Taxi & Limousine Comm'n v. Dubose

OATH Index No. 177/11 (Aug. 13, 2010), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 11-27-A (May 4, 2011), **appended**

Petitioner established that respondent stole coins from a van that he seized during the course of his job. Petitioner also proved that respondent attempted to disable a camera in the van, and lied to investigators from the Department of Investigations. Petitioner failed to establish by a preponderance of the credible evidence that respondent stole $1810 in cash from the van. ALJ recommends termination of respondent's employment.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
TAXI AND LIMOUSINE COMMISSION
Petitioner
-against-
MARK DUBOSE
Respondent

REPORT AND RECOMMENDATION

INGRID M. ADDISON, *Administrative Law Judge*

The Taxi and Limousine Commission ("petitioner" or "TLC") referred this disciplinary proceeding pursuant to section 75 of the Civil Service Law. Petitioner charged that respondent Mark Dubose, an inspector, violated rules 2, 3, 10, 12, 20, 22, and 23 of petitioner's Code of Conduct when he: (1) stole money from a van that he seized in the performance of his duties; (2) attempted to disable the camera in the van and lied about his purpose in doing so during an interview with the Department of Investigation ("DOI"); and (3) during the same interview, lied about driving the seized van and about taking coins and other monies from the van. Respondent is also charged with abusing his position in violation of section 2604(b)(3) of the New York City Charter (ALJ Ex. 1).

A hearing was conducted before me on July 26, 2010. Petitioner presented the testimony of the owner of the subject van, a DOI investigator who interviewed respondent, two TLC witnesses, documentary evidence, and video footage captured by a camera within the seized van. Petitioner also presented a recording of the DOI interview. The record was closed on July 29,

2010, upon petitioner's submission of a transcript of that interview. Respondent Dubose testified on his own behalf, denied the charges, and presented documentary evidence.

For the following reasons, the charges that respondent stole coins from the seized van, attempted to disable the van's camera, and lied at a DOI interview about his purpose in doing so and about driving the van are sustained. Petitioner failed to establish by a preponderance of the credible evidence that respondent stole $1810 in cash from the seized van.

For the proven misconduct, I recommend that respondent be terminated from his position.

ANALYSIS

Respondent has been employed by the TLC for almost twenty years, most of which were spent as an inspector. He became a lieutenant three years ago and currently supervises inspectors in the field. He is supervised by one Captain Ramos (Tr. 195-97). The charges against him stem from a complaint filed by Zachariah Hamilton, owner of My Ride Transportation, Inc.

It is undisputed that on the morning of October 14, 2009, respondent seized a van belonging to Mr. Hamilton. That day, Captain Ramos had assigned his squad to work in conjunction with the 103rd precinct of the New York City Police Department ("NYPD") to apprehend drop-offs and pick-ups of illegal commuter vans at two different locations in Jamaica, Queens. One location was at 158th Street and Archer Avenue. At around 8:15 a.m. respondent, Inspector Manny Ortiz, and a police officer were in an unmarked TLC vehicle when they observed Mr. Hamilton dropping passengers off at the subway station near 158th Street and Archer Avenue and receiving money from them (Tr. 196-203). A state-of-the-art video camera with battery backup, installed in Mr. Hamilton's van, captured what followed and automatically uploaded it via satellite to Mr. Hamilton's laptop computer, up until the camera was disengaged (Tr. 90-92; Pet. Ex. 1A).

The video showed that after the final passenger exited, respondent knocked on the passenger side of the van and opened the door. Mr. Hamilton explained that he had a contract in his office that permitted him to pick up workers from Nassau County and take them to the subway station, and vice versa. He also provided documents which respondent rejected as being State-approved only, and had nothing to do with the TLC. Meanwhile, a uniformed police officer on the driver's side requested Mr. Hamilton's license and registration and asked him to exit the van while respondent switched the ignition off. At around 8:36:14, respondent entered

the van and turned the ignition on. At Mr. Hamilton's request, respondent revealed that the van was being taken to the Laurel Hill pound, under the Kosciuszsko Bridge. Respondent drove off at around 8:36:57 a.m.

