

**COMMONWEALTH OF MASSACHUSETTS**

SUFFOLK, ss.

**CIVIL SERVICE COMMISSION**

One Ashburton Place, Room 503  
Boston, MA 02108  
617.727.2293

DARARITH UNG,  
Appellant,

v.

D1-08-150

LOWELL POLICE DEPARTMENT,  
Respondent.

Appellant's Attorneys:

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Commissioner:

Christopher C. Bowman

**DECISION**

Pursuant to G.L. c. 31, § 43, the Appellant, Dararith Ung (hereinafter "Ung" or Appellant") appealed the decision of the Lowell Police Department (hereinafter "LPD or Appointing Authority") to terminate him from his position as a police officer for making false statements to a superior officer with the intent to deceive; malfeasance of duty; and neglect of duty.

A full hearing was held on November 3, 2010; November 19, 2010; and December 7, 2010 at Lowell City Hall. A digital recording was created of the hearing and both parties were provided with a CD of the proceeding. Following the close of the hearing, proposed decisions were submitted by both parties on March 14, 2011 (Appellant) and March 16, 2011 (Appointing Authority).

## **FINDINGS OF FACT**

Based upon the documents admitted into evidence and the testimony of:

*Called by the Appointing Authority:*

- Rath Sar, citizen of Lowell who filed complaint against Appellant;
- Lt. James Hodgdon, LPD;
- Deborah Friedl, Deputy Superintendent, LPD;
- Sgt. John Sheehan, LPD;
- Kenneth Lavalley, Superintendent, LPD;
- Lt. Daniel Larocque, LPD;
- Craig Withycombe, MIS/IT, LPD;

*Called by the Appellant:*

- Dararith Ung, Appellant;

I make the following findings of fact:

1. The Appellant was a permanent, full-time police officer for the LPD from 1992 until he was terminated in 2008. (Testimony of Appellant)
2. While employed as a police officer with the LPD, the Appellant served as a Khmer interpreter in the context of numerous criminal investigations including a homicide investigation and investigations involving the federal DEA, FBI and Secret Service. (Testimony of Hodgdon)

### *Prior Discipline*

3. On November 21, 1993, the Appellant received a written order not to carry his service weapon off duty and an official reprimand for two separate incidents, on September 21, 1993 and October 29, 1993, of brandishing his service weapon in public. (Appointing Authority Exhibit A)
4. On June 11, 1996, the Appellant received a 172 working day suspension from the LPD for failing to obey a written order instructing him not to carry his service weapon while off-duty. (Appointing Authority Exhibit A)

### *Facts regarding instant appeal*

5. The Professional Standards Unit of the LPD investigated the following two citizen complaints in 2004 and 2005 regarding the Appellant that ultimately resulted in his termination: 1) the “Rath Sar investigation”; and 2) the “Market Basket investigation”.

### *The Rath Sar Investigation*

6. The Appellant was personally acquainted with both Rath Sar and another woman by the name of Mom Chan prior to September 2004. According to the Appellant, he met both of these women through his family-owned convenience store in Lowell. (Testimony of Appellant)
7. At the time the Appellant met Mom Chan in 2001, he knew that she owned 6-7 rental units on South Whipple Street in Lowell and that she lived in one of those apartments. (Testimony of Appellant)
8. The Appellant socialized with Mom Chan and she had the Appellant’s cell phone number. (Testimony of Appellant and Sar)

9. Sometime in 2003, Mom Chan rented a room to Rath Sar for approximately \$200 - \$300 / month. Mom Chan introduced Ms. Sar to the Appellant. Ms. Sar frequented the Appellant's convenience store and would see and talk to the Appellant at the store. Sometimes the Appellant was working at the store by himself and sometimes he was there with his wife. According to Ms. Sar, the Appellant would flirt with her while she was at the store and ask her to be his "second wife". She testified that she "laughed and waived [him] away" because "I knew he had a wife." (Testimony of Sar)
10. Ms. Sar is a native of Cambodia who moved to the United States around the years 2000 – 2001. She understands some of the English language when spoken. However, Ms. Sar can not speak or read the English language. She is currently seeking to become a United States citizen. (Testimony of Sar)<sup>1</sup>
11. When she first moved to the United States, Ms. Sar married a man that she had previously lived with in Cambodia.
12. Sometime in 2003 or 2004, Ms. Sar's husband died while he was visiting Cambodia. She subsequently remarried (in 2005) and has been married to her current husband for approximately five (5) years. (Testimony of Sar)
13. I credit Ms. Sar's testimony regarding the events, described in detail below, related to the ownership of a 2003 Lexus and her interactions with the Appellant that related to this vehicle. I credit her testimony in this regard despite some reservations I had about other parts of her testimony, including testimony about her former (deceased) husband. The testimony regarding the Lexus and the Appellant was plausible and consistent, both during

