The City of New York

POLICE DEPARTMENT

August 4, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant John Rajan
Tax Registry No. 898342
115 Precinct
Disciplinary Case Nos. 2013-9912 & 2013-10294

The above-named member of the Department appeared before me on July 8, 2014,[1] May 6, 2015, and May 7, 2015, charged with the following:

Disciplinary Case No. 2013-9912

1. Said Sergeant John Rajan, while on duty and assigned to Patrol Borough Manhattan South Anti-Crime Unit, on or about April 19, 2013, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Sergeant was involved in a physical altercation with another member of the service, Sergeant Marco Trujillo, tax # 910954, while inside their command.

P.G. 203-10, Page 1, Paragraphs 5 - PROHIBITED CONDUCT
GENERAL REGULATIONS

Disciplinary Case No. 2013-10294

1. Said Sergeant John Rajan, while assigned to Patrol Borough Manhattan South Specialized Unit, on or about November 1, 2011 through July 31, 2012, did utilize the Department computer system to conduct multiple inquiries, which were not related to official Department business.

P.G. 219-14, Page 1, Paragraph 2 – DEPARTMENT COMPUTER SYSTEMS

[1] The first day of trial Respondent appeared before Assistant Deputy Commissioner Claudia Daniels-DePeyster.

The Department was represented by Michelle Alleyne, Esq., Department Advocate's Office, and Respondent was represented by Andrew Quinn, Esq., and John Patten, Esq.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Officer Eric Ahlfeld, Police Officer Michael Bellagamba, Police Officer Traci McLaughlin, Retired Sergeant Marco Trujillo, and Captain Thomas Traynor as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2013-9912

Respondent is found Guilty.

Disciplinary Case No. 2013-10294

Respondent is found Guilty in part.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2013-9912

The following is a summary of the relevant facts that are undisputed. Respondent and retired Sergeant Marco Trujillo had an acrimonious working relationship. At approximately 1800 hours on April 19, 2013, Respondent and Trujillo were present and on duty in the Patrol Borough Manhattan South Anti-Crime Unit office on West 42nd Street.

Also present were officers Eric Ahlfeld, Michael Bellagamba, and Traci McLaughlin. Respondent and Trujillo engaged in a verbal dispute in the main area of the office and in front of officers Ahlfeld, Bellagamba, and McLaughlin. The dispute then devolved into a physical altercation when Respondent and Trujillo walked to the back of the office and out of the sight of the other officers. Officers Ahlfeld, Bellagamba, and McLaughlin intervened when they heard a commotion shortly thereafter. The officers were able to physically separate Respondent and Trujillo and the altercation ended. Both Respondent and Trujillo were treated at local hospitals for injuries sustained during the altercation. (Tr. 17, 21, 44, 50-51, 80-81, 86-87, 121-122, 128-129, 131-132, 141, 220, 223-226)

Officer Ahlfeld testified that on April 19, 2013, he was assigned to the Patrol Borough Manhattan South (PBMS) Anti-Crime Unit. His immediate supervisors were Respondent and Trujillo. According to Ahlfeld, Respondent and Trujillo "clearly didn't get along with each other," but prior to the altercation at issue in this case, he was not aware of any physical altercations between the two sergeants. On April 19, 2013, Ahlfeld was sitting at a desk in the Anti-Crime office filling out paperwork and watching the news on television. At some point, he heard a loud noise "like a metal file cabinet banging" coming from a back area of the office that he could not see. He got up from his desk to see what was happening and observed Respondent and Trujillo "basically chest to chest up against each other." Ahlfeld testified that he immediately went between the two sergeants to separate them because, "clearly they got into some sort of physical altercation with each other." Officers Bellagamba and McLaughlin also came over to separate the sergeants. When the alteration ended Respondent left and Trujillo remained in the Anti-Crime office.

Shortly after, Ahlfeld noticed redness on Trujillo's neck that McLaughlin was taking photos of with a cell phone camera. (Tr. 15-24)

Officer Bellagamba testified on April 19, 2013, he was also assigned to the PBMS Anti-Crime Unit. Trujillo was his squad sergeant and direct supervisor, but Respondent was also his supervisor if Trujillo was not in. At approximately 1800 hours on the day of the incident, Bellagamba was seated at the large conference table in the Anti-Crime office. Respondent and Trujillo were standing nearby seemingly arguing with each other. Bellagamba noticed that Respondent was standing very close to Trujillo's left arm. Bellagamba testified that he did not recall what was being said between the sergeants because he was trying not to pay attention to them. However, he does remember hearing Trujillo say to Respondent at one point, "Back off me." He then heard a noise "[l]ike [Respondent and Trujillo] were possibly in a physical altercation," but when he turned toward them, they were standing approximately five feet away from each other. According to Bellagamba, Respondent then asked the police officers present to leave the office. Trujillo responded by telling the officers to get ready to go out on patrol. At that point, Trujillo walked to the back of the office to an area that was blocked off by file cabinets. Bellagamba and McLaughlin walked to the file cabinets to gather their gear. Respondent then walked past the officers toward Trujillo. Bellagamba's view was obstructed and he could no longer see Respondent or Trujillo. As Bellagamba was retrieving his gear, he heard "banging and foot movements." He walked around the file cabinets and saw Respondent and Trujillo standing face to face "latched on with each other's hands on each other's clothing." Bellagamba joined Ahlfeld and McLaughlin in separating the sergeants and breaking up the altercation. Once they had been separated, Respondent left the office.

Bellagamba testified that at no point did he see Respondent with his hands around Trujillo's neck. He did not notice any injuries on either Respondent or Trujillo at the time of the incident or directly thereafter, but did notice redness on Trujillo's neck later that night. (Tr. 41-52, 57-58)

Officer McLaughlin testified that on April 19, 2013, she was also assigned to the PBMS Anti-Crime Unit. Trujillo was her direct supervisor, but Respondent also acted as her supervisor at times. According to McLaughlin, the working relationship between Respondent and Trujillo was not good and "[t]here was always just a constant tension and bickering and some banter going on all of the time." On the day of the incident, McLaughlin was seated at the large conference table in the Anti-Crime office with Bellagamba doing paperwork and watching television. Respondent, Trujillo, and Ahlfeld were also present in the office. McLaughlin left briefly and when she returned Respondent, Trujillo, and Bellagamba were all standing. McLaughlin recalled Respondent asking everyone to leave the office, but Trujillo replied by saying, "My guys, suit up. We are going out." McLaughlin then walked over toward the back of the office to gather her equipment from the file cabinets. At the same time, Trujillo walked around the file cabinet area to a small office in the back. Respondent followed Trujillo and shortly thereafter, McLaughlin heard a loud bang. She quickly walked around to see what was happening and saw Respondent and Trujillo engaged in a "push-pull," during which Respondent was holding onto Trujillo's necklace. McLaughlin then went in between the two men and tried to separate them. At some point during the struggle, Trujillo's necklace broke. McLaughlin could not recall if the altercation ended when the necklace broke or because she and her fellow officers pulled Respondent and Trujillo apart. According to

McLaughlin, when she arrived in the back area, Respondent was holding onto Trujillo in the neck area. Shortly after, Trujillo asked McLaughlin to take photographs of redness on his neck. (Tr. 78-89, 92)

Trujillo testified that he and Respondent never got along and he did not like Respondent. On April 19, 2013, he and Respondent were having a verbal dispute in the main area of the Anti-Crime office. Trujillo claims that as he stood up from the conference table Respondent "bucked" him from the behind. Trujillo testified that he feared for his safety and told Respondent to get away from him. According to Trujillo, the other officers in the office intervened and Ahlfeld actually stepped between them. Respondent asked the officers to leave, but Trujillo told them to disregard Respondent's order and get ready to go out to work. Trujillo asserted that when he walked to the back of the office Respondent "viciously attacked from behind, grabbed by [his] neck, [his] shirt and [his] necklace." Trujillo testified that Respondent was choking him with his necklace. As he struggled to get Respondent off of him, the necklace broke. Officers Ahlfeld, Bellagamba and McLaughlin intervened, breaking up the altercation. He immediately complained of pain in his shoulder and around his neck and had photographs of his injuries taken using a cell phone camera. He was treated at Bellevue Hospital for pain prior to his GO-15 hearing regarding the incident. (Tr. 121, 124-133, 140-143; Dep. Ex. 1-2)

Respondent admits to engaging in a physical altercation with Trujillo, but claims that he was provoked. According to Respondent, he and Trujillo never had a good working relationship. Respondent testified that Trujillo relentlessly badgered and taunted him. On April 18, 2013, he and Trujillo were involved in a verbal dispute when Trujillo made a gesture mimicking oral sex and mouthed "your wife liked it" at Respondent. Admittedly,

