



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 30, 2024

Memorandum for: Deputy Commissioner, Trials

Re: **Captain Antonio Pagan**
Tax Registry No. 919528
Brooklyn Court Section
Disciplinary Case No. 2022-25272

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on June 4, 6, and 10, 2024, and was charged with the following:

DISCIPLINARY CASE NO. 2022-25272

1. Said Captain Antonio Pagan, assigned to PSAC 2, on or about March 08, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Captain Pagan made a comment of a sexual nature to an individual known to the Department.

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

PROHIBITED CONDUCT

P.G. 205-36

**EMPLOYMENT
DISCRIMINATION**

2. Said Captain Antonio Pagan, assigned to PSAC 2, on or about and between February 01, 2020 through July 31, 2021 did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Captain Antonio Pagan subjected an individual known to the Department to unwanted physical contact.

**P.G. 203-10, Page 1, Paragraph 5
A.G. 304-06, Page 1, Paragraph 1**

PROHIBITED CONDUCT

P.G. 205-36

**EMPLOYMENT
DISCRIMINATION**

3. Said Captain Antonio Pagan, assigned to PSAC 2, on or about July 20, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by making disparaging and disrespectful remarks regarding

membership in a protected class. (*As amended*)

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

P.G. 205-36

**EMPLOYMENT
DISCRIMINATION**

4. Said Captain Antonio Pagan, assigned to PSAC 2, on or about July 20, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by making disparaging and disrespectful remarks regarding membership in a protected class.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

P.G. 205-36

**EMPLOYMENT
DISCRIMINATION**

In a Memorandum dated July 29, 2024, Assistant Deputy Commissioner Adler found Captain Antonio Pagan guilty of all Specifications in Disciplinary Case No. 2022-25272. The facts and circumstances presented in the Memorandum from Assistant Deputy Commissioner of Trials, Adler, have been carefully considered. I agree with the findings, but I do not agree with the proposed penalty recommendation of separation from the Department.

After reviewing the facts and circumstances of this matter, I have determined that while a severe penalty is warranted for the misconduct, separation from the Department is not. It is undisputed that Captain Pagan engaged in inappropriate behavior with a subordinate. As an executive in this Department, Captain Pagan allowed for a subordinate to benefit from his interest and for chain of command to be broken. After careful consideration of the evidence presented at trial and the Department's Disciplinary System Penalty Guidelines, I have determined Captain Pagan should forfeit sixty (60) vacation days for the charged misconduct.



Edward A. Caban
Police Commissioner



POLICE DEPARTMENT

July 29, 2024

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In the Matter of the Charges and Specifications : Case No.

- against - : 2022-25272

Captain Antonio Pagan :

Tax Registry No. 919528 :

Brooklyn Court Section :

-----X

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Sahira Asia, Esq.
Lawrence Newman, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Louis C. La Pietra, Esq.
La Pietra & Krieger, P.C.
30 Glenn Street, Suite 105
White Plains, NY 10603

To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Said Captain Antonio Pagan, assigned to PSAC 2, on or about March 8, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Captain Pagan made a comment of a sexual nature to an individual known to the Department.

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

PROHIBITED CONDUCT

P.G. 205-36

EMPLOYMENT
DISCRIMINATION

2. Said Captain Antonio Pagan, assigned to PSAC 2, on or about and between February 1, 2020 through July 31, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, to wit: said Captain Antonio Pagan subjected an individual known to the Department to unwanted physical contact.

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

PROHIBITED CONDUCT

A.G. 304-06, Page 1, Paragraph 1

P.G. 205-36

EMPLOYMENT
DISCRIMINATION

3. Said Captain Antonio Pagan, assigned to PSAC 2, on or about July 20, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by making disparaging and disrespectful remarks regarding membership in a protected class. *(As amended)*

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

P.G. 205-36

EMPLOYMENT
DISCRIMINATION

4. Said Captain Antonio Pagan, assigned to PSAC 2, on or about July 20, 2021, did wrongfully engage in conduct prejudicial to the good order, efficiency, or discipline of the Department, by making disparaging and disrespectful remarks regarding membership in a protected class.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

P.G. 205-36

EMPLOYMENT
DISCRIMINATION

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on June 4, June 6, and June 10, 2024. Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. The Department called Police Communications Technician [REDACTED] as a witness, and introduced video footage she recorded with her phone as well as screenshots of text messages. Respondent called retired PCTs [REDACTED] and [REDACTED], each of whom testified remotely, and PCT [REDACTED], as witnesses, and testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Guilty of all charges, and recommend a penalty of Termination from the Department.

