

## ***Dep't of Correction v. Katanic***

OATH Index No. 2117/10 (Oct. 15, 2010), *appeal dismissed*, NYC Civ. Serv. Comm'n Item No. CD 11-03-D (Mar. 2, 2011), **appended**

Charges sustained against correction officer, whose job it is to train other officers in the safe use of firearms. Officer possessed numerous firearms he refused to disclose to the Department, and lied repeatedly to top agency officials about whether he owned such guns and about the number and identity of those weapons, in violation of Department rules and law. Two of the rifles were shown to be illegal assault weapons. ALJ recommends termination of employment.

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### **NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**

*In the Matter of*  
**DEPARTMENT OF CORRECTION**

*Petitioner*

*- against -*

**JASON KATANIC**

*Respondent*

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### **REPORT AND RECOMMENDATION**

**JOAN R. SALZMAN**, *Administrative Law Judge*

This disciplinary proceeding was referred by petitioner, the Department of Correction (“the Department”), pursuant to section 75 of the Civil Service Law. Respondent Correction Officer Jason Katanic has been employed by the Department as a correction officer for 13 years. His job is to instruct other officers in the safe use of firearms and to teach them shooting skills at the firing range the Department shares with the Police Department (Tr. 24, 229). He is charged with having deliberately concealed from the Department his possession of numerous personal protection firearms and additional recreational firearms, in violation of law and agency rules and directives. Respondent allegedly failed and refused to disclose these guns on required agency forms or to register them according to law and departmental regulations. He is further charged with repeatedly making false statements to agency officials by denying that he possessed any of these guns, with disgorging the guns piecemeal and only when Department captains

escorted him twice to his home, and with producing more guns from his home on these occasions -- and even after these two home visits -- than he had previously disclosed he owned (ALJ Ex. 1).

A hearing was conducted before me on July 7, 2010. After the parties submitted post-trial briefing, the record was closed on August 25, 2010. The charges were numbered 046/10 and 047/10. At the trial, the Department withdrew specification 3 of Charge 046 on the basis that it was duplicative (Tr. 6). The Department presented the testimony of Supervising Warden Peter Panagi, Assistant Deputy Wardens Michael Maurizi and Pennye Jones, Captains John Sullivan, Dennis O'Reilly, Emelia Knox, Brian Calloway, and Vincent Valerio, and submitted documentary evidence in support of the charges. Respondent testified in his own behalf. Respondent also submitted documentary evidence.

The Department's evidence was overwhelming and undisputed; liability was established. Respondent's post-trial brief indicates that the only controverted issue in this matter is the penalty (Resp. Memo. of Law at 1) ("Respondent's position at trial was, and remains that this matter is one of penalty only"). For the reasons set forth below, I recommend that all charges be sustained and that respondent's employment with the Department be terminated.

### ANALYSIS

The Department presented a very cogent case, beginning with an overview provided by Supervising Warden Panagi, the material aspects of which were corroborated by the Department's succeeding witnesses. In sum, the Department showed that respondent filed the requisite paperwork for only two guns in 2007 and 2008 (two Glockes) (Pet. Exs. 7, 8). But respondent concealed from the Department that he also had in his possession as of January 2010, without the required written permission, *at least five more, undocumented handguns*: a Ruger, a Kimber, a Sig Sauer, a Beretta, and an HK (Pet. Ex. 9). Respondent lied about having these guns when first questioned by superior officers, and only haltingly surrendered them to captains of the Department upon their visits to his home in January 2010. Because respondent continued to lie, when caught, about exactly how many unregistered guns he really had, it took not one, but two trips by Department captains to respondent's home to collect these guns. On these successive visits by the captains, he came up with more handguns he had denied owning and an additional three rifles or long arms (Tr. 30), two of which were illegal assault weapons, that he also had concealed from top personnel of the Department (Panagi: Tr. 22-80).

This is not a case of a minor oversight in filing paperwork. Respondent had a lot of guns. He deliberately concealed these guns from the Department and then lied about it repeatedly. Gun safety is a matter of grave concern to a law enforcement agency and dishonesty combined with flouting of the agency's directives and rules and of state penal law closely regulating guns distinguish this case from prior disciplinary cases involving isolated failures to file required paperwork. The magnitude of respondent's undisputed misconduct was impressive.

According to the testimony of Assistant Deputy Warden ("ADW") Maurizi, a 22-year veteran of the agency and the supervisor of the Firearms and Tactics Unit (Tr. 80-81), the Department began to investigate respondent's activities with respect to his personal firearms upon hearing complaints from Police Department personnel. The two departments share the firing range at Rodman's Neck in the Bronx (Tr. 87). Contrary to respondent's theory that he is being persecuted here based on his youthful offender status,<sup>1</sup> the factual record shows without doubt that it was not respondent's early history, which he disclosed on his job application 13 years ago (Resp. Ex. A), that led to the charges here, but rather a report from a confidential police informant, who told ADW Maurizi that respondent was in possession of illegal weapons (Tr. 87-91). It was respondent, not the Department, who introduced his job application into the record and placed his youthful offender status in issue throughout the trial of this matter.

Indeed, when the Police Department's Integrity Control Lieutenant made ADW Maurizi aware of an incident involving respondent years before, ADW Maurizi made his supervisor aware of the conversation, and did nothing at all about it. Even when approached "from time to time" for a period of more than a year by several police officers who asked if he could change respondent's assignment, he did nothing: "There really wasn't any action I could take" (Tr. 88, 92-93). On cross-examination, ADW Maurizi elaborated: "There wasn't anything that could be done. . . . I wasn't trying to use it against him. I knew about it, and that was it" (Tr. 93). He added that police personnel wanted respondent's assignment changed because they were aware of respondent's record as a youth, and they looked to ADW Maurizi as the ranking supervisor at the firing range to change respondent's assignment, but ADW Maurizi did not take any such action (Tr. 93). When he told his supervisor about the complaints, "basically the opinion was, he

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<sup>1</sup> Respondent's counsel stipulated at the close of the hearing that there was a sealed case relating to respondent as a juvenile that was brought to the attention of the Department and that the fact that respondent had a juvenile case could be mentioned in this report and recommendation (Tr. 298-300). Respondent introduced his job application (Resp. Ex. A), in which he disclosed this matter to the Department, at least in part, 13 years ago.

was already assigned there, he was working there, there wasn't an issue with his performance as an instructor, so the matter was adjudicated back then, we hired him, and that was it. And that's how I left it" (Tr. 93-94). The adjudication referred to a youthful offender incident as to which the records had been sealed (Tr. 94-95).

