



POLICE DEPARTMENT

-----X  
In the Matter of the Disciplinary Proceedings :

- against - :

Police Officer James Secreto :

Tax Registry No. 918312 :

Housing PSA 1 :

FINAL

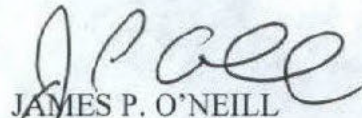
ORDER

OF

DISMISSAL  
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Police Officer James Secreto, Tax Registry No. 918312, Shield No. 20974, Social Security No. ending in [REDACTED], having been served with written notice, has been tried on written Charges and Specifications numbered 2017-18355, as set forth on form P.D. 468-121, dated December 22, 2017, and after a review of the entire record, Respondent is found Guilty.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer James Secreto from the Police Service of the City of New York.

  
JAMES P. O'NEILL  
POLICE COMMISSIONER

EFFECTIVE:

COURTESY • PROFESSIONALISM • RESPECT



POLICE DEPARTMENT

January 10, 2018

-----X  
In the Matter of Charges and Specifications :

- against - :

Police Officer James Secreto :

Tax Registry No. 918312 :

Housing PSA 1 :

Case No.

2017-18355

-----X  
At:

Police Headquarters  
One Police Plaza  
New York, New York 10038

Before:

Honorable Nancy R. Ryan  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

Javier Seymore, Esq.  
Department Advocate's Office  
One Police Plaza, Room 402  
New York, NY 10038

For the Respondent:

Tried *in absentia*

To:

HONORABLE JAMES P. O'NEILL  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NEW YORK 10038

COURTESY • PROFESSIONALISM • RESPECT



**Charges and Specifications:**

1. Said Police Officer James Secreto, assigned to Housing PSA 1, while on-duty, inside of 315 Hudson Street, New York County, on or about December 22, 2017, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department in that said Police Officer Secreto failed to comply with an order to answer questions during an Official Department Interview being held pursuant to Patrol Guide Procedure 206-13.

P.G. 206-13 PAGE 2 PARA. 12 INTERROGATIONS OF MEMBERS OF THE SERVICE

P.G. 203-03 PAGE 1 PARA. 2 COMPLIANCE WITH ORDERS

P.G. 203-10 PAGE 1 PARA. 5 GENERAL REGULATIONS

**Summary of Findings and Recommended Penalty**

The Department called Sergeant Charles Haren as a witness. Respondent did not appear for trial and was tried *in absentia*. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. After reviewing the evidence presented at the hearing, assessing the credibility of the witness, I find Respondent Guilty of failing to obey an order to answer questions during an official Department interview. The penalty recommended is that Respondent's employment with the Department be terminated.

**Analysis***a. Trial in Absentia*

Respondent appeared at the Police Pension Fund on the date he was placed on modified duty, December 18, 2017, to submit an application for service retirement. At the time of application, Respondent had over 22 years of service. His effective date of retirement is scheduled to be January 17, 2018.

On December 28, 2017, Respondent appeared before me to conference this matter. He was represented by Michael Martinez, Esq. of Worth, Longworth and London, LLP. The court suggested a trial date of January 5, 2018, but at the request of Respondent's counsel, granted a

trial date of January 8, 2018. Respondent was present when the court stated that the case was adjourned for trial until January 8, 2018.

On January 5, 2018, the court was advised through Stuart London, Esq. of Worth, Longworth and London, LLP., that neither Respondent nor Mr. London would be appearing for the trial scheduled on January 8, 2018. Mr. London confirmed by phone on January 8, 2018, on the record, that Respondent was aware that January 8, 2018, was the date for his Department disciplinary hearing and that Respondent had informed Mr. London that he would not be participating in the hearing.

As Respondent was directly informed by this court, and his counsel, that the trial was to commence on January 8, 2018, and he was given an official Department notification to appear (Dep't Ex. 1), I find that he had ample notice of the charges and the date of this proceeding. 38 R.C.N.Y. 15-03 (b) (2). I also find that, based on Mr. London's representations, Respondent intentionally failed to appear for the proceeding. Based on the foregoing, Respondent's Departmental disciplinary hearing was conducted *in absentia*. 38 R.C.N.Y. 15-04 (d).

*b. Failure to Comply with Order*

Respondent is charged with failing to comply with an order to answer questions during an official Department interview held on December 22, 2017, in violation of Patrol Guide Procedure 206-13. To prevail in this matter, the Department Advocate must prove by a preponderance of the credible evidence that the order was communicated to the Respondent, that the orders were clear and unambiguous and that the Respondent failed to obey them. I find that the Department Advocate satisfied its burden of proof.

It is undisputed that Sergeant Charles Haren, a 12 year member of the service, assigned to the Department's Internal Affairs Group 21, was assigned to conduct an official Department

interview of Respondent. The interview was done in furtherance of the Department investigation into allegations that Respondent engaged in a larceny by stealing Xerox toner cartridges from the 9 Precinct.

