Meritorious Police Duty-Integrity

On June 23, 2010, Respondent was placed on Level 2 Discipline Monitoring as a result of this case but otherwise has no prior formal disciplinary record.

For your consideration.

David S. Weisel
Assistant Deputy Commissioner – Trials