Subsequently, ADW Maurizi was approached by an informant at the firing range parking lot. This informant identified himself as a New York City police officer and told ADW Maurizi that respondent "was buying guns that the Department didn't know about, and he had stuff that he shouldn't have" (Tr. 89). The informant refused to give his name. When pressed by ADW Maurizi for more information as to what sorts of guns, the informant said, "I know the guy's dirty" (Tr. 89). Only upon receiving that information, did ADW Maurizi call the Police Department Integrity Control Lieutenant and Captain Vincent Valerio of the Inspector General's Office (the "IG") and report the complaint from a police officer that respondent had undocumented guns. Captain Valerio asked ADW Maurizi for information on the guns respondent had reported to the Department and told him to discuss the matter with no one, not even his superiors. ADW Maurizi complied and had nothing further to do with respondent, who was reassigned and removed from the Firearms and Tactics Unit in January of this year (Tr. 89-91).

When ADW Maurizi received the allegations that respondent had unregistered guns, he was obliged to report this to the Inspector General. Mayoral Executive Order No. 16 § 4(d) (1978), as amended.

It is undisputed that private citizens in New York State must apply to the local police in the jurisdiction where they live for permits to carry handguns and that peace officers have an exemption from these requirements by virtue of their jobs. The Department strictly regulates this exemption by requiring its correction officers, who are peace officers,<sup>2</sup> to apply to the Department for permission to buy such guns (Pet. Ex. 1). Correction officers must file what is known as a "C" Form with the Department. If permission is granted for an officer to buy a personal firearm, the officer then has 60 days in which to purchase and register the gun with the Department, which forwards the C Form to the State Police (Pet. Ex. 6; Tr. 35). It is only because of their status as peace officers that correction officers have the privilege of buying guns, without the permits required of civilians, only after the Department reviews and approves

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<sup>2</sup> A correction officer is a "peace officer" under Criminal Procedure Law section 2.10(25) (Lexis 2010).

the application for the purchase. In this way, the Department regulates guns and requires documentation from each of its officers showing exactly which guns they possess.<sup>3</sup> Without departmental approval, the purchase of a gun for private use by a correction officer is in violation of law. Absent the civilian permit system, the officers' mandatory documentation on these forms represents the method by which the State Police track handguns in the state. Gun dealers must notify the State Police when they sell guns to a peace officer, and these sales are known as exempt sales (Maurizi: Tr. 83-86). Significantly, the Department's Directive sets forth its policy, including the following salient provisions:

- The Department shall use agency-wide procedures, including a standardized form, for all requests to purchase firearms. In addition, the Department shall closely monitor all requests for the purchase of handguns.
- The Department shall continue to adhere to a system of firearm procedures necessary to ensure that security is maintained while providing a safe workplace and preserving a safe environment.
- The Department shall monitor all firearm transactions made by members of the Department by maintaining a personal firearms record for each member of the Department. This comprehensive record shall list all individual firearm transactions for each member.
- The Department shall pursue these goals while maintaining compliance with local, state and federal mandates.

Directive 4511R-A § I.B at 1-2 (July 15, 1996, as amended June 16, 2006) (Pet. Ex. 1).

Under section III.A of Directive 4511R-A, respondent as a correction officer was required to file the necessary form (4511-C) to apply for permission from the Commanding Officer to purchase a personal handgun: "*A separate application to/and approval from the member's Commanding Officer must precede each purchase of an additional firearm.*" Directive 4511R-A, §§ III.A.3, III.A.6 at 7-9 (emphasis supplied). In addition, the authorization from the Commanding Officer is only good for 60 days. If that time expires, the officer must submit a new application. The officer has 30 days from the purchase to report to the Firearms and Tactics Unit to have the gun inspected and to qualify to use it. The Directive provides that "These procedures apply to all members of the Department. No member of the Department,

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<sup>3</sup> See Penal Law sections 265.20(a)(1)(c) and 400.00(3)(b), governing exemptions applicable to peace officers. Under section 400.00(3)(b), the licensing officer has duties to determine, *inter alia*, that an applicant has the proper training and supervision in the use of the firearm and that the applicant "does not appear to be or pose[] a threat to be, a danger to himself or to others," and further that that the licensing officer has met with and investigated the applicant, and checked for any previous criminal record of the applicant. The licensing officer has other state law duties under these provisions to report to police before approving the application from a correction officer for each gun sought to be purchased.

regardless of rank/title, assignment or employment status is exempt from any state or local standards and/or the provisions contained herein.” Directive 4511R-A, § III.A.3-7.

Section IV.E of the Directive requires that: “*Prior to assuming ownership of a personal handgun, the member must have, in accordance with section III.A. of this Directive (i) Written Authorization from their Commanding Officer . . .*” Directive 4511R-A, § IVE.1(a)(i) at 30 (emphasis supplied). In addition, respondent was required to register each firearm with his command by supplying the name of the manufacturer, model, caliber and serial number. He was obligated to secure the weapon with the command if it was a “carry” handgun, present the original store receipt or notarized bill of sale, which must be filed in his personnel folder, and retain a photocopy of the store receipt or notarized bill of sale. Directive 4511R-A § IV.E(1)(b). All purchases of handguns must be recorded in the Department’s Personal Handgun Transaction Logbook. *Id.* § IV.E.(3) at 32-33. This book records the member’s name, rank, and shield number, the type of authorization, the type of handgun (“carry” or “recreational”), the date the request to buy or sell the gun was approved, the date a carry gun was secured, and the date of the transfer from the bill of sale or receipt. *Id.* In addition, the Directive makes specific reference to the requirement in Penal Law section 400.00(12-c) that all firearm acquisitions and dispositions by members of service be reported promptly to the New York State Police, on the C Form. *Id.* at 33-34.

