



POLICE DEPARTMENT

-----X  
 In the Matter of the Disciplinary Proceedings :  
 - against - : FINAL  
 Police Officer Thomas Diorio : ORDER  
 Tax Registry No. 926774 : OF  
 Military & Extended Leave Desk : DISMISSAL  
 -----X

Police Officer Thomas Diorio, Tax Registry No. 926774, having been served with written notice, has been tried on written Charges and Specifications numbered 2021-23536, as set forth on form P.D. 468-121, dated June 28, 2021 (amended on July 1, 2021), 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 Thomas Diorio from the Police Service of the City of New York.

*DERMOT F. SHEA*  
DERMOT F. SHEA  
POLICE COMMISSIONER

EFFECTIVE: 8/17/21



POLICE DEPARTMENT

August 12, 2021

-----X  
In the Matter of the Charges and Specifications : Case No.  
- against - : 2021-23536  
Police Officer Thomas Diorio :  
Tax Registry No. 926774 :  
Military & Extended Leave Desk :  
-----X

At: Police Headquarters  
One Police Plaza  
New York, NY 10038

Before: Honorable Jeff S. Adler  
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Lauren Silverstein, Esq.  
Department Advocate's Office  
One Police Plaza  
New York, NY 10038

For the Respondent: Tried *in absentia*

To:

HONORABLE DERMOT F. SHEA  
POLICE COMMISSIONER  
ONE POLICE PLAZA  
NEW YORK, NY 10038

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

## CHARGES AND SPECIFICATIONS

1. Said Police Officer Thomas Diorio, while off-duty and assigned to the 106th Precinct, on or about and between April 9, 2021, and May 14, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Diorio did advance and profit from prostitution on three (3) occasions by providing transportation for undercover police officers posing as prostitutes to and from hotels, for the purpose of engaging in prostitution, in exchange for said Police Officer Diorio receiving United States currency.

P.G. 203-10, Page 1, Paragraph 5

N.Y. Penal Law 230.20(1)

PUBLIC CONTACT –  
PROHIBITED CONDUCT  
PROMOTING PROSTITUTION IN  
THE FOURTH DEGREE

2. Said Police Officer Thomas Diorio, while assigned to the 106th Precinct, on or about and between April 9, 2021, and May 14, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer Diorio did obtain a benefit for knowingly refraining from performing a duty that is clearly inherent in the nature of his office. (*As amended.*)

P.G. 203-10, Page 1, Paragraph 5

N.Y. Penal Law 195.00(2)

PUBLIC CONTACT –  
PROHIBITED CONDUCT  
OFFICIAL MISCONDUCT

3. Said Police Officer Thomas Diorio, while assigned to the 106th Precinct, on or about June 30, 2021, did impede an official Department investigation, to wit: said Police Officer Diorio made misleading statements during an official Department interview. (*As added.*)

A.G. 304-10, Page 1, Paragraphs 2 & 4

FALSE OR MISLEADING  
STATEMENTS

## REPORT AND RECOMMENDATION

The above-referenced matter appeared before me for trial on August 9, 2021.

Respondent chose not to appear for the trial, and requested that his attorney, John Tynan, Esq., not appear as well. As such, an inquest hearing was held in their absence. The Department called Undercover Police Officer UC-**X** and Lieutenant Jason Lamitola, as witnesses, and introduced into evidence multiple video and audio recordings of the incidents in question, as well

as recordings and transcripts of Respondent's official Department interview. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, I find Respondent Guilty of the charged misconduct, and recommend that he be dismissed from the Department.

### PROCEDURAL HISTORY

On July 22, 2021, the parties appeared before this Court for a scheduling conference. The Department Advocate's Office requested an expedited trial since Respondent had submitted paperwork for retirement, and the matter was adjourned for trial to August 9, 2021. Respondent was informed by the Court that if he failed to appear, the trial would proceed in his absence.

On August 9, 2021, Respondent did not appear for trial. His attorney, John Tynan, Esq., appeared in person before the Court, and informed the Court that Respondent would not be attending, and that Respondent had requested that Mr. Tynan also not participate in the trial.