At around 8:39:33 a.m., respondent, who was still in the seized van, began to peruse his surroundings. Then he reached into a receptacle at the front of the dashboard and removed coins, which could be heard jingling. Respondent appeared to count the coins with both hands between his legs before transferring them to his left hand. He reached again into the receptacle and removed more coins, which he also transferred to his left hand. At 8:40:46 a.m., he placed the coins into his left sweatshirt pocket. At 8:42 a.m., respondent parked the van and left. There was no further action until respondent entered the van from the passenger's side at around 10:29:23 a.m., tugged at the camera on the windshield, and seemed to struggle with it in an attempt to disengage it. Thereafter the recording went blank.

In the meantime, Mr. Hamilton went to the TLC office and secured a release for his van. He testified that when he got to the van at around 6:00 p.m. on the same day, he found the camera on the floor and coins missing from his ash tray. Also missing was $1810, which he had left in an envelope in his glove box that has no lock on it. The money was to be deposited into his bank account to pay bills, but only the deposit slip and envelope were left behind. He had not thought of removing the money because he did not conceive that his van would have been seized. He did not know the cash total of the coins that were missing because he normally tossed all coins, including one-dollar coins, into his ash tray (Tr. 93-95). Mr. Hamilton testified that he immediately notified the booth attendant at the pound about the camera and the missing cash, but was told that he should address his inquiries "to the people who take your vehicle" (Tr. 95) He did not report it to the police because he felt that he would have been brushed off, since the police and the TLC worked together. He went home and discussed it with his wife. The following day, he called "311" and was directed to file his complaint with the DOI (Tr. 96).

Alexander Dillon, a City employee for approximately 17 years, and a DOI investigator for about three and a half, was assigned to investigate Mr. Hamilton's complaint. After speaking with him, Mr. Dillon asked Mr. Hamilton to bring his laptop computer to Mr. Dillon's office, where he downloaded the video that was captured by the camera in Mr. Hamilton's van (Tr. 7-8). Mr. Dillon and special investigator Jared Feirstein interviewed respondent on April 13, 2010, and recorded the interview (Tr. 9). Thereafter, DOI referred the matter to the TLC for disciplinary

action (Tr. 9). Petitioner submitted a recording of the interview which was authenticated by Mr. Dillon and later supplemented with a transcript (Pet. Ex. 2).

Attempt to Disable Camera and Lying to Investigators

Petitioner charged that respondent attempted to disable the camera in the seized van and lied to the DOI investigators when he: (1) denied driving any seized van on the day in question, and (2) told them that he was attempting to remove the camera to secure it.

During the interview, respondent told the investigators that a seized vehicle is normally taken to a pound where it is visually inspected by a pound inspector, or it may be taken to a staging area first and then to a pound.[1] The supervisor makes a list of whatever is visible and the TLC officer who drove the vehicle to the pound must sign off on the voucher and relinquish the keys to the pound supervisor (Pet. Ex. 2, Supp. at 5-8). If the seizure was conducted jointly with the police department, a police officer would drive the seized vehicle to the pound. Respondent declared that he had not driven a seized vehicle since he became a lieutenant, but when shown the video footage of him driving Mr. Hamilton's van, told the investigators that he must have been ordered to do so by Captain Ramos (Pet. Ex. 2, Supp. at 16-18). He maintained the same position at trial, testifying that Captain Ramos, who was close by when respondent seized the van, instructed him to drive it to a staging area at 168th Street, between Jamaica and Archer Avenues. Meanwhile, Inspector Ortiz finished writing a summons against Mr. Hamilton, then followed respondent to the staging area, which is controlled by the NYPD and is accessed by only NYPD or TLC-identified employees (Tr. 209-212, 216).

At the interview, respondent initially denied returning to the van after parking it, but then equivocated about why he might have done so, suggesting retrieval of the blue copy of the seizure form, and assurance that the key started the vehicle, as possible reasons. He also told the investigators that he attempted to remove the camera to secure it in the glove box (Pet. Ex. 2, Supp. at 20-24).

At trial, respondent touted that he had been instrumental in the implementation of the seizure program at the TLC and trained inspectors on the applicable rules (Tr. 225-26). According to him, TLC policy requires anything of value to be concealed from plain sight, and it was in accordance therewith that he returned to the van to secure the camera in the glove box.