The Department classifies handguns into two categories, according to Warden Panagi: (1) the Department may authorize a correction officer to carry an off-duty weapon for personal protection; and (2) an officer may have certain recreational firearms, which do not require prior authorization from the Commanding Officer, but nonetheless must be disclosed to the Department immediately with the original bill of sale, and require departmental authorization (Directive 4511R-A § I.C.2; Tr. 30; Pet. Exs. 1, 5). As an officer at the firing range, respondent was required to submit a “Request For Personal Handgun” (known as Form 4511-C) to Warden Panagi before he could purchase a handgun (Tr. 24-25; Pet. Ex. 4). Directive 4511 and Institutional Memoranda 065/06 and 071/06 set forth and remind officers of these requirements (Pet. Exs. 1-4). Notably, Institutional Memorandum No. 071/06 states that all staff assigned to the firing range (the Firearms and Tactics Unit):

are directed to ensure compliance with all departmental orders and directives as they relate to the handling, possession and carrying of Personal Protection Firearms. Firearms Instructors are reminded that they receive no special

consideration in this regard and are expected to comply with all relevant departmental policies and procedures. Failure to comply may result in appropriate disciplinary action.

(Pet. Ex. 3). This memorandum has specific application to respondent because he served as a firearms instructor for the Department. After submitting a Form 4511-C, correction officers like respondent must then wait for permission to purchase the listed gun. Permissions are granted or denied quickly, within days, by Commanding Officers (Wardens) on Form 4511-D, "Determination of Personal Handgun Request" (Tr. 28-30; Pet. Ex. 5).

Warden Panagi explained that "[t]he Department has a great need to ensure and account for each and every firearm the member of service owns. . . . [T]his also allows the facility to review and ensure that they know what handguns a member of service is in possession of, and whether that member of service may have had any incidents relating to any of the firearms that they own at the present time, whether they suffered the loss of a firearm, whether they were involved in an incident involving a firearm" (Tr. 33). The Personnel Office reviews and completes a section of Form 4511-C submitted by an officer (Pet. Ex. 4), and reviews the employee's history; the Deputy Wardens review and complete their sections; and the Warden serving as Commanding Officer signs the form as either approved or disapproved (Tr. 34). The request form requires a listing of all handguns the correction officer presently possesses when he or she applies to purchase or sell a gun (Tr. 33; Pet. Ex. 4). If approved to purchase a gun, the officer must sign and acknowledge receipt of the agency's determination on Form 4511-D (Pet. Ex. 5; Tr. 34). He must then fill out the attachment to the 4511-C Form, the C Form, entitled "Acquisition or Disposition of Firearms by Peace Officers -- Report to N.Y. State Police" (Pet. Ex. 6). That form is governed by Penal Law section 400 (Tr. 38-39, 74-75). The Department's Firearms and Tactics Unit takes the C Form, checks the firearm, verifies the serial number, completes the appropriate section on the form, and forwards the completed C Form to the State Police in Albany (Tr. 35).

Respondent served as a firearms instructor for about two years before the hearing in this case (Tr. 40). Warden Panagi received Deputy Warden Maurizi's report that police sources had told him that they recognized respondent and that he may have been involved in a crime years ago. Warden Panagi checked with Assistant Commissioner of Personnel Alan Vengersky. Mr. Vengersky checked respondent's application for employment and confirmed to Warden Panagi

that respondent had made a disclosure on his application about a youthful offense. This was in late 2009 (Tr. 43-45). Asked if he took any action based on this information, Warden Panagi credibly testified at trial that he took no further action as to respondent's ancient record: "None" (Tr. 43). Asked why not, he elaborated: "Well, that had no bearing on his current performance. I was not involved in the hiring process. Mr. Vergersky was. And as far as I was concerned, Officer Katanic was performing well, had a clean record. There was no reason for me to take any further action" (Tr. 44, 64). Warden Panagi also spoke with his immediate superior, Chief of Administration Valerie Oliver, about respondent and his prior record, but again took no action (Tr. 45). After that, a newspaper article concerning respondent's record appeared, and Warden Panagi spoke with the Chief of Department, Larry Davis, and with Captain Vincent Valerio of the Department of Investigation about respondent and his record as a youth (Tr. 46-47). Warden Panagi reassigned respondent temporarily to the Academy pending the outcome of the investigation of allegations about respondent, and again took no further action at that time (Tr. 45-47).

It was only after Warden Panagi received word from Chief Davis and Captain Valerio that respondent had unauthorized firearms that the Warden began to take action to confiscate all firearms in respondent's possession; Warden Panagi received a fax on January 22, 2010, from Captain Valerio of State Police records showing that respondent had guns for which he had not filed Form C or the other requisite paperwork (Tr. 48-49). Warden Panagi credibly testified on cross-examination that the decision to have respondent surrender his weapons was based solely on respondent's failure to comply with the firearms policy and protocol, and not on his record as a youth (Tr. 70). Warden Panagi exhibited no animus toward respondent. To the contrary, he candidly acknowledged that respondent had done good work at the range (Tr. 63). The Warden did not embellish his testimony, and his direct testimony was no different from the testimony he gave on cross-examination.

Captain Valerio investigated the allegation that respondent had illegal, unregistered guns in his possession. The Captain is a 30-year veteran of the Department on special assignment for the last decade of that time to the New York City Department of Investigation (Tr. 192-93). He checked the New York State Police Registry by sending a letter to the Registry asking for the records of guns registered to respondent (Tr. 193-95; Pet. Ex. 20). Liz Barker of the State Police responded that the State Police had C Forms on file for two Glock weapons of respondent. She



also turned up dealer records showing that he had purchased three other guns, but the State Police had no C Form registration records on file for those. Ms. Barker informed Captain Valerio by fax dated December 11, 2009, that respondent must file the C Forms “so that he can possess [the additional three guns] legally” (Pet. Ex. 20). Thus, the State identified a .45 caliber Kimber, which respondent purchased in April 2004, a 9 mm Beretta he purchased in September 2004, and a .22 caliber Ruger he purchased in October 2004, all of which respondent possessed without departmental permission (Pet. Ex. 20).