Since Respondent was directly informed by the Court that the trial was to commence on August 9, 2021, I find that he had ample notice of the date of this proceeding. Based on the foregoing, the Court proceeded in Respondent's absence, and conducted an inquest hearing on August 9, 2021, pursuant to 38 R.C.N.Y. 15-03(b)(2), 15-04(d).

### ANALYSIS

Respondent faces charges that he advanced and profited from prostitution on three separate occasions, between April 9, 2021 and May 14, 2021. Specifically, it is alleged that as part of an extended integrity test, Respondent and Police Officer Michael Sardone, who has since retired, transported several undercover officers, posing as prostitutes, to and from locations

where the undercover officers were to engage in prostitution. During one of the integrity tests, one of the undercover officers was in possession of what appeared to be cocaine. Not only did Respondent not take police action against the prostitution or the narcotics possession, he received money as payment for transporting the undercover officers. It also is alleged that Respondent impeded the Department's investigation into his misconduct by repeatedly making misleading statements during his official Department interview on June 30, 2021.

Undercover Officer UC- [REDACTED] X testified that she was part of an operation that began with an unrelated investigation into Sardone in February 2021. During the course of that investigation, UC- [REDACTED] X exchanged multiple text messages with Sardone (Dept. Ex. 1). Beginning on February 17, 2021, she texted Sardone that she works as an escort, and in a phone call on April 6, 2021, UC- [REDACTED] X asked Sardone if he was interested in being a driver for her and some other "girls," taking them to and from a client in Manhattan on April 9, since her regular driver was sick. A recording of that call (Dept. Ex. 3) confirms that UC- [REDACTED] X stated that Sardone would be paid at least one thousand dollars for his services, and possibly more. Sardone told her that he had someone who would do the work with him, and arranged for the undercover to speak with Respondent. Later on April 6, UC- [REDACTED] X spoke with Respondent via phone call (Dept. Ex. 4), and they discussed details of how the drop-off and pickup would occur on April 9, as well as payment to Respondent and Sardone, which she was adjusting up to four thousand dollars. (Tr. 29-38)

According to UC- [REDACTED] X, she met with Respondent and Sardone at a Starbucks the following day, April 7, to finalize plans for April 9. Audio and video recordings of that meeting (Dept. Ex. 5 & 6) capture the discussion, during which they work out the details of the drop-off and pickup. The undercover officer tells them that they will be driving her and two other girls to

a high-end client, whom she had dealt with previously, and pick them up about an hour-and-a-half later. They confirm that Respondent and Sardone would be paid a total of four thousand dollars for their services. (Tr. 38-43)

On April 9, 2021, Respondent and Sardone met UC- [REDACTED], and two other female undercover officers posing as prostitutes, at a diner parking lot in Queens. UC- [REDACTED] testified that she handed two thousand dollars to Sardone and Respondent, who drove the three women to a hotel in Manhattan. Upon arrival, a male undercover officer, posing as the client, approached Respondent and Sardone outside the vehicle and gave each of them a one hundred dollar tip. When they were ready for pickup, UC- [REDACTED] texted Sardone, and they were all driven back to the diner parking lot, where the undercover officer handed the remaining two thousand dollars to Sardone and Respondent. Video and audio footage capturing the events confirms UC- [REDACTED]'s description of what transpired, including the payments to Sardone and Respondent, and the transportation to and from the hotel that the officers provided. (Tr. 43-53; Dept. Ex. 7-11)

On April 23, 2021, Respondent and Sardone again met UC- [REDACTED] and one additional female undercover officer, also posing as a prostitute, in the same diner parking lot. UC- [REDACTED] testified that she paid one thousand dollars to Sardone and Respondent, who then drove the two women to a Manhattan hotel. Sometime later, Sardone and Respondent picked the undercover officers up at the hotel, and drove them back to the parking lot, where UC- [REDACTED] handed them an additional one thousand dollars. Video and audio footage captured the interactions, confirming UC- [REDACTED]'s account. (Tr. 53-59; Dept. Ex. 12-16)

On May 14, 2021, Respondent and Sardone, for a third time, met UC- [REDACTED] and one other female undercover officer, also posing as a prostitute, in the same parking lot. UC- [REDACTED] testified that she paid one thousand dollars up front to Sardone and Respondent, who then drove them to a

Queens hotel. She explained to them that this was a new client and asked them to be prepared to come up to the room, which they agreed to do. Sometime after the drop-off, UC- [REDACTED] X texted Sardone requesting that the officers come to the hotel room, which they did. Inside the room were the two female undercover officers, as well as a male undercover officer posing as the "john." The females pretended to be having a dispute with the john regarding payment, complaining that he had not paid the full amount for the sex. Both Respondent and Sardone verbally encouraged the john to pay the remaining amount, with Respondent stating, "Can we square this up so we can get out of here... I mean it was talked about before so let's just pay them their money." According to UC- [REDACTED] X the john handed one thousand dollars to Respondent to resolve the disagreement, saying that he "looks like a tough guy." The other female undercover officer told the john that she was taking back her "coke," and, despite the john's protests, did, in fact, grab from the john several baggies containing what appeared to be cocaine. They exited the room, returned to the vehicle, and drove back to the parking lot. UC- [REDACTED] X testified that Respondent held on to the one thousand dollars handed to him by the john as the remaining payment for their services. Video and audio footage from the parking lot, vehicle, and hotel room confirms the undercover officer's account of what occurred. (Tr. 60-73; Dept. Ex. 18-22)

Sardone spoke with UC- [REDACTED] X by phone the following day, and the two of them reviewed the events of May 14. Sardone informed her that he and Respondent were still interested in working with her in the future, but that they preferred for there not to be any narcotics brought into the vehicle in case they were pulled over. (Tr. 74-76; Dept. Ex. 23)

Lieutenant Jason Lamitola of IAB testified that he was present for Respondent's official Department interview on June 30, 2021. (Tr. 78-79) A recording of that interview, and the

accompanying transcript, were admitted in to evidence (Dept. Ex. 24). Details from that interview will be discussed under Specification 3, below.

Specification 1 charges Respondent with advancing and profiting from prostitution on three occasions, in that he and a former colleague received money in exchange for driving undercover officers, posing as prostitutes, to and from hotels for the purpose of engaging in acts of prostitution. Under section 230.20(1) of the New York State Penal Law, a person is guilty of Promoting Prostitution in the Fourth Degree, a Class A misdemeanor, when he knowingly advances or profits from prostitution.

Based on the record, there is no question that Respondent received money payments for his services. UC [REDACTED] credibly explained how she paid Respondent and Sardone on each of the three occasions for their work, half at the initial pickup, and the other half upon completion. Video footage confirms the undercover's account, showing money actually being exchanged. In his official Department interview, Respondent acknowledged that he accepted money as payment for his services.

Similarly, the record has established that Respondent was aware that he was escorting women engaged in prostitution. In his Department interview, Respondent claimed that after the first incident on April 9, he realized that the undercover officers were involved in "some kind of a service." There is, however, credible evidence produced by IAB's extensive investigation that shows Respondent was aware that they were prostitutes even before that. In the telephone call of April 6, 2021, three days before Respondent and Sardone drove the undercover officers for the first time, UC [REDACTED] discussed the nature of the girls' work with Respondent; she explained to him that "we're not street girls, you know, we're like high-end." (Dept. Ex. 4) Similarly, at the Starbucks meeting on April 7, UC [REDACTED] reviewed with Respondent and Sardone the plans for

April 9, and told them that since it would not be an overnight, she would go with the two other girls: "Sex for money. So, it's... simple. It's just picking us up, dropping us off." (Dept. Ex. 5)

The awareness that the girls were engaging in prostitution was reinforced throughout Respondent's interactions with the undercover officers during each of the three incidents. After the pickup from the hotel on April 9, the undercover officers, inside the vehicle, discussed in Respondent's presence the specific sex acts they engaged in in exchange for money, with one of the undercover officers boasting, "I get fucked and I get paid for it and it was good." (Dept. Ex. 10) Similarly, in the vehicle on the way to the hotel on April 23, the undercover officers openly and clearly discussed with Respondent and Sardone the sex acts and "pillow talk" enjoyed by the client who they were on their way to meet. (Dept. Ex. 13) On May 14, Respondent and Sardone actually entered the hotel room, where the girls were arguing with the john over receiving full payment for their services. (Dept. Ex. 20)

As such, the credible evidence has proven that Respondent knowingly advanced and profited from prostitution on three separate occasions. He knew that the reason he was providing transportation for the women was so that they could engage in acts of prostitution, and he received money in payment for his services on each of the three occasions. Accordingly, I find Respondent guilty of Specification 1.