Respondent was "enraged" and began "charging at" Trujillo, but was held back by the other officers in the room at the time and nothing further occurred. (Tr. 214, 217-220, 232)

Respondent testified that the following day when he arrived at the office, he asked to speak privately with Trujillo to ask him to not make comments about his family. According to Respondent, his attempts to talk to Trujillo devolved into an argument during which Trujillo was "trying to bait [him] to get into a physical altercation." While the initial verbal dispute occurred in the open area of the office, at some point Trujillo walked to the back, out of sight of the other officers in the office. Respondent continued trying to talk to Trujillo and followed him to that back area. Trujillo then walked toward him pointing his finger very close to Respondent's face and said, "Get the fuck out of here." Respondent testified that he reflexively slapped Trujillo's hand away and they started "tussling back and forth." Respondent testified that they grabbed each other's shirts and struggled until they were broken up by the other officers present. As they were being separated, Trujillo punched him in the temple with a closed fist causing the area to swell slightly. Respondent received treatment at the hospital after the altercation. Respondent testified that he did not approach Trujillo at any point from behind, nor did he put his hands around Trujillo's neck. (Tr. 220-226, 234-237; Resp. Exs. A-C, E)

At issue is whether Respondent engaged in misconduct when he became involved in a physical altercation with Trujillo. This tribunal finds that he did. It is clear that Respondent and Trujillo allowed their mutual dislike for each other to interfere with their abilities to perform their duties as sergeants assigned to PBMS. While their accounts of what precipitated the incident on April 19, 2013, vary, the fact remains that both men engaged in an on-duty physical altercation which necessitated the response of officers they

were assigned to supervise. Ahlfeld, Bellagamba, and McLaughlin all testified that they were forced to intercede. The conduct of both sergeants was certainly prejudicial to the good order and discipline of their command.

Respondent, through his attorney, argued that the circumstances surrounding why the altercation occurred should be considered a mitigating factor because he was "so brutally and offensively provoked" by Trujillo. The testimony varies greatly regarding the circumstances leading up to the physical altercation. I find Trujillo's testimony and description of events to be both embellished and disingenuous. However, I find that even if Respondent's account is true, the alleged provocation does not mitigate his responsibilities as a sergeant in the NYPD. *See Case Nos. 83727/08 & 83169/07* (Feb. 23, 2011) (officer guilty of engaging in a physical altercation with another MOS despite apparent provocation). Respondent admits that he "charged at" Trujillo the day before this incident. That alone should have been a red flag to discontinue contact or deal with the offensive conduct through other channels. Instead, Respondent argued with Trujillo the next day, followed him to the back area of the office out of view of others and initiated physical contact with Trujillo when he smacked Trujillo's hand away from his face. Regardless of the supposed provocation, at the time of the incident, Respondent failed to demonstrate the level of professionalism that is expected from a twenty-three year member of this Department. Accordingly, Respondent is found guilty of the charged misconduct. (Tr. 255)

Disciplinary Case No. 2013-10294

Respondent is charged with utilizing the Department computer system to conduct inquiries unrelated to official Department business between November 1, 2011 and July 31,

2012. Trial testimony highlighted the following allegations of computer misuse by Respondent using the Department's Personnel Profile Report (PEPR) database: searches for information about retiring members of the service for the purpose of creating honorary plaques in recognition of their service to the Department, a search for the updated phone number of a retired co-worker, and Respondent's search of himself on multiple occasions to determine his performance monitoring status. I find that some of these uses constitute the unauthorized use of the Department computer system and therefore, Respondent is guilty of the charged misconduct. (Tr. 195, 201, 228-229, 243-246)

Captain Thomas Traynor became Commanding Officer of Respondent's unit in early 2010. He testified that shortly thereafter, there was a period of about one year during which Respondent was responsible for performing the functions of ICO. In that capacity Respondent had access to a number of Department databases, including PEPR, and performed searches using the database at the direction of Captain Traynor. Captain Traynor also testified that while he was Commanding Officer, he was aware of, and did not object to, Respondent using Department computers to run history checks when creating honorary plaques for retiring members of service. (Tr. 191, 194-199, 201)