Captain Valerio testified that there was a discrepancy between the number of guns respondent had registered with the Department and the number of guns he surrendered at the time of his suspension (Tr. 198). Captain Valerio and his partner visited respondent at Rikers Island in April 2010 (Tr. 216), and asked him why he had not registered the weapons with the Department. Respondent told the Captain that “if he had put them down at a late date, that he would be in trouble with the agency” (Tr. 200).<sup>4</sup> Captain Valerio prepared a closing report of his investigation on June 17, 2010 (Pet. Ex. 21). He wrote in the report that respondent had not reported three handguns to the Department as mandated by the New York State Penal Law, section 400.00(12-c)(a) and admitted that he had purposely omitted them from forms filed with the Department. Moreover, after two inquiries by the Commanding Officer, respondent “hesitantly turned in a total of 9 handguns and 6 long arms.” All the weapons were taken into the possession of the Office of the Inspector General and vouchered with the New York City Police Department lab for forensic examination (Pet. Ex. 21). In addition to five handguns respondent failed to register with the Department, Captain Valerio determined that of the six long arms respondent ultimately surrendered to the Department, two were assault weapons as defined by Penal Law section 265<sup>5</sup> and New York City Administrative Code section 10-301(16) (semiautomatic rifles and shotguns). The Captain wrote that peace officers have no exemption from the ban on assault weapons in New York City unless those weapons are used in the performance of their official duties (Tr. 202-03: Pet. Ex. 21).

Captain Valerio also investigated the allegation that respondent had a sealed juvenile case and determined that respondent had “properly disclosed” it on his employment application (Tr.

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<sup>4</sup> Captain Valerio stopped questioning respondent in his interview as soon as respondent said he wanted a lawyer (Tr. 207; Pet. Ex. 21). Respondent’s counsel stipulated on the record that she was not seeking to exclude evidence based on any argument that respondent was not given an opportunity to seek representation in his interview with the Inspector General’s Office or in his other meetings with the Department (Tr. 292-94).

<sup>5</sup> Criminal Procedure Law § 265.00(22)(“assault weapons” definition includes certain semiautomatic rifles).

211). Respondent placed his job application in evidence to show that he had truthfully disclosed his record on his job application (Resp. Ex. A). Upon redirect examination, and only after respondent had introduced his disclosure of his sealed case on his job application during re-cross of Captain Valerio, to bolster respondent's own credibility, the Captain indicated that respondent had not disclosed all the circumstances of the juvenile case (Tr. 224-25). Respondent opened the door to this redirect (Tr. 222-26). Nonetheless, I decline in this public decision to go into the details of the juvenile case, and do not rely on those facts, given the sensitivity of the matter under law<sup>6</sup> and the fact that respondent was not charged with falsifying his job application. Likewise, I need not and do not base my credibility findings on respondent's testimony on cross-examination (Tr. 259-62), relied upon by the Department (Pet. Brief at 11), as to the completeness of his job application or his recollection of the circumstances of his youthful offense because his dishonesty was fully and independently established by his own false answers to the Warden and the Captains about how many guns he really owned and by the material omissions he made in the papers he filed with the agency concerning the two Glocks that he did disclose (Pet. Exs. 7 and 8). *See Dep't of Sanitation v. Menzies*, OATH Index No. 678/98, at 2-3 (Feb. 4, 1998), *adopted*, Comm'r Dec. (Feb. 17, 1998), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 98-101-A (Sept. 9, 1998) (credibility is assessed in light of common sense and human experience). The chronology of events following the commencement of the investigation was as follows:

*Thursday, January 21, 2010:* Respondent, who had been assigned to the firing range to train other correction officers in the proper use of firearms, was reassigned to the Academy (Tr. 46-47).

*Friday, January 22, 2010:* Based on the discrepancies between the State Police records and the Department's records showing that respondent had secretly purchased guns for which he had no departmental authorization, Supervising Warden Panagi directed Captain Sullivan, the Tour Commander at the Academy (Tr. 106), to confiscate all firearms in respondent's possession (Tr. 48-49). The approved forms for respondent's two Glocks were in his personnel folder in accordance with agency procedure (Tr. 52-53; Pet. Exs. 7, 8). On orders from Chief Larry

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<sup>6</sup> Under the Criminal Procedure Law section 720.35, youthful offenders are afforded certain employment protections and their court records are confidential, but that confidentiality as it pertains to both the court records and the facts of the underlying matter can be waived. *See Matter of Sean K.*, 50 A.D.3d 1220 (3rd Dep't 2008); *Matter of Barnett v. David M.W.*, 22 A.D.3d 575 (2nd Dep't 2005).

Davis, and in consultation with Warden Panagi, Captain Sullivan directed respondent, in the presence of Captain O'Reilly, who works for the Chief of Department (Tr. 127), to surrender his weapons (Tr. 107-110). Respondent handed over to Captain Sullivan his Glock 19 (Pet. Ex. 11), and falsely told both captains he had a Glock 17 at home, but *no other weapons*: “No.” (Tr. 49, 52-53, 110, 129; Pet. Exs. 7, 8) (emphasis supplied). When Captain Sullivan asked respondent if he had any long arms, he again said “No” (Tr. 110, 129) (emphasis supplied). Captains Knox, Chairperson for the Law and Compliance Department of the Academy (Tr. 142), and Brown followed respondent to his home, where respondent surrendered to the captains the Glock 17 in the late afternoon (Tr. 54, 110-116, 144, 146; Pet. Ex. 12). Captain Knox testified that respondent was upset about having to surrender his weapon, was uncooperative at first, and he was venting his frustration until she calmed him down (Tr. 146). The 24th and 25th of January were Saturday and Sunday, and there were no developments over the weekend (Tr. 54-55).

