

**COMMONWEALTH OF MASSACHUSETTS  
CIVIL SERVICE COMMISSION**

SUFFOLK, ss.

ELIEZER GONZALEZ,  
Appellant

v.

D-02-773

BOSTON POLICE DEPARTMENT,  
Respondent

Appellant's Attorney:

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Respondent's Attorney:

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Commissioner:

John E. Taylor

**DECISION**

Pursuant to the provisions of G.L. c. 31, s. 43, the Appellant, Eliezer Gonzalez, is appealing the decision of the Appointing Authority, Boston Police Department, in suspending him without pay from the Boston Police Department for a period of sixty (60) days<sup>1</sup> for violating Rule 102, §3 (Conduct – 3 counts); Rule 102, §4 (Neglect of Duty - 3 counts); Rule 103, §8 (Patrol -1 count); Rule 103, §9 (Permission - 1 count); Rule 113, § 5, Cannon 5 (Cannon of Ethics - 3 counts); Rule 113, §5, Cannon 6 (Cannon of Ethics - 1

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<sup>1</sup> Included in the Appellant's Post-Hearing Brief was the incorrect (and repeated) claim that the length of Appellant's suspension was forty five (45) days. In fact, the suspension was for sixty (60) days.

count); Rule 113, §5, Cannon 10 (Cannon of Ethics - 1 count) and Rule 102, §23 (Truthfulness) of Boston Police Department Rules and Regulations, arising out of Internal Affairs Division (hereinafter "IAD") case numbers 003-01 and 113-01. The appeal was timely filed. A Full Hearing was held at the offices of the Civil Service Commission on January 27, 2005. Three (3) tapes were made of the hearing. Both parties submitted post-hearing briefs. As no notice was received from either party, the hearing was declared private. Twenty-one (21) exhibits were entered into the record by Respondent Boston Police Department, which exhibits were stipulated to by the Appellant. Appellant did not offer any exhibits into the record.

### **FINDINGS OF FACT:**

Based upon the documents entered into evidence (Exhibits 1-21), and the testimony of the Appellant; Kevin Waggerty, Sergeant Detective, Boston Police Department; John Danileck, Sergeant, Boston Police Department; Lawrence Hoffman, Sergeant Detective, Boston Police Department; James P. Bartes, Operations Manager, Bay State Realty; Cory Flashner, Assistant District Attorney, Suffolk County District Attorney's Office; and David Johnson, Constable, Boston, I make the following findings of fact:

1. The Boston Police Department is the employer and appointing authority.  
(Testimony, Exhibit 1)
2. At all relevant times, the Appellant was a permanent, tenured Civil Service Police Officer (Detective) in the City of Boston, I.D. No. 10266, assigned to District Area A-7. (Testimony, Exhibit 7)
3. The Rules and Procedures of the Boston Police Department set forth rules of conduct for employees of the Police Department, including but not limited to sections concerning Conduct - Rule 102, §3; Neglect of Duty - Rule 102, §4; Patrol - Rule 103, §8; Permission - Rule 103, §9; and Ethics - Rule 113, § 5,

Cannon 5; Rule 113, §5, Cannon 6; and Rule 113, §5, Cannon 10. (Exhibits 1-6)

4. The Appellant was provided a copy of the Police Department Rules and Regulations and has had the opportunity to read same. (Testimony, Exhibit 1-6)

**IAD Case No. 003-01**

5. On March 8, 2000, Appellant, his personal friend of several years, David Johnson (a constable in Suffolk County), and another constable arrived at 88 Broad Street, Boston, Massachusetts (which is located in Boston Police Department District A-1), and spoke with Property Manager James Bartes. (Testimony)
6. Appellant identified himself to Mr. Bartes as a Boston Police Officer, and produced a police report purporting to show that he was conducting a stolen property investigation. (Testimony, Exhibit 9)
7. Mr. Bartes confirmed that Equity Traders leased space in the subject building. (Testimony)
8. Mr. Bartes granted Appellant, Mr. Johnson and the other constable access to the subject building and brought them to the office of his superior, Ken Moscow. (Testimony)
9. After meeting with Mr. Moscow, Mr. Bartes brought Appellant, Mr. Johnson and the other constable to the premises leased by Equity Traders. (Testimony)
10. Mr. Johnson and the other constable immediately began examining and comparing the serial numbers on the office equipment to sheets of paper they possessed and eventually seized approximately fifty (50) computers located within the premises leased by Equity Traders. (Testimony)

11. Appellant was present during the entire time that Mr. Johnson and the other constable seized the property. (Testimony)
12. Thereafter, on or about March 13, 2000, Detective John Danilecki was contacted by former District Attorney Ralph Martin of the Suffolk County District Attorney's office regarding a possible larceny at Equity Traders. (Testimony)
13. Det. Danilecki initially met with Steven McCarthy, a principal of Equity Traders, who reported that office equipment (approximately fifty (50) computers which had been leased by his company from Schneider Leasing Company) had been illegally seized by the Boston Police Department. (Testimony, Exhibit 8)
14. As part of his larceny scheme investigation, Det. Danilecki spoke with Attorney Marshal Handley, the corporate attorney for Schneider Leasing Company, who informed him that David Johnson was employed by them as a constable and represented that he had the authority to seize the equipment at Equity Traders for failure to pay on the lease. However, Mr. Handley admitted that Schneider Leasing Company had not commenced a civil action against Equity Traders. Mr. Handley also confirmed that Appellant was present at the time the items were unlawfully seized. (Testimony, Exhibit 10)
15. Det. Danilecki next spoke with David Johnson, who admitted seizing the office equipment from Equity Traders for Schneider Leasing Company. Mr. Johnson also admitted that Appellant, his "friend", was present at the time of the seizure to "do [Johnson] a favor" by helping to him to recover "stolen property." (Testimony, Exhibit 10)

16. Det. Danilecki informed Mr. Johnson that the equipment was not stolen and that he could not use police officers for civil duties. (Testimony, Exhibit 10)
17. Det. Danilecki thereafter submitted a memorandum to the Bureau of Internal Investigations, Internal Affairs Division, detailing that Appellant had allegedly gone to 88 Broad Street (under the guise of a criminal investigation of an individual named “Shawn Clark”) to assist a constable friend (Mr. Johnson) in the removal of leased office equipment. (Testimony, Exhibit 10)
18. In response to Det. Danilecki’s memorandum to IAD, the case was referred to the Anti-Corruption Unit for further investigation and Det. Danilecki, in accordance with applicable Boston Police Department Rules and Regulations, immediately ceased his investigation. (Testimony)
19. Thereafter, Sergeant Detective Lawrence Hoffman, of the Anti Corruption Division of the IAD, was assigned to investigate the matter. (Testimony)
20. After a detailed and thorough investigation, on December 20, 2001 Appellant was formally charged with multiple violations of the Boston Police Department Rules and Regulations. (Testimony, Exhibit 7)

#### **IAD Case 113-01**

21. On or about February 23, 2000, Mr. Arnold Beatty McDonald was viciously attacked with a box cutter while being robbed of a take-out pizza from the Bella Luna restaurant in Jamaica Plain, Massachusetts, which is located in Police District E-13. (Testimony, Exhibit 12)
22. After being discovered unconscious on the street, Mr. McDonald was rushed to the hospital where he underwent surgery and received approximately five hundred (500) stitches in his face and neck. (Testimony, Exhibit 15)

23. A criminal investigation of the incident by Detectives John Callahan, Richard Grafton and Kevin Waggert of District E-13 resulted in Richard Valentine being named the lead suspect and, on May 26, 2000, an Arrest Warrant for Mr. Valentine was issued. (Testimony, Exhibits 12 and 14)
24. Mr. Valentine is the step-son of David Johnson (the same David Johnson involved in companion case IAD No 003-01). (Testimony, Exhibit 13)
25. On May 28, 2006, Detectives from District E-13 served the Arrest Warrant at the home of Mr. Valentine, who resided with his mother and David Johnson. (Testimony)
26. The Detectives were advised by his mother that Mr. Valentine would voluntarily surrender to the West Roxbury District Court on the first available date after the upcoming long weekend, Tuesday, May 31, 2000. (Testimony)
27. On May 31, 2000, Appellant approached Assistant District Attorney Corey Flashner (“A.D.A. Flashner”) at the bail hearing in the case of Commonwealth v. Valentine, West Roxbury District Court, Docket No. YO-00 W0010, and requested that A.D.A. Flashner not request bail because he “had the wrong guy”. (Testimony)
28. Appellant told A.D.A. Flashner that the basis for this belief was that the Complaint form for the charges and the Arrest Warrant had discrepancies with respect to the height and weight of Mr. Valentine. Specifically, Appellant stated that the complaint form identified Mr. Valentine as being 6’00” and 200 lbs., while the Arrest Warrant identified Mr. Valentine as 0’0” and 130 lbs.<sup>2</sup> (Testimony, Exhibit 14)<sup>3</sup>

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<sup>2</sup> The Arrest Warrant (Exhibit 14) correctly identified Mr. Valentine’s weight as 130 lbs. Appellant failed to produce a copy of the Complaint form he allegedly saw in West Roxbury District Court, and at hearing relied on the height/weight listed on the Arrest Booking Form dated May 25, 2000 which incorporated

29. A.D.A. Flashner advised Appellant that the conversation was inappropriate and terminated the conversation. Thereafter, A.D.A. Flashner immediately notified his supervisor. (Testimony)
30. That same day (May 31, 2000), the Suffolk County District Attorney's Office contacted Det. Waggert and asked him why Appellant was seeking to have Mr. Valentine released without bail. (Testimony).
31. Det. Waggert advised the Suffolk County District Attorney's Office that Appellant never attempted to contact any of the detectives from District E-13 involved in the investigation of the attack on Mr. McDonald, nor did Appellant contact any of the detectives questioning the identification of Mr. Valentine as the proper suspect. (Testimony)
32. Det. Waggert thereafter contacted Appellant's Duty Supervisor, Lieutenant Greland, to inquire why Appellant was questioning the identity of the lead suspect in Commonwealth v. Valentine. (Testimony)
33. Lt. Greland had no knowledge that Appellant was in West Roxbury District Court on May 31, 2000 and that he had involved himself in Commonwealth v. Valentine. (Testimony)
34. On June 1, 2000, Det. Waggert drafted a memorandum to Appellant's supervisor and also filed a Complaint on June 19, 2000 with IAD. (Testimony, Exhibits 11 and 18)

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information from a prior arrest of Mr. Valentine nearly one and one-half (1 ½) years earlier, on January 24, 1999. (Exhibit 13)

<sup>3</sup> Mr. Valentine's guilt was subsequently established when he pleaded guilty to all charges and received a multiple year sentence.

35. Additionally, Appellant was interviewed about the matter by both Lt. Greland and Captain Frederick Daniels, who ultimately referred the matter to the Anti-Corruption Division on or about June 30, 2000. (Exhibit 16)
36. Thereafter, Sergeant Detective Lawrence Hoffman<sup>4</sup> of the Anti Corruption Division of the IAD was assigned to investigate the matter. (Testimony)
37. After a detailed and thorough investigation, on December 20, 2001 Appellant was formally charged with multiple violations of the Boston Police Department Rules and Regulations. (Testimony, Exhibit 7)

### **The IAD Complaint**

38. On December 20, 2001, a joint Complaint was brought against Appellant by IAD arising out of IAD Case No. 003-01 and IAD Case No. 113-01. (Exhibit 7)
39. On April 25, May 29 and June 14, 2002, a hearing was held before Boston Police Department Deputy Superintendent William Casey, regarding the December 20, 2001 Complaint. (Exhibit 7)
40. By letter dated August 30, 2002, Boston Police Commissioner Paul F. Evans sustained the multiple charges brought against Appellant, who was suspended for sixty days without benefits. (Exhibit 20)
41. This appeal ensued.
42. With respect to the unlawful seizure of property at Equity Traders, Appellant testified that his presence at the 88 Broad Street location was conducted as

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<sup>4</sup> In a desperate (and unsuccessful) attempt to challenge the credibility of Sgt. Hoffman, Appellant's attorneys allege in their post-hearing brief that the Boston Police Department conducted an improper Criminal Offender Record Information ("CORI") check of Mr. Johnson. To the contrary, the Commission finds that the CORI check was done in compliance with G.L. c. 6, §§168-178B and applicable case law, and was properly introduced as a means of impeaching the testimony of Mr. Johnson.



part of an investigation of an individual named “Shawn Clark” (who he claimed to have previously investigated and arrested for creating false contracts in District E-18). Appellant testified that he “received an anonymous tip from Mr. Johnson”, who himself allegedly received it from an unnamed “confidential informant”, that Shawn Clark had sold stolen equipment to Equity Traders. However, Appellant failed to offer any objective proof to substantiate this claim (that Shawn Clark was selling office equipment from District E-18 across the city to businesses in District A-1 (where Equity Traders was located))). Indeed, Appellant failed to offer any evidence whatsoever as to the existence of Shawn Clark.

43. As a detective, Appellant had city wide jurisdiction to conduct investigations, provided such investigations originated from events in his assigned district. Here, Appellant was assigned to District A-7. However, 88 Broad Street, Boston, Massachusetts is located in District A-1. Thus, since Appellant admittedly neither sought nor received permission to leave his assigned district on the date in question, nor did he notify his Supervising Officer that he had left his assigned district, he violated Boston Police Department Rules and Regulation, Rule 103, § 8 (Patrol); Rule 103, §9 (Permission) and Rule 102, § 4 (Neglect of Duty).
44. Further, this Commission finds that Appellant’s testimony that he merely conveyed his concerns to A.D.A. Flashner that Richard Valentine was “misidentified” (due to an obvious typographical error on the arrest warrant which listed Mr. Valentine’s height as “0’0” instead of “6’0”) is specious.
45. Appellant’s efforts to interfere with and influence the Court proceedings on behalf of someone who ultimately pleaded guilty were repugnant violations of Rule 102 §3 (Conduct); Rule 113, §5 (Canons 5, 6 and 10). Additionally, his subsequent provision of inaccurate, false information to the investigatory units

of the Police Department (made as part of his attempt to cover up his improper actions) was violative of Rule 102, §23 (Truthfulness).

46. Similarly, the testimony of David Johnson was unreliable and untrustworthy in its entirety, and his testimony was contradicted, in critical points, by other reliable, credible and corroborated evidence which was the foundation of the Police Department's case, including but not limited to the credible testimony of Det. Hoffman, Det. Waggerty Det. Danilecki and A.D.A. Flashner.

## CONCLUSION

The role of the Civil Service Commission is to determine “whether the appointing authority has sustained its burden of proving that there was reasonable justification for the action taken by the appointing authority.” City of Cambridge v. Civil Service Commission, 43 Mass. App. Ct. 300, 304 (1997). Town of Watertown v. Arria, 16 Mass. App. Ct. 331 (1983). McIsaac v. Civil Service Commission, 38 Mass. App. Ct. 473, 477 (1995). Police Department of Boston v. Collins, 48 Mass. App. Ct. 411 (2000). City of Leominster v. Stratton, 58 Mass. App. Ct. 726, 728 (2003). An action is “justified” when it is “done upon adequate reasons sufficiently supported by credible evidence, when weighed by an unprejudiced mind; guided by common sense and by correct rules of law.” City of Cambridge at 304, quoting Selectmen of Wakefield v. Judge of First Dist. Ct. of E. Middlesex, 262 Mass. 477, 482 (1928). Commissioners of Civil Service v. Municipal Ct. of the City of Boston, 359 Mass. 211, 214 (1971). The proper inquiry for determining if an action was justified is, “whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of the public service.” Murray v. Second Dist. Ct. of E. Middlesex, 389 Mass. 508, 514 (1983). School Committee of Brockton v. Civil Service Commission, 43 Mass. App. Ct. 486, 488 (1997). This burden must be met by a preponderance of the evidence. M.G.L. c. 31, §43.

In order to carry out the legislative purpose of the civil service laws, the appropriate inquiry for the commission is “whether the employee has been guilty of substantial

misconduct which affects the public interest by impairing the efficiency of the public service.” Murray v. Justices of Second District Court of Eastern Middlesex, 389 Mass. 508, 514 (1983). Substantial misconduct by police officers adversely affects the public interest more than any other civil service position. In a free society the public must have confidence in their police officers because of the vast power they can dispatch. “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.” Police Commissioner of Boston v. Civil Service Commission, 22 Mass.App.Ct. 364, 371 (1986). “Police officers must comport themselves in accordance with the laws they are sworn to enforce and behave in a manner that brings honor and respect for rather than public distrust of law enforcement personnel.” Id. Because of the nature of a police officer’s position, and the risk of abuse of power, police officers are held to a high standard of conduct.

It is the conclusion of this Commission that the Respondent has satisfied its burden of proving reasonable justification for suspending the Appellant for sixty (60) days without pay and benefits. Specifically, the evidence proffered by the Department is sufficiently reliable to warrant a reasonable mind to find that the Appellant is guilty of the misconduct for which he was penalized.

It is the function of the agency hearing the matter to determine what degree of credibility should be attached to a witness’ testimony. School Committee of Wellesley v. Labor Relations Commission, 376 Mass. 112, 120 (1978). Doherty v. Retirement Board of Medicine, 425 Mass. 130, 141 (1997). The hearing officer must provide an analysis as to how credibility is proportioned amongst witnesses. Herridge v. Board of Registration in Medicine, 420 Mass. 154, 165 (1995).

Here, the Commission assigns little credibility to the testimony of Appellant and his sole witness, David Johnson, with respect to the incidents in question. Both Appellant and Mr. Johnson were evasive in their respective answers and failed to offer any credible

explanation whatsoever as to Appellant's improper involvement in both the unlawful seizure of property at Equity Traders and his intervention in Commonwealth v. Valentine.

With respect to the unlawful seizure of property at Equity Traders, Appellant alleged that his presence at the 88 Broad Street location was conducted as part of an investigation of an individual named "Shawn Clark" (who he claimed to have previously investigated and arrested for creating false contracts in District E-18). Appellant testified that he "received an anonymous tip from Mr. Johnson", who himself received the tip from an unnamed "confidential informant", that Shawn Clark had sold stolen equipment to Equity Traders. However, Appellant failed to offer any objective proof to substantiate this claim (that Shawn Clark was selling office equipment from District E-18 across the city to businesses in District A-1 (where Equity Traders was located)). Indeed, Appellant failed to offer any evidence whatsoever as to the existence of Shawn Clark.

As a detective, Appellant had city-wide jurisdiction to conduct investigations, provided such investigations originated from events in his assigned district. Here, Appellant was assigned to District A-7. However, 88 Broad Street, Boston, Massachusetts is located in District A-1. Thus, since Appellant neither sought nor received permission to leave his assigned district on the date in question, nor did he notify his Supervising Officer that he had left his assigned district, he violated Boston Police Department Rules and Regulation, Rule 103, § 8 (Patrol); Rule 103, §9 (Permission) and Rule 102, § 4 (Neglect of Duty).

Further, Appellant's actions, undertaken to "do his friend a favor", were not undertaken in an impartial manner, constituted a misuse of authority, and resulted in a failure to adhere to reporting requirements and to the mishandling of evidence, when he acted as an agent for a private enterprise (David Johnson), in order to facilitate the retrieval of rental property without lawful authority, in direct violation of Rule 102, §3 (Conduct); Rule 113, §5 (Canon 5); and Rule 102, §4 (Neglect of Duty) .

Appellant's improper involvement in Commonwealth v. Valentine is even more egregious to this Commission. Appellant's suggestion to A.D.A. Flashner that Richard Valentine was "misidentified" because of an obvious typographical error on the arrest warrant (which listed Mr. Valentine's height as "0'0" instead of "6'0") is specious. The fact that Appellant would go to such lengths to "do a favor" for his good friend's step-son who was accused of a horrendous crime is offensive, displaying a cavalier attitude towards the Rules and Regulations of the Boston Police Department and the Rule of Law in general. His heavy-handed efforts to interfere with and influence the Court proceedings on behalf of someone who ultimately pleaded guilty were repugnant violations of Rule 102 §3 (Conduct); Rule 113, §5 (Canons 5, 6 and 10). Additionally, his subsequent provision of inaccurate, false information to the investigatory units of the Police Department (made as part of his attempt to cover up his improper actions) was violative of Rule 102, §23 (Truthfulness).

Similarly, the testimony of David Johnson was unreliable and untrustworthy in its entirety. Further, his testimony was contradicted, in critical points, by other reliable, credible and corroborated evidence which was the foundation of the Police Department's case, including but not limited to the credible testimony of Det. Hoffman, Det. Waggerty Det. Danilecki and A.D.A. Flashner.

For all of the above stated reasons, it is found that the Boston Police Department has established by a preponderance of the reliable and credible evidence in the record that it had just cause to suspend the Appellant for sixty (60) days without pay and benefits for his misconduct. Therefore, the appeal on Docket No. D-02-733 is hereby *dismissed*.

Civil Service Commission

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John E. Taylor  
Commissioner

By vote of the Civil Service Commission (Goldblatt Chairman; Taylor, Guerin, Marquis and Bowman, Commissioners) on January 25, 2007.

A True Record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. A motion for reconsideration shall be deemed a motion for rehearing in accordance with MGL ch. 30A sec. 14(1) for the purpose of tolling the time of appeal.

Pursuant to MGL ch. 31 sec. 44, any party aggrieved by a final decision or order of the Commonwealth may initiate proceedings for judicial review under MGL ch. 30A sec. 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:

Kerri E. Tierney, Esq.  
Stephen C. Pfaff, Esq.