ANALYSIS

It is alleged that during an 18-month period beginning in February 2020, Respondent sexually harassed Police Communications Technician ("PCT") [REDACTED]. During the period in question, Respondent was a Captain in the PSAC 2 unit [REDACTED].

Specifically, it is charged that on March 8, 2021, Respondent made an inappropriate sexual comment to [REDACTED] which [REDACTED] secretly recorded with her cell phone. It also is alleged that between February 2020 and July 2021, Respondent, on several occasions, subjected [REDACTED] to unwanted physical contact in that he inappropriately rubbed her hand. Respondent also faces two charges for sending text messages to [REDACTED] on July 20, 2021 that were disparaging to [REDACTED]'s Muslim heritage.

In addition to the specific incidents referenced in the charges, evidence was presented, through witness testimony and more than 750 pages of text messages (Dept. Ex. 7), of multiple interactions between Respondent and ██████████ over the course of 18 months, which provides relevant context to the accusations in this case. As will be discussed below, the Department Advocate contends that the actions of Respondent constituted unwanted and inappropriate behavior ██████████ while the defense argues that Respondent and ██████████ were engaged in a consensual, flirtatious relationship, and that she has fabricated these charges in support of a civil lawsuit she filed against Respondent and the Department. The background information will be discussed first, before turning to the specific allegations in this matter.

██████████ testified that she first encountered Respondent late in 2017 or early 2018, when she had to get his approval for a day off to attend to child care. That request was granted, and their interaction in Respondent's fifth floor office was without incident. On another occasion in the spring of 2018, ██████████ needed time off to go with her husband to Barbados in order to get his Green Card. Respondent questioned why she would marry someone who did not have his papers, which made ██████████ uncomfortable. Respondent granted the request, and gave her his personal phone number in case she needed anything while in Barbados. (Tr. 23-27)

In the months that followed, ██████████ went to Respondent several additional times asking for time off. ██████████ testified that her husband worked on an oil rig, so she was essentially a single mother who needed to look after her daughter. The relationship between ██████████ and Respondent became more personal, with Respondent asking her questions about her background, including her Muslim heritage. ██████████ testified that on multiple occasions, sometimes in person and sometimes via text, Respondent requested that she send him "selfies" before he granted her the day off; at different times, he asked her to send photographs of herself, including

some where she was wearing her hijab, or in the shower, and ██████ complied. ██████ described a typical in-person encounter: “We would be in his office, I would say, ‘Hey, I need this day off.’ He would say, ‘Well, I need a picture.’ And he would specify what kind of picture and just say a picture.” Many such requests were made by text as well. On one occasion, Respondent said he would extend ██████’s overtime, and then stated, “I will only do it for a pic. Agreed?” When ██████ did agree, Respondent added, “OK so that’s 2 u owe me.” (Dept. Ex. 7 at 305) In another exchange, Respondent texted, “Don’t forget my pic later today. I’m going to need it as an energy booster.” (Dept. Ex. 7 at 301) On another day after ██████ texted that she had been to the beach, Respondent answered, “Nice, some pics would be appreciated.” (Dept. Ex. 7 at 340) (*See also* Dept. Ex. 7 at 57, 65, 83, 110, 152, 181-82, 248, 313-16, 346, 427.)