*Monday, January 25, 2010*: Captain Calloway, the Personnel and Administration Captain (Tr. 172), may have phoned respondent at his home and instructed him to turn in all his weapons. Respondent arrived at the Academy in the morning with four additional guns: a Smith & Wesson .357 Magnum, a Ruger .357 Magnum, a Kimber .45 automatic, and a Sig Sauer .22 automatic, and surrendered them to Captain Calloway (Tr. 54-55, 174; Pet. Exs. 9, 17). The only factual dispute in the case was whether Captain Calloway called respondent and ordered him to produce these weapons that morning or respondent simply brought them in on his own, albeit after he already knew the Department had ordered him to do so. Captain Calloway did not include in his written report dated January 27, 2010, the point that he called respondent at home in the morning and ordered him to produce the rest of his guns (Pet. Ex. 17; Tr. 187). Rather, Captain Calloway wrote that respondent reported to the Personnel Office at 10:15 a.m. on January 25, 2010, and the Captain told him to surrender all recreational firearms in his possession. Captain Calloway's report then quoted respondent as having responded: “I figured that, that is why I brought them in with me” (Pet. Ex. 17). That quotation is more consistent with respondent's version, that there was no call that morning from Captain Calloway, than with the possibility that the Captain called him on the phone earlier that day.

I find that the Department did not establish that Captain Calloway called respondent at home on January 25th. But the point is immaterial because whether respondent was ordered to disgorge his guns not only on the 22nd by one Captain, but again on the 25th by yet another

Captain, under either scenario, respondent continued to hide from the Department the full extent of his gun collection, and continued to lie about how many and which guns he owned, to withhold them, and to disgorge them piecemeal as the Department's scrutiny of his gun collection intensified. In no way was respondent a volunteer when he surrendered more guns on January 25th. Respondent claimed that Captain Sullivan had not called him that morning: "I took it upon myself to just start bringing my weapons in" (Tr. 239). His argument that he volunteered these guns lacks merit and is incredible. He had already been escorted home to produce one weapon. And he was already under orders to produce all his guns and under investigation for his gun ownership when he brought in another set of guns that morning. Though he claimed at trial falsely that it was his idea to "start" bringing in his guns, in fact, he was deliberately hiding still more guns at this home, even as he was producing a new installment of, on that occasion, four guns to his employer on January 25th (Tr. 239-40). The more respondent testified, the more it became clear that he never intended to make the required disclosures to and obtain permission from the Department to purchase guns. Asked by his own counsel why he had not turned in all of his weapons on the morning of the 25th, respondent gave the following remarkably damning answer:

Well, regardless of what Warden Panagi had said before, that it only takes a few days for approval for firearms, it's not like that when you work in regular jails. It sometimes takes months. And I had bought that .45, it's a custom tactical law enforcement for competition, and I used it in several Police Olympics. But I had known that I wanted to bring a gun like that with me to the Police Olympics, and I knew it would take a while to get permission for it, so I bought it without getting permission for it.

(TR. 240). Respondent admitted further that he knew the requirement that he complete the C Form so that his Command could forward that form to the State Police, but he did not follow the rule (Tr. 241).

Warden Panagi compared respondent's personnel file documents concerning guns to the guns he surrendered and made a chart of the discrepancies, noting the make, model, caliber, and serial number of each of the guns that respondent turned in by taking the information from the guns themselves (Pet. Ex. 9). Warden Panagi found paperwork showing that respondent did have approval for the Smith & Wesson and the Ruger as recreational firearms. There was no permission for the Kimber and the Sig Sauer (Tr. 57; Pet Ex. 9). The Warden was troubled --

rightly so -- that respondent was not telling the truth when he told Captain Sullivan that he had no other firearms, and then disgorged four additional guns after the weekend (Tr. 58).

Later that day, the Warden called respondent into his office. In the presence of ADW Jones, the Acting Commanding Officer of the Academy, then Executive Officer of the Academy (Tr. 164), and Captain Calloway, the Personnel Supervisor, the Warden asked respondent if he had any other handguns or long arms. In the course of this 15-20 minute conversation, during which respondent had ample time to consider the truth of his answers, he lied again and said he had *no* other handguns. Compounding his problems, he told his superior officers that he had *three* long arms at home (Tr. 58-59), giving the lie to his statement three days before to Captains Sullivan and O'Reilly that he had *no* other weapons. The number of long arms would turn out to be another lie. On January 26, 2010, ADW Jones prepared a near-contemporaneous memorandum recording her knowledge of the events of January 25th. She wrote that Warden Panagi was in his office with Captain Calloway on January 25th, about 1:30 p.m., and that Warden Panagi specifically asked respondent if he had any handguns in his possession. Respondent replied, "No, I turned all my handguns in. I have none in my possession" (Pet. Ex. 16). Warden Panagi asked respondent the same question several times and respondent repeatedly gave the same answer. She also confirmed Warden Panagi's account of respondent's assertion at that meeting that he had three long arms (Pet. Ex. 16; Tr. 168-69). Captain Calloway of the Academy provided additional testimony further corroborating Warden Panagi's and ADW Jones' account of the events and the Department also submitted three contemporaneous memoranda prepared by Captain Calloway documenting respondent's actions (Tr. 172-75; Pet. Exs. 17-19).

Respondent also defied the Warden's order to submit a report listing all the firearms he owned, claiming, evasively, that the information was at home. The Warden asked him to list only the make and model, even without the serial numbers, and respondent refused, stating that he wanted an attorney (Tr. 59). This was not a criminal matter at that point and the Warden testified that respondent has a duty to answer questions from his Commanding Officer about departmental business (Tr. 74). ADW Jones confirmed Warden Panagi's account of the Warden's order to respondent to submit a list of his firearms, of respondent's refusal, and of the reasons he gave for that disobedience (Pet. Ex. 16). Respondent never submitted the report, with or without benefit of counsel, though he had ample opportunity to consult with an attorney and

comply with the order. The Warden then asked a Captain to go to respondent's residence with another supervisor and collect the three long arms. In the late afternoon of January 25th, Captains Knox and O'Reilly escorted respondent to his home, where respondent handed to them not three, but *six* long arms (Tr. 60-61, 131). Respondent went upstairs in his house, then downstairs and produced five of the six rifles. As the Captains went to secure those rifles in the agency van, respondent said, "Wait a minute, I have one more to get out of the garage," and produced the sixth long arm (Tr. 132, 152-53).