Specification 2 charges Respondent with obtaining a benefit in exchange for knowingly refraining from taking law enforcement action against prostitution and narcotics possession. Section 195.00(2) of the New York State Penal Law states that a public servant is guilty of Official Misconduct, a Class A misdemeanor, when, with the intent to obtain a benefit, he knowingly refrains from performing a duty which is imposed upon him by law or is clearly inherent in the nature of his office.

As discussed above, the credible evidence has shown that Respondent accepted money for the services he provided the undercovers, and that he did so with the knowledge that they were engaged in prostitution. Not only did Respondent not take enforcement action against the women on April 9, 2021, he provided the same services to them, in exchange for money, on two additional occasions, April 23 and May 14. On none of those dates, or any time thereafter, did Respondent take police action regarding the prostitution, choosing, instead, to personally profit from the criminal activity that was occurring. Respondent's failure to perform his duty as a police officer under these circumstances constituted official misconduct.

Additionally, on the third occasion, Respondent was present inside the hotel room during a dispute between two of the female undercover officers and a male undercover posing as a john. In the footage of that dispute (Dept. Ex. 20), one of the female undercovers says she is taking back her "coke" from the john, who protests. The undercover officer can be seen with baggies of what appear to be narcotics in her hand. This all occurs with Respondent standing just a few feet away, yet he takes no police action. During the car ride back, the undercover officer confirms out loud that there is cocaine inside the vehicle, which she had taken back from the john. Respondent states, "Yeah, he was angry about that." (Dept. Ex. 21) As such, the credible evidence has established that Respondent, who was paid by the undercovers for his assistance that day, was well aware that the undercovers were in possession of what appeared to be a controlled substance. Nevertheless, Respondent took no law enforcement action against those involved, thereby committing official misconduct.

As such, I find that the record has established, by a preponderance of the credible evidence, that Respondent was paid money by women whom he was aware were involved in prostitution, as well as in possession of cocaine. In exchange for the payments he received,

Respondent did not perform a duty inherent in the nature of his office, in that he did not take law enforcement action in response to the illegal activity. Accordingly, I find Respondent guilty of Specification 2.

Specification 3 charges Respondent with impeding the investigation by making misleading statements during his official Department interview on June 30, 2021. Section 304-10 of the Administrative Guide defines a “misleading statement” as one that is “intended to misdirect the fact-finder, and materially alter the narrative.” That can include situations where a member of service makes “repeated claims of ‘I do not remember’ or ‘I do not know’ when a reasonable person under similar circumstances would recall, or have been aware of, such material facts.”

In his interview, Respondent repeatedly answered, “I don’t remember,” to questions he was asked regarding the incidents and the surrounding circumstances, even though the interview occurred within a few months of the incidents. For instance, when asked about the April 7 meeting at Starbucks, and whether there was any discussion as to why the “girls” needed to be brought to the locations, Respondent answered that it was not discussed, and he could not remember whether he ever talked about the logistics with Sardone (Dept. Ex. 25A at 19, 35, 64-65). However, audio footage captured UC-X specifically stating during the Starbucks conversation that they would be meeting a “high-end” client, and that it would be “sex for money.” (Dept. Ex. 5)

Also in the interview, Respondent claimed he was unable to recall where in Manhattan he drove the undercover officers, or how much he was paid, details that were unique enough for Respondent to have remembered. (Dept. Ex. 25A at 20, 59) Incredibly, Respondent also initially claimed not to remember having any interaction with anyone else at one of the hotels, or being

called upstairs to help, even though the events of May 14 were particularly memorable. (Dept. Ex. 25A at 22, 25). Only later in the interview did Respondent acknowledge that they were, in fact, called upstairs at one of the hotels, though again, he incredibly claimed he could not remember any of the details of what occurred inside. (Dept. Ex. 25A at 26-27) After being shown video footage of what transpired inside the hotel room, Respondent acknowledged that there was cocaine inside the room, but he claimed that he did not know whether there was cocaine in the vehicle on the ride back, and that he did not recall any conversation about cocaine while they were in the vehicle. (Dept. Ex. 25A at 44-46, 62) The audio recording from the vehicle (Dept. Ex. 21) proved just the opposite, as the parties clearly discussed the cocaine, and Respondent, himself, was a participant in that discussion.