██████ testified that she felt uncomfortable with these requests, but her priority, as a single mother, was to have the time off to take care of her child, and so she played along with Respondent and did send photos. ██████ acknowledged that in doing so, there were times she came off as flirtatious; she insisted, though, that she was not leading him on, and was focused only on maintaining flexibility with her work hours. (Tr. 24, 29-32, 60-61, 70-71, 74-75, 80-82, 103-14, 118-19, 138-41)

██████ testified that beginning in 2020, Respondent asked her to go out on a date on multiple occasions; ██████ declined, telling him that she had to look after her child. Respondent told her to let him know when she was ready, and he would even pay for a babysitter. ██████ testified that she did not refuse him outright because she needed the days off, and did not want to risk upsetting him. On one day in 2021, Respondent told ██████ that he was good at performing oral sex, and would like to do it to her. These comments made her

very uncomfortable. [REDACTED] secretly recorded Respondent on one of the occasions in his office where he asked her to be his girlfriend. In that video (Dept. Ex. 3), Respondent tells [REDACTED] not to play games with him, and presses her to give him an answer as to whether she is willing to date him outside the office. [REDACTED] repeatedly answers that she cannot set up anything now. At 0:59, Respondent tells [REDACTED] that he wants an Arab girlfriend, and he wants her to be it. (Tr: 34-36, 53-55)

After providing this background information regarding her dealings with Respondent, [REDACTED] testified as to several specific interactions, which form the basis of the four charges in this case. On March 8, 2021, [REDACTED] was scheduled to have a hearing for a Command Discipline (“CD”) that had been issued to her after she was out sick for four days and did not provide a doctor’s note. [REDACTED] testified that she went to Respondent’s office, where she secretly recorded their conversation, because he frequently made inappropriate comments to her, and she was concerned about statements Respondent had recently made threatening to change her tour. (Tr. 38-41, 44)

In the first part of the video (Dept. Ex. 1), Respondent can be heard telling [REDACTED] that he wants her to stop getting too comfortable with the new lieutenant, Lieutenant [REDACTED]. She then mentions she has a hearing scheduled on her CD, and suggests that she would accept the loss of two hours in order to resolve the matter. At 0:56, Respondent answers, “Sit on my lap...and I’ll warn and admonish.” [REDACTED] says, “Really?” and Respondent nods his head yes as he smiles. [REDACTED] tells him to have a good day and walks out of his office. [REDACTED] testified that this incident was different than other times where Respondent had made similar remarks in text messages, since this time they were face-to-face in his office, with clear glass

windows that made them visible to others in the workplace. As such, when he suggested that she sit in his lap, she felt particularly uncomfortable. (Tr. 42-43, 145, 149-50)

██████████ recorded an additional interaction with Respondent in his office, which she testified was the same day as the footage from Dept. Ex. 1. In the second video, she again is discussing with him how to resolve her CD. (Dept. Ex. 2) Respondent asks her to sit next to him to go over the CD together. At approximately 1:10 of the video, Respondent can be heard saying something to ██████████ about blowing him a kiss, to which she replies, "You want me to blow you a kiss to get out of this shit." The recording then ends. ██████████ testified that this, too, made her uncomfortable. (Tr. 45-46, 52)

██████████ testified that also on March 8, 2021, after her incident with Respondent described above, she agreed to be warned and admonished, and signed off on the CD. When Respondent handed her a pen for that purpose, he placed his hand over her hers, and rubbed ██████████'s hand for a couple of seconds. ██████████ testified that there were other occasions in 2021 where he also touched her inappropriately. For instance, there were three or four times where Respondent gave her money to buy food to bring back to the command. When he handed her the money, he similarly placed his hand over hers and rubbed it. ██████████ testified that when he touched her in this manner it made her very uncomfortable. She also recalled a day in the spring of 2021 where she unexpectedly ran into Respondent at a COSTCO. She testified that he reached out to hug her, which again made her very uncomfortable; nevertheless, she hugged him back because she was afraid of upsetting him in public. (Tr. 47-50, 119-22)

On July 20, 2021, Respondent sent ██████████ a series of text messages regarding the Muslim holiday "Eid." ██████████ explained that as part of the holiday, Muslims go to the mosque for prayer, sacrifice a lamb, and give gifts to the poor. In one text (Dept. Ex. 5), Respondent

stated, "If ur dressed like a Muslim today take a picture n show me." [REDACTED] testified that she did not understand why he made the request to see her in Muslim attire, and she ignored it. In a second text (Dept. Ex. 6), Respondent sent a screenshot of a news story about a "bull on the loose" in Suffolk County. He wrote that the bull, which was going to be sacrificed as part of the Muslim holiday, had escaped, and that it had possibly been released because there was an animal rights group nearby. Respondent texted, "I hope this doesn't affect [you and] cause [you] to go hungry today. If u need me to help out let me know." [REDACTED] testified that the text made her uncomfortable. She did not know whether Respondent was implying that Muslims only eat animals on the holiday, and she found his comments to be offensive. (Tr. 58-64)