Captain O'Reilly had been told he was to pick up only three long arms, so he was surprised when respondent produce twice that many, "because it's like, they kept coming and coming" (Tr. 132). Asked if he was concerned for his safety, Captain O'Reilly, who was wearing a bullet-proof vest for this assignment, testified, "I was uncomfortable" because respondent had more guns than he had disclosed to Captain Sullivan in Captain O'Reilly's presence, and Captain O'Reilly did not expect that there would be more weapons. Now he was concerned and wondering, "[W]hat else is coming out? I didn't know" (Tr. 133, 138-39). Neither did Captain Knox feel safe returning to respondent's home to retrieve more guns because: she heard on the morning of January 25<sup>th</sup> that respondent had turned in more weapons; she and Captain Brown had already made a trip to respondent's home to pick up one gun and she was now being sent out again to retrieve more guns; and she did not know exactly how many more guns respondent really had (Tr. 148-49, 154, 161). She also wore a ballistic vest before proceeding with the assignment to accompany respondent to his home to pick up more guns (Tr. 149). Captains O'Reilly and Knox both wrote memoranda setting forth their retrieval of the guns on January 25th, with an inventory of the weapons respondent surrendered (Pet. Exs. 14, 15). Two of the rifles listed in Captain Knox's memorandum were highlighted in bold letters because she believed those two (a CSG .22 and a Bushmaster) were not permitted within the City limits (Tr. 154-55).

Warden Panagi testified that even after having the weekend to think over the surrender of all his weapons, respondent showed up that Monday without the Beretta and the Ruger that were on record with the State Police as belonging to respondent (Tr. 61). He was still holding out, perpetuating his lies, and refusing to cooperate. The Captains escorted him back to the Academy and Warden Panagi, after consulting with Chief Davis, suspended respondent (Tr. 61; Tr. 116-

20, 133; Pet. Ex. 13). The Captains secured and inventoried the weapons (Tr. 119, 133; Pet. Ex. 14).

*Tuesday, January 26, 2010:* Only after his suspension did respondent call Captain Calloway and tell him he had found the two guns that had been identified by the State Police as his, the Beretta and the Ruger. Captain Calloway was surprised by this communiqué because respondent had told him that he had already turned in all of his firearms, and here he was with even more (Tr. 181-82). Captains Calloway and Brown drove to respondent's residence, where respondent turned over to them the Beretta, the Ruger, and yet another unauthorized gun, the HK .45 automatic -- not two more, but *three* more handguns. Respondent had no authorization for any of these guns, as the Warden determined by comparing the guns to respondent's personnel folder. The stated basis for his suspension was that he had purchased the 9 mm Beretta and the .22 Ruger shown on State Police records (from the dealers, not from respondent) back in 2004, without the knowledge and authorization of the Department (Tr. 62-63; Pet. Ex. 10).

In short, respondent had no authorization for five of his handguns -- a Kimber, a Sig Sauer, a Beretta, a .22 Ruger, and an HK (Pet. Ex. 9). Respondent's testimony that he had in fact filed a C Form for the HK was not credible in that he admitted he had no such documentation for that gun and neither did the State Police (Tr. 267; Pet. Ex. 20).

The Department's witnesses were professional and dispassionate. Their testimony was consistently reinforced -- one might say, cemented -- by their colleagues' recollections of the events, by the undisputed, credible evidence on all salient points, both in the form of testimony and documentation. By the end of the case, there was no doubt about the facts of respondent's stubborn refusal to abide by law, agency directives and rules.

Respondent testified that he used most of his weapons for shooting competitions. He described himself as a sharpshooter. "I'm ranked by the National Rifle Association. My guns are for me to compete with" (Tr. 244). He testified further that he has been in 100-150 competitions and won 60 or 70 awards. He called sharpshooting his hobby (Tr. 244). Respondent admitted that he knew and understood Directive 4511-RA "requires you to get permission for every handgun you purchase" and that he did not do that (Tr. 249). Respondent admitted further, on cross-examination, that he purposely did not turn in the three remaining firearms on January 25th: "Q. You purposely didn't turn those in, right? A. I had already stated that I didn't get permission for them. Q. So . . . You knew that you had them and you

didn't turn them in; is that right? A. Correct" (Tr. 265). He also admitted that he purposely did not complete the disclosure forms (Tr. 265-66). As cross progressed, respondent became more blunt in his admission of willfulness: "Q. You didn't put it in here [the disclosure form] because you knew we didn't, the Department did not know about two of those weapons, is that right? A. Sure. That's right" (Tr. 266).

In sum, "[t]he rules and regulations of the department govern the conduct of the correction officer as a peace officer, and he must yield to the conditions of his employment" when it comes to the Department's regulation of its officers' possession and use of firearms. *Anemone v. Kross*, 23 Misc. 2d 186, 187 (Sup. Ct. N.Y. Co., Special Term 1960). The Commissioner's "administrative duty embraces the supervision of the members of the department and more particularly the conduct of a member who desires to carry a revolver, only by virtue of the department's approval." *Id.*

The charges are sustained.

#### **FINDINGS AND CONCLUSIONS**

The Department has proved by a preponderance of the credible evidence the following violations of law and Department rules, regulations and directives:

1. Respondent deliberately and actively concealed from the Department, beginning in 2004 and continuing through the period January 22-26, 2010, his possession of five personal protection firearms and three additional long arms, in violation of law and agency rules and directives. Respondent failed and refused to disclose on required agency forms or register these handguns according to law and departmental regulations. Two of his rifles were illegal assault weapons.
2. Respondent repeatedly made false statements in the period January 22-26, 2010, to the Warden and other high-level agency officials about his possession of these guns and disgorged the guns piecemeal and only after several Correction Captains escorted him twice to his home.
3. Respondent was insubordinate in that he was ordered to surrender all his guns but refused to do so. Instead, he repeatedly withheld some of the guns each time he was ordered to produce them. Respondent was also insubordinate in that he refused orders to supply to the Warden a written inventory of all his guns.
4. Respondent submitted two false documents, the Employee Personal Information Form dated August 13, 2007 (Pet. Ex. 7), and the Request for Personal Handgun Form dated October 13, 2008 (Pet. Ex. 8), in that he deliberately omitted his



ownership of numerous guns he knew he had and was obligated to disclose on those agency forms when he filed for the purchase of the two Glock weapons, the only weapons this record shows he did report in writing to the Department.