[1] This was corroborated by Pansy Mullings, the TLC's Deputy Commissioner of Enforcement (Tr. 151).

He turned off the interior lights of the van when he was unable to remove the camera and gave the keys to Inspector Ortiz who transported the van to the pound (Tr. 225-27, 235). A vehicle processing record completed by Inspector Ortiz listed the following property as visible: "R/I/D, camera, two way radio, 2 adaptors, wheel lock, change in cup holder" (Resp. Ex. A).

Deputy Commissioner Mullings contradicted respondent's version of the TLC policy. She testified that prior to seizing a commuter van, the TLC inspector must instruct the driver to remove valuables from the vehicle and have the driver sign the seizure form. A driver's refusal must be noted on the form. If valuables are left in the vehicle, they should be bagged and taken to the police for vouchering before the vehicle is taken to the pound. Further, if a seized vehicle is left at a staging area, it must be locked. Deputy Commissioner Mullings revealed that the TLC had received a proliferation of complaints from drivers of seized vehicles that items had been taken from their vehicles. Because of that, she issued a policy memorandum on October 2, 2009, instructing inspectors that pursuant to the seizure of a vehicle, valuables left within must be vouchered at the precinct and not left in the vehicle (Pet. Ex. 6). The policy was e-mailed to everyone and posted on the bulletin board, and Deputy Commissioner Mullings also addressed the issue at various roll calls. She testified that prior to her issuance of the October 2 memorandum, it appeared that the general practice was to place items in the trunk or leave valuables in the car. She further testified that cash and coins should be vouchered, unless the coins constitute just a few pennies (Tr. 150-54).

Deputy Commissioner Mullings testified that video cameras are not approved for use in TLC-licensed vehicles. Rather, the approved cameras take digital stills that are stored on a hard drive located in the trunk of the TLC vehicles. They are activated only when the vehicle door is opened or if the driver depresses the panic button. When the vehicle's ignition is switched off, the TLC-approved cameras cease recording (Tr. 155-57). In any event, she maintained that where a valuable item is permanently affixed, it should be left in the vehicle (Tr. 154).

The video evidence was indisputable and compelling. Respondent was unabashedly untruthful when he asserted that he had not driven a seized vehicle since he became a lieutenant. His credibility was further undermined when he advanced that he was instructed to drive Mr. Hamilton's van only after he was confronted with the video of him driving it. Had this been true, it would have been a rare occurrence according to his testimony, and one which he would most likely have recalled.

I also found that respondent elected to distort the TLC policy to rationalize his attempt to disable the camera. Deputy Commissioner Mullings was credible in her enunciation of the procedure that must be followed prior to, and after seizure of a vehicle. Furthermore, she had issued a directive on the procedure about two weeks prior to this incident. Employees are placed on constructive notice of rules, orders and policies which are properly distributed to them. *See Dep't of Sanitation v. Seagers*, OATH Index No. 3547/09 at 12 (Aug. 26, 2009), *rev'd in part,* Comm'r Dec. (Sept. 25, 2009) (worker deemed to have notice of directive placed in his mailbox); *Dep't of Sanitation v. Mackay,* OATH Index No. 1725/04 at 6 (Sept. 2, 2004) (employee had constructive notice of teletype order placed on bulletin board); *Dep't of Sanitation v. Lugo,* OATH Index No. 1634/05 at 6 (Nov. 17, 2005), *aff'd,* NYC Civ. Serv. Comm'n Item No. CD 06-65-SA (July 10, 2006) (the posting of a memorandum put worker on constructive notice of its contents). Therefore, respondent is deemed to have knowledge of TLC's procedure for the treatment of valuables. The procedure does not permit the removal of permanently-affixed items, and provides that valuables should be bagged and taken to the police for vouchering. Hence, even if the camera were not permanently affixed, placing it in the glove box was not an option under the TLC policy.

It was obvious that respondent was oblivious to the fact that the video camera in the van continued to record even after the ignition was switched off, ironically capturing his attempt to disable it. The myriad of reasons that he put forth for returning to Mr. Hamilton's van after he had parked it in the staging area was not credible and demonstrated respondent's evasiveness. Therefore, I found respondent's claim that he was aiming to secure the camera in the glove box to be contrived.

