

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

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

VICTOR PELLOT,
Appellant

v.

D-04-404

CITY OF HAVERHILL,
Respondent

Appellant's Attorney:

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Commissioner:

John E. Taylor

DECISION

Pursuant to G.L. c. 31, § 43, the Appellant, Victor Pellot (hereinafter "Pellot" or "Appellant"), is appealing the action taken by the Respondent, the City of Haverhill (hereinafter "the City") to suspend him for one year and reduce him in rank from Police Sergeant to Police Officer for violating Haverhill Police Department (hereinafter "the Department") Rules and Regulations. The appeal was timely filed. A hearing was held on August 22 and 23, 2007. As no written notice was received from either party, the hearing was declared private. The witnesses were sequestered.

FINDINGS OF FACT:

Forty-seven (47) exhibits were entered into evidence. Over the objection of the City, Exhibits 27, 28 and 29 having to do with the polygraph examination of Appellant were redacted in their entirety. Based upon the documents entered into evidence and the testimony of:

For the Appointing Authority: Police Chief Alan DeNaro (hereinafter "DeNaro"), Deputy Police Chief Donald Thompson (hereinafter "Thompson"), Police Sergeant John Arahovites (hereinafter "Arahovites"), Police Lieutenant John Rogers (hereinafter "Lt. Rogers"), Detective Robert Rogers (hereinafter "Det. Rogers"), Female buyer (hereinafter "female buyer"), an identified neighbor (hereinafter "Neighbor"), Corey Speechley (hereinafter "Speechley"), David Jesionowski (hereinafter "Jesionowski ") and a confidential informant of the Haverhill Police Department (hereinafter "CI").

For the Appellant: Victor Pellot and Lieutenant Kevin Dorr (hereinafter "Dorr").

I make the following findings of fact:

1. The Appellant was hired as a police officer by the City of Haverhill in 1983 and was promoted to Sergeant in approximately 1999. His duties as a Street Supervisor on the day shift included patrolling the street, monitoring the radio and responding to situations requiring the presence of a supervisor. (Testimony of Appellant and Dorr)
2. Prior to the suspension that is the subject of the appeal, the Appellant had no disciplinary record with the Department. (Testimony of Appellant)
3. On June 28, 2002 Lt. Rogers and Det. Rogers were conducting surveillance for drug activity at a location known for frequent drug sales. After witnessing what they believed to be a drug sale, Lt. Rogers radioed Det. Rogers to pull over the buyer's pick up truck, and he did so. (Testimony of Lt. Rogers and Det. Rogers)
4. The buyer, Alan Schrempf, was arrested for possession of cocaine, transported back to the station and booked. He made verbal statements to Lt. Rogers that he had

purchased cocaine from a dealer named Genovese (Tito) Santiago (hereinafter “Santiago”) while a police officer referred to as “Manny” was present. (Testimony of Lt. Rogers, Det. Rogers and Exhibit 24)

5. Schrempf provided Lt. Rogers and Det. Rogers with a handwritten statement in which he stated that he purchased cocaine from Santiago on several occasions over a period of five months at his house. He stated that a “Spanish police officer that he knew as Manny” was present during several of the purchases, in full uniform, with three stripes on his sleeve, and driving a police cruiser. (Exhibits 22 and 23)
6. Santiago is the Appellant’s first cousin. The Appellant is also known by his nickname “Manny”. (Testimony of Appellant)
7. Lt. Rogers notified Thompson about Schrempf’s allegations concerning the Appellant. Thompson instructed Lt. Rogers to prepare a special report. Thompson reviewed the statements and the report with the then Police Chief who instructed Thompson to continue to investigate the matter. (Testimony of Lt. Rogers and Thompson)
8. Det. Rogers testified that in May or June, 2002 he and Det. Melanson were conducting surveillance on citizens’ complaints of drug activity and observed Santiago exiting a vehicle. Det. Melanson identified the person as Santiago, who was previously unknown to Det. Rogers. Two days later Pellot spoke to Det. Rogers at the police station and asked if he and Det. Melanson were following Santiago concerning drug activity. Pellot then advised Det. Rogers not to “harass” Santiago, his cousin, because Santiago neither sells drugs nor is involved in drug activity. The Appellant

has since denied that this ever conversation occurred. (Testimony of Appellant, Det. Rogers and Exhibit 47)