5. Respondent violated Directive 4511-RA, §§ III.A and IV.E (officer must apply in writing to Commanding Officer to purchase a personal handgun and await written approval, which is good for only 60 days; prior written authorization from the Commanding Officer is required prior to the acquisition of each personal handgun).
6. Respondent violated Department of Correction Rules and Regulations (1996), Rules 3.05.010 (employees shall be accountable to the Commanding Officer); 3.05.120 (efficient performance required); 3.20.030 (violation of rules and regulations, failure to follow orders, insubordination, conduct unbecoming an officer, making a false official statement can result in dismissal from employment); 3.20.190 (insubordination prohibited); 3.20.300 (conduct which threatens good order and discipline and of a nature to bring discredit on the Department is punishable); and 4.30.020 (false entries on agency records and false reports prohibited).<sup>7</sup>
7. A court of appropriate jurisdiction could find that respondent violated New York State Penal Law § 175.30 (offering a false instrument for filing in the second degree).
8. A court of appropriate jurisdiction could find that respondent violated New York State Penal Law §§ 400.00(12-c)(a) and 400.00(15) (failure of City employee to report promptly in writing to his employer the make, model, caliber, and serial number of each firearm he withheld).

### **RECOMMENDATION**

Upon making these findings, I requested and reviewed the abstract of respondent's personnel record on Form 22R. He was appointed to the Department in 1997. Respondent was

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<sup>7</sup> The Department did not articulate a theory under which respondent also violated Mayoral Executive Order ("MEO") No. 16 § 4(c) (July 26, 1978), as amended (obstruction of investigation), and I make no finding as to whether respondent violated that Order. Warden Panagi acted on information he received from Captain Valerio, who works for the Department of Investigation ("DOI"), and had a conversation with Mr. Valerio on January 22, 2010, just before the Warden called respondent in to speak with him and confiscate respondent's guns. But Warden Panagi gave no details of his conversation with Captain Valerio (Tr. 48-49). The Department proved that respondent made the false statements about having no other weapons to the Warden and the Captains, not to the Inspector General or DOI. The record does not reveal that respondent's meetings with the Warden and the Captains were held under the aegis of or at the direction of DOI. The Department did not develop this point. Nor was there proof that these statements were made in an MEO 16 interview. *See, e.g., Dep't of Correction v. Centeno*, OATH Index No. 2031/04 (Mar. 16, 2005) (false statements obstructed investigation). I need not decide whether respondent violated MEO 16 because the relevant specifications, numbered 1 and 2, of Charge 047/10 are sustained in any event as false statements in violation of agency rules.

suspended for five days in 1999 for being out-of-residence when he was required to be home because he had told the Department he was out sick (Tr. 229). In the present case, the Department sought termination of respondent's employment, which penalty I find to be appropriate given the seriousness of the misconduct proved. This case involves a very deep breach of the trust the Department has placed in respondent as a law enforcement officer. Even now, respondent refuses to accept responsibility for his actions. He blames the Department for interfering with his private gun collection. But it was his own testimony at this trial that was the most powerful evidence against him. Respondent admitted on direct examination by his own attorney that he answered "No" falsely when Captain Sullivan asked him if he had any more guns. Asked why he did not answer Captain Sullivan truthfully when the Captain asked him if he had more guns, respondent delivered the most telling admission in the case:

*You know, they can't tell me why they're taking my guns, if they don't know I have them, then they don't need to know I have them.*

(Tr. 237) (emphasis supplied). This testimony was breathstopping. Respondent himself proved his stubborn refusal to adhere to the most basic requirements of being a law enforcement officer - to follow the very rules he was charged with upholding -- and teaching -- the important rules governing gun safety and disclosure for purposes of securing prior agency authorization for each gun he wanted to buy. The misconduct here is exacerbated because respondent's very job was to train other law enforcement officers in the use of firearms in accordance with Directive 4511R-A and Department rules, but he refused to follow those same safety and law enforcement rules. He has shown himself, by his own admitted refusal to comply with the law, to be unwilling to fulfill his duties and incapable of holding the position of correction officer.

Respondent confirmed his continuing refusal to accept responsibility for his dishonest behavior and his failure to appreciate the gravity of his dishonesty. In his trial testimony, respondent called the Department's request for termination of his employment "ridiculous" (Tr. 251-52). I do not find it so. Respondent cast blame on the Department for his predicament, but, in fact, it was respondent alone who placed his job in jeopardy through his own contumacious refusal to follow the rules governing his service as a correction officer. Respondent's youthful offender status does not insulate him from the consequences of all subsequent illegal activity and misconduct in which he engaged as an adult.

Respondent deprived the Department of the opportunity to approve his purchases of guns, which he testified he used recreationally and in national competition as a sharpshooter. It is conceivable that his off-duty skills work could have been considered useful to the Department because respondent was a firearms instructor for other correction officers. His job was to teach recruits, other officers, and people from other jurisdictions how to use guns, and he served as a safety officer at the firing range (Tr. 229-30). But he chose to be deceitful and he knowingly flouted the important gun regulations applicable to him, even though it was his status as a correction officer which alone would have allowed him legally to possess these firearms in the absence of other legal registration.

Department counsel is correct, as he said in closing argument, that this case is about integrity (Tr. 283). The case is not only about missing paperwork, it is about deliberately hiding weapons from the Department, lying repeatedly to superior officers about how many guns he had, and then surrendering only a few at a time, in violation of orders to hand in all of them, and about deliberately defying a clear, direct order to submit to his supervisors a written inventory of all the guns he owned. Respondent's integrity has been called into serious question; he has no valid defense for his dishonest behavior. It was clear from respondent's description of his guns at trial that the guns were very important to him, that he wanted them for such events as the Police Olympics, and that he felt a need to hold onto them (Tr. 240, 264-65, 268). His profound desire to acquire these guns for competition, according to his admissions, led to his knowing, but faulty calculation that he would not disclose his ownership of them (Tr. 240). But his rationale, which boils down to "I want it," is no excuse at all.