The questions asked of Respondent during the interview were “material,” in that they dealt with significant issues involving Respondent’s interactions with undercover officers posing as prostitutes, and were essential to the Department’s investigation. The questions focused on distinctive events that one would expect Respondent to remember with some particularity, especially since he was questioned so soon after the incidents occurred.

As such, I find that Respondent was being deliberately misleading when he repeatedly claimed that he did not remember significant details. The credible evidence has established that Respondent impeded the Department’s investigation with his misleading responses, and I find him guilty of Specification 3.

### PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department’s Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent’s

employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making the penalty recommendation is contained in an attached memorandum. Respondent, who was appointed to the Department on September 29, 2000, has no prior disciplinary record.

Respondent has been found guilty of advancing and profiting from prostitution on three separate occasions, and for failing to perform his duty as a police officer. Not only did Respondent not take enforcement action regarding the prostitution and the narcotics, he received payment for his assistance in these illegal endeavors. He then compounded this misconduct by impeding the Department's investigation into his actions: during his official Department interview, Respondent repeatedly made misleading statements when asked about the details of the three incidents with the prostitutes.

The Department recommends that Respondent be terminated from the Department, noting that the actions of Respondent are proscribed by New York State Law. Specifically, as discussed above, Respondent's acts constituted Promoting Prostitution in the Fourth Degree, as well as Official Misconduct, both Class A misdemeanors. Under the Disciplinary Guidelines, the presumptive penalty for each of those counts is thirty (30) penalty days. However, I agree with the Advocate that under the specific circumstances presented here, the aggravated penalty of termination is appropriate for both.

Respondent's actions were not based on spur-of-the moment decisions made under high-pressure situations; rather, he had time for deliberate reflection, and made the knowing and intentional choice to engage in criminal behavior. Respondent cannot claim inexperience as an excuse: he is just shy of 21 years with the Department. Respondent was plainly motivated by personal gain, and he did, indeed, receive monetary payment for his misconduct. With his

blatant disregard of the law that he is sworn to uphold, Respondent betrayed the public trust, and did damage to the Department's mission, reputation, credibility, and relationship with the community. His recent pattern of illegal behavior indicates that Respondent is unable to adhere to Department rules and standards.

With his egregious actions, Respondent has demonstrated that he no longer is fit to be a member of this Department. Particularly appalling is the video footage from the third incident, where Respondent accepted money to transport prostitutes to and from a hotel, went up to a hotel room to support the prostitutes in a dispute with their john, helped the prostitutes obtain payment from the john, and stood there as one of the prostitutes retrieved a quantity of cocaine from the john, which she then brought into the vehicle with Respondent. Throughout all of this, Respondent, a sworn police officer, was an active participant in the criminal activity that was occurring right in front of him, and took no law enforcement action against it.

One of the core values of the Department is to fight crime, both by preventing it and aggressively pursuing violators of the law. There is nothing more repugnant to that mission than having those who are entrusted to uphold the law turn against it, using their experience and training to do wrong. Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent be DISMISSED from the New York City Police Department.

**APPROVED**  
AUG 7 2021  
*DERMOT SHEA*  
DERMOT SHEA  
POLICE COMMISSIONER

Respectfully submitted,



Jeff S. Adler  
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
POLICE OFFICER THOMAS DIORIO  
TAX REGISTRY NO. 926774  
DISCIPLINARY CASE NO. 2021-23536

Respondent was appointed to the Department on September 29, 2000. On his three most recent annual performance evaluations, he twice received overall ratings of “Exceeds Expectations” for 2018 and 2019, and received an overall rating of “Exceptional” for 2020. Respondent has been awarded two medals for Excellent Police Duty and one medal for Meritorious Police Duty.

Respondent has no disciplinary record. In connection with the instant matter, Respondent was suspended on June 30, 2021; he remains suspended to date.

For your consideration.

Jeff S. Adler  
Assistant Deputy Commissioner Trials