In sum, I find that respondent attempted to disable the camera which was permanently affixed, and lied to the DOI investigators about his purpose in doing so, and about driving the vehicle after seizure, in violation of rules 2, 3, 10, 20, 22 and 23 of petitioner's Code of Conduct.[2] Petitioner's charge that respondent also violated rule 12, which prohibits employees

[2] Rule 2 provides that "Any employee who is called before the . . . the Department of Investigation or any lawfully constituted court, officer or body having authority to make inquiry as to the performance of his official duties and, having appeared, answers questions specifically, narrowly and directly relating to the performance of his official duties in a palpably evasive, transparently sham, false or untruthful manner shall be subject to charges of misconduct."
Rule 3 provides that "Employees shall obey and not violate any rule, code, internal regulation or order of any bureau of TLC or any subdivision thereof."

from neglecting their assigned duties, was prefaced with "were this explanation true" and thus based on mere speculation as to whether or not respondent's explanation was true. I decline to consider such speculation.

Theft of Money

Petitioner charged respondent with stealing money from Mr. Hamilton's vehicle after he seized it on October 14, 2009.

The video of respondent removing and pocketing Mr. Hamilton's coins in a surreptitious manner was self-evident. During the DOI interview, respondent did not dispute extracting coins from a receptacle in the seized van but adamantly denied removing money from the glove box (Pet. Ex. 2, Supp. at 28-30, 34). At one point, when the investigators suggested that the matter would be referred to the district attorney's office, respondent replied that he did not want to lose his job over "$2.50 or whatever it was" because he has a son to take care of. He offered to accept a suspension (Pet. Ex. 2, Supp. at 30-31, 33, 35). Deputy Commissioner Mullings met with respondent after the matter had been referred to the Commission for disciplinary action. Ms. Mullings testified that respondent told her that he had intended to voucher the coins but neglected to do so. He inquired whether he was in trouble and offered to serve a suspension from his job (Tr. 157-58). Likewise, at trial, respondent admitted that he removed coins from the coin holder, counted them and placed them in his sweatshirt pocket but insisted that his intent was to voucher them (Tr. 215, 237-38). He asserted that he is only guilty of failing to voucher them but that to date, they remain in a white envelope in his locker (Tr. 238). He also denied accessing the van's glove compartment (Tr. 223)

Respondent's explanation that he intended to voucher the coins was self-serving and simply incredible. Given the video evidence, the prospect of disciplinary charges and dismissal gave him a powerful incentive to prevaricate. As he pointed out, the DOI interview took place in April 2010, six months after the incident. It did not comport with common sense that for six

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Rule 10 provides that "Employees shall not interfere with or obstruct an investigation conducted by this Agency, the DOI or any lawfully constituted court, officer . . . having authority to make inquiry to conduct such investigation."
Rule 20 provides that "Employees shall not make any false entry upon any record of the Agency or give a false statement in connection with any required verbal record/or submit a false document."
Rule 22 provides that "Employees shall not engage in any conduct that interfered with any activities of the agency or may improperly influence any decision of the agency or that of its officers or employees."
Rule 23 provides that "Employees shall not conduct themselves in a manner prejudicial to good order and discipline."

months, respondent inadvertently neglected to voucher money which he should not have taken in the first place. Moreover, had he indeed intended to voucher them, as he stated, he would have removed all the coins. Rather, in an attempt to cover his tracks, he purposefully left some for Inspector Ortiz to inventory on the Vehicle Processing Record, since Inspector Ortiz had no idea of how many coins were in the receptacle in the first place.

Accordingly, petitioner established by a preponderance of the credible evidence that respondent stole coins from the seized van.

However, the evidence that respondent stole money from the glove box is circumstantial only. Mr. Hamilton credibly testified that he had $1810, which he intended to deposit, stashed away in the glove compartment. He also provided monthly bank statements from July through December 2009, to support that his deposits for October were significantly lower than the other months. I believed Mr. Hamilton's testimony that he did not think of removing the money because he did not expect his van to be seized. Moreover, it was evident from the video that he was so agitated at the prospect of losing his van and so preoccupied with how he could secure its release that it was reasonable for him to overlook taking steps to safeguard it.

Misconduct in a civil service disciplinary proceeding may be established solely by circumstantial evidence. Circumstantial evidence is defined as "evidence of a collateral fact that is, of a fact other than a fact in issue, from which, either alone or with other collateral facts, the fact in issue may be inferred." *Dep't of Sanitation v. Ivy,* OATH Index No. 2376/00 at 17 (May 3, 2001), *aff'd*, NYC Civ. Serv. Comm'n Item No. CD 02-07-SA (Mar. 22, 2002); *See also Dep't of Sanitation v. Jeffries,* OATH Index Nos. 2529/09 & 2530/09 at 15 (Sept. 18, 2009). But "[i]n order to establish a fact in issue by circumstantial evidence, the inference sought to be drawn must be based on proven facts . . . [and] must be reasonably taken from the proven collateral facts." *Ivy*, OATH 2376/00 at 17 (citing *Transit Auth. v. Dugger*, OATH Index No. 794/91 (May 14, 1991)). The Department need not disprove all other possible explanations or inferences in order to sustain its case. But it must "show that the inference drawn is the only one that is fair and reasonable." *Dep't of Sanitation v. Guastafeste*, OATH Index No. 658/00 at 16 (May 1, 2000), *aff'd*, 282 A.D. 2d 398 (1st Dep't 2001); *see also Ridings v. Vaccarello*, 55 A.D.2d 650, 651 (2nd Dep't 1976); *Markel v. Spencer*, 5 A.D.2d 400, 403 (4th Dep't 1958), *aff'd*, 5 N.Y.2d 958 (1959).

Here, respondent had the opportunity to rifle through the van after he had disabled the camera. In fact, given his theft of coins two hours prior, disabling the video camera suggested that respondent's motive was not to secure it, as he testified, but to search for other valuables. However, respondent was not the sole person with access to the van after its seizure. NYPD personnel were in charge of the staging area as well as the pound. Further, Inspector Ortiz also had access to the van, as evidenced by the Vehicle Processing Record on which he itemized visible property before he relinquished the vehicle to the pound. Thus, while a strong inference may be drawn that respondent was culpable in the disappearance of Mr. Hamilton's money from the glove box, it was equally possible that someone else may have been culpable. Accordingly, petitioner did not establish by a preponderance of the credible evidence that respondent stole money from the glove box of the seized van.

In sum, petitioner proved that respondent stole coins from the coin receptacle, but not from the glove compartment of Mr. Hamilton's vehicle, which he had seized in the performance of his job as a lieutenant for the TLC.

Petitioner charged that such misconduct violated rules 3, 20, and 23 of its Code of Conduct. However, of the rules cited, I found respondent's theft of coins to be in violation of rules 3 and 23. Rule 23 provides that "Employees shall not conduct themselves in a manner prejudicial to good order and discipline." Rule 3 of petitioner's Code of Conduct provides that "employees shall obey and not violate any rule, code, internal regulation or order of any bureau of TLC." By violating rule 23, respondent tacitly violated rule 3. On the other hand, rule 20 prohibits employees from giving false statements in connection with any required verbal record, among other things. Because petitioner did not establish by a preponderance of the credible evidence that respondent removed the $1810 from the seized vehicle, respondent's denial that he did so does not constitute a violation of 20.

Petitioner also charged that respondent's misconduct violated section 2604(b)(3) of the New York City Charter, which prohibits a public servant from using his position to obtain any financial gain or other private or personal advantage. Respondent used his position as a lieutenant for the TLC to seize a privately-owned vehicle and steal money from it. Therefore, I find that respondent's misconduct indeed constituted a violation of section 2604(b)(3) of the New York City Charter.

FINDINGS AND CONCLUSIONS

1. Petitioner established that respondent stole coins from a vehicle that he seized during the course of his duty as a TLC lieutenant on October 14, 2009. Petitioner failed to establish by a preponderance of the credible evidence that respondent stole other monies from the seized vehicle. Such misconduct violated rule 3 and 23 of petitioner's Code of Conduct.

2. Petitioner established that respondent attempted to disable a permanently-affixed camera from a seized vehicle, and lied to investigators about his purpose in doing so. Such misconduct violated rules 2, 3, 10, 20, 22, and 23 of petitioner's Code of Conduct.

3. Petitioner established respondent lied to investigators when he told them that he had not driven a seized vehicle in the three years since he became a TLC lieutenant, and only admitted to driving a seized vehicle when confronted with a video of him doing so. Such action violated Rules 2, 3, and 10 of petitioner's Code of Conduct.

RECOMMENDATION

Upon making the above findings, I requested respondent's personnel abstract. Respondent started working for the Commission on September 17, 1990. In 1999, a 70-hours suspension was imposed for respondent's failure to report an accident. That same year, he also received a 35-hours suspension for time and leave infractions. In both instances, annual leave was forfeited in satisfaction. In 2002, two days' annual leave was forfeited for respondent's failure to appear for a hearing. During his tenure with the Commission, respondent received recognition letters and commendations. He was promoted to lieutenant on May 26, 2008, two years ago, and not three, as he testified (Tr. 196). On his last three performance evaluations, he received overall ratings of "good" to "very good." But on the most recent one, covering the period May 1, 2009 through February 1, 2010, his supervisor noted that respondent is at times unapproachable because of his attitude. He responds negatively when given assignments, and disrespects his supervisor in the presence of subordinates.

Petitioner proved that respondent stole coins from a van that he seized, and lied to DOI investigators during their investigation of a complaint from the vehicle's owner. The Commission seeks respondent's termination which I find to be appropriate.

Almost invariably, this tribunal has applied the principle of progressive discipline. *See Dep't of Transportation v. Jackson*, OATH Index No. 299/90 at 12 (Feb. 6, 1990) ("it is a well-established principle in employment law that employees should have the benefit of progressive discipline wherever appropriate, to ensure that they have the opportunity to be apprised of the seriousness with which their employers views their misconduct and to give them a chance to correct it."). However, termination has been found to be appropriate even where respondent had no disciplinary history but the proven conduct was so egregious that a lesser penalty was inadequate. *See Keith v. NYS Thruway Auth*., 132 A.D.2d 785 (3d Dep't 1987) (upholding termination for first offense where incident was egregious); *Dep't of Environmental Protection v. Evelyn,* OATH Index No. 3343/09 (Oct. 9, 2009) (despite lack of disciplinary history, termination recommended where respondent found guilty of neglecting his duty regarding a scheduled water shutdown and had 18 unauthorized absences); *Office of Management & Budget v. Perdum,* OATH Index No. 998/91 (June 17, 1991) (nineteen-year employee with no prior record terminated for repeated insubordination and incompetence where he demonstrated no willingness to change); *Latimer v. Dep't of Health*, NYC Civ. Serv. Comm'n Item No. CD 84-77 (Oct. 5, 1984) (upholding penalty of termination for first offense despite policy of progressive discipline, where proved misconduct was intentional and obstinate).

The most serious of the proven charges is respondent's theft of coins from the vehicle that he seized. There can be no reasonable explanation for such morally reprehensible action. Respondent's offer to both the investigators and Deputy Commissioner Mullings to serve a suspension because he does not want to lose his job over "$2.50 or whatever it was" (Pet. Ex. 2, Supp. at 31) indicates that he does not appreciate the gravity of his misconduct, and instead quantifies it by the value of what he stole. As Administrative Law Judge Kramer noted in *Department of Transportation v. Mascia,* OATH Index No. 403/85 at 21 (May 30, 1986), where respondent who had no prior disciplinary history, was found guilty of stealing a roll of tokens from his supervisor's desk drawer, "It is of no import that the value of the items stolen was relatively small." Judge Kramer cited to the Court of Appeals decision in *Pell v. Board of Education,* 34 N.Y.2d 222 (1974). In addressing eight consolidated article 78 proceedings in which each appellant sought review of the action taken by its respective Appellate Division regarding the discipline of public employees, the Court noted that:

> There is also the element that the sanctions reflect the standards of society to be applied to the offense involved. Thus, for a single illustrative contrast, habitual lateness or carelessness, resulting in substantial monetary loss, by a lesser employee, will not be as seriously treated as an offense as morally grave as larceny, bribery, sabotage, and the like, although only small sums of money may be involved . . .
>
> Consideration of the length of employment of the employee, the probability that a dismissal may leave the employee without any alternative livelihood, his loss of retirement benefits, and the effect upon his innocent family, all play a role, *but only in cases where there is absent grave moral turpitude and grave injury to the agency involved or to the public weal* (emphasis added). But deliberate, planned, unmitigated larceny, or bribe taking, or demonstrated lack of qualification for the assigned job is not of that kind. Paramount too, in cases of sanctions for agencies like the police, is the principle that *it is the agency and not the courts which, before the public, must justify the integrity and efficiency of their operations* (emphasis added).

Pell, 34 N.Y.2d at 235-36.

In the field, respondent represents the Commission whose field officers are entrusted with protecting the public and simultaneously enforcing the law. In their interaction with members of the public, any misconduct is likely to be imputed to the Commission, as well as any other agency with which it collaborates in the performance of its functions. As Mr. Hamilton testified, he was reluctant to file a complaint with the police because they had worked alongside respondent when his van was seized. Thus, Mr. Hamilton's trust in the police was diminished.

Respondent's deliberate theft and attempt to disable the camera from the seized van cannot be reconciled with the honesty that is expected of him. He violated the Commission's trust and irreparably harmed its confidence in him to represent it with moral integrity. As Deputy Commissioner Mullings rightfully articulated:

> You can't have officers take money. It doesn't matter if they take a nickel or they take a quarter, once they take money you can't trust them and somebody who is an officer who is writing summonses, who is seizing vehicles you have to be able to trust their integrity.

(Tr. 158).

Further, given the rash of complaints that the Commission had received from drivers whose vehicles had been seized, it needs to assure the public that it is taking the necessary steps to prevent such misconduct from festering.

Accordingly, in spite of respondent's lengthy tenure with the Commission and the multiple letters of recognition and commendation that he received, I find termination of his employment to be appropriate, and I so recommend.

Respondent was also charged with and found to have violated section 2604(b)(3) of Chapter 68 of the City Charter, which prohibits a public servant from using his position to obtain any financial gain or other private or personal advantage. A violation of section 2604(b)(3) of the Charter may result in a fine of up to $10,000. Section 2606(b) indicates, however, that such a fine may be imposed only upon a determination by the Conflicts of Interest Board. Since the Conflicts of Interest Board did not initiate this proceeding, nor make a determination, the imposition of a fine under its rules is not permitted.

Ingrid M. Addison
Administrative Law Judge

August 13, 2010

SUBMITTED TO:

DAVID YASSKY
Commissioner

APPEARANCES:

DAVID NIDA, ESQ.
Attorney for Petitioner

JEFFREY L. GOLDBERG, P.C.
Attorney for Respondent
BY: ERIC SANDERS, ESQ.

NYC Civ. Serv. Comm'n Decision, Item No. CD 11-27-A (May 4, 2011)

THE CITY OF NEW YORK
CIVIL SERVICE COMMISSION

In the Matter of the Appeal of:

MARK DUBOSE
Appellant

-against-

NYC TAXI & LIMOUSINE COMMISSION
Respondent

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

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NANCY G. CHAFFETZ, COMMISSIONER
ACTING CHAIR

RUDY WASHINGTON, COMMISSIONER

ALINA A. GARCIA
DIRECTOR/GENERAL COUNSEL

AMANDA WISMANS
ATTORNEY FOR THE COMMISSION

ERIC SANDERS, ESQ.
REPRESENTIVE FOR APPELLANT

APPELLANT PRESENT

DAVID NIDA, ESQ.
REPRESENTATIVE FOR RESPONDENT

STATEMENT

On Thursday, February 10, 2011 the City Civil Service Commission heard oral argument in the appeal of **MARK DUBOSE**, Inspector, NYC Taxi and Limousine Commission (TLC), from a determination by the TLC, 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.

COMMISSIONERS' FINDINGS:

After a careful review of the testimony adduced at the departmental hearing and based on the record in this case, the Civil Service Commission finds no reversible error and affirms the decision and penalty imposed by the New York City Taxi & Limousine Commission.

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

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

RUDY WASHINGTON, *Commissioner,* Civil Service Commission

May 4, 2011