In mitigation, there is respondent's long-term service of 13 years (Tr. 227), but that record is not unblemished. Respondent's tenure is insufficient to overcome the overwhelming aggravating factors proved here. In keeping with the above precedents and considering respondent's prior disciplinary history, the agency's need to emphasize the importance of officers complying with orders and maintaining respect for authority and law in a paramilitary organization where the officers must uphold the Penal Law and agency rules and procedures, I recommend dismissal from the service as the only appropriate penalty here.

The reasoning in *Department of Correction v. Flemming*, OATH Index No. 228/85 at 13 (Nov. 5, 1987), in which a correction officer's employment was terminated for failing to report

and get approval for the purchase of a personal firearm and other misconduct, and lying about her ownership of a single gun, is particularly apt here:

Respondent was aware of the Department's rules governing her conduct in this instance. Nevertheless she violated those rules. Respondent's conduct here was inexcusable. The Department has a preeminent interest in regulating the conduct of its members with respect to their purchase and possession of firearms. Before granting permission to buy a weapon, the Department must be able to determine whether a particular officer should be permitted to carry a weapon, not only for the officer's safety but also for the public safety.

This case is more egregious than *Flemming*, given the depth and breadth of respondent's dishonesty, his stubborn refusal to follow directives, rules and the criminal law, and his unwillingness to tell the truth about guns to his superior officers when asked point-blank for the extent of his gun collection. If *Flemming* involved failure to be forthright with the Department about owning one gun, then *a fortiori*, here, concealing five handguns and three rifles, including two illegal assault weapons, is beyond the pale. Respondent has demonstrated that he is not to be trusted as an instructor in the proper use of firearms and compliance with agency rules on the reporting of and necessary approvals for the purchase and sale of dangerous weapons.<sup>8</sup>

Dishonesty aggravates the severity of the offenses here and respondent falls short of the high standards required of New York City public servants and of correction officers in particular. See generally *Dep't of Correction v. Melendez*, OATH Index Nos. 237/05 and 240/05 at 15 (Aug. 25, 2005) (repeatedly lying and filing false report proved respondent an untrustworthy officer who lacked integrity and led to termination of employment for false statements concerning use of force incident even though respondent was not guilty of improper use of force); *Dep't of Correction v. Harris*, OATH Index No. 1444/97 (Sept. 29, 1997), *aff'd*, NYC Civ. Serv. Comm'n Item No. 98-109-SA (Oct. 26, 1998); *Dep't of Correction v. Davis*, OATH Index No. 238/03 (Mar. 28, 2003), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 04-04-SA (Jan. 26, 2004) (sheer volume of violations proved, considered with respondent's fundamental lack of regard for agency rules and his deviousness, called for termination of his employment).

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<sup>8</sup> For these reasons, two of the cases cited by respondent for lesser penalties are inapposite and unpersuasive, as those cases involve either a lesser degree of misconduct with respect to guns than was demonstrated conclusively here, or a resignation in the face of charges; in those cases, the aggravating elements of ingrained dishonesty, refusal to comply with the law, and the sheer volume of unregistered guns were absent; a third case relied upon by respondent stands for the proposition that abuse of the firearm regulations and other misconduct warrant termination of employment.

The penalty of termination finds further support in prior case law. *See Dep't of Correction v. Coleman*, OATH Index No. 1267/03 at 14-15 (Dec. 18, 2003), *adopted*, Comm'r Dec. (Apr. 2, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD04-77-SA (Nov. 18, 2004) ("Petitioner has a significant interest in ensuring strict compliance with its regulations concerning the maintenance and safeguarding of weapons and in maintaining the integrity of the employee interview process"; respondent's "persistent failure to be forthcoming" about her knowing possession of an illegal firearm and "persistent refusal to acknowledge the seriousness of the conduct" meant termination was the only appropriate penalty; "*The failure to be forthcoming is antithetical to respondent's position as a peace officer*") (emphasis supplied); *Dep't of Correction v. Boyce*, OATH Index No. 1227/97 (Apr. 29, 1997) (termination for violation of gun rules and criminal law; concealment of single illegal weapon from department and dishonesty of officer noted); *Dep't of Correction v. Morton*, OATH Index No. 1786/99 (Apr. 13, 1999), *adopted*, Comm'r Dec. (Oct. 18, 1999) (termination for transport of illegal weapon).

Respondent argued for a penalty of two weeks' suspension without pay (Resp. Mem. Aug. 6, 2010 at 10). For the reasons set forth above, such a penalty would be grossly insufficient for the breach of security and honesty shown on the record amassed here.

Therefore, I recommend termination of respondent's employment forthwith.

Joan R. Salzman  
Administrative Law Judge

October 15, 2010

SUBMITTED TO:

**DORA B. SCHRIRO**  
*Commissioner*

APPEARANCES:

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**NYC Civ. Serv. Comm'n Decision, Item No. CD-11-03-D (Mar. 2, 2011)**

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**THE CITY OF NEW YORK  
CIVIL SERVICE COMMISSION**

*In the Matter of the Appeal of:*

**JASON KATANIC**  
*Appellant*

*-against-*

**NYC DEPARTMENT OF CORRECTION**  
*Respondent*

Pursuant to Section 76 of the New York State Civil Service Law

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**NANCY G. CHAFFETZ**, *Acting Chair*

**JASON KATANIC**

**JASON KATANIC** appealed from a determination of the New York City Department of Correction, finding appellant guilty of misconduct and/or incompetence and imposing a penalty of Termination.

By letter to this Commission received on January 6, 2011, the appellant requested that his appeal be withdrawn.

Accordingly, the appellant's request to withdraw is granted and the appeal is hereby dismissed.

**NANCY G. CHAFFETZ**, *Commissioner/Acting Chair*, Civil Service Commission

**MATTHEW W. DAUS**, *Commissioner*, Civil Service Commission

**RUDY WASHINGTON**, *Commissioner*, Civil Service Commission