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<sup>1</sup>An interpreter assisted Ms. Sar with her testimony before the Commission.

her direct testimony as well as during some tough cross examination. Without referencing any notes, and despite the long period of time that has elapsed since the events occurred, she had a good recollection of the most salient details and her testimony rang true to me.

(Testimony, demeanor of Sar)

14. As of 2003, Ms. Sar had not yet established credit necessary to obtain a bank loan in the United States. Mom Chan agreed to co-sign a bank loan so that Ms. Sar could purchase a new car. (Testimony of Sar)

15. Mom Chan co-signed the aforementioned car loan with Ms. Sar. Ms. Sar utilized the proceeds from this bank loan along with \$5,000 from jewelry she sold to purchase a white Lexus automobile for approximately \$20,000 - \$25,000. The title to this vehicle named both Rath Sar and Mom Chan as the owners. (Testimony of Sar)

16. When the white Lexus was registered with the Massachusetts Department of Motor Vehicles, it was registered in the names of both Rath Sar and Mom Chan. However, Ms. Sar made all the payments on the vehicle. The vehicle's license plate number was 41NY06. (Testimony of Sar; Appointing Authority Exhibit B9)

17. Following the death of Rath Sar's husband in 2004, the Appellant asked Ms. Sar to meet him in a parking lot in Lowell. According to Ms. Sar, the Appellant gave her \$1,000 during their meeting as a gift to use as she pleased. (Testimony of Sar) The Appellant testified before the Commission that the \$1,000 was a loan requested by Ms. Sar that she needed to help make her car payments. (Testimony of Appellant)

18. Ms. Sar testified that subsequent to receiving the \$1,000 from the Appellant, he asked her three times (twice by phone and once in person) to go out with him and she refused each

time. (Testimony of Sar) According to Ms. Sar, when she rebuffed the Appellant a third time, the Appellant told her she needed to return the \$1,000 and, if she didn't, the Appellant would take her to court to collect the \$1,000 and report her to immigration officials. Ms. Sar testified that the Appellant's threats included a well-known Cambodian expression, "I am rock; you are egg". (Testimony of Sar)

19. By September 2004, Ms. Sar was no longer living with Mom Chan but lived at the Camelot Court Apartments in Lowell. (Testimony of Sar) On September 2, 2004, the Appellant was assigned to Car 7 in the West Sector in Lowell. (Testimony of Appellant and Hodgdon; Appointing Authority Exhibit B6.5)

20. On September 2, 2004, the Appellant filed a report of an unauthorized use of a motor vehicle and/or stolen motor vehicle with respect to a 2003 Lexus GS300 MA Reg. #41NY06. (Testimony of Appellant, Hodgdon; Appointing Authority Exhibit B2, B3, B11)

21. The Appellant's September 2004 report concerning the 2003 Lexus GS300 MA Reg. # 41NY06 included the vehicle VIN number and indicates that the reporting party, Mom Chan of 94 S. Whipple Street, stated "she took trip to Cambodia on 03/30/04. She had her car at her driveway. On 8/28/04 she returned to the United States and she learned that her acquaintance; Sar Rath Narlene D.O.B. [redacted]. ss#[redacted], used her car without her permission. Victim got in touch with Miss Sar and told her to bring her car back. But Miss Sar refused to return the car. Miss Sar was unknown whereabouts [sic] at this point." This report further indicates recovery at 10:49 PM at 307 Camelot Court. (Appointing Authority Exhibit B7)