Respondent admits that he conducted all of the computer searches at issue, but asserts that everything done either had an administrative purpose or was related to the retirement of a fellow member of the service. Respondent testified that everything he did was in connection with increasing the morale of the Department and was done with the knowledge and approval of his supervisors. Respondent denied ever using Department databases for his own personal gain. However, he admitted to using the PEPR database to look up the phone number of a retired former co-worker so that he could invite him to a

party. Additionally, on cross-examination Respondent admitted to using the Department's PEPR database on multiple occasions to conduct a search on himself to determine whether or not he was still on performance monitoring. (Tr. 229-230, 245)

The Department Advocate asserts that regardless of Respondent's motivations for conducting such computer searches, they were not related to official Department business and not tied to an official function of the Department. In response, Respondent argues that any searches he conducted were related to the "good working order" of the Department and were done in an effort to increase morale among members of the service. The searches Respondent conducted using the PEPR database to gather information about retiring members of the service to create honorary plaques were done with the knowledge and approval of his Commanding Officer, Captain Traynor. As such, I do not find that Respondent's use of the PEPR database under those circumstances constitutes misconduct. (Tr. 256)

However, Respondent admittedly ran his own name in the PEPR database on multiple occasions, a direct contradiction of his testimony that none of the computer searches were done in his own personal interest. Clearly, on those occasions Respondent's use of the database to check his monitoring status served his own interests and not those of the Department. Additionally, Respondent admitted to using the PEPR database to search for the telephone number of a retired former co-worker so that Respondent could invite him to a party. Once again, such a use clearly served Respondent's own interests, rather than those of the Department. Furthermore, the protection of personal information of both active and retired members of the service is critical and the use of Department databases to search for such information for non-Departmental purposes should not be tolerated.

Accordingly, Respondent is found guilty, in part, of utilizing the Department computer system to conduct inquiries unrelated to official Department business.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent was appointed to the Department on October 15, 1990. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent has been found guilty of utilizing the Department computer system to conduct multiple inquires unrelated to official Department business and engaging in a physical altercation with another member of the service in two separate disciplinary cases. The Department Advocate has recommended a penalty of 25 vacation days for both cases. In support of its recommendation, the Department cites the following cases: *Case No. 2011-3602* (Nov. 10, 2011), in which a six-year police officer with no prior disciplinary history forfeited 20 vacation days for, while on-duty, engaging in a physical altercation with a lieutenant; *Case Nos. 83727/08 & 83169/07* (Feb. 23, 2011), in which an eight-year police officer with no prior disciplinary history forfeited 20 vacation days for twice engaging in on-duty disputes with co-workers, one of which escalated into a physical altercation and which Respondent was deemed the initial aggressor; *Case No. 2008-650* (Aug. 2, 2011), in which a ten-year police officer with one prior disciplinary case forfeited 15 vacation days for using a Department computer on five separate dates to make unauthorized warrant checks on an individual; and *Case No. 2010-2675* (Jan. 24, 2012), in

which a seven-year police officer with no prior disciplinary history forfeited 15 vacation days for wrongfully utilizing a Department computer on two separate occasions to conduct unauthorized warrant checks.

I do not find the existence of any factors that mitigate the penalty as recommended in the two cases brought against Respondent. Taking into account Respondent's twenty-four year career with the Department, his excellent performance evaluations, as well as his prior disciplinary history, I find the recommended penalty of 25 vacation days appropriate to address the charged misconduct.

Respectfully submitted,

Rosemarie Maldonado
Deputy Commissioner Trials

APPROVED

NOV 05 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER JOHN RAJAN
TAX REGISTRY NO. 898342
DISCIPLINARY CASE NOS. 2013-9912 & 2013-10294

Respondent received an overall rating of 4.5 on his last three annual performance evaluations. He has been awarded eleven medals for Meritorious Police Duty and seven medals for Excellent Police Duty. [redacted]

On August 28, 2009, Respondent received Charges and Specifications for frisking an individual without sufficient legal authority, failing to safeguard and properly voucher a quantity of what was believed to be marijuana, failing to supervise another member of the service, failing to maintain his activity log, and failing to prepare a UF-250 stop and frisk report. On September 10, 2009, Respondent received Charges and Specifications for searching an individual's bag without sufficient legal authority, failing to maintain his Activity Log, and abusing his authority by authorizing a subordinate officer to wrongfully issue a summons to said individual. Respondent pleaded guilty and forfeited fifteen vacation days.

For your consideration.

R Maldonado

Rosemarie Maldonado
Deputy Commissioner Trials