



POLICE DEPARTMENT

November 14, 2018

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In the Matter of the Charges and Specifications :

- against - :

Police Officer Tatiana Latorre :
Tax Registry No. 950729 :
48 Precinct :

Case No. 2016-15262

Police Officer Alysha Avellino :
Tax Registry No. 949800 :
68 Precinct :

Case No. 2016-15263

Police Officer Dimitrios Sotiriou :
Tax Registry No. 949684 :
30 Precinct :

Case No. 2016-15264

Police Officer Brian Ricci :
Tax Registry No. 939303 :
72 Precinct :

Case No. 2016-16090

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

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department:

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

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To:

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

CHARGES AND SPECIFICATIONS

Respondent Tatiana Latorre

Disciplinary Case No. 2016-15262

1. Said Police Officer Tatiana Latorre, on or about August 30, 2014, while on duty and assigned to the 109th Precinct, upon observing corruption or misconduct of another Member of the Service known to the Department, did fail to notify the Internal Affairs Bureau of the Department. *(As amended)*

P.G. 207 21, Pages 1 & 2

ALLEGATIONS OF CORRUPTION AND
OTHER MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

2. Said Police Officer Tatiana Latorre, on or about December 9, 2015, while on-duty and assigned to the 109th Precinct, during an official Department interview regarding an investigation, pursuant to the provisions of Patrol Guide Section 206-13, did wrongfully make misleading statements. *(As amended)*

P.G. 203-08, Page 1, Paragraph 1

PUBLIC CONTACT – PROHIBITED
CONDUCT

3. Said Police Officer Tatiana Latorre, while assigned to the 109th Precinct, on or about November 21, 2015, in the confines of the 109th Precinct, did fail and neglect to perform said officer's duties, to wit: said Police Officer failed to promptly take police action relating to the execution of a search warrant at Shangrila Karaoke Lounge. *(As amended)*

P.G. 203-05, Page 1, Paragraph 1

POLICE OFFICER – DUTIES AND
RESPONSIBILITIES

Respondent Alysha Avellino

Disciplinary Case No. 2016-15263

1. Said Police Officer Alysha Avellino, on or about August 30, 2014, while on duty and assigned to the 109th Precinct, upon observing corruption or misconduct of another Member of the Service known to the Department, did fail to notify the Internal Affairs Bureau of the Department. *(As amended)*

P.G. 207-21, Pages 1& 2

ALLEGATIONS OF CORRUPTION AND
OTHER MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

2. Said Police Officer Alysha Avellino, on or about December 28, 2015, while on-duty and assigned to the 109th Precinct, during an official Department interview regarding an investigation, pursuant to the provisions of Patrol Guide Section 206-13, did wrongfully make misleading statements. *(As amended)*

P.G. 203-08, Page 1, Paragraph 1

PUBLIC CONTACT – PROHIBITED
CONDUCT

Respondent Dimitrios Sotiriou

Disciplinary Case No. 2016 15264

1. Said Police Officer Dimitrios Sotiriou, on or about August 30, 2014, while on duty and assigned to the 109th Precinct, upon observing corruption or misconduct of another Member of the Service known to the Department, did fail to notify the Internal Affairs Bureau of the Department.

P.G. 207 21, Pages 1 & 2

ALLEGATIONS OF CORRUPTION AND
OTHER MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

2. Said Police Officer Dimitrios Sotiriou, on or about December 9, 2015, while on duty and assigned to the 109th Precinct, during an official Department interview regarding an investigation, pursuant to the provisions of Patrol Guide Section 206-13, did wrongfully make misleading statements.

P.G. 203-08, Page 1, Paragraph 1

PUBLIC CONTACT – PROHIBITED
CONDUCT

Respondent Brian Ricci

Disciplinary Case No. 2016-16090

1. Said Police Officer Brian Ricci, while assigned to the 109th Precinct, on or about November 21, 2015, in the confines of the 109th Precinct, did fail and neglect to perform said officer's duties, to wit: said Police Officer failed to promptly take police action relating to the execution of a search warrant at Shangrila Karaoke Lounge.

P.G. 203 05, Page 1, Paragraph 1

POLICE OFFICER – DUTIES AND
RESPONSIBILITIES

2. Said Police Officer Brian Ricci, while assigned to the 109th Precinct, while on-duty, on or about November 21, 2015, within the confines of the 109th Precinct, upon becoming aware of corruption or other misconduct involving a Member of the Service, said Police Officer failed to notify the Department.

P.G. 207-21, Pages 1 & 2

ALLEGATIONS OF CORRUPTION AND
OTHER MISCONDUCT AGAINST
MEMBERS OF THE SERVICE

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before the Court on September 24 and 25, and October 1, 2018. Respondents, through their counsels, entered pleas of Not Guilty to the subject charges. The Department called Sergeant Darrell Owens, Police Officer Jawad Javed, Sergeant Steven Lee, and Inspector Thomas Conforti as witnesses. Respondents each testified on their own behalf. After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find as follows:

Respondent Latorre:

Specification 1 (fail to notify): Not Guilty
Specification 2 (misleading statements): Guilty
Specification 3 (fail to act): Not Guilty

Recommended penalty: 20 vacation days

Respondent Avellino:

Specification 1 (fail to notify): Not Guilty
Specification 2 (misleading statements): Guilty

Recommended penalty: 20 vacation days

Respondent Sotiriou:

Specification 1 (fail to notify): Not Guilty
Specification 2 (misleading statements): Guilty

Recommended penalty: 20 vacation days

Respondent Ricci:

Specification 1 (fail to act): Not Guilty
Specification 2 (fail to notify): Not Guilty

ANALYSIS

This matter is an off-shoot of an Internal Affairs Bureau ("IAB") investigation into members of service accepting bribes from karaoke clubs in Queens in exchange for warning them in advance of police inspections. That investigation began in 2014, and resulted in the arrests of Lieutenant Robert Sung and Detective Yatyu Yam in December of 2015, neither of whom remains with the Department. During the course of the investigation, certain karaoke clubs within the confines of the 109th precinct were targeted for enforcement action in order to determine which ones were receiving protection. Respondents were utilized to assist in that enforcement, without being aware of the underlying corruption investigation. The allegations against Respondents stemmed from two such actions: the first at Club JJNY ("JJNY") on August 30, 2014, and the second at the Shangrila Karaoke Club ("Shangrila") on November 21, 2015.

Sergeant Steven Lee, presently assigned to the Police Academy, testified that in August of 2014 he was the conditions sergeant at the 109th precinct. In late July or early August, he was told by Sung that Sung was planning to bring false [REDACTED] allegations against Inspector Thomas Conforti, who at the time was a captain and the C.O. of the 109th precinct. Sung was upset that Conforti was interfering with Sung's bribery arrangements with certain karaoke clubs and prostitution houses, and wanted to get rid of Conforti. Lee testified that he informed Conforti of the plot so that Conforti could protect himself. (Tr. 279-82)

Lee met with IAB about two weeks later, and it was arranged that Lee would attempt to record Sung. According to Lee, IAB initially wanted to gather more evidence regarding the false [REDACTED] allegation. Additionally, IAB was investigating Sung for corruption involving the karaoke clubs, which Lee claimed he did not know about before he met with IAB; IAB later enlisted Lee's assistance in that investigation as well. (Tr. 283-84, 317-19, 348)

On August 29, 2014, Sung asked Lee to do an inspection at JJNY, since that was one of the clubs that Conforti was targeting. Sung's plan was to tip off the club's owner, Person A, so that there would not be any customers or criminal activity in the club at the time of the inspection. IAB directed Lee to go ahead with the inspection the next day. Lee testified that he was assured that members of his team would not get into trouble in connection with the inspection, as long as they did not lie in their official Department interviews. (Tr. 286-89, 315-16)

On August 30, around midnight, Lee assembled his conditions team to perform the inspection. That team consisted of his driver, Officer Jawad Javed, Respondent Sotiriou and his partner Officer O'Leary, and Respondents Latorre and Avellino, the only two female officers on the team.¹ Lee testified that he called the team to the location once he already was outside JJNY; he did not recall giving them prior notice of this inspection, and had not informed the officers that this was part of a bigger operation. Lee was unsure precisely when each of his team members arrived at JJNY, but believed that Latorre and Avellino may have got there some time after Lee and the other team members were already inside. (Tr. 291-93, 296, 316, 322, 359, 363)

Lee testified that he instructed his team to start conducting checks, while he walked off to the right to speak with the owner Person A for about 10-15 minutes. When Lee asked him why there were patrons inside the location, Person A said there were only a few customers. Lee then entered a room on the left, where there were approximately eight male and female patrons, some of whom had a substance that appeared to be ketamine on their faces. There also were glassine vials of ketamine inside the room, including on a table. Lee told Latorre and Avellino to assist Javed in

¹ At the time of the two incidents, Respondent Latorre's last name was Feely, and Avellino's was Williams. Subsequently, they each changed their last names. The charges and specifications for each of these Respondents were orally amended to reflect this updated information. Nevertheless, during the trial testimony, witnesses often referred to these Respondents by their former names.

searching the room, since some of the patrons were females. According to Lee, one of the female Respondents searched a female patron and recovered from her purse a red envelope containing ketamine; Lee could not recall which of the officers did the search. (Tr. 298-301, 324-25, 364-65, 370, 374-75, 377-79)

Lee went upstairs and tried calling Sung, but Sung did not answer. He next called his IAB handlers, Lieutenant Seeger and Sergeant Owens, who asked Lee if any of the patrons had been handcuffed. Lee went to check, then confirmed to his handlers that there were people in handcuffs. About five-to-ten minutes later, Detective Yam called Lee; they discussed what was happening, and Yam told Lee that this was Sung's place and Lee should let the patrons go. Lee testified that he checked back with his handlers, who instructed him to uncuff the patrons and let everyone go. Lee estimated he spent about 30-45 minutes on these phone conversations. (Tr. 302-305, 334-36, 361, 384)

Lee testified that he returned to the room, where he instructed his team to release the three patrons in handcuffs. Lee stated that the entire team was present at the room, either inside or at the threshold, though he did not recall who was standing where. According to Lee, the team members were all upset that individuals were being uncuffed, and statements were made by the officers complaining about it; Lee was unsure, however, which specific officers made those statements. The patrons were uncuffed, and the team left the location without making any arrests. Lee did not recall what happened to the drugs, but was pretty sure they were left behind. (Tr. 305, 307-09, 329-32, 338, 372-73, 379, 381, 385)

Police Officer Jawad Javed, of the Critical Response Command, testified that he was part of the 109th precinct conditions team on August 30, 2014. He believed that all four members of the team were present with him and Lee at JJNY when they entered the location. They followed Lee downstairs into the club. Lee went to the right, and Javed entered the closest room. The

room was poorly lit, so Javed used his flashlight. He observed about 10 patrons inside the room, some sitting on a sofa near a table on which ketamine was present. Javed also observed white powder on the noses of two of the people, which he believed to be ketamine as well. Javed testified that he had two pairs of handcuffs, which he used to cuff the two people with powder on their noses. He also claimed that he asked one of the female officers, either Latorre or Avellino, for her handcuffs, which he used to cuff a female patron; however, at his Department interview on December 9, 2015, Javed stated only that he "asked for extra cuffs," without mentioning that it was a female officer who handed them to him. (Tr. 187-95, 204-05, 210-13, 231, 252-53, 256, 264)

After the patrons were handcuffed, Lee came to the room and, without explanation, announced, "This is a '91' [condition corrected], uncuff them. Let's go." Javed testified that he believed Latorre and Avellino were inside the room with him at the time, and Sotiriou and Officer O'Leary were standing in the threshold of the doorway; however, at his Department interview Javed had stated that while there were other officers present, he was unsure precisely who was in the room with him. (Tr. 195-96, 217, 219, 233, 244-46)

Javed testified that he protested Lee's order since he had three under, but Lee directed that the patrons be released so Javed complied and uncuffed them. He handed the third pair of handcuffs back to a female officer, and the team left the location. Outside, Javed confronted Lee inside their RMP about what had just happened, and Lee explained that he had just spoken with Sung who told him to let them go. Javed was upset and uncomfortable about what had transpired, and reported the incident to his commanding officer, Conforti, the next day. (Tr. 197-98, 201, 217-220, 222)