[REDACTED] testified that she did not report Respondent's behavior from fear of being "side-balled": she was concerned that Respondent would retaliate and cause her to suffer a lot of hardship at work, including switching her tour in a way that would jeopardize her child care situation. She decided, instead, to continue "stroking his ego." However, on or about August 4, 2022, [REDACTED] spoke with Lieutenant [REDACTED], with whom she felt comfortable, regarding Respondent's behavior toward her. She first informed [REDACTED] that Respondent had instructed her not to speak with him, and then described some of her specific interactions with Respondent. She told him about the March 8, 2021 incident where Respondent asked her to sit in his lap, and she showed him the video footage of their conversation. (Tr. 37-38, 56, 64-66, 89-91, 138)

[REDACTED] did not ask [REDACTED] to report what had occurred, but the next day he told her that as a mandatory reporter he had called EEO and repeated what she had said to him. When an EEO representative reached out to [REDACTED], she initially said that she did not want to discuss the matter. However, approximately two weeks later, she did speak with EEO about Respondent's conduct toward her, though she did not provide as much detail as she did at trial. During that

interview (Dept. Ex. 11), ██████ had an attorney present, and she subsequently filed a civil lawsuit against Respondent and the Department. According to ██████, she was “very hurt” by what had transpired, and wanted to be made whole for how Respondent made her feel. She denied that she had been leading Respondent on in order to set him up for a lawsuit. (Tr. 66-69, 88-89, 93-95, 98, 102, 139)

Respondent testified that his relationship with ██████ was initially the same as with anyone else, until she started joking around more and becoming more assertive in approaching him. He described her as “flirtatious,” and noted that she sometimes referred to him as her “work husband.” Respondent stated that he, too, has a sense of humor, and so he also engaged in banter with her, and they exchanged texts almost every day. Respondent acknowledged that he had ██████’s phone number saved on his phone as the Egyptian goddess “Nefertiti” in case someone else saw their exchanges, but he noted that she sent him a text (Dept. Ex. 7 at 55) stating she liked the name. He conceded that there were times he requested photos from ██████, though he never asked for anything nude or suggestive, and actually sent a blushing emoji in response to the shower photo she sent (Dept. Ex. 7 at 86). He also insisted that his requests for photos were a joke, and not a quid pro quo in exchange for granting her days off. On some occasions ██████ informed him that her husband would be away for weeks, which Respondent interpreted as her suggesting it was an opportunity for Respondent “to make a move” on her. He did not recall ever offering to pay for a babysitter for ██████ so they could go out; he noted that accusation, as well as the one where she alleged that Respondent had told her he was good at oral sex, did not appear in ██████’s lawsuit or in her statements to EEO. (Tr. 228-29, 233, 247-48, 250-52, 258, 274, 277-79, 283, 301-02)

Regarding the video footage of the meeting where Respondent tells ██████ that he wants her to be his girlfriend (Dept. Ex. 3), Respondent testified that part of the video was missing. He also noted that prior to the conversation, ██████ had been asking him for over a month about getting together for lunch, and he had told her that since she was the one with the childcare issues, she should let him know when it was a good day to meet for lunch. It was in that context that he made the statement to her that she should stop playing games. According to Respondent, even though he can be heard on the video saying that he wanted ██████ to be his girlfriend, he did not really want to date her romantically; he attributed his comment to a “weakness,” where he doesn’t like to say no to people. (Tr. 241, 246, 280-83, 300)

With respect to the incident of March 8, 2021, involving ██████’s CD, Respondent testified that his reference to her sitting in his lap was an ongoing joke between them, where she had previously stated that she would interrupt his meetings with other female employees and sit in his lap. The standard penalty of “warn and admonish” was imposed for the CD, and ██████ never actually sat in his lap. Respondent also testified that when he told ██████ not to speak with Lieutenant ██████ he was just pretending to be angry; it was merely another example of his “dry sense of humor,” where he was “giving it back” to her since she sometimes complained that he had other female PCTs in his office. (Tr. 229-31, 284-89)

Regarding the accusation that he improperly touched ██████ on multiple occasions, Respondent testified that he did not recall handing her a pen to sign off on the CD, but he acknowledged that it was possible their hands did touch. Similarly, he conceded that their hands may have briefly touched when he handed her money to buy food. (Tr. 252-53, 291)

Respondent acknowledged that on July 20, 2021, he sent the text message asking ██████ for a picture if she dressed in Muslim attire for the holiday. (Dept. Ex. 5) He testified

that since she did not wear such clothing to work, he would have been interested in seeing her with a “different look.” He did not intend the comment to be disparaging toward [REDACTED]. Similarly, his text about the bull escaping (Dept. Ex. 6) was merely an attempt at humor, and not meant to belittle [REDACTED]’s faith in any way. (Tr. 253-55, 291-96)

Respondent testified that in hindsight, he realizes that he should have behaved more professionally in his dealings with [REDACTED], and should not have let the informalities between them escalate the way they did. He thought he “would be safe” as long as he did not exploit the situation “to score in the bedroom.” Respondent maintained that while they were working together, he saw her as a friend, though they did flirt with each other. He thought she was pretty, and it was his hope that after he retired they could begin dating. Respondent insisted that he regrets his actions, and feels that he let himself and the Department down. (Tr. 261-62, 279, 282-83)

In support of his defense, Respondent called several witnesses who observed some of his interactions with [REDACTED]. [REDACTED], who was a PCT with the Department from 1989-2022, testified that she knew both Respondent and [REDACTED] from her time at PSAC 2. [REDACTED] also served as a delegate, and she described Respondent as “fair” in their interactions during disciplinary matters. She testified that she observed [REDACTED] selling food and desserts inside the command, which was prohibited. She warned [REDACTED] about it, and the next day there was a banana pudding dessert left on her desk. [REDACTED] testified that in her opinion, [REDACTED] was in Respondent’s office “almost way too much,” and on one occasion she thought she saw [REDACTED] blowing a kiss to Respondent. Out of concern that this situation could be problematic for Respondent, [REDACTED] spoke with him and suggested that he be careful about spending so much

time with [REDACTED]. [REDACTED] never complained to [REDACTED] of any improper conduct by Respondent toward her. (Tr. 179-84)

[REDACTED], a former PCT who also worked at PSAC 2, testified that she went to Respondent when she needed help with issues, such as days off to take care of her kids. She described him as a “great supervisor.” [REDACTED] stated that [REDACTED] was a good worker, with a “loud, out-there personality.” For example, on one occasion when [REDACTED] was talking with a male PCT, [REDACTED] approached her and said, “That’s my boo.” According to [REDACTED], [REDACTED] and Respondent appeared to have a friendly relationship. [REDACTED] recalled a day where she and PCT [REDACTED] were meeting with Respondent inside his office when [REDACTED] barged in and said, “What are you bitches doing in here?” [REDACTED] and [REDACTED] looked at each other and then left the office. (Tr. 190-93)

PCT [REDACTED] testified that she regularly worked with [REDACTED] beginning in 2019-2020, and described her as “pretty confident.” According to [REDACTED], Respondent was a very nice, approachable supervisor. [REDACTED] echoed the account of [REDACTED] about the time they were sitting in Respondent’s office when [REDACTED] barged in. [REDACTED] testified that she was “flabbergasted” by the aggressive way in which [REDACTED] entered the office, and took it as her cue to leave. (Tr. 214-20)

In summary, it is the defense position that [REDACTED] is an unreliable witness who misrepresented and exaggerated her interactions with Respondent, and that she really was just setting him up with an eye toward filing her civil lawsuit. However, after carefully observing the witness testimony at trial, and considering it in conjunction with the exhibits offered into evidence, I reject that defense. I found [REDACTED] to be credible in her testimony, which was detailed, logical, and corroborated by the video and texts in evidence. She convincingly

described an on-going course of conduct where Respondent repeatedly exposed her to unwanted sexual advances, in person and through texts, often in connection with her requests for accommodations to her work schedule. Making matters worse, Respondent also made inappropriate comments with respect to ██████'s Muslim heritage. Although the exchanges between them did often come across as flirtatious, I credit ██████'s testimony that she was merely playing along with Respondent, a supervisor with the power to make decisions affecting her work assignments. ██████ was in a vulnerable position, and she prioritized her need for flexibility in connection with her child-care needs. The reason she was reluctant to report Respondent's actions was because she was afraid there would be retaliatory consequences. Still, she was troubled enough by Respondent's conduct to secretly record him, and she eventually confided in Lieutenant ██████ regarding Respondent's inappropriate behavior. Based on the totality of the evidence, I find ██████'s description of what transpired to be truthful, and not a fabrication to support a lawsuit.