22. Standard operating procedure of the LPD is that an officer contact dispatch upon taking a report for an unauthorized use/stolen motor vehicle in order for the dispatch center to run a query of the vehicle registration through the CJIS ("Criminal Justice Information System") system to determine if the vehicle has previously been recovered in any jurisdiction. When dispatch runs a query through CJIS, it normally has access to the VIN number for each such vehicle. (Testimony of Hodgdon)
23. The Appellant testified that he would have obtained the VIN number for the Lexus by calling a dispatcher. (Testimony of Appellant) Lt. Hodgdon testified that there is no evidence that the Appellant contacted dispatch to query the plate. (Testimony of Hodgdon)
24. On September 2, 2004, Ms. Sar was at the Camelot Court Apartments in Lowell when Lowell Police arrived at the scene and attempted to recover the subject white Lexus. According to Ms. Sar, she approached an officer [not the Appellant] at Camelot Court and showed him the check book that she used to make car payments and said "that car is mine", "I pay that car every month." (Testimony of Sar)
25. LPD records indicate that a CJIS query for the subject motor vehicle was run on September 2, 2004 at 21:59 or 9:59 P.M. A print out of this query indicates as "Owners" Mom Chan and Rath Sar. (Appointing Authority Exhibit B8)
26. According to Ms. Sar, the officer, after looking at his computer in his patrol vehicle, told her that he saw that the car has "two names", that she must be a sibling and that he would not tow her car. (Testimony of Sar)

27. At some point while Ms. Sar was talking to the police officer referenced above, the Appellant arrived on the scene. According to Ms. Sar, the Appellant approached her and told her that she must drive the car and give it to Mom Chan. According to Ms. Sar, she told the Appellant that she pays for the car and that she would not bring it to Ms. Sar at which point the Appellant became angry with her. (Testimony of Sar)
28. As part of its decision to terminate the Appellant, the LPD concluded in relevant part that, “On September 2, 2004, Officer Ung knowingly and intentionally made a false report of unauthorized use and/or stolen motor vehicle with respect to a 2003 Lexus GS300 MA Reg. 41NY06 when he filed such a report knowing this vehicle was jointly owned by Rath Sar and Mom Chan and that such vehicle was lawfully in the possession of Rath Sar.” (Appointing Authority Exhibit A)
29. After this September 2004 incident, Ms. Sar went to a credit union and applied for and obtained approval on a personal auto loan. Ms. Sar did this so that Mom Chan's name could be removed from the title and registration on this vehicle. (Testimony Sar)
30. In order to facilitate processing of Ms. Sar's loan, she was given documentation for Mom Chan to sign. Ms. Sar contacted Mom Chan about signing this document. Mom Chan told Ms. Sar to meet her at the Appellant's convenience store. When Ms. Sar arrived at the store, Mom Chan and the Appellant were waiting. Ms. Sar gave the paper to Mom Chan and Mom Chan, in turn, gave the paper to the Appellant. After the Appellant looked at the paper, Mom Chan signed the paper and gave it back to Ms. Sar. (Testimony of Sar)



31. Ms. Sar returned this paper to the bank and was told by the bank that she should await receipt of title to this vehicle. As of June 14, 2005, she had not yet received the new title.

(Testimony of Sar)

32. At some time after returning the document to the bank and before June 14, 2005, Ms. Sar inquired with her bank when she had not received the title to the vehicle. She was informed that the title to the vehicle had been sent to her old address, which was Mom Chan's address.

(Testimony of Sar)

33. On or about February 9, 2005, the Appellant filed a civil action, pro se, against Ms. Sar in the Small Claims session of the Lowell District Court seeking the return of the aforementioned \$1000 he had given Rath Sar in July 2004. (Testimony of Sar and Appellant; Appointing Authority Exhibits B3,B4,B17)

34. This Small Claims action remained pending against Ms. Sar as of June 14, 2005.(Testimony of Sar and Appellant; Appointing Authority Exhibits B3,B17)

35. On June 14, 2005 at 18:54 or 6:54, the Appellant took a second stolen motor vehicle report concerning the subject vehicle.(Appointing Authority Exhibit B6.5)

36. The Appellant's June 14, 2005 report concerning the 2003 Lexus GS300 MA Reg. # 41NY06 included the vehicle VIN number and indicated that the reporting party, Mom Chan of 94 S. Whipple Street, stated "Another owner claimed another used it without authority authorizing use. She wanted her plate, name off this vehicle." (Appointing Authority Exhibit B6.5)