Inspector Thomas Conforti of the Central Investigations Division testified that he was the C.O. of the 109th precinct in July of 2014. In late July or early August, Lee reported to him that

Sung was upset that Conforti was going to reassign Sung, which would interfere with the arrangements Sung had with the karaoke clubs. In order to prevent this from happening, Sung wanted to have the inspector removed from the precinct. Toward that end, Sung was going to set up false [REDACTED] allegations against Conforti. (Tr. 397-99, 463-64)

When he was informed of this plot, Conforti notified IAB. About a month or so later, IAB asked for the inspector's assistance in their already existing investigation into corruption involving the karaoke clubs. Specifically, Conforti was directed to initiate enforcement action at certain karaoke clubs in order to identify which clubs were receiving police protection. (Tr. 402, 466)

On November 21, 2015, Conforti arranged for the execution of a search warrant at Shangrila. In order to "maintain the sanctity of the investigation," so that no one would know that IAB was involved, Conforti waited until an hour before to assemble his team and inform them of the plan for executing the warrant. They met for about five minutes in the Western Beef parking lot a couple of blocks from Shangrila, where Conforti explained the specific assignments to the team members, who were from the conditions team and anti-crime unit. Ricci and Latorre were part of the team, each assigned to guard the lobby area by the elevator and staircase in front of the location, while Conforti and other team members entered the location through a side entrance and proceeded to the 3rd floor where the club was located. Conforti testified that he specifically informed Ricci and Latorre not to let anyone in or out during the execution of the warrant. He also gave an elevator key to Ricci, and instructed the officers to disable the elevator. Conforti conceded that he did not tell the team members that there might be a member of service attempting to leave from inside the club, and did not provide any specific instruction regarding what to do if a member of service emerged from the stairwell. Indeed, Conforti had no expectation that Yam would be there. (Tr. 411-19, 421-24, 439-44, 461-62)

According to Conforti, his team members entered the location as planned and proceeded to the 3rd floor. Conforti later learned that as they were doing so, Detective Yam and two civilians came down the front staircase, walked past Ricci and Latorre, and another officer, and exited the building. IAB's investigation revealed that Person B had called Yam and warned him about the police action. Neither Respondent attempted to stop the individuals as they exited the building, and neither informed Conforti that someone had left. (Tr. 426-27, 431-33, 447, 449, 453)

Sergeant Darrell Owens of IAB Group 26 testified that around January of 2014, IAB received numerous complaints alleging that there were karaoke clubs within the confines of the 109th precinct that were receiving protection from MOS in exchange for bribes; Lieutenant Sung and Detective Yam became targets of the ensuing investigation. In August of 2014, Sergeant Lee informed IAB that Sung and Yam were protecting JJNY. Owens testified that Lee had been aware of Sung's corruption since 2013 without reporting it. (Tr. 38-39, 43, 98-100) Regarding the inspection that occurred at JJNY on August 30, 2014, Owens testified that none of the Respondents reported to IAB what had occurred at the club that day. (Tr. 62, 122)

Sergeant Owens confirmed that following a series of narcotics buys at Shangrila, a search warrant was executed at that location on November 21, 2015, under the supervision of Conforti. (Tr. 77) Owens also testified that the Department confiscated surveillance video from the elevator area and from the street outside the entrance to the club (Dept. Ex. 5). On the inside footage, Ricci, Latorre, and Officer Crystal Jackson can be seen standing near the closed stairwell door to the left of the elevator. At about the 00:10-second mark, the door opens and three people emerge from the stairwell. Latorre, who is directly in front of the door, moves back to the wall and watches, while Ricci, who is to the right, leans around the door to see who is emerging from the stairs. The three people walk to the right and exit the location. The footage

from outside the club more clearly shows the three people who exit the club: Detective Yam in plain clothes, followed by two civilian men. It was later determined that Person B had called Yam at Shangrila and warned him about the search warrant. Owens testified that at his Department interview on December 17, 2015, Ricci volunteered that about two hours after leaving the club, Yam sent a text message to Ricci stating, "WTF." Ricci replied that he was still at the location. (Tr. 93-94, 166-68)

Sotiriou and Latorre were interviewed by the Department on December 9, 2015, while Avellino was interviewed on December 28, 2015. Recordings of their audio statements, and the accompanying transcripts, were admitted into evidence (Dept. Exs. 1, 1A, 2, 2A, 3, 3A, respectively). The portions of those interviews that the Advocate alleges were misleading are indicated in Dept. Ex. 4.

In his Department interview, Sotiriou stated that he was unaware that there had been arrests at JJNY. He later heard that there had been people uncuffed, but he did not witness that himself. (Dept. Ex. 1A at 5, 9, 12) In her interview, Latorre stated that she did not specifically remember anyone being arrested inside JJNY, but that it was possible since she saw Lee and Javed talking with each other. She did not remember seeing anyone in handcuffs, or any discussion about arrests being made in the club. (Dept. Ex. 2A at 7-9) Avellino stated in her interview that she did not remember seeing anyone handcuffed or detained by her colleagues inside JJNY. There was no discussion about an order to uncuff individuals who had just been placed in handcuffs. No one informed Avellino that arrests had been voided and arrestees allowed to go free. (Dept. Ex. 3A at 22, 29, 36)

Respondent Sotiriou, who was part of the 109th precinct's conditions team on August 30, 2014, testified that he and his partner O'Leary were called to JJNY by Lee to do an inspection. When they arrived, Lee and Javed were waiting outside, and together they entered the club.

Sotiriou believed that Latorre and Avellino arrived a little after; he first noticed the two female officers by the exit as the team was leaving. Once inside the club, Sotiriou and his partner walked in one direction and began checking rooms, while Lee and Javed went in the opposite direction. They checked four or five rooms and observed about 30-40 people inside the club, but did not notice any illegal activity. After about 20-25 minutes, Lee concluded a phone call and said to the team, "Let's go 98 let's get the fuck out of here." The team then exited the location. Sotiriou claimed that he did not observe any drugs inside JJNY, and did not see anyone handcuffed or uncuffed. (Tr. 488-95, 506, 509-10, 514)

Respondent Latorre, who also was part of the conditions team, testified that she heard Lee put over the radio that he was at the JJNY location to do an inspection. Lee did not call Latorre or her partner Avellino to the job, but the officers decided to go there anyway as backup. According to Latorre, she did not get along well with Lee, and this was not the first time he had excluded them from participating in an inspection being performed by the conditions team. Latorre and her partner arrived at the location about 10-15 minutes later, went downstairs, and stood just inside the entrance. Lee was standing close by, and within three-or-four minutes he instructed the team to leave the club and resume patrol. According to Latorre, she and her partner were only there for about five minutes, and did not enter any of the individual rooms. Latorre claimed that she did not see anyone in handcuffs. She also testified that she never heard Javed ask for a pair of handcuffs, or Lee tell her to search a female patron. (Tr. 521-27, 541-45, 549)

Regarding the November 21, 2015 incident at Shangrila, Latorre testified that her tour was changed and she first became aware of the operation when she was summoned to the Western Beef lot. There were about 20-25 officers gathered, some in uniform and some in plain clothes, and it was difficult for her to hear Conforti's general instructions to the group; she did

not hear any mention that they were executing a search warrant. Conforti specifically directed Latorre and Officer Jackson that they should follow Ricci and stand by the door of the location. He instructed them to, "stand there, and don't let anyone out." Latorre did not receive instructions on stopping MOS from leaving the location, nor was she told anything more about the operation. (Tr. 533-36, 556, 564)

Latorre was at the club for one-to-two hours. At some point, Detective Yam came out of the stairwell with two other males and exited the location. Since she recognized Yam from the command, she did not question him about leaving with the two men. Latorre did not see any reason to inform Conforti that Yam and the two individuals had left the club. (Tr. 537, 557-59, 566)

Respondent Avellino, who was partnered with Latorre on August 30, 2014, testified that she did not get along with Lee, who sometimes excluded her and her partner from team enforcement. Although they were not specifically summoned by Lee to the inspection at JJNY, they went there anyway, for the safety of their colleagues and so that Lee could see them there. They arrived about 20-25 minutes later, and entered the location. Avellino observed Javed inside one room (though she did not see any civilians in that room), Sotiriou and O'Leary in another, and Lee standing in the hallway; Lee did not acknowledge Avellino or her partner. Within five minutes, Lee announced "98" and the officers left the location. Avellino did not recall entering any of the rooms, and did not see illegal narcotics. She claimed she did not remember seeing anyone handcuffed or released. She also never gave her handcuffs to Javed, and was not told to search a female patron. Avellino did not notify IAB since she did not observe any corruption. (Tr. 574-80, 583-86, 591, 596, 603-04)

Avellino offered into evidence several certificates recognizing her outstanding service to the community in April of 2018, and her selection as 68th Precinct Officer of the Month in January of 2017. (Resp. Ex. A).

Respondent Ricci, who was with anti-crime on November 21, 2015, testified that he first became aware of the Shangrila operation when he was summoned to the Western Beef lot. He described the scene in the lot as chaotic, with Conforti briefly addressing the group about doing a bar check for narcotics at Shangrila. There was no tactical plan, and Ricci did not hear any mention of a search warrant. Conforti instructed the group that no one was to leave the location, though he did not specifically include MOS in that directive. Conforti then handed a key to Ricci and told him to shut down the elevator. (Tr. 611, 613-15, 618, 629)

According to Ricci, the officers entered the location and he shut down the elevator as instructed. Within a few minutes, Detective Yam exited from the stairwell to the left of the elevator, along with two other individuals who were with him. When Ricci recognized Yam as a detective who he worked with at the 109th precinct, his "guard went down" and he allowed them to exit the location. About two hours later, Ricci received a text from Yam stating, "WTF." The text confused Ricci, who did not understand why Yam was texting him; he sent a reply text essentially stating, "We're still here." There was no further communication between them. Ricci did not tell Conforti about the texts, but he did mention them during his Department interview less than a month later. Ricci insisted he did not know that Yam was a target, and thought he might be part of the operation, which is why he did not stop him or the two individuals with him from leaving and did not report corruption to IAB. (Tr. 618 27, 632-35, 644-47, 651)

The charges stemming from each of the two karaoke clubs will be considered separately.

JJNY

Specification 2 charges Respondents Latorre, Avellino, and Sotiriou with making misleading statements at their Department interviews. Even though more than a year had passed between the incident and the Department interviews, each of these Respondents provided enough detail to demonstrate that they had a general recollection of what occurred inside JJNY. In their interviews, each of these Respondents stated that they did not remember seeing any of the JJNY patrons handcuffed and subsequently released. At trial, Respondents maintained that their statements at the Department interviews were truthful.

On the one hand, I credit that Latorre and Avellino arrived after the other team members, and the record fell short of establishing their awareness of what precipitated the temporary detention of the patrons. The room where Javed detained the patrons was poorly lit and searched by Javed with the aid of a flashlight. Javed claimed at trial that one of the female officers handed him her handcuffs, but he did not mention that important fact when questioned at his Department interview. Lee testified that one of the female officers searched a female patron and recovered ketamine from her purse, but Javed did not corroborate that claim. Similarly, the record was unconvincing in establishing that Sotiriou was aware of what led to the patrons being handcuffed. I credit Sotiriou's account that he initially was occupied checking other rooms and was unaware what was occurring inside the room searched by Javed.

Nevertheless, the credible evidence has established that each of these three Respondents was present by the time Lee ordered that the patrons be uncuffed, and they were aware that those patrons were subsequently released. Both Lee and Javed provided more detailed, logical testimony not only that several patrons were handcuffed and then released, but that the three Respondents were all aware that this occurred. Lee and Javed both testified credibly that the entire team was present in the immediate area when Lee announced the order to uncuff the

patrons. Lee noted that the officers were upset about the order to release the detainees. The individuals were uncuffed as per Lee's direction, and the team then left the location. Since each of these Respondents gave statements to the contrary at their Department interviews, I find them guilty of Specification 2.

Specification 1 charges Respondents Latorre, Avellino, and Sotiriou with failing to notify IAB after observing corruption or misconduct by another MOS. Section 207-21 of the Patrol Guide states that "all members of service have an absolute duty to report any corruption or other misconduct, or allegation of corruption or other misconduct, of which they become aware." It is undisputed that the three Respondents did not notify IAB regarding what transpired inside JJNY. The issue is whether the credible evidence has established that their failure to do so constituted misconduct. I find that it has not.