On December 22, 2017, Respondent, accompanied by his attorney and his union representative, after being notified, appeared at 315 Hudson Street, New York, NY. Also present for the interview were Sergeant Krisbel, Deputy Inspector Hellman and Deputy Chief Cooper. (Dep't. Ex. 2)<sup>1</sup>

Sergeant Haren testified that with Respondent, his attorney and his union representative present, he followed the procedures set out in Patrol Guide Procedure 206-13 for conducting the interview. Specifically, he read the provisions in Patrol Guide Procedure 206-13. (Tr. 18) Sergeant Haren further testified that Respondent did answer questions until he was specifically asked about toner cartridges taken from the 9 Precinct. (Tr. 19)

During the interview, Deputy Chief Cooper told Respondent that the intention was to ask him about the toner cartridges. He further advised Respondent that despite his attorney's advice, the decision on whether to answer was his own and Respondent acknowledged that. (Dep't. Ex. 2, 99) Sergeant Haren then stated:

It is my duty to inform you that you are required to answer questions directed to you by investigators, truthfully, and to the best of your knowledge. Patrol Guide 206-13, Interrogations of Mem -- Member [sic] of Service, states, I wish to inform you that you are being questioned as part of an official investigation by the Police Department. You will be asked questions specifically directed, and narrowly related, to the performance of your duties. You are entitled to all rights and privileges guaranteed by the laws of the State of New York, the Constitution of the State, and the Constitution of the United States, including the right not to be compelled to incriminate yourself, and the right to have legal counsel present at each and every stage of this investigation. I further wish to advise you that if you refuse to testify or to answer questions relating to the performance of your official duties, you will be subject to departmental charges, which could result in

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<sup>1</sup> The transcript of the interview indicates the subject/witness is "Police Officer James Krado." At trial, Sergeant Haren testified that the transcript was actually a fair and accurate transcript of his interview with Respondent. Department Advocate Seymour indicated that "Krado" should be "Secreto."

your dis -- dismissal [sic] from the police department. If you do answer, neither your statements nor any information or evidence which is gained by reason of such statements can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to a [sic] subsequent departmental charges. Do you understand the stipulations of 206-13? (Dep't. Ex. 2 100-101)

Respondent answered, "Yes." (Dep't. Ex. 2, 101)

Deputy Chief Cooper asked Respondent, "How many toner cartridges have you stolen from the Ninth Precinct?" (Dep't Ex. 2, 101) Respondent's attorney advised Respondent to refuse to answer. A break in the interview was taken. When Respondent returned, Deputy Chief Cooper again asked him how many Xerox toner cartridges Respondent had stolen from the Ninth Precinct. Respondent stated he had been "advised to not answer questions at this time." Deputy Chief Cooper said, "Not advised, you have to say, I'm refusing to answer any further questions." Respondent stated, "I'm refusing to answer any further questions." Deputy Chief Cooper then asked Respondent if he clearly understood the potential consequences of his refusal and Respondent stated, "Yes. Yes, I -- clearly." (Dep't. Ex. 2, 102)

Based on the above evidence, I find that Respondent received a clear and unambiguous order to answer questions at the official Department interview held on December 22, 2017, and that Respondent refused to do so as required under Patrol Guide 206-13.

Patrol Guide Section 203-03, page 1, paragraph 2, specifically requires that members of service, "Obey lawful orders and instructions of supervising officers." [REDACTED]

[REDACTED]

Exceptions to this principal are very limited. For example, an employee need not obey an unlawful order, an order that is beyond the scope of a supervisor's authority, or an order that poses an imminent threat to health or safety. See Ferreri v. NY State Thruway Authority, 62 N.Y.2d 855 (1984); Reisig v. Kirby, 62 Misc.2d, 632 (Sup. Ct. Suffolk County 1968), aff'd, 31

A.D. 2d 1008 (2d Dep't 1969). None of these exceptions apply in this case. Accordingly, Respondent is found Guilty of the charged misconduct.

### Penalty

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 18, 1996. 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 failing to comply with a lawful order pursuant to Patrol Guide 203-03, in that he failed to answer questions at an official Department interview pursuant to Patrol Guide 206-13, page 2, paragraph 12.

This tribunal has long held that failure to comply with a lawful order to answer questions at an official Department interview is grounds for termination. See *Disciplinary Case No. 2016-15216* (February 10, 2016) (Twenty-four year lieutenant dismissed from the Department for failing to comply with an order on two separate dates to appear at an official Department interview).

**APPROVED**

JAN 12 2018  
  
JAMES P. O'NEILL  
POLICE COMMISSIONER

Respectfully submitted,

  
Nancy R. Ryan  
Assistant Deputy Commissioner Trials



## POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER JAMES SECRETO  
TAX REGISTRY NO. 918312  
DISCIPLINARY CASE NO. 2017-18355

Respondent was appointed to the Department on July 18, 1996. On his last three annual performance evaluations, he received an overall rating of 4.5 "Extremely Competent/Highly Competent." In his twenty-two years of service, he has reported sick [REDACTED]

[REDACTED] He has been awarded seven medals for Excellent Police Duty.

Respondent has a prior disciplinary history. In 2006, Respondent forfeited 15 suspension days and 8 vacation days for engaging in a physical altercation with another on-duty uniformed member of the service. In 2007, he forfeited 15 vacation days for failing to check the license plate numbers of vehicles located in the vicinity of his command, as required, and then entering false entries in the Finest Log regarding the license plate inquiries.

Additionally, from March 31, 2006, to February 28, 2008, Respondent was placed on Level 1 Disciplinary Monitoring as a result of receiving Charges and Specifications in one of the aforementioned disciplinary cases.

For your consideration.

  
Nancy R. Ryan  
Assistant Deputy Commissioner Trials