9. On July 17, 2002 Thompson, Det. Rogers and Schrempf met with the Drug Enforcement Agency (DEA) in Boston. Schrempf repeated the statement he had already given to the Haverhill Police and agreed to act as a DEA informant in making controlled buys from Santiago. (Testimony of Thompson, Det. Rogers and Exhibit 30)
10. While awaiting approval of Schrempf to act as a DEA informant, Agent Doyle and Det. Rogers conducted periodic surveillance of Santiago's home between July and September, 2002.
11. In October, 2002 Det. Rogers met with Neighbor, who lives directly across the street from Santiago in the residential neighborhood with light vehicle traffic and very little pedestrian traffic. Neighbor, who is retired, is often home. (Testimony of Neighbor)
12. Neighbor stated that he was concerned about drug activity at Santiago's home as well as about the presence of a Haverhill police cruiser which was frequently parked there with the words "Patrol Supervisor" on it. (Testimony Neighbor)
13. Neighbor allowed the DEA to setup a camera in his home, which was aimed at Santiago's driveway. The surveillance camera recorded the following activity of the Appellant at Santiago's residence in uniform and with a police cruiser on: October 20, 2002 - Arrives at 10:48 AM and departs at 11:22 AM; October 25, 2002 - Arrives at 12:53 PM and departs at 1:42 PM. During this period, several people were observed coming and going; October 26, 2002 - Arrives as 2:23 PM and departs shortly thereafter; October 31, 2002 - Arrives at 11:31 AM and departs at 11:38 AM;

November 7, 2002 - Arrives as 10:55 AM and departs shortly thereafter; September 26, 2003 - Arrives at 1:36 PM and departs at 2:41 PM. (Testimony of Neighbor and Exhibit 30)

14. On October 26, 2002, December 5, 2002 and December 16, 2002, the DEA employed Schrempf to make controlled purchases of cocaine from Santiago at his house. (Testimony of Thompson, Det. Rogers and Exhibit 30)
15. During January 2003, the DEA attempted to introduce an undercover agent into Santiago's operation through Schrempf. This effort was not successful and Schrempf became afraid that Santiago had discovered the undercover operation. He was deactivated as an informant.¹ (Testimony of Thompson, Det. Rogers and Exhibit 30)
16. Through much of 2003, the DEA made sporadic surveillance and attempted to locate a new informant in vain. (Testimony of Thompson and Exhibit 30)
17. On April 8, 2003, DeNaro received a call from another neighbor of Santiago's who complained that an officer was continuously at the house while drug dealing is going on and that this activity had been going on for over a year. Within the next hour, DeNaro drove by the Santiago house and observed the police supervisor's cruiser in the driveway. He returned to the police station and confirmed that the cruiser was assigned to Appellant. (Testimony of DeNaro)
18. On November 20, 2003 surveillance was being conducted at Santiago's residence when a vehicle pulled up and Santiago was observed reaching into the vehicle. The vehicle departed shortly after and was followed and stopped by detectives. Two persons were arrested for possession of cocaine and admitted to buying the cocaine from Santiago. (Testimony of Thompson, Det. Rogers and Exhibit 30)

¹ Schrempf died on February 14, 2004. The cause of death is listed as "acute tramadol intoxication."

19. As a result of this arrest, a search warrant was obtained for Santiago's residence.

Before the warrant was executed Santiago left his residence in a motor vehicle with two females. The motor vehicle was stopped, Santiago was arrested for distribution and trafficking in cocaine, and the two females were arrested for possession. A search of Santiago's house found no drugs. (Testimony of Thompson, Det. Rogers and Exhibit 30)

20. One of the females arrested on December 29, 2003 testified that she and another woman had gone to Santiago's house between August and October, 2003 to purchase cocaine. She stated that Appellant was present but in a different room when Santiago gave cocaine to the two women. Although this witness received no special treatment as a result of the statement she provided the Haverhill police with on December 29, 2003, her testimony was shaky and halting. (Testimony of Female buyer)

21. The Appellant testified that he visited Santiago's residence prior to his arrest in November 2003 because his cousin was confined to his house. He stated that he would stop by on his lunch break, perhaps once a week between May 2002 and July 2003, but that in some weeks he visited more frequently. The Appellant stated that while at the Santiago residence he saw people come and go for short periods of time, but did not find that unusual because work was being done on the house. The Appellant's testimony was not credible and his answers were evasive. (Testimony of Appellant)

22. Dorr, the Appellant's supervisor on the day shift, testified that he never received any complaints concerning the Appellant. He testified that on most days when he went lunch, the Appellant would cover for him as shift commander. He said that he was not

aware that the Appellant spent time at the Santiago residence. Dorr was a credible witness. (Testimony of Dorr)

23. Following Santiago's arrest, the Department opened an investigation on the Appellant. On December 2, 2003 he was placed on paid administrative leave. (Exhibit 31)

24. On December 5, 2003 an individual named Corey Speechley was arrested on outstanding warrants and provided a written statement. Speechley stated that during the two years he did electrical work at the Santiago residence, he observed people coming to the house for short periods of time, leading him to believe that Santiago was selling drugs. Speechley stated that he had known Appellant since high school and that the Appellant was present in uniform and with a cruiser on many of these occasions. He was a credible witness. (Testimony of Speechley)

25. On December 17, 2003, Neighbor provided a written statement stating that upon moving in two years earlier, he observed many people coming to Santiago's house and staying only a minute or two. He stated that the Appellant showed up often in his uniform and in his cruiser and that people would continue to come by. (Testimony of Neighbor and Exhibit 33)

26. On January 8, 2004, the Appellant was ordered to the Haverhill Police Station to respond to written questions concerning his involvement with Santiago. In response to the questions, the Appellant stated that would occasionally stop by his cousin's home, he would stop by approximately once a week but not in excess of one hour while he was on duty, that he was aware of Santiago's prior drug convictions, that he saw nothing unusual in people coming and going to Santiago's home when he was

present, was unaware that Santiago was dealing drugs until his arrest, and that he was not present while drugs were dealt at Santiago's house. (Testimony of Thompson, Appellant and Exhibit 14)

27. On January 23, 2004 Appellant was again ordered to the Haverhill Police Station to respond to questions concerning his involvement with Santiago. He further stated that he would drop by often to see if Santiago needed anything, sometimes as much as three or four times a week, sometimes for minutes but other times longer, and that he may have stayed for over an hour on more than one occasion. He stated that he did see people come and go, but did not think this was unusual. The Appellant denied any knowledge of drug dealing by Santiago. (Testimony of Thompson, Appellant and Exhibit 15)

28. On March 6, 2004 Thompson interviewed David Jesionowski who had been arrested on a warrant for bad checks. Jesionowski stated that he had purchased cocaine from Santiago several times. On about a dozen of those occasions the Appellant had been present at the house, in uniform and with a cruiser. Jesionowski testified that he received no special treatment on his pending criminal cases as a result of providing his statement. (Testimony of Jesionowski, Thompson and Exhibit 13)

29. A witness, CI, testified that he did yard work for Santiago in exchange for drugs and at other times would go there just to purchase drugs. On one of those occasions the uniformed Appellant was present in the living room. Parker testified that this was not the first time he saw Appellant at Santiago's. CI has been working as a confidential informant for the Haverhill Police Department for approximately a year. (Testimony of CI)

30. On March 31, 2004 Thompson submitted his report of investigation concerning the Appellant. Thompson concluded that the Appellant was present when Santiago sold cocaine and was aware of the activity. Thompson based his conclusion on the testimony of Schrempf, Neighbor, Rosengard, Speechley and Jesionowski, and Santiago's history of drug convictions and the results of the Appellant's two polygraph tests.² (Testimony of Thompson and Exhibit 30)
31. On May 5, 2004 DeNaro suspended Appellant for five days and recommended that the Appointing Authority, Mayor James J. Fiorentini (hereinafter "Fiorentini") terminate his employment. The alleged violations against Appellant were the following:
1. Rule 102, Sections A, B, H - Unbecoming Conduct;
 2. Rule 106, Section A - Neglect of Duty (8 counts);
 3. Rule 111, Unsatisfactory Performance Sworn Officer (8 counts);
 4. Rule 136, Truthfulness;
 5. Rule 145, Associations;
 6. Cannon of Police Ethics, Article III - Duty to be familiar with law and with the responsibilities of self and other public officials;
 7. Cannon of Police Ethics, Article VII - Conduct toward the public;
 8. Cannon of Police Ethics, Article XI - Attitude toward Profession.
- (Testimony of DeNaro and Exhibit 1)
32. DeNaro testified that Appellant's violations of the above-referenced rules were based on the excessive time spent at the Santiago house while on duty - in uniform and with a marked police cruiser - while drug sales were being made. DeNaro explained that the violations were also based on Appellant's dishonesty in his interviews with Thompson on issues including the frequency and the length of time he spent at the Santiago residence, whether he warned Santiago about police activities, and whether

²This polygraph evidence was excluded by the Commission. See Cignetti v City of Cambridge, Docket No. D-4868 (1996). The Commission's ruling is in line with the Supreme Judicial Court's ruling that polygraph tests are inadmissible in court because their reliability and credibility is unproven.

he knew that drug sales were taking place in his presence. (Testimony of DeNaro, Exhibit 1, 35, 44, and 45)

33. DeNaro testified that the Appellant's presence at the Santiago home, the amount of time he spent there, the ongoing activities, and the several calls received from the public house violated the Canon of Police Ethics, Article III - Duty to be familiar with law and with the responsibilities of self and other public officials requires an officer to make certain of their responsibilities and the particulars of their enforcement seeking aid from their superiors in matters of technicality or principal, the Canon of Police Ethics, Article VII - Conduct toward the public demands that law enforcement officers shall conduct their official life in a manner such as will inspire confidence and trust and the Canon of Police Ethics, Article XI - Attitude toward Profession, (Testimony of DeNaro, Exhibit 1, 35 and 44)
34. DeNaro testified that his review of the videotapes, the Appellant's responses to the written questions, his taped interview, the statements of civilians, the telephone calls he received from civilians, Thompson's Internal Affairs Report, and his own personal observations formed the basis for taking disciplinary action against Appellant. (Testimony of DeNaro, Exhibit 1 and 44)
35. An appointing authority hearing was held in the summer of 2004. The Hearing Officer found that Appellant's failure to know of the drug activity at Santiago's residence, his knowledge of Santiago's prior drug conviction, and his conversation with Det. Rogers were the basis for his recommendation that he be reduced in rank to police officer and serve a thirty day minimum suspension. (Exhibit 36)

36. Mayor Fiorentini adopted the finding of facts as made by the Hearing Officer but also found the facts to be "extremely troubling" and increased Appellant's suspension period to one year without pay and demoted him in rank to police officer. (Exhibit 36)
37. Following his return to work, Appellant has been assigned to work inside the station.
38. Det. Rogers, Lt. Rogers, and Chief DeNaro were all credible witnesses.

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). See 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." Id. 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 Commission determines justification for discipline by inquiring, "whether the employee has been guilty of substantial misconduct which adversely affects the public interest by impairing the efficiency of 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). The Appointing Authority's burden of proof is one of a

preponderance of the evidence which is established "if it is made to appear more likely or probable in the sense that actual belief in its truth, derived from the evidence, exists in the mind or minds of the tribunal notwithstanding any doubts that may still linger there."

Tucker v. Pearlstein, 334 Mass. 33, 35-36 (1956). In reviewing an appeal under G.L. c. 31, §43, if the Commission finds by a preponderance of the evidence that there was just cause for an action taken against an appellant, the Commission shall affirm the action of the appointing authority. Town of Falmouth v. Civil Service Commission, 61 Mass. App. Ct. 796, 800 (2004).

The issue for the Commission is "not whether it would have acted as the appointing authority had acted, but whether, on the facts found by the commission, 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). *See* Commissioners of Civil Serv. v. Municipal Ct. of Boston, 369 Mass. 84, 86 (1975) and Leominster v. Stratton, 58 Mass. App. Ct. 726, 727-728 (2003).

In this case, Respondent has met its burden to prove by a preponderance of the evidence that its action of disciplining Appellant was justified. The evidence, including the Internal Affairs report, the credible testimony of DeNaro, Det. Rogers, Lt. Rogers and others present that Santiago was selling cocaine from his residence to numerous people who came and went quickly, in the frequent presence of the Appellant, in uniform and with his cruiser. Although the Appellant testified that he did not see anything unusual going on at his cousin, that is just not credible. If it appeared to the untrained civilian eye

that drug activity was going on, this should have been even more apparent to a police officer with the Appellant's rank, training and experience.

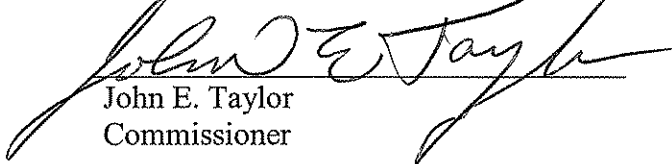
By virtue of the powers conferred by their office, police officers are held to a high standard of conduct. "Police officers are not drafted into public service; rather, they compete for their positions. In accepting employment by the public, they implicitly agree that they will not engage in conduct which calls into question, their ability and fitness to perform their official responsibilities." Police Commissioner of Boston v. Civil Service Commission, 22 Mass. App. Ct. 364, 371 (1986).

Based on the above law and in consideration of the evidence here, Respondent's conclusion that Appellant has selectively told the truth in this matter is justified as is its determination that the Appellant failed to conduct his official life in a manner that would inspire confidence and trust in himself as an officer and in the Department.

In sum, Respondent has established by a preponderance of the evidence that there is just cause for the one year suspension of Appellant and his demotion from the rank of Sergeant to Police Officer, and, there is no evidence of inappropriate motivations or objectives that would warrant the Commission reducing the discipline imposed upon him.

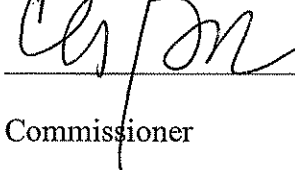
The appeal under Docket No. D-04-404 is hereby *dismissed*.

Civil Service Commission


John E. Taylor
Commissioner

By vote of the Civil Service Commission (Bowman, Chairman, Marquis, Henderson and Taylor, Commissioners) on May 1, 2008)

A true record. Attest:


Commissioner

A motion for reconsideration may be filed by either Party 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 M.G.L. c. 30A § 14(1) for the purpose of tolling the time for appeal.

Any party aggrieved by a final decision or order of the Commission may initiate proceeding for judicial review under section 14 of chapter 30A 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 commission's order or decision.

Notice to:

Bryan C. Decker, Esq.

William D. Cox, Jr. Esq.