Even though Respondents were aware that several individuals were being released from custody, that does not automatically mean the officers had reason to believe that corruption or misconduct was occurring. As discussed above, the record fell short of establishing Respondents' awareness of what precipitated Javed's temporary detention of the patrons, and what led to their subsequent release. With hindsight, it is now clear that the release of the patrons was connected to the corruption involving Sung, Yam, and the karaoke clubs. However, when viewed from the perspective of the Respondents at the time of the incident, the situation was not so clear-cut, as the patrons could have been detained and then released for any number of reasons. Moreover, there was no credible evidence that Respondents had any knowledge of the corruption involving the karaoke clubs or the investigation into that corruption. They observed their supervisor, Lee, on the phone with someone, before he gave the instruction to uncuff the patrons and resume patrol. Respondents reasonably followed the direction of their supervisor and left the location.

To be sure, it is understandable that Lee and his IAB handlers did not want to divulge too much information to the team members, for fear of compromising the corruption investigation. However, it would be unfair not to recognize that Respondents were acting on less-than-full information at the time of the inspection. In the absence of such information, and based on their limited observations at the scene, it was not apparent from the credible evidence that police corruption or misconduct was occurring at JJNY. As such, their failure to notify IAB did not constitute misconduct, and I find Respondents Latorre, Avellino and Sotiriou not guilty of Specification 1.

Shangrila

Respondents Ricci (Specification 1) and Latorre (Specification 3) are charged with failing to take action at the Shangrila karaoke club on November 21, 2015. Ricci (Specification 2) also is charged with failing to notify IAB after observing corruption or misconduct by another MOS at the club. Specifically, it is alleged that Respondents allowed Detective Yam and two civilians to exit the location, contrary to the instructions from the C.O., Conforti. It is undisputed that they did, in fact, allow the three men to exit without stopping or questioning them. At issue is whether their failure to take police action regarding Yam and the other two individuals constituted misconduct. I find that it did not.

There was some discrepancy as to what precisely Conforti said during the meeting in the Western Beef lot. Conforti testified that he informed everyone that they were executing a search warrant at the location. Both Ricci and Latorre described the meeting as chaotic, and insisted they never heard Conforti say anything about a search warrant; Ricci recalled hearing Conforti say that they were doing a bar check for narcotics. Respondents did acknowledge, though, that Conforti specifically told them not to let anyone out of the building. However, Conforti did not in any way suggest to Respondents that there might be an MOS inside the location, nor did he

provide them with any specific instruction regarding what to do if an MOS attempted to exit the building.

Ricci testified credibly that he disabled the elevator as he was told. From the video evidence, Yam can be seen exiting the stairwell to the left of the elevator, accompanied by two other men. Yam is not in uniform, though both Ricci and Latorre testified credibly that they recognized him as a detective from the precinct. Also, Yam, although blocked by the door, appears through a window in the door to display an object at the 00:13-second mark of the video, which he holds in a way indicative of it being some form of identification. Respondents each convincingly explained that they did not see any reason to stop and question a co worker, which is why they allowed the three men to exit the location.

In hindsight we now know that Yam was a target of the investigation, and that apparently he had just been tipped off by Person B about the police presence. But I credit Respondents' testimony that at the time of the incident, they possessed no such knowledge. The meeting in the Western Beef lot was chaotic and brief, and there was no written tactical plan presented to the officers. Again, this tribunal is mindful of Conforti's stated concern about "protecting the sanctity of the operation" by limiting the amount of information he shared with other MOS. However, as discussed above, it would be unreasonable to penalize Respondents here when they were acting based on incomplete information.

Under the totality of circumstances presented here, the credible evidence has not established that Ricci and Latorre committed misconduct by allowing Yam, and the two men he was leading, to exit Shangrila. Similarly, the credible evidence has failed to establish that Ricci was aware that corruption or other misconduct was occurring involving Yam, even after he received the text message from Yam. As such, his failure to notify IAB did not constitute

misconduct. Accordingly, I find Respondents Ricci and Latorre not guilty of the charges connected with Shangrila.