In contrast, I find that Respondent's testimony, that he was only joking in his comments and requests, to be incredible. That claim was convincingly contradicted not just by the testimony of ██████, but by the video footage in evidence as well as the text messages. For instance, in the office meeting captured on video in Dept. Ex. 3, Respondent comes across as completely serious when he says to ██████ that he wants her to be his Arab girlfriend, tells her not to play games with him, and presses her for an answer as to her willingness to date him. Throughout their text messages, Respondent makes repeated requests for photos. (*See, e.g.*, Dept. Ex. 7 at 181-82, 301, 305, 340) When ██████ complies, Respondent often expresses his approval, either through thanking her in words or with emojis. The credible evidence has established that Respondent, a Captain with the responsibility to act professionally and

appropriately toward those he supervises, knowingly did just the opposite in his interactions with [REDACTED]. Moreover, he was not duped into his actions; rather, he was a willing participant.

With that in mind, we turn to the specific allegations against Respondent.

Specification 1 (Comment of sexual nature)

Specification 1 charges Respondent with wrongfully making a sexual comment to [REDACTED] on March 8, 2021. It is undisputed that Respondent did, in fact, say to [REDACTED] that if she sat on his lap, he would resolve her command discipline with a “warn and admonish” penalty: both [REDACTED] and Respondent testified as to the conversation, and it was secretly recorded by [REDACTED] (Dept. Ex. 1). The question is whether the comment constitutes misconduct. I find that it does.

Section 205-36 of the Patrol Guide states that unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when “submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual,” or where “such conduct has the effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive work environment.” Here, while they were face-to-face inside his office, Respondent proposed to [REDACTED] that she could favorably resolve her CD *if* she sat in his lap. I credit [REDACTED]’s testimony that the remark made her particularly uncomfortable. It was an unwelcome demand, and one that created an offensive work environment for [REDACTED].

As noted above, I reject the suggestion that this was a harmless joke. Rather, it was an inappropriate, unacceptable comment made by a Captain to a PCT whom he supervised. The remark is even more troubling in the context of the numerous unwanted sexual advances made

by Respondent toward [REDACTED] during the time period in question. The credible evidence has established that Respondent acted contrary to the good order, efficiency, and discipline of the Department by making an inappropriate sexual comment to a subordinate. Accordingly, I find Respondent Guilty of Specification 1.

Specification 2 (Unwanted physical contact)

Specification 2 charges Respondent with subjecting [REDACTED] to unwanted physical contact. It is alleged that Respondent inappropriately touched [REDACTED]'s hand on multiple occasions: once when he handed her a pen to sign off on a CD disposition, and several times where he was handing her money when she was going on a food run. [REDACTED] testified that on each of these occasions Respondent placed his hand over hers and briefly rubbed it, which made her very uncomfortable. Respondent could not speak specifically to what happened on each of these occasions, but he conceded that their hands may have briefly touched.

For the reasons discussed above, including the ongoing behavior of Respondent toward his subordinate, I credit [REDACTED]'s testimony that this was inappropriate physical contact. What occurred was more than incidental contact; rather, these inappropriate touchings had an impact on [REDACTED], to the point where they left a lasting impression with her. [REDACTED] did not appear to be exaggerating the nature of the physical contact between them; there were no allegations, for instance, that Respondent wrongfully touched her in any way other than briefly rubbing her hand. But even these touchings constituted unwanted physical contact in the workplace, which was contrary to the good order, efficiency, and discipline of the Department. Accordingly, I find Respondent Guilty of Specification 2.