37. On June 14, 2005, Lowell Police Lieutenant Daniel Larocque was patrolling outbound on Pawtucket Boulevard in Lowell in a cruiser equipped with a Lo-Jack system when he was notified of the existence of a stolen motor vehicle in his vicinity. After contacting Lowell dispatch, Lt. Larocque was able to identify the vehicle as a white Lexus and locate the vehicle on Warwick Street. Lt. Larocque radioed dispatch to inform dispatch of the location of this vehicle. (Testimony of Larocque)
38. After Lt. Larocque's radio communication, the Appellant arrived on scene despite the fact that he was not assigned to patrol Warwick Street. After the Appellant's arrival, Car 10, assigned to patrol Warwick Street, appeared operated by Officer Frechette. (Testimony of Larocque)
39. Ms. Sar was residing at 69 Warwick Street in Lowell when the Appellant arrived at her door at about 10:00 P.M. on June 14, 2005. Ms. Sar spoke to the Appellant in her native Khmer language. According to Ms. Sar, the Appellant told her that Mom Chan reported the car stolen. Ms. Sar went outside to see 3 police vehicles on the street. Ms. Sar told the Appellant "you know that is my car" and asked the Appellant why there was a second complaint. Ms. Sar told the Appellant, "this is my car and I pay every month." The Appellant then spoke to the other officers at the scene in English. (Testimony of Sar)
40. Lt. Larocque left the scene after about 5 minutes instructing Officer Frechette to remain at the scene with the Appellant until the call cleared. (Testimony of Larocque)

41. Ms. Sar asked the Appellant to look on his computer and see that the car was registered in her name. According to Ms. Sar, he refused to do so and demanded the keys to the vehicle, threatening to arrest her if she did not do so. (Testimony of Sar)
42. Ms. Sar then attempted to retrieve the registration from the vehicle and the Appellant told her that the registration was to be taken with the vehicle. (Testimony of Sar)
43. While Ms. Sar continued to plead with the Appellant, the vehicle was being loaded onto a tow truck. Ms. Sar surrendered the keys to her vehicle and her vehicle was seized. (Testimony of Sar)
44. The Appellant does not dispute that he gave the instruction to the tow truck operator at the Warwick Street scene to seize Ms. Sar's vehicle. (Test of Appellant)
45. As part of its decision to terminate the Appellant, the LPD concluded in relevant part that, “On June 14, 2005, Officer Ung knowingly and intentionally made a false report of unauthorized use and/or stolen motor vehicle with respect to a 2003 Lexus GS300 MA Reg. 41NY06 when he filed such a report knowing that this vehicle was jointly owned by Rath Sar and Mom Chan and the such vehicle was lawfully in the possession of Rath Sar.”
46. On June 30, 2005, Ms. Sar and her attorney filed a complaint against the Appellant regarding the June 14, 2005 seizure of her automobile at Warwick Street in Lowell. At this time, neither Ms. Sar nor her attorney informed LPD of the prior September 2, 2004 incident. Ms. Sar was interviewed by LPD Professional Standards in the presence of an interpreter. (Testimony of Hodgdon; AA Exhibit B)

47. On June 30, 2005, Lt. James Hodgdon, on behalf of the LPD Professional Standards Division, launched an investigation into the allegations made by Ms. Sar. During the course of that investigation, Lt. Hodgdon twice interviewed the Appellant about Ms. Sar's allegations. Lt. Hodgdon's investigation resulted in a report to then-Superintendent Edward F. Davis. (Testimony of Hodgdon; AA Exhibit B)
48. Lt. Hodgdon began working as a police over twenty-three (23) years ago. He has served the LPD for sixteen (16) years, including six (6) years as a lieutenant. He has considerable experience conducting internal affairs investigations. I credit Lt. Hodgdon's testimony. He completed a thorough, objective internal affairs investigation and he did not appear to have any personal animus toward the Appellant that would influence his report. He offered candid, forthright testimony regardless of whether that testimony would be beneficial or harmful to the Appellant. (Testimony, demeanor of Hodgdon)
49. During Lt. Hodgdon's first interview with the Appellant about Ms. Sar's complaint, he (Hodgdon) was unaware of the prior September 2, 2004 incident involving the same parties and the subject vehicle. The Appellant did not inform Lt. Hodgdon of this prior incident and told Professional Standards investigators during this first interview that for six months prior to filing a Small Claim against Rath Sar on February 16, 2005, he had no interaction with her. (Testimony of Hodgdon)
50. Following his first interview with the Appellant, Lt. Hodgdon learned that on September 2, 2004, the Appellant had taken another stolen motor vehicle/unauthorized use report for the

very same vehicle and involving the same parties. (Testimony of Hodgdon; Appointing Authority Exhibit B)

51. On October 12, 2005, the Appellant was interviewed a second time by Lt. Hodgdon on behalf of Professional Standards. The Appellant acknowledged the report but denied any specific recollection of his actions in taking the report. (Testimony of Hodgdon)

52. The Appellant testified before the Commission that Mom Chan never told him that she owned the vehicle in question but that he presumed she owned the car because her name was on the plate. He further testified that Mom Chan did not tell him that Rath Sar was using the car without authorization. Rather, he testified that Mom Chan told him that her name was “on the plate”, that Ms. Sar did not pay the excise tax or a parking ticket; and that she wanted her (Chan’s) name off the plate. (Testimony of Appellant)

53. The Appellant was not a good witness. His responses to the most relevant questions, including how he obtained a VIN number for the Lexus in question, were not plausible and did not ring true to me. Most troubling, however, was the Appellant’s insistence that he was not aware that Ms. Sar co-owned the Lexus at the time he filed the police reports regarding the Lexus. It is abundantly clear that he did. Finally, his answers contradicted the credible testimony of Lt. Hodgdon. (Testimony, demeanor of Appellant)

54. In addition to finding that the Appellant filed false reports related to the unauthorized use of the motor vehicle in question, the LPD also found that the Appellant lied to investigators regarding how he obtained the vehicles VIN number and falsely stated that he didn’t

remember his instructions on June 14, 2005 to only release the vehicle to Mom Chan.

(Appointing Authority Exhibit A)

*Market Basket Investigation*

55. In 2005, LPD Deputy Superintendent Deborah Friedl had been assigned to the Professional Standards Division of the Lowell Police Department. (Testimony of Friedl)

56. On October 6, 2005, as a result of a private citizen's complaint, Deputy Friedl was prompted to begin an investigation into an incident that occurred on September 24, 2005 at a Market Basket in Lowell. (Testimony of Friedl; Appointing Authority Exhibit C)

57. On September 24, 2005, the Appellant was dispatched to a "disturbance" at Market Basket on Wood Street. The Appellant was the lead officer at call as he was the first to respond. According to Ms. Friedl, LPD policy requires the "lead" officer on scene has the responsibility to investigate and document a call for police response. (Testimony of Friedl)

58. According to Deputy Friedl, the procedure in Lowell is that a "back up" officer is always sent to a "disturbance" call to assist the lead officer as needed. This "back up" officer has no responsibility to investigate or document the call in the form of a report unless this "back up" officer has reason to believe that the lead officer is not performing these duties. (Testimony of Friedl; Appointing Authority Exhibit C)

59. Friedl conducted an investigation into the Appellant's actions in response to the September 24, 2005 incident. (Testimony of Friedl)

60. As part of her investigation, Ms. Friedl interviewed the private citizen who was shopping at the store (who filed the complaint), a head cashier at the supermarket, the Appellant and Officer Heather Koller. (Testimony of Friedl)
61. The private citizen was a Pakistani woman in her mid-40s who was approximately 5'1" and slender. The private citizen told Deputy Friedl that when she corrected a store employee working behind a counter, a male employee told her, "wait, she's trying to help you" and then two female customers began swearing at her and said, "go back to your country". (Testimony of Friedl)
62. As part of her investigation, Deputy Friedl would come to learn that the Appellant was friendly with one of the two female customers and Officer Koller was friendly with the other woman. (Testimony of Friedl)
63. The private citizen told Deputy Friedl that the two female customers, who had now made their way outside to the parking lot, continued to taunt her from the parking lot. (Testimony of Friedl)
64. The private citizen told Deputy Friedl that two police officers (the Appellant and Officer Koller, in that order) arrived soon thereafter. (Testimony of Friedl)
65. The private citizen told Deputy Friedl that she tried to explain to the Appellant what happened, but he told her to leave the store and, if she returned, she would be arrested. (Testimony of Friedl)

66. The Appellant did not interview any witnesses and he did not file a written report regarding this matter. (Testimony of Friedl)

67. In its decision to terminate the Appellant, the LPD concluded in relevant part that, the Appellant, "on September 24, 2005, willfully neglected his duties and failed to properly investigate and take the appropriate action in his response to a call which resulted in his dispatch to an incident between patrons of a Market Basket store on Wood Street in Lowell." (Appointing Authority Exhibit A)

## CONCLUSION

G.L. c. 31, § 43, provides:

"If the commission by a preponderance of the evidence determines that there was just cause for an action taken against such person it shall affirm the action of the appointing authority, otherwise it shall reverse such action and the person concerned shall be returned to his position without loss of compensation or other rights; provided, however, if the employee by a preponderance of evidence, establishes that said action was based upon harmful error in the application of the appointing authority's procedure, an error of law, or upon any factor or conduct on the part of the employee not reasonably related to the fitness of the employee to perform in his position, said action shall not be sustained, and the person shall be returned to his position without loss of compensation or other rights. The commission may also modify any penalty imposed by the appointing authority."

An action is "justified" if 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." Commissioners of Civil Service v. Municipal Ct. of Boston, 359 Mass. 211, 214 (1971); Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997); Selectmen of Wakefield v. Judge of First Dist. Ct., 262 Mass. 477, 482 (1928). 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." School Comm. v. Civil Service Comm'n, 43 Mass. App. Ct. 486, 488, rev.den., 426 Mass. 1104 (1997); Murray v. Second Dist. Ct., 389 Mass. 508, 514 (1983)

The Appointing Authority's burden of proof by a preponderance of the evidence is satisfied "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).

"The commission's task...is not to be accomplished on a wholly blank slate. After making its de novo findings of fact . . . the commission does not act without regard to the previous decision of the [appointing authority], but rather decides whether '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'", which may include an adverse inference against a complainant who fails to testify at the hearing before the appointing authority. Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006). See Watertown v. Arria, 16 Mass. App. Ct. 331, 334, rev.den., 390 Mass. 1102 (1983) and cases cited.

Under Section 43, the Commission is required "to conduct a de novo hearing for the purpose of finding the facts anew." Falmouth v. Civil Service Comm'n, 447 Mass. 814, 823 (2006) and cases cited. The role of the 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." Cambridge v. Civil Service Comm'n, 43 Mass.App.Ct. 300, 304, rev.den., 426 Mass. 1102, (1997). See also Leominster v. Stratton, 58 Mass. App. Ct. 726, 728, rev.den., 440 Mass. 1108, 799 N.E.2d 594 (2003); Police Dep't of Boston v. Collins, 48 Mass.App.Ct. 411, rev.den. (2000); McIsaac v. Civil Service Comm'n, 38 Mass App.Ct. 473, 477 (1995); Town of Watertown v. Arria, 16 Mass.App.Ct. 331, 390 Mass. 1102 (1983).

By a preponderance of the evidence, the LPD has shown that it had just cause to discipline the Appellant for filing false reports and being untruthful about events related to the automobile of Rath Sar, the private citizen who filed a complaint against him. They did not, however, show, by a preponderance of the evidence that there was just cause to discipline the Appellant for reasons related to the Market Basket incident.

#### *Rath Sar Investigation*

On two occasions, September 2, 2004 and June 14, 2005, the Appellant filed a false report of unauthorized use and/or stolen motor vehicle with respect to a vehicle that he knew to be in the possession of Ms. Sar and that he knew to be owned jointly by Ms. Sar and Mom Chan. On both of these occasions, the Appellant made a false report of unauthorized use and/or stolen motor vehicle knowing that said vehicle was, in fact, not stolen nor was its use unauthorized. Further, on June 14, 2005, the Appellant also unlawfully effectuated, pursuant to this false police report, the seizure via towing of said vehicle from the lawful possession of Ms. Sar from her home at 69 Warwick Street in Lowell.

The Appellant's attempts to claim some ignorance with respect to the ownership of this vehicle are not convincing. There is no evidence to support the Appellant's claims that he made even a perfunctory attempt to ascertain ownership of this vehicle through CJIS system on either of the occasions upon which he filed a report of unauthorized use/stolen motor vehicle. By his own admission, he was well aware of an ongoing personal dispute between these 2 women. His report on that date indicates "between two owners." And yet, on this date, the Appellant appeared at the scene, off of his assigned route, and personally ordered the tow truck operator to seize the vehicle from the possession of Ms. Sar. Also by his own admission, whether a loan or a gift, he gave Rath Sar \$1000 in July 2004. I note the Appellant's own statement that around July 3,

2004, only 2 months prior to the incident, Ms. Sar came to him to borrow money "...to pay her car payment." The Appellant was clearly aware that Ms. Sar did, in fact, own an automobile that she was paying for.

Similarly, the Appellant knew the vehicle was jointly owned when he filed his June 14, 2005 report. The "Motor Vehicle Tow and Inventory Report" prepared and filed by the Appellant on that date clearly states "between two owners" as the reason for the vehicle to be held after towing. Further, although the Appellant claims that he queried MA Reg 41NY06 on June 14, 2005 and that query results listed only Mom Chan as the owner of such vehicle, a LEAPS system report indicates that, on June 14, 2005, such a query would have disclosed both Mom Chan and Rath Sar to be the owners of such vehicle and that such query would further reveal that the subject vehicle had been registered in both names since July 25, 2003. In fact, the initial "Stolen/Recovered Motor Vehicle/Boat Report" filed by the Appellant on June 14, 2005 clearly states that the vehicle was registered both to Mom Chan and Rath Sar and further indicates that a financial dispute existed between these persons. Finally, the Appellant, prior to June 14, 2005, had personally reviewed financial documents at Mom Chan's request which showed that the two women owned the vehicle and Ms. Sar was taking steps to remove Mom Chan's name from the title.

In addition, Officer Ung made false statements to investigators from the Professional Standards Unit of the Lowell Police Department in the course of their investigation into both of these incidents. He made false statements when he told investigators that he had queried Massachusetts motor vehicle registration 41NY06 through the CJIS system on or around June 14, 2005 and that such query showed only Mom Chan as the listed owner of this vehicle. He

withheld information which he knew to be relevant to the Professional Standards investigation when he inexplicably failed to disclose to investigators that he had previously, on September 2, 2004, made a report of unauthorized use./stolen motor vehicle with respect to the very same vehicle. Finally, the Appellant made a false statement when he claimed, on October 12, 2005 to not remember taking a report concerning this vehicle on September 2, 2004. I do not find Officer Ung 's inability to recollect these things to be to be credible in light of the clear and uncontroverted evidence including the Appellant's own admission that he was then personally well acquainted with both Mom Chan and Rath Sar and that, just 2 months prior, he had supposedly lent Ms. Sar \$1000.

An appointing authority is well within its rights to take disciplinary action when a police officer has “a demonstrated willingness to fudge the truth in exigent circumstances” because “[p]olice work frequently calls upon officers to speak the truth when doing so might put into question a search or embarrass a fellow officer.” See Falmouth at. 796, 801; *citing Cambridge, supra* at 303.

The Commission has recognized that a police officer must be truthful at all times and that failure to do so constitutes conduct unbecoming an officer. MacHenry v Wakefield, 7 MCSR 94 (1994). Lying in a disciplinary investigation alone is grounds for termination. LaChance v. Erickson, 118 S. Ct. 753 (1998), *citing Bryson v. United States*, 396 U.S. 64 (1969). The Commission has stated that “it is well settled that police officers voluntarily undertake to adhere to a higher standard of conduct than that imposed on ordinary citizens.” Garrett v. Haverhill, 18 MCSR at 385-86 See also Royston v. Billerica, 19 MCSR at 128-29 (upholding discharge of police officer who “knowingly lied to the Chief during a departmental investigation to cover up” his own misconduct); (reasonable justification for discharge of police officer who repeatedly

presented false testimony during departmental investigation of officer's misconduct); Meaney v. Woburn, 18 MCSR 129, 133-35 (discharge upheld for police officer based, in part, on officer's consistent dishonesty and "selective memory" during departmental investigation of officer's misconduct); Pearson v. Whitman, 16 MCSR at 49-50 (appointing authority's discharge of police officer who had "a problem with telling the truth" upheld); Eisenbeiser v. West Springfield, 7 MCSR 99, 104 (discharge upheld based, in part, on officer's dishonesty as his misconduct was ongoing, intentional and showed no signs of improvement).; Rizzo v. Town of Lexington, 21 MCSR 634 (2008); (discharge upheld based partially on officer's dishonesty regarding a use of force incident); Desharnias v. City of Westfield, 23 MCSR 418 (2009) (discharge upheld based primarily on officer's dishonesty about a relatively minor infraction that occurred on his shift); Kinnas v. Town of Shrewsbury, 24 MCSR 67 (2011) (discharge upheld based primarily on officer's dishonesty about whether he accessed the social media account of a fellow officer's spouse).

#### *Market Basket Incident*

The LPD did not show, by a preponderance of the evidence, that there was justification to discipline the Appellant for the alleged "Market Basket incident". The LPD's investigation of this matter was insufficient and the information produced by the investigation did not show misconduct that warranted discipline. Neither of the two women who are alleged by the complainant to have committed racial slurs toward her were ever interviewed by anyone from the LPD in connection with the investigation. Further, a percipient witness, an employee of Demoulas Market Basket, who apparently was in line and heard the entire conversation between the complainant and the two women accused of slurs, was never interviewed. More disturbingly, the LPD, assuming that misconduct did occur, failed to mete out any discipline against a female

officer that was also present at the supermarket on the day in question and failed to file a report that could have formed the basis of criminal charges against two citizens, one of whom was a friend of the female officer.

Having determined that it was appropriate to discipline the Appellant, the Commission must determine if the LPD was justified in the level of discipline imposed, which, in this case, was termination.

The Commission is guided by “the principle of uniformity and the ‘equitable treatment of similarly situated individuals’ [both within and across different appointing authorities]” as well as the “underlying purpose of the civil service system ‘to guard against political considerations, favoritism and bias in governmental employment decisions.’ ” Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006) and cases cited. Even if there are past instances where other employees received more lenient sanctions for similar misconduct, however, the Commission is not charged with a duty to fine-tune an employee’s discipline to ensure perfect uniformity. See Boston Police Dep’t v. Collins, 48 Mass. App. Ct. 408, 412 (2000).

“The ‘power accorded the commission to modify penalties must not be confused with the power to impose penalties ab initio, which is a power accorded the appointing authority.’ ” Falmouth v. Civ. Serv. Comm’n, 61 Mass. App. Ct. 796, 800 (2004) quoting Police Comm’r v. Civ. Serv. Comm’n, 39 Mass.App.Ct. 594, 600 (1996). Unless the Commission’s findings of fact differ significantly from those reported by the appointing authority or interpret the relevant law in a substantially different way, the commission is not free to “substitute its judgment” for that of the appointing authority, and “cannot modify a penalty on the basis of essentially similar fact finding without an adequate explanation” E.g., Falmouth v. Civil Service Comm’n, 447 Mass. 814, 823 (2006).

I have, based on the testimony of credible witnesses and the documentary evidence submitted, reached essentially the same findings as the LPD regarding the most substantive allegations against the Appellant – misconduct and untruthfulness related to the Rath Sar investigation. While the LPD also based its termination in part on the Market Basket incident, the misconduct and untruthfulness, coupled with the Appellant’s prior discipline, justify the LPD’s decision to terminate the Appellant. Finally, I found insufficient evidence to show disparate treatment against the Appellant.

For all of the above reasons, the Appellant’s appeal under Docket No. D1-08-150 is hereby *dismissed*.

Civil Service Commission

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Christopher C. Bowman  
Chairman

By vote of the Civil Service Commission (Bowman, Chairman; Henderson, Marquis, McDowell and Stein , Commissioners on November 3, 2011.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of this Commission order or decision. Under the pertinent provisions of the Code of Mass. Regulations, 801 CMR 1.01(7)(l), the motion must identify a clerical or mechanical error in this order or decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration does not toll the statutorily prescribed thirty-day time limit for seeking judicial review of this Commission order or decision.

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

Notice to:

Stephen Pfaff, Esq. (for Appellant)

Pon Nokham, Esq. (for Appellant)

Maria Sheehy, Esq. (for Appointing Authority)