

**COMMONWEALTH OF MASSACHUSETTS
CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503
Boston, MA 02108
(617) 727-2293

FABIANO ESTRELA,
Appellant

v.

TOWN OF RANDOLPH,
Respondent

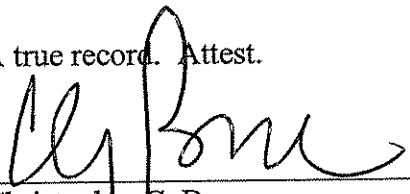
Case No.: D1-07-369

DECISION

After careful review and consideration, the Civil Service Commission voted at an executive session on July 17, 2008 to acknowledge receipt of the report of the Administrative Law Magistrate dated June 9, 2008. No comments were received by the Commission from either party. The Commission voted to adopt the findings of fact and the recommended decision of the Magistrate therein. A copy of the Magistrate's report is enclosed herewith. The Appellant's appeal is hereby *dismissed*.

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, Stein and Taylor, Commissioners) on July 17, 2008.

A true record. Attest.



Christopher C. Bowman
Chairman

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(I), the motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice to:

George Hassett, Esq., and Michael F. Hanley, Esq. (for Appellant)
Peter J. Berry, Esq., and Robert M. Spiegel, Esq. (for Appointing Authority)
Shelly Taylor, Esq. (DALA)

COMMONWEALTH OF MASSACHUSETTS

Division of Administrative Law Appeals

98 North Washington Street, 4th Floor

Boston, MA 02114

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June 9, 2008

Christopher Bowman, Chairman
Civil Service Commission
One Ashburton Place
Boston, MA 02108

George Hassett, Esq.
Michael F. Hanley, Esq.
Hanley, Hassett & Fitzsimmons, LLC
Quincy, MA 02169-1252

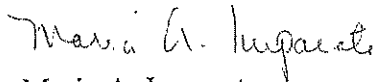
Peter J. Berry, Esq.
Robert M. Spiegel, Esq.
Deutsch/Williams
One Design Center Place, Suite 600
Boston, MA 02210

Re: *Fabiano Estrela v. Town of Randolph*, D1-07-369, CS-08-112

Dear Chairman Bowman, Mr. Hassett, Mr. Hanley, Mr. Berry and Mr. Spiegel:

Enclosed please find my Recommended Decision that is being issued today. The parties are advised that, pursuant to 801 CMR 1.01 (11) (c), they have 30 days to file written objections to the decision with the Civil Service Commission, which may be accompanied by supporting briefs.

Very truly yours,



Maria A. Imperato
Administrative Magistrate

Enc.

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CIVIL SERVICE COMMISSION

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

Division of Administrative Law Appeals

Fabiano Estrela,
Appellant

v.

Town of Randolph,
Appointing Authority

Docket Nos. D1-07-369
DALA No. CS-08-112

Appearance for Appellant:

George Hassett, Esq.
Michael F. Hanley, Esq.
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40 Willard Street, Suite G101
Quincy, MA 02169-1252

Appearance for Appointing
Authority:

Peter J. Berry, Esq.
Robert M. Spiegel, Esq.
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Boston, MA 02210

Administrative Magistrate:

Maria A. Imparato, Esq.

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RECOMMENDED DECISION

Under G. L. c. 31, s. 43, the Appellant, Fabiano Estrela, is appealing the October 22, 2007 decision of the Appointing Authority, Town of Randolph ("Town"), to discharge him from his position of police officer. The appeal was timely. (Exs. 2, 3)

I held a hearing on February 13 and February 21, 2008 at the office of the Division of Administrative Law Appeals, 98 North Washington Street, Boston, MA. I declared the hearing private because I did not receive a written request from either party to make it public.

I admitted documents into evidence. (Exs. 1 – 21) I marked the results of the Appellant's polygraph examination "A" for identification; the Criminal Justice Information System RJ Request Results "B" for identification; and the booking reports of Neumar Icalho, Ilson DeOliviera, Nascimento Santos and Edney Leite together as "C" for identification.

The Town offered the testimony of: Idelio Silva; Ires Ramos; Rodrigo DeAssis; Sergio Silveira; Randi Petricone; Sgt. David Domingos of the State Police; Lt. John Courtney of the Randolph Police Department ("RPD"); Detective Lt. Arthur Sullivan of the RPD; and Police Chief Paul Porter of the RPD. Mssrs. Silva, Ramos, DeAssis and Silveira testified in Portuguese through interpreter Josseithe Cornavaca.

The Appellant offered the testimony of: Patrolman Stephen Morse; Patrolman Gabriel Pantazelos; Patrolman Mark Abramson; Sgt. Robert Emerson; Lt. John Hamelburg; and Patrolman Edmund Corbett, all of the RPD.

The Appellant, Fabiano Estrela, was not called to testify.

I took under advisement the Appellant's Motion to Strike the Testimony of Sergeant David Domingos as to Polygraph Evidence, and the Town's Opposition thereto, as well as the Appellant's Motion to Strike Hearsay Evidence as Contained in Detective Lieutenant Arthur Sullivan's Report Marked Exhibit #6, and the Town's Opposition thereto.

The record closed on April 18, 2008 with the filing of closing briefs.

FINDINGS OF FACT

1. Fabiano Estrela worked as a police officer for the Town of Randolph until October 22, 2007 when he was discharged.

Procedural history

2. On December 29, 2006, Sgt. William McNamara reported to Detective Lt. Arthur Sullivan that he had received an anonymous call from a man who stated that Officer Estrela had stolen money from several Brazilian men after Officer Estrela had stopped them in their motor vehicles. The caller said that the Brazilian men were very afraid to report the incidents to the police for fear of retaliation. After conversation with Chief Paul Porter, Detective Lt. Sullivan began an Internal Affairs investigation. (Exs. 9, 10)
3. On January 22, 2007, an article appeared in *A Noticia*, a Portuguese language newspaper, reporting that a group of Brazilian men from Randolph had used radio programs to accuse the local police of extorting money from undocumented individuals and disrespecting their civil rights. (Ex. 16)
4. By memorandum of February 22, 2007, Chief Porter placed Officer Estrela on paid administrative leave pending the outcome of an internal investigation by the department's Professional Standards Unit. (Ex. 4)
5. By letter of February 28, 2007, Chief Porter ordered Officer Estrela to submit to a polygraph examination on March 13, 2007. (Ex. 15)
6. By memorandum of March 2, 2007, Chief Porter informed Officer Estrela that an Internal Affairs Interview to be conducted by Detective Lt. Arthur Sullivan was scheduled for March 8, 2007 to "discover facts and to offer you an

opportunity to explain events relating to the performance of duty. The interview will not seek a final determination or adjudication as to whether you ought to be removed from your job, but rather will be investigative in nature.” (Ex. 5)

7. By memorandum of March 8, 2007 Detective Lt. Sullivan directed Officer Estrela to provide an oral report detailing his knowledge of allegations that several men arrested by him were missing money and/or personal property. Officer Estrela asserted his Fifth Amendment privilege against self incrimination, but agreed to waive his Massachusetts Declaration of Rights, Article 12 privilege. (Ex. 12)
8. At the oral interview on March 8, 2007, Officer Estrela answered all of the questions asked of him. He said that he did not recall the men who made the complaints, nor did he recall the traffic stops. He denied that he had stolen money or property. He said that he either did not, or could not, remember giving the men directives with respect to their personal property. (Testimony, Sullivan)
9. By memorandum of March 23, 2007, Detective Lt. Sullivan directed Officer Estrela to submit a complete financial disclosure statement for the previous five years, dating back to January 1, 2002, including bank account statements; deeds and titles to property; instruments of debt; mutual funds, stocks or bonds; all pending court actions which could have fiscal ramifications; and any and all bankruptcy filings. This order was amended by agreement to require only the previous three years of records. (Ex. 13; Ex. 21, p. 14)

10. By letter of August 16, 2007, Officer Estrela was informed that the Board of Selectmen had scheduled a hearing under G. L. c. 31, s. 41 to determine whether there was just cause to discipline him based on the allegations that he misappropriated money or valuables during traffic stops, and that he testified untruthfully during the internal affairs investigation. The charges included violation of the Law Enforcement Code of Ethics; Rule 4.1 – Conduct Unbecoming an Officer; Rule 5.1- Neglect of Duty; Rule 6.9-Truthfulness; Rule 9.20-Testifying at Investigation; Rule 10.15-Criminal Conduct; Rule 11.15-Care and Custody of Property; Rule 12.1-Filing Reports; and Rule 12.2-Falsifying Records. (Ex. 1)
11. After hearing on September 5, 2007, the Board of Selectman voted on October 20, 2007 in favor of the Chief's recommendation that Officer Estrela be terminated from his employment. (Ex. 2)
12. Officer Estrela appealed to the Civil Service Commission on October 25, 2007. (Ex. 3)

The Charges

Idilio Silva

13. Idilio Silva is an undocumented immigrant from Brazil who has been in this country since 2001. He was pulled over by Officer Estrela on November 28, 2005 while he was driving a friend's car on Route 28 in Randolph. Officer Estrela asked for Mr. Silva's driver's license. (Testimony, Silva; Ex. 17)
14. Officer Estrela told Mr. Silva that his Brazilian driver's license was not good. He directed Mr. Silva to get out of the car and put his wallet on the car seat.

Then Officer Estrela arrested and handcuffed Mr. Silva and placed him in Officer Estrela's cruiser. (Testimony, Silva)

15. As he sat in the back of the cruiser, Mr. Silva saw Officer Estrela return to Mr. Silva's car and lean into it. Then Officer Estrela returned to the cruiser and drove Mr. Silva to the police station. (Testimony, Silva)
16. At the police station, the police took Mr. Silva's personal property, including his cell phone, his watch and a ring. Mr. Silva was charged with operating without a license, failure to drive within marked lanes, and having an outstanding warrant. He was fingerprinted and taken to court. (Testimony, Silva; Ex. 17)
17. After the court hearing in which Mr. Silva was asked to pay a fine, the police returned his cell phone, watch and ring to him. Mr. Silva then went to the police station to see if his wallet was there. He was told his wallet was not there. (Testimony, Silva)
18. On November 29, 2005, Mr. Silva returned to the police station with a friend who acted as interpreter. He told Lt. Hamelburg that Officer Estrella had stolen his wallet. Lt. Hamelburg told Mr. Silva that he did not believe him. Mr. Silva insisted that Officer Estrella had stolen from him. Lt. Hamelburg "again stated that I did not believe him." Mr. Silva left the station. (Ex. 11; Testimony, Hamelburg)
19. Mr. Silva's wallet contained \$1,300.00 in cash that he was going to send to his father in Brazil, two identification cards, and two cards with pictures. (Testimony, Silva)

20. The car Mr. Silva was driving was towed from the scene by Roycrofts Towing. The friend who owned the car called the police station and asked for the car. The tow company then towed the car to the home of its owner.
(Testimony, Ex. 17)
21. Officer Estrela speaks Portuguese and was able to speak with Mr. Silva.
(Ex. 11)
22. On March 19, 2007, Lt. John Courtney interviewed Mr. Silva through an interpreter as part of the Internal Affairs investigation. (Ex. 8)
23. Officer Estrela stole Mr. Silva's wallet.

Ires Ramos

24. Ires Ramos is an undocumented immigrant from Brazil who has been in this country for seven years. On September 17, 2006, while he was driving his girlfriend's car home from work, Officer Estrela stopped him on Route 28 and asked, in English, for Mr. Ramos's license. Officer Estrela then started to speak in Portuguese. (Testimony, Ramos)
25. Mr. Ramos took his Brazilian driver's license out of his wallet and gave it to Officer Estrela. Officer Estrela said that the license was no good. He asked Mr. Ramos to get out of the car, pat frisked him, put him in handcuffs and put him in his police cruiser. Mr. Ramos left his wallet on the front seat of the car. In the car's console was a thick, gold bracelet. (Testimony, Ramos)
26. Mr. Ramos then observed Officer Estrela return to Mr. Ramos's car, and then come back to the cruiser. (Testimony, Ramos)

27. While he was sitting in the back of the cruiser, Mr. Ramos asked Officer Estrela to go get his wallet and bracelet from the car. Officer Estrela said, "You don't need them." (Testimony, Ramos)
28. At the police station, Mr. Ramos called his girlfriend and told her to go back to the car for the wallet and the bracelet. (Testimony, Ramos)
29. Mr. Ramos's personal property, including a chain and a ring, was taken from him at the police station. He was charged with operating without a license, giving a false name and failure to drive within marked lanes. Mr. Ramos was fingerprinted and placed in a cell until the next morning when he was taken to court. He was released from court after paying a fine and his chain and ring were returned to him. (Testimony, Ramos; Ex. 18)
30. After court, Mr. Ramos went to the police station to get documentation that would allow him to pick up his car that had been towed from the scene by L & W Auto Body Inc. His wallet and bracelet were not in the car. Mr. Ramos went back to the police station to check, but was told that his wallet and bracelet were not there. Mr. Ramos was given Officer Estrela's telephone number, but Officer Estrela did not answer. (Testimony, Ramos)
31. Mr. Ramos's wallet had \$500.00 in cash. (Testimony)
32. Officer Stephen Morse arrived on the scene as a back-up officer when Mr. Ramos was already in the cruiser. He stayed at the scene until the tow truck arrived, and told a woman who pulled up wanting to take the car that she could not. Officer Morse was on the scene for less than a minute. (Testimony, Morse)

33. In the booking report of this arrest prepared by Officer Estrela there is no mention of Mr. Ramos's missing wallet or bracelet. (Ex. 18)
34. On February 21, 2007 Detective Lt. Sullivan interviewed Mr. Ramos through an interpreter as part of the Internal Affairs investigation. (Ex. 21, p. 6)
35. Officer Estrela stole Mr. Ramos's wallet and bracelet.

Rodrigo DeAssis

36. Rodrigo DeAssis is an undocumented immigrant from Brazil who has been in this country for 4 ½ years. He was pulled over by Officer Estrela on November 4, 2006 when he was on his way to work. Officer Estrela asked for Mr. DeAssis's license and registration. Mr. DeAssis's license was in the car console, right next to his wallet. He presented his Brazilian license, registration and passport to Officer Estrela. (Testimony, DeAssis)
37. Officer Estrela said the driver's license was no good and that he was going to take Mr. DeAssis to jail. Officer Estrela took Mr. DeAssis's wallet and put it in his own pocket. Officer Estrela told Mr. DeAssis that the car was not registered under his name. He put the wallet back in the car, and Mr. DeAssis put the wallet in the console. (Testimony, DeAssis)
38. Officer Estrela put Mr. DeAssis in his cruiser, and then went back to Mr. DeAssis's car as the tow truck from Roycrofts Tow, driven by "Danny," was arriving. Mr. DeAssis observed Officer Estrela lean his body into Mr. DeAssis's car, and then return to the cruiser. Mr. DeAssis asked Officer Estrela to get his wallet from the car. Officer Estrela did not respond. (Testimony, DeAssis; Ex. 19)

39. Officer Gabriel Pantazelos responded to the scene as a back-up officer. He did not recall entering Mr. DeAssis's vehicle, or seeing Officer Estrela enter Mr. DeAssis's vehicle, and he did not recall seeing a tow truck at the scene. He did not recall seeing a wallet. He was at the scene for a matter of minutes. (Testimony, Pantazelos)
40. At the police station Mr. DeAssis asked at least three times about his wallet. Officer Estrela made no response. (Testimony, DeAssis)
41. At the police station Mr. DeAssis's ring, chain and passport were taken from him and placed in a bag. He was charged with operating without a license, failure to drive within marked lanes and giving a false name. He was placed in a cell. (Testimony, DeAssis; Ex. 19)
42. At the station, Officer Estrela asked Officer Edmund Corbett to enter a lost and found item because an arrestee had left his wallet on the roof of his car that was towed. Officer Estrela said he would go back to the scene to look for the wallet. (Testimony, Corbett)
43. About 40 minutes after Mr. DeAssis was placed in a cell, Officer Estrela came back with Mr. DeAssis's wallet, saying that he found it in the street. Missing from the wallet was \$140 in cash, an ATM card, and calling cards to Brazil. Mr. DeAssis was released and given a court date for Monday. He received his bag of personal possessions when he left the station. (Testimony, DeAssis)
44. With respect to Mr. DeAssis's wallet, Officer Estrela wrote in his formal report: "After booking, DeAssis stated that he believed his wallet was left on the vehicle. I later went back to the scene and found the wallet by the curb.

DeAssis stated that around \$60 cash was missing and three debit cards. A lost and found report was completed.” (Ex. 19)

45. Detective Lt. Sullivan interviewed Mr. DeAssis through an interpreter as part of the Internal Affairs investigation. (Ex. 21, pp. 7-8)

46. Officer Estrela stole the contents of Mr. DeAssis’s wallet.

Sergio Silveira

47. Sergio Silveira is an undocumented immigrant from Brazil who has been in this country for three years. He was stopped by Officer Estrela while driving to work in a friend’s car on December 12, 2006. Mr. Silveira gave Officer Estrela his Brazilian driver’s license which was in his wallet in his pocket. Officer Estrela said the license was no good. (Testimony, Silveira; Ex. 20)

48. Officer Estrela told Mr. Silveira to empty his pockets and place his belongings on the dashboard. Mr. Silveira put his phone and his wallet on the dashboard. His passport was in the glove box and he did not place it on the dashboard. Officer Estrela then patted down Mr. Silveira, placed him in handcuffs and put him in the cruiser. (Testimony, Silveira)

49. There was approximately \$230, a calling card and pictures in the wallet. (Testimony, Silveira)

50. At the police station Mr. Silveira was charged with operating without a license and failure to drive within marked lanes. Mr. Silveira was placed in a small room and Officer Estrela said he would go back and look for Mr. Silveira’s wallet. Officer Estrela returned and said that he did not find the wallet. (Testimony, Silveira)

51. Mr. Silveira was fingerprinted and then brought to court. In court, Mr. Silveira explained to the judge that he could not pay his fine because Officer Estrela had not returned his wallet to him. A friend of Mr. Silveira's paid his fine. When he left court, Mr. Silveira's phone and passport were returned to him. The next day Mr. Silveira went to the Roycroft tow yard, where the car had been towed by "Danny," and looked into the car, but his wallet was not there. (Testimony, Silveira)
52. Officer Estrela's booking report of this arrest makes no mention of Mr. Silveira's missing wallet. (Ex. 20)
53. Detective Lt. Sullivan interviewed Mr. Silveira through an interpreter on January 2, 2007 as part of the Internal Affairs investigation. (Ex. 21, p. 3)
54. Officer Estrela stole Mr. Silveira's wallet.

Handling the personal property of arrestees

55. When an officer makes a motor vehicle stop, he should ask the driver to step out of the vehicle to be patted down. If the pat down reveals a wallet in a pocket, the wallet should be left there. The arrestee's valuables should go with him to the station where he will empty his pockets onto the booking desk. The items are itemized and put into a transparent bag with a booking slip listing the contents of the bag. The bag is sealed. Any money in the wallet is returned to the arrestee to keep with him in his pocket in his cell. (Testimony, Courtney; Sullivan)

Polygraph

56. On March 13, 2007 Officer Estrela underwent a polygraph examination administered by State Police Detective Sergeant David P. Domingos at the Canton Police Department. (Exs. 6, 7; Testimony, Domingos)
57. Prior to the examination, Officer Estrela answered "no" when he was asked whether he had ever filed for bankruptcy. (Ex. 7, "2007/03/13 09:06:30 to 09:07:05")
58. Officer Estrela filed for bankruptcy on January 16, 2004. An order discharging him from his debts was issued on June 29, 2004. (Ex. 14)
59. Officer Estrela answered "no" when he was asked whether he had taken money from motor vehicle stops. (Ex. 7)

Finances

60. Randi Petricone dated Officer Estrela from August 2002 to May 2005, and again from September 2005 to May 2006. In 2002-2003 they jointly used Ms. Petricone's credit card to purchase a \$3,000.00 puppy. Ms. Petricone authorized Officer Estrela to use her card to purchase \$4,000.00 rims for his truck tires, with the understanding that he would pay her back. (Testimony, Petricone)
61. Ms. Petricone had five or six credit cards. She could not find one card so she called the company and learned that the card had been maxed out at \$15,000. She got an on-line print out of the charges and found that Officer Estrela had put \$8,000.00 of charges on the card without her authorization, to pay for dinners, a cell phone and weekend trips. (Testimony, Petricone)

62. Officer Estrela agreed to pay her \$600.00 a month to satisfy the debt. He paid for two months, and then stopped paying. (Testimony)
63. Officer Estrela told Ms. Petricone that he was being sued, together with the Town and another police officer, and that he had to pay \$200-\$300 per week of his pay to satisfy that judgment. He told Ms. Petricone that beginning in 2007 he was suspended without pay. (Testimony)
64. A lawsuit against Officer Estrela for use of excessive force was settled by the Town prior to trial. Officer Estrela's pay was not affected. (Testimony, Sullivan)
65. When Officer Estrela was placed on administrative leave in January 2007 he was placed on paid leave, not unpaid leave. (Testimony, Sullivan)
66. In October 2006 Ms. Petricone filed for bankruptcy because she had \$30,000.00 in credit card debt. (Testimony)

"Danny"

67. The Roycroft Tow driver known as "Danny" is Daniel King. He was interviewed by Detective Lt. Sullivan. Mr. King acknowledged that he had a criminal history including larceny, but he did not know anything about missing property from cars that he towed. (Testimony, Sullivan)
68. Mr. King remembered towing the DeAssis car because as he was putting the vehicle onto the tow truck, he dropped his cell phone. He returned and checked the area and the street and did not see a wallet, but he did find his cell phone. (Testimony, Sullivan)

69. Mr. King no longer works at Roycrofts. There had never been any problems with theft, or allegations of theft, with respect to Mr. King. (Testimony, Sullivan)

Chief Porter

70. Chief Porter recommended to the Board of Selectman that Officer Estrela be discharged from his position because he lied during the investigation to the polygraph examiner, Sgt. Domingos, about his bankruptcy, and because he lied to Detective Lt. Sullivan during the Internal Affairs investigation. Once a police officer lies, he can no longer be a police officer because he cannot testify credibly in court. (Testimony, Porter)

CONCLUSION AND RECOMMENDATION

The Appointing Authority, Town of Randolph, has proved by a preponderance of evidence that there is just cause for the discharge of Officer Fabiano Estrela. I recommend that the Civil Service Commission affirm the action of the Appointing Authority.

The Appointing Authority has demonstrated that the Appellant engaged in Conduct Unbecoming an Officer, in violation of Rule 4.1 of the Police Department's Rules and Regulations, by committing acts of "immoral, improper, unlawful" conduct which reflects discredit upon the officer. The Appellant stole money and jewelry from Brazilian immigrants whom he stopped for motor vehicle operation violations.

The Appellant did not speak the truth at all times, in violation of Rule 6.9-Truthfulness, when he denied to the polygraph examiner prior the polygraph examination that he had never filed for bankruptcy protection, and when he denied to Detective Lt. Sullivan that he did not take money and valuables at the traffic stops. The fact that he lied to Detective Lt. Sullivan in the course of the Internal Affairs investigation violates Rule 9.20-Testifying at Investigations.

The Appellant's theft of money and valuables is a violation of Rule 10.15-Criminal Conduct. The Appellant's failure to assure that all personal property, including money, which comes into an officer's possession is properly handled violates Rule 11.15-Care and Custody of Property.

The Appellant's failure to mention Mr. Ramos's missing wallet and bracelet, the Appellant's assertion in his report of the DeAssis stop indicating that Mr. DeAssis believed he left his wallet on the roof of his car, and the Appellant's booking report of Mr. Silveira that makes no mention of Mr. Silveira's missing wallet, are in violation of Rule 12.1-Filing Reports, and Rule 12.2-Falsifying Records.

I conclude for several reasons that the Appellant stole money and valuables from the Brazilian immigrants at the traffic stops. There was a clear pattern in the Appellant's handling of the traffic stops; in each case he told the arrestee to leave his wallet in the car, and after he had placed the arrestee in the cruiser, the Appellant returned to the stopped vehicle before the tow truck arrived. It was at this point that I believe he stole the arrestees' wallets, or the money in the arrestees' wallets.

The Appellant was not acting in accordance with the proper procedure, which is to leave a wallet in the arrestee's pocket until the arrestee arrives at the police station.

At that point, the arrestee's possessions are emptied onto the booking desk and placed and sealed into a transparent bag. Any money is returned to the arrestee to keep in his pocket in the cell.

In addition to this clear pattern of behavior, the evidence demonstrates that the Appellant made false statements regarding his acquisition and use of money and regarding his personal finances and indebtedness. He lied to the polygraph examiner prior to the examination by indicating that he did not ever file for bankruptcy, even though he had filed for bankruptcy in 2004.

The Appellant also lied to his girlfriend, Randi Petricone, about his use of her credit card without her knowledge to accrue \$8,000.00 in debt. The Appellant told Ms. Petricone that his pay was being docked to satisfy a judgment against him for use of excessive force, and that he was placed on administrative leave without pay. Neither statement was true.

In the case of the four Brazilian immigrants who testified at hearing, the one common denominator in all of the vehicle stops was Officer Estrela. There were several other police officers who arrived on the scene as back-up, and there was more than one tow company involved in towing the stopped vehicles. Officer Estrela was involved in all of the stops.

Furthermore, I draw a negative inference from the Appellant's failure to testify at the Appointing Authority hearing and at the Commission hearing. A party in a civil case who seeks shelter under the privilege against self-incrimination of the Fifth Amendment of the United States Constitution and Article 12 of the Declaration of Rights of the Constitution of Massachusetts may be the subject of a negative

inference by a fact finder. *Town of Falmouth v. Civil Service Commission*, 447 Mass. 814, 826, 857 N.E.2d 1052 (2006), citing *Lentz v. Metropolitan Prop. & Cas. Ins. Co.*, 437 Mass. 23, 26 (2002). This is true where the opposing party, through the testimony of a complainant, has established a case adverse to the party invoking the privilege. *Town of Falmouth*, 447 Mass. at 826-827, citing *Quintal v. Commissioner of the Dep't of Employment & Training*, 418 Mass. 855, 861 (1994).

Discipline

The Appellant's behavior was particularly egregious because he targeted and preyed upon undocumented Brazilian immigrants whose immigration status made them particularly vulnerable.

Although there is no evidence in the record of prior discipline, the sum total of the charges proved by the Appointing Authority demonstrate such an egregious breach of the public trust that discharge is warranted, even in the absence of prior discipline.

I conclude that there was reasonable justification for the action taken by the Appointing Authority in the circumstances found by the Commission to have existed when the Appointing Authority made its decision. *Watertown v. Arria*, 16 Mass. App. Ct. 331, 334 (1983).

As the Appeals Court noted in *Police Commissioner of Boston v. Civil Service Commission*, 22 Mass. App. Ct. 364, 494 N.E.2d 27 (1986):

Police officers must comport themselves in accordance with the laws which they are sworn to enforce and behave in a manner that brings honor and respect rather than public distrust of law enforcement personnel. They are required to do more than refrain from indictable conduct. Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question their ability and fitness to perform their official

responsibilities. *Id.*, 494 N.E.2d at 32

Appellant's Motions

I deny the Appellant's Motion to Strike the Testimony of Sergeant David Domingos as to polygraph evidence. His testimony shall remain in the record.

I did not, however, rely on the results of the polygraph examination, and instead marked the results "A" for identification only. I made my findings of fact, and drew my conclusions about the Appellant's actions, based entirely on the testimony of other witnesses, save for the finding with respect to the Appellant's denial of bankruptcy to Sergeant Domingos prior to the start of the polygraph examination, and the Appellant's denial that he took money or valuables during traffic stops.

I deny the Appellant's Motion to Strike Hearsay Evidence as Contained in Detective Lieutenant's Arthur Sullivan's Report Marked Exhibit #6. Hearsay evidence is admissible in an administrative proceeding.

I did not, however, rely on the hearsay evidence contained in the report to make my findings of fact. There were four other Brazilian immigrants who were interviewed by Detective Lt. Sullivan in Exhibit 6, and whose booking reports were offered into evidence. I declined to mark the booking reports into evidence, and marked them "C" for identification only. These four other Brazilian immigrants did not testify at hearing. I concluded that the hearsay contained in the Sullivan report with respect to their allegations against the Appellant was not reliable enough to support findings of fact.

Recommendation

I recommend that the Civil Service Commission uphold the action of the Appointing Authority to discharge Fabiano Estrela from his job as a Randolph police officer.

DIVISION OF ADMINISTRATIVE LAW APPEALS

Maria A. Imperato

Maria A. Imperato
Administrative Magistrate

DATED: 6/9/08