PENALTIES

In order to determine appropriate penalties, Respondents' service records were examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Information from their personnel records that was considered in making these penalty recommendations are contained in the attached confidential memoranda. Respondent Latorre was appointed to the Department on July 6, 2011. She previously forfeited two (2) vacation days for an improper stop in 2015. She has received strong annual evaluations the past three years, and is the recipient of one medal for Meritorious Police Duty. Respondent Avellino was appointed to the Department on July 6, 2010. She has no disciplinary history, and submitted several certificates recognizing her outstanding service to the community in April of 2018, and her selection as 68th Precinct Officer of the Month in January of 2017. Respondent Sotiriou was appointed to the Department on July 6, 2010. He has no disciplinary history, and has been awarded four medals for Excellent Police Duty.

Each of these Respondents has been found guilty of one charge of making misleading statements. As discussed above, Respondents found themselves involved in enforcement action where important information was withheld from them because of an ongoing corruption investigation that needed to remain confidential. The difficulty of this situation prompted Sergeant Lee, their supervisor at the time, to seek to have his team members immunized from any disciplinary action. The one condition for them to receive such immunity was to be truthful at their Department interviews. Unfortunately, each of the Respondents, when questioned as subjects of the investigation, claimed not to remember seeing anyone inside the club being

uncuffed. These statements were contrary to the credible evidence, and so there must be some accountability.

The Advocate has recommended a penalty of thirty (30) vacation days, ten (10) suspension days, and one (1) year dismissal probation for each Respondent. However, in light of the not guilty findings, and under the specific circumstances presented here, that recommendation is excessive. Instead, a penalty involving the forfeiture of vacation days is appropriate. See, e.g., *Disciplinary Case No. 2016-15648* (Oct. 4, 2017) (Ten-year police officer with no disciplinary record forfeited twenty (20) vacation days for twice making misleading or inaccurate statements during official Department interviews, regarding his being directed by a supervisor to change the allegations contained in a complaint report and domestic incident report).

Taking into account the totality of circumstances and issues in this matter, I recommend that Respondents Latorre, Avellino, and Sotiriou each forfeit twenty (20) vacation days.


Respectfully submitted,



Jeff S. Adler

Assistant Deputy Commissioner Trials

APPROVED

MAR 22 2018

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials

To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER TATIANA LATORRE
TAX REGISTRY NO. 950729
DISCIPLINARY CASE NO. 2016-15262

Respondent Latorre was appointed to the Department on July 6, 2011.

On her last three annual performance evaluations, Respondent received three overall ratings of 4.5 "Extremely Competent/Highly Competent" in 2016, 2015, and 2014. Respondent was awarded one medal for Meritorious Police Duty.

In her seven-years of service, Respondent has reported sick on nine occasions, three of which involved a line-of-duty injury.

In *Disciplinary Case No. 2015-14476*, Respondent negotiated a penalty of two vacation days for stopping an individual known to the Department without sufficient legal authority.

On June 30, 2017, Respondent was placed on Level I Disciplinary Monitoring based on her history with the Department; that monitoring remains ongoing.

For your consideration.

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 ALYSHA AVELLINO
TAX REGISTRY NO. 949800
DISCIPLINARY CASE NO. 2016-15263

Respondent Avellino was appointed to the Department on July 6, 2010.

On her last three annual performance evaluations, Respondent received two overall ratings of 4.0 "Highly Competent" in 2016 and 2015, and one overall rating of 4.5 "Extremely Competent/Highly Competent" in 2014. Respondent was awarded two medals for Excellent Police Duty.

In her eight-years of service, Respondent has reported sick on nine occasions.

Respondent has no disciplinary record.

For your consideration.

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 DIMITRIOS SOTIRIOU
TAX REGISTRY NO. 949684
DISCIPLINARY CASE NO. 2016-15264

Respondent Sotiriou was appointed to the Department on July 6, 2010.

On his last three annual performance evaluations, Respondent received one overall rating of 4.0 "Highly Competent" in 2016, and two overall ratings of 4.5 "Extremely Competent/Highly Competent" in 2015 and 2014. Respondent was awarded four medals for Excellent Police Duty.

In his eight-years of service, Respondent has not reported sick.

Respondent has no disciplinary record.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials