Dep't of Correction v. Salik

OATH Index No. 1304/13 (June 25, 2013), *adopted*, Comm'r Dec. (Jan. 27, 2014), *aff'd*, NYC Civ. Serv. Comm'n Case No. 2014-0131 (Apr. 17, 2014)

Correction officer engaged in unbecoming conduct and conduct of a nature to bring discredit upon the Department when he: purposefully used the name and license number of a corporation with which he was not affiliated, and held it out as his; took a significant monetary advance for the work he contracted to perform, failed to perform the contract, and only made restitution after he faced significant jail time; and was convicted of operating a home improvement contractor's business without a license. Termination of employment recommended.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
DEPARTMENT OF CORRECTION
Petitioner
- against -
TYRONE SALIK
Respondent

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

This disciplinary proceeding was referred by petitioner, the Department of Correction ("Department" or "petitioner"), pursuant to section 75 of the Civil Service Law. The Department charged that respondent, correction officer Tyrone Salik, engaged in unbecoming conduct based on his arrest and indictment on charges of grand larceny in the third degree, a class D felony, and petit larceny, a class A misdemeanor, and his subsequent guilty plea to a violation of the Administrative Code, after he: held himself out and solicited work as a licensed home improvement contractor; executed a contract with a home owner for basement renovations using someone else's license number; and, accepted $35,000 from the home owner for work that he failed to complete. The Department also charged that respondent inefficiently performed his duties by failing to provide notice of his arrest and the circumstances surrounding it, in violation

of petitioner's rules. In addition, the Department alleged that respondent's conduct violated sections 155.35, 175.10 and 190.25 of the Penal Law (ALJ Ex. 2).

At a hearing on May 21, 2013, petitioner presented the testimony of New York City Police Detective Marcelo Medina and Department Investigator Wileen Tavares. Respondent testified on his own behalf. Both sides also presented documentary evidence.

At respondent's request, and with no objection from petitioner, I agreed to hold the record open for respondent to provide proof that he had notified petitioner of his arrest. Petitioner indicated that if satisfied with respondent's submission, it would withdraw the second charge. On May 28, respondent submitted a memo to Warden Thomas Hall, dated the day of his arrest, which I moved into evidence as respondent's exhibit B. Petitioner declined to withdraw Charge 2 at that time because the exhibit lacked a date stamp. By e-mail on June 4, 2013, petitioner withdrew Charge 2 after its review of internal documents. The record closed on June 5, 2013.

For the reasons set forth below, I find that respondent's off-duty conduct violated the Department's rules and was of a nature to bring discredit upon the Department. Moreover, his conduct bears a nexus to his job as a correction officer.

I therefore recommend that respondent be terminated from his employment with the Department.

ANALYSIS

On December 22, 2011, respondent was arrested for (1) grand larceny in the third degree (a felony under Penal Law §155.35(1)), after he executed a contract with a homeowner, took $35,000 from her and failed to perform on the contract, and (2) petit larceny (a misdemeanor under Penal Law § 155.25), for holding himself out and soliciting work as a licensed home improvement contractor and executing a contract with a homeowner using someone else's license number. On July 27, 2012, he was indicted on charges of grand larceny and falsifying business records, as well as violations of sections 20-387 and 20-401 of the Administrative Code. Section 20-387 of the Administrative Code prohibits the solicitation of a home improvement contract without a license, while section 20-401(1)(a) deems the unlicensed operation of a home improvement business, a misdemeanor. The Department submitted the felony complaint and a voluntary disclosure form (Pet. Exs. 1, 8).

The Department presented copies of the Certificate of Disposition and transcripts of respondent's plea allocution before Justice Danny Chun of the Supreme Court of the State of New York, Kings County, Criminal Term, on February 4 and 13, 2013 (Pet. Exs. 2, 3, 4). On February 4, 2013, respondent entered a conditional plea of guilty to grand larceny in the third degree and a violation of section 20-401(1)(a) of the Administrative Code. In consideration of his plea, the court agreed to dismiss or vacate the felony charge and sentence respondent to a conditional discharge if he paid $35,000 in restitution to the homeowner within one week. Otherwise, he faced a one to three-year jail sentence (Tr. 87-88; Pet. Ex. 3). On February 13, 2013, after it had been satisfied that respondent had made restitution of the $35,000, the court permitted him to withdraw his guilty plea to the felony charge, which it dismissed. For his guilty plea to operating as a home improvement contractor business without a license, in violation of the Administrative Code, the court sentenced respondent to a one year conditional discharge.

The doctrine of collateral estoppel precludes respondent from relitigating the charge that he violated the Administrative Code. *See Dep't of Correction v. Bivens,* OATH Index No. 2088/10 at 2 (Aug. 20, 2010), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 12-25-SA (May 22, 2012). Thus, his guilty plea and conviction on that count is conclusive proof of the underlying facts. However, respondent testified as to the circumstances that led to his arrest and indictment.

Prior to joining the Department, respondent worked sporadically as a handyman for small construction firms. He painted, repaired walls and changed faucets, among other activities. He also worked under licensed practitioners on larger projects and gained hands-on experience in welding, plumbing, and electrical work. Respondent estimated that he has been involved in more than 500 construction projects over a 14-year period (Tr. 53-54).

In 2000, respondent attempted to start his own business in the name of Salik Contracting. He stated that he paid to have it registered and obtained an employer identification number ("EIN"). During cross-examination, petitioner asked respondent:

> Q: So when you created your business in early 2000, exactly who did you register this business with?
> A: With the City, New York City.
> Q: What Agency?
> A: Oh, I believe it was City Hall. It was right down there by the 4, 5 and 6 train. There's an office there.

(Tr. 95). Respondent further testified that he opened a business account with Chase Bank, and received tax forms that carried his business name, but he never filed tax returns because he "wasn't doing any business." In response to questions about his status with the New York City Department of Consumer Affairs ("DCA") vis-à-vis a home improvement contractor's license, respondent repeatedly replied that his was a licensed business in the State of New York, and he had an EIN, as well a business account with Chase (Tr. 71-72, 95). In 2003 or 2004, after a client on a particular job asked him for his license, respondent searched for his own name or "googled" himself on the internet, then proceeded to the New York State website. He initially testified that he used the search term "Salik Construction," but when prompted, stated that he searched by his name, "Salik," which he considered uncommon. The Department's inquiry into why respondent opted to search on the internet rather than refer to his documents on file prompted the following exchange:

> Q. Even though you had those documents in your possession at home in a closet or wherever you keep them, you chose to go on the internet?
> A. Mn-hmm.
> Q. Is that correct?
> A. Right, because neither of those had my license number, it only had an employee identification number. That's only like if you're going to have employees and you need to file—well, at least that was my understanding.
> Q. So what license number are you referring to?
> A. The license from my business, the number that I'm registered with the State of New York as a business.
>
> Q. So that license number came with your business certificate?
> A. Well, I assume it would follow in suit. Then again, like I said, if I have a business certificate and I'm licensed by the State to conduct business, I'm getting tax forms in the mail, I have an employee identification number, my understanding was that I was a fully functioning business. I opened up a business account. So as far as I knew, there was nothing lacking in terms of paperwork that I needed.

(Tr. 97-98). In any event, respondent recorded the number associated with the business which his search produced and retained it on file. He thought it strange that the company was listed as Salik Construction, but he interchanged "construction" and "contracting" because "they're basically the same," and made no further inquiry. Besides, he thought that he was the only "Salik" engaged in construction in the New York City area (Tr. 72-75). The following narrative relates the sequence of events that led to respondent's arrest and ultimate conviction.

Respondent became acquainted with Maureen O'Neill, the complainant against him in the Supreme Court, through her son, Brendan, who played in a band with respondent's son. Around May 2008, Brendan asked respondent if he could create a rehearsal space in Ms. O'Neill's basement. According to respondent, the following circumstances gave rise to his arrest. Pursuant to Brendan's inquiry, respondent met with Ms. O'Neill, who wanted specific work done on her property. In particular, she was concerned about cracks in her foundation caused by the uneven flow of water down the side of her property from the adjoining property. She also expressed concern about a tree at the front of her home, the roots of which were elevating her portion of the sidewalk and making it uneven, so Ms. O'Neill wanted respondent to make her sidewalk level. In addition, she wanted respondent to work on the rails of her front stairs. But the most labor intensive job was the excavation work that was needed in the basement, because digging had to be done by hand. Respondent explained that he could not get machinery into the unfinished basement which appeared as if someone had poured excess cement over an uneven dirt floor (Tr. 55-57, 59-61).

After much negotiation, respondent and Ms. O'Neill agreed on a price of $43,000, and respondent drafted a contract dated July 15, 2008, with the following caption:

S A L I K C O N S T R U C T I O N
C O.

New York State Business License #1117634

(Tr. 58-59, 69-70; Pet. Ex. 5). According to respondent, the license number that he listed was the one that his search on the internet had revealed some years before (Tr. 75). In the following sequence during cross-examination, respondent was prodded about that number:

> Q. So you had never, to the best of your knowledge, received a document from the State, or from the City for that matter, indicating that Salik Construction Co. license is the same number that you used on the contract with Ms. O'Neill?
> A. Not from any documents that I can recall, no. . . .
> Q. All right. Now you said that – you testified that you went on the New York State website to pull up this license number?
> A. Yes. I believe it's New York State. Like I said, I started with Google just to Google it –
> Q. According to –
> A. --because I figured I'm an only Salik, so it would come up.
> Q. According to your testimony, you went to the New York State website and you pulled up a license number under the name of Salik, is that your testimony?

A. Yes, ma'am.
Q. Now you are aware that the New York City Department of Consumer Affairs is a different agency from the New York State, you know that, right?
Q. I am fully aware now.

(Tr. 97-99). The caption of the contract also listed respondent's home address in Manhattan, and his telephone numbers. The contract itemized the work to be performed, estimated that the work would be completed in "approximately five (5) weeks," and established the following payment schedule: an initial payment of $20,000, a second payment of $15,000, due at the commencement of the work (which was estimated to begin within five business days of deposit receipt), and a final payment of $8,000, due upon satisfactory completion of the work. Respondent acknowledged receipt of $20,000, $10,000 and $5,000 from Ms. O'Neill, on July 24 and 28, and August 4, 2008, respectively (Pet. Ex. 12 at 9-10). He stated that soon after he received the money, he started working at Ms. O'Neill's home (Tr. 77).

Respondent hired three men who worked with him for approximately 10 days, and assisted Ms. O'Neill in sifting through her basement storage to determine what she wanted to retain. The cost of the labor plus incidentals approximated $135 per person per day. Then a team of eight men worked for about three weeks on breaking up the concrete with sledgehammers and removing the debris bucket by bucket because the basement's narrow entrance did not permit a wheelbarrow. Because it was more labor intensive, the cost of labor plus incidentals this time approximated $160 per person per day. Respondent discovered that there was serious damage to the foundation which had no underpinnings. He ordered gravel and brought in a machine to level out the floor, and also prepped the basement to install floor drains. Respondent claimed that in all, he spent about $8,000 to $9,000 on materials and equipment (Tr. 61-66, 68-69). Meanwhile, about three weeks into the project, Ms. O'Neill informed respondent that she was having financial difficulty and wanted to scale back on the project. He explained that it would be difficult to do so because of how he had structured things financially, but told her that he would try to work with her (Tr. 82).

One day, after the excavation had been completed, respondent returned from purchasing materials at the Home Depot and found that the Department of Buildings ("DOB") had issued a Stop Work Order ("SWO") at the premises because he had not obtained the requisite work permit (Tr. 66-67, 78-79). Respondent claimed that as a result, he had to restore the basement to

its original level, after they had excavated about two to three feet. But the grading work that he had performed at the side of the house, and his work on Ms. O'Neill's sidewalk and front stairs were not issued violations. Restoration of the basement caused the cost of the work to balloon. Respondent also asserted that there were other violations issued against Ms. O'Neill's property. To clear them, he had to hire an architect to file plans. Respondent claimed that as a result, the monies that he received from Ms. O'Neill were exhausted and he had to take a pension loan in order to restore the basement to its original condition. He informed Ms. O'Neill of the situation and assured her that he would do everything in his power to see the job completed. Respondent hired a crew which cost him $1,000 per day. After about one and a half weeks, he had to undertake the work on his own. He worked sporadically at Ms. O'Neill's home in 2009 and 2010, after which he ceased work and ceased taking her calls because her family members were making threatening calls to him (Tr. 79-81, 84-86). He admitted that a significant amount of the work listed on the contract was not performed (Tr. 106-08).

On July 30, 2010, Ms. O'Neill filed a complaint with the DCA, in which she briefly outlined what had occurred and expressed that all she wanted was a refund of the $35,000 that she had advanced respondent (Pet. Ex. 12 at 8). It appears that as part of its investigation into her complaint, the DCA wrote to Salik Construction Co. Inc., a company located at 2239 Benson Avenue in Brooklyn, on August 2, 2010. The company's owner, Abdul Majid Salik, replied to the DCA's letter on August 6, 2010 (Pet. Ex. 9). Mr. Salik denied that his company had ever undertaken work at Ms. O'Neill's home, or that he had ever met her or taken money from her. He pointed out that his company is located in Brooklyn, and stated that he had never heard of respondent. Mr. Salik was also appalled that such a large cash amount was demanded in advance of the job, and vowed to cooperate with the DCA in its investigation. After the DCA informed Ms. O'Neill about Mr. Salik's letter, she replied in a letter dated September 19, 2010, expressing her devastation at learning that respondent was not licensed (Pet. Ex. 12 at 14). In her letter, she was more explicit about the condition in which respondent left her basement and how it had affected her quality of life. Specifically, Ms. O'Neill no longer had access to her basement because respondent had removed the internal stairway and had sealed off access.

In May 2011, the Brooklyn District Attorney's ("DA") office launched an investigation into respondent after receiving a complaint from Ms. O'Neill. Marcelo Medina, an NYPD detective with the DA's squad in Kings County, was assigned to investigate Ms. O'Neill's

complaint (Tr. 15-17). In June 2011, he met with Ms. O'Neill at her school in the Bronx, where she is an assistant principal. She explained that she had entered into a contract with respondent for work to be done on her basement. She paid him $35,000, and he performed major demolition. Then DOB issued a SWO, and respondent never completed the work that he was contracted to do (Tr. 19). Detective Medina reported to the assistant DA ("ADA") assigned to the case, and they met with respondent in September 2011 (Tr. 20-21). Detective Medina's investigation included a meeting with Muhammed Ajaz, president of Salik Construction Co. Inc. Mr. Ajaz assured the detective that his company had never been situated in Harlem, and that respondent had never worked for his company (Tr. 25-26). In December 2011, Detective Medina prepared a felony complaint against respondent (Tr. 22-24; Pet. Ex. 8). Respondent surrendered himself to the DA's office on December 22, 2011, on which date he was arrested and charged with grand larceny in the third degree and petit larceny.

In July 2011, while the DA's office was investigating respondent, the Department of Investigation ("DOI") notified petitioner of the complaint against him. Petitioner, through Investigator Wileen Tavares, undertook parallel tracking of the status of the complaint at the Brooklyn DA's office (Tr. 39-42; Pet. Ex. 6). In December 2011, Investigator Tavares was informed by the DA's office of respondent's impending arrest. In January 2012, she prepared an investigative report, in which she concluded that respondent had violated Department rules and recommended that charges be preferred against him (Pet. Ex. 7).

Also in January 2012, respondent applied for a home improvement contractor's license (Tr. 80-81; Pet. Ex. 10). That application was denied on June 2, 2012, after respondent failed to submit documentation regarding his criminal history (Pet. Ex. 11).

Respondent made much ado about Ms. O'Neill's absence at the administrative trial and argued that petitioner's presentation of her written complaints to the DCA in 2010, attached to a sworn affidavit should be completely discredited and disregarded. I decline to do so.

Sworn testimony is usually considered more reliable than hearsay statements. *See Dep't of Correction v. Velez,* OATH Index No. 1655/02 at 5 (Dec. 3, 2002), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD-05-34-SA (Aug. 11, 2005). But hearsay is admissible in disciplinary proceedings and may provide the sole basis for a finding of fact. *See* Charter § 1046(c)(1) (Lexis 2013); 48 RCNY § 1-46 (Lexis 2012); *People ex rel. Vega v. Smith,* 66 N.Y.2d 130, 139 (1985); *Dep't of Correction v. Connell,* OATH Index No. 1598/11 at 10 (May 24, 2011); *Dep't of*

Correction v. Jackson, OATH Index No. 134/04 at 4-5 (May 5, 2004), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 05-67-SA (Sept. 14, 2005).

While hearsay must have probative value and bear some indicia of reliability in order to be given significant weight, *Dep't of Housing Preservation & Development v. Davron*, OATH Index No. 1533/11 at 16 (Dec. 21, 2011), respondent's arrest and subsequent pleas in the Supreme Court were predicated on the very complaints he now seeks to challenge as unreliable hearsay. Thus, I am disinclined to find Ms. O'Neill's letters unreliable.

I turn now to respondent's testimony regarding the underlying conduct that formed the basis for his arrest. First, respondent's explanation of his use of "Salik Construction Co." was not credible. He presented no evidence to establish that he had incorporated a business by the name of "Salik Contracting" in New York State. A search of the New York State Department of State ("DOS") website[1] for companies containing the name "Salik" produced nothing for Salik Contracting. But it displayed information on "Salik Construction Co. Inc., the name that respondent used on his contract with Ms. O'Neill. Thus, I found respondent's claim that he had formed and registered "Salik Contracting" to be contrived. It was crystal clear that he had usurped the name of "Salik Construction Co. Inc.," a company with which he had no affiliation, and fronted it as his.

In mitigation of his guilty plea to operating a home improvement business without a license, respondent argued that he made an oversight in failing to realize that he needed a license from the DCA. The evidence contradicts that argument. On his contract with Ms. O'Neill, respondent affixed the home improvement contractor's license number for Salik Construction Co. Inc., which indicated his awareness that such a license was indeed necessary. It also suggested that he wanted to validate himself and the contract. To be issued a license by the DCA, respondent would have had to apply for one. Respondent did not apply for a home improvement contractor's license until after he was arrested. Incredibly, he claimed to have gotten the number from the New York State website, even though the DOS is not the licensing authority for this type of license. Moreover, the company profile for Salik Contruction Co. Inc. on the DOS website displayed an identification number which did not match the license number

[1] On June 20 and 24, 2013, the parties were notified by email that, pursuant to section 1-48(a) of this tribunal's Rules of Practice, 48 RCNY § 1-48(a) (Lexis 2012), I was taking official notice of the results of a search for companies containing the name "Salik" on the DOS and DCA websites. *See Patsy's Italian Restaurant, Inc. v. Banas*, 575 F. Supp. 2d 427, 443, n. 18 (E.D.N.Y. 2008) ("It is generally proper to take judicial notice of articles and Web sites published on the Internet.").

that respondent affixed to his contract with Ms. O'Neill.[2] On the other hand, the DCA website displayed the license numbers of its licensees, alongside other detailed information about the licensees, making respondent's claim of an innocent mistake incredible. It was therefore crystal clear that respondent had intentionally used another's license number in an attempt to deceive his customer.

I find that respondent's use of the license number issued to a company with which he was not affiliated, and holding it out as his own was deliberate and fraudulently intended to impersonate another for his own financial gain.

I was not persuaded by respondent's argument that he did not intend to defraud Ms. O'Neill. It struck me as odd that someone who proclaimed to have worked in the construction industry on minor as well as major projects for approximately 14 years would not have known that he needed a DOB permit for the kind of major work itemized in the contract. Because he did not procure one, the DOB issued a stop work order after respondent and his men had practically demolished Ms. O'Neill's basement. Respondent claimed that he performed the contract in good faith because he hired workers and paid the vast majority of money to them over a three to four-week period, in addition to purchasing materials. I disagree. That does not constitute contract performance. A contract is performed when the work detailed on the contract is completed. Here, of the 14 activities listed in his contract with Ms. O'Neill, respondent admitted that he had accomplished almost none of them. Thus, not only did respondent materially breach the contract by failing to obtain a DOB permit for the work in the first place, he also breached it by failing to perform most of the activities listed.

In addition, I find respondent's exhaustion of Ms. O'Neill's $35,000 with almost nothing to show for it a grossly inept handling of money. It was apparent that respondent was woefully underqualified for the job that he undertook. And while he might not have initially intended to defraud Ms. O'Neill, his refusal to take her calls after two years of non-performance of the contract suggested that he had no intention of completing the job or returning her money, that is, until jail time was a very real prospect.

[2] Moreover, the other information on this page made it clear that even if respondent had indeed formed a company, this was not the profile for his company.

Finally, I note that even though respondent acknowledged blame, he sought to chastise Ms. O'Neill for availing herself of the criminal justice system because as a result, he suffered from the embarrassment of being arrested and suspended, and being in financial despair.

The Department alleged that respondent's conduct violated multiple sections of the Penal Law. As an initial matter, the New York State Supreme Court and the New York City Criminal Court are the bodies vested with the authority to adjudicate Penal Law violations. This tribunal is not. Instead, this tribunal is authorized to conduct disciplinary proceedings under section 75 of the Civil Service Law to determine whether there is sufficient evidence of misconduct. *See Dep't of Housing Preservation & Development v. Lawhorne,* OATH Index No. 420/87 at 11 (June 22, 1988). Accordingly, we have dismissed charges alleging violations of the Penal Law and sustained charges alleging misconduct. *See, e.g. Office of the Comptroller v. Lattanzio,* OATH Index No. 1029/04 at 11-12 (Oct. 13, 2004); *Lawhorne,* OATH 420/87 at 19; *Bd. of Education v. Forde,* OATH Index No. 491/95 at 25-26 (Mar. 29, 1995).

The Department also alleged that respondent's conduct violated Department rules and regulations. Under the Department's rules, employees found guilty of unbecoming conduct, violation of the Department's rules and regulations, or conviction in a court of criminal jurisdiction, "may be dismissed, or suffer such other punishment as the Commissioner may direct." Dep't of Correction Rule 3.20.030. Further, conduct that may bring discredit upon the Department shall be acted upon by the Department according to the nature and degree of the offense and punished at the discretion of the Commissioner. Dep't of Correction Rule 3.20.300.

Under certain circumstances, employers may sanction employees for off-duty misconduct, but as a pre-requisite, the employer must show some rational relationship between the conduct sought to be sanctioned and the employee's job position. *See Cromwell v. Bates,* 105 A.D.2d 699 (2d Dep't 1984); *Zazycki v. City of Albany,* 94 A.D.2d 925 (3d Dep't 1983); *Dep't of Environmental Protection v. Tosado,* OATH Index No. 311/83 (Sept. 2, 1983).

Correction officers are peace officers sworn to uphold the law. By operating a home improvement business without a license, respondent sidestepped the Administrative Code which imposes that requirement. Thus, his conviction on that charge bears a nexus to respondent's job. More importantly, however, I find that a "sufficient nexus" existed between respondent's off-duty fraudulent conduct and his job as a correction officer, charged with overseeing criminal offenders in the jail system. The very nature of a correction officer's job demands integrity.

Respondent's deliberate, knowing and fraudulent use of a DCA license number for which he had never applied not only demonstrated a lack of integrity, but is at odds with his job as a peace officer. *See Dep't of Correction v. Blanc,* OATH Index No. 2571/11 at 33 (Feb. 2, 2012), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 12-40-SA (Aug. 10, 2012) (finding 'a sufficient nexus' between respondent's fraudulent off-duty actions and her employment to justify misconduct charges."); *Dep't of Correction v. Jones,* OATH Index No. 393/04 at 12-13 (May 3, 2004) ("with few exceptions, the commission of criminal acts cannot be tolerated by peace officers . . . such conduct has a direct nexus to the duties that correction officers are sworn to uphold."); *Dep't of Correction v. Muza,* OATH Index No. 236/99 at 6 (Dec. 23, 1998), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 00-26-SA (Apr. 10, 2000) (unlawful possession of credit card had "a clear nexus" to correction officer's job "as a law enforcement officer."). Moreover, his willingness to undertake, without a DOB permit, work of such magnitude involving massive excavation in Ms. O'Neill's basement, demonstrated a flagrant disregard for laws (to wit, the Building Code) that are designed, among other things, to ensure the integrity of building construction, and to protect homeowners and the public from the risk of collapsing buildings. That too, is at odds with his duties as a correction officer. Finally, respondent's failure to perform the contract and to make restitution of Ms. O'Neill's $35,000 until he faced jail time was also unbecoming conduct that discredited the Department.

Accordingly, that portion of the charge that alleges violations of the Department's rules and regulations is sustained.

FINDINGS AND CONCLUSIONS

1) Petitioner established by a preponderance of the credible evidence that respondent engaged in unbecoming conduct when he usurped the name and license number of a corporation with which he was not affiliated, and held it out as his. Such conduct was also of a nature to bring discredit upon the Department.

2) Petitioner established by a preponderance of the credible evidence that respondent engaged in unbecoming conduct when he contracted to perform work, took a significant monetary advance for the work, failed to perform the contract, and only made restitution after he faced significant jail time.

3) Respondent's conviction for operating a home improvement business without a license established that respondent engaged in unbecoming conduct. As a correction officer, his conviction was also of a nature to bring discredit upon the Department.

RECOMMENDATION

Upon making these findings, I obtained and reviewed respondent's personnel abstract from the Department, for purposes of recommending an appropriate penalty. Respondent has been employed by the Department as a correction officer since December 16, 2004. In June 2011, a memorandum of complaint was filed against him for being absent without leave authorization. The disposition on that matter is listed as "pending." The only other discipline listed is the Department's suspension of respondent on December 23, 2011, following his arrest the previous day. Respondent returned to work on March 17, 2013.

Here, respondent was found to guilty of engaging in unbecoming conduct that discredited the Department, when: he was convicted for operating a home improvement business without a license; he usurped the license number of a corporation with which he was not even remotely connected; he purported to be licensed and entered into a home improvement contract with a homeowner using the number that he had usurped as his; he took a significant amount of money from the homeowner without completing the job almost two years after performance was promised, and made restitution only after he risked incarceration.

At trial, the Department sought a recommendation of termination of respondent's employment. Generally, this tribunal applies the principle of progressive discipline such that little or no prior discipline would militate against termination. However, where correction officers have been found to have engaged in fraud, we have recommended termination even in light of a spotless disciplinary record because "this type of dishonesty is inimical to service in law enforcement." *Dep't of Correction v. Blanc,* OATH Index No. 2571/11 at 38 (Feb. 2, 2012), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 12-40-SA (Aug. 10, 2012) (citing to *Dep't of Correction v. Bivens,* OATH Index No. 2088/10 at 9 (Aug. 20, 2010)). *See also Dep't of Correction v. Fuller,* OATH Index No. 2144/05 (Nov. 28, 2005), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 06-120-SA (Nov. 14, 2006) (correction officer terminated from employment for defrauding HUD by signing statements which falsely claimed that she was unemployed).

Respondent's off-duty behavior here was egregious. His contract with Ms. O'Neill was fraught with deceit, not only because he purported to be a home improvement contractor, but a licensed one at that. His use of someone else's license as his own was fraudulent. His avoidance of making restitution until about five years after receiving a substantial sum of money for work which he failed to perform, and doing so only when he faced the real prospects of becoming an inmate was also dishonest and incompatible with being a correction officer.

I therefore find termination of respondent's employment as a correction officer to be the most appropriate remedy for his misconduct, and I so recommend.

Ingrid M. Addison
Administrative Law Judge

June 25, 2013

SUBMITTED TO:

DORA B. SCHRIRO
Commissioner

APPEARANCES:

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BY: **PETER TROXLER, ESQ.**

THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION

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IN THE MATTER OF THE APPEAL OF:

SALIK, TYRONE

DATE: 04/17/14

Appellant:

-against

NYC DEPARTMENT OF CORRECTION

Respondent:

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

----------X

PRESENT:

NANCY G. CHAFFETZ, COMMISSIONER
CHAIR

RUDY WASHINGTON, COMMISSIONER
VICE CHAIR

CHARLES D. MCFAUL, COMMISSIONER

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APPELLANT PRESENT

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REPRESENTATIVE FOR RESPONDENT

STATEMENT

On Thursday, April 10, 2014, the City Civil Service Commission heard oral argument in the appeal of TYRONE SALIK, Correction Officer, NYC Department of Correction ("DOC"), from a determination by the DOC, finding him guilty of charges of incompetency or misconduct and imposing a penalty of Termination following an administrative hearing conducted pursuant to Civil Service Law Section 75.

THE CITY OF NEW YORK
CITY CIVIL SERVICE COMMISSION

In the Matter of the Appeal of

TYRONE SALIK
Appellant

-against-
NEW YORK CITY DEPARTMENT OF CORRECTION
Respondent

Pursuant to Section 76 ofthe New York State Civil Service Law
CSC Index No.: 2014-0131

DECISION

PRESENT:

NANCY G. CHAFFETZ, COMMISSIONER
CHAIR

RUDY WASHINGTON, COMMISSIONER
VICE CHAIR

CHARLES D. MCFAUL
COMMISSIONER

TYRONE SALIK ("Appellant") appealed from a determination of the New York City Department of Correction ("DOC") finding him guilty of incompetency and/or misconduct and imposing a penalty of termination following disciplinary proceedings conducted pursuant to Civil Service Law Section 75.

The Civil Service Commission ("The Commission") conducted a hearing on April 10, 2014.

This Commission has carefully reviewed the record in this case and the testimony adduced at the departmental hearing. Based upon this review, the Civil Service Commission finds no reversible error and affirms the decision and penalty imposed by DOC.

NANCY G. CHAFFETZ, COMMISSIONER
CHAIR

RUDY WASHINGTON, COMMISSIONER
VICE CHAIR

CHARLES D. MCFAUL
COMMISSIONER

Dated: 4/17/14