Specifications 3 & 4 (Disparaging text messages)

Specifications 3 and 4 charge Respondent with making disparaging and disrespectful remarks regarding ██████'s membership in a protected class, in that he sent inappropriate text messages to her on July 20, 2021. On a day in which ██████ was celebrating the Muslim holiday Eid, Respondent chose to send her a text asking her to send a picture with her dressed in Muslim attire. ██████ did not understand why he would make such an inappropriate request, and she ignored it. He then compounded the situation by sending a follow-up text regarding a bull escaping in Suffolk County, and wrote that he hoped it did not cause ██████ to go hungry. ██████, not surprisingly, was uncomfortable with the texts and found them to be offensive.

Respondent did not deny sending the texts, which are in evidence (Dept. Exs. 5 & 6). He claimed, however, that he did not intend to belittle ██████'s faith; he sent the first text because he thought it would be interesting to see ██████ with a "different look," and the text about the bull was meant to be "humorous." Neither of these excuses justify the texts he sent. Once again, Respondent used poor judgment, first by requesting a photograph of a subordinate in religious attire, and then by making an insensitive joke about her religious holiday. Both texts were disparaging and disrespectful to ██████'s Muslim heritage, and I find Respondent Guilty of Specifications 3 & 4.

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 this penalty recommendation is contained in an attached

memorandum. In 2010, Respondent pleaded guilty to making an improper loan to a subordinate, and forfeited 20 vacation days.

Respondent, who was appointed to the Department on April 15, 1997, has been found guilty of each of the four charges against him. The charges of making an inappropriate sexual comment, and making disparaging remarks regarding a person's religion, each carry a presumptive penalty of 20 days. The count involving unwanted physical contact has a presumptive penalty of 25 days. The aggravated penalty for each of the counts is Termination, which is the penalty recommended by the Department Advocate.

It should go without saying, but apparently bears repeating: the Department promotes a fair, safe, inclusive and accommodating work environment for all members of the NYPD. The workplace must be free from discrimination and harassment. With his behavior toward [REDACTED], Respondent's conduct as a supervisor repeatedly ran afoul of these basic principles. On March 8, 2021, he plainly stated to [REDACTED] that he would favorably resolve her CD if she sat in his lap. Moreover, he made this statement in the middle of their workday, inside his office. Later that same day, also while they were on duty, Respondent rubbed her hand inappropriately as he handed her a pen to sign off on the CD. That unwanted physical contact was repeated on multiple additional occasions, when Respondent handed money to [REDACTED]. Then, on July 20, 2021, Respondent's misconduct expanded into a different area, when he texted disrespectful, disparaging remarks to [REDACTED] regarding her Muslim heritage. As discussed above, I found [REDACTED] to be credible in her description of what transpired, and the fact that she subsequently filed a lawsuit does not undercut the validity of her claims, nor does it relieve Respondent of responsibility for his actions.

Making these actions even more troubling is that they occurred within the context of many similar acts during the time period in question. When one considers the entirety of their communications, including Respondent's repeated requests to [REDACTED] that she send him photographs of herself, and his express desire to have her be his girlfriend, it is impossible to minimize how egregious Respondent's behavior was. These were not isolated incidents; rather, they were part of an extensive course of conduct that created a hostile work environment for [REDACTED], which is an aggravating factor in determining an appropriate penalty. Also of great concern is that at the time of these incidents, Respondent was an Executive tasked with vast responsibility in overseeing and supervising personnel who deal with emergency calls for assistance. In that capacity, he disturbingly took advantage of a workplace subordinate, which is another aggravating factor.

Respondent's statement on the witness stand, that he thought he would be safe as long as he did not exploit the situation to score in the bedroom, just serves to underscore how poor was his judgment, and how egregious were his actions. Behavior such as that exhibited by Respondent runs completely contrary to the values of this Department, rendering his continued employment with the NYPD untenable. Taking into account the totality of the facts and circumstances in this matter, I recommend a penalty of Termination from the Department.

Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

DISAPPROVED

AUG 30, 2024

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
CAPTAIN ANTONIO PAGAN
TAX REGISTRY NO. 919528
DISCIPLINARY CASE NO. 2022-25272

Respondent was appointed to the Department on April 15, 1997. He has been awarded seven medals for Excellent Police Duty.

In 2010, Respondent pled guilty to entering into a financial transaction with a subordinate, and negotiated a penalty of 20 vacation days.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials