STATE OF NEW YORK: COUNTY OF ULSTER
CITY OF KINGSTON
--x
In the Matter of the Disciplinary Charges

-against-

CHRISTOPHER REA

DISCIPLINARY
DECISION

Pursuant to the provisions of Section 75
Of the Civil Service Law of the State of New York

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On or about January 23, 2012, City of Kingston Assistant Fire Chief Christopher Rea (hereinafter referred to as "Mr. Rea") was promoted by the undersigned to the position of Fire Chief. Mr. Rea succeeded Richard Salzmann who retired from the position rather than answer charges that he committed acts of wrongdoing related to his annual leave and compensatory time accruals[1]. On or about February 9, 2012, Mr. Rea was notified by letter that the appointment as Fire Chief was rescinded and he was suspended without pay based upon the results of an investigation which revealed that on a number of occasions over the preceding years, Mr. Rea was receiving pay from New York State for work as a Fire Safety Instructor while simultaneously receiving pay from the City of Kingston for work as Assistant Fire Chief. Ongoing investigations of Mr. Rea's conduct revealed numerous additional acts of misconduct.

On or about May 24, 2012, Mr. Rea filed an Article 78 proceeding in the Supreme Court, Ulster County, wherein, relying on an unsigned draft of an employment contract, he claimed that he was contractually entitled to "all benefits as are provided to City employees under the City's contract with the Kingston Professional Fire Fighters Association and any other additional Memorandum of Agreements they may form". Specifically, Mr. Rea argued that he could not be

[1] As addressed below, Mr. Salzmann subsequently pled guilty to a number of misdemeanors in Kingston City Court related to these same time and attendance issues.

subject to discipline "except for just cause" and that he was further entitled to binding arbitration as set forth in Article XVIII of the Kingston Professional Fire Fighters Association (hereinafter referred to as "KPFFA") contract.

The City of Kingston submitted an answer to Mr. Rea's complaint. Therein, the City clarified that the document that Mr. Rea submitted was not his actual contract but an unsigned draft and provided Mr. Rea's actual contract to the Supreme Court. Of particular significance to these proceedings, insofar as the final signed and fully executed version of the contract did not grant Mr. Rea the rights set forth in the KPFFA contract, the City argued that Mr. Rea was not entitled to binding arbitration but was rather only entitled to a hearing before a Hearing Officer appointed pursuant to Civil Service Law Section 75.

On or about July 17, 2012, the Article 78 proceeding was settled by the parties and an Order was entered by the Supreme Court, County of Ulster, which provided in relevant part that charges would be filed by the City of Kingston within thirty days and that a hearing would be conducted before a Hearing Officer pursuant to the provisions of Section 75 of the Civil Service Law. Most significantly, in reaching said stipulation, Mr. Rea did not exercise his right to secure a judicial determination regarding the contractual issue in the Supreme Court, and he abandoned his claim that he was entitled to binding arbitration as set forth in the KPFFA contract.

After clarification in the Supreme Court regarding the applicable disciplinary process, on August 21, 2012 the City of Kingston filed disciplinary charges against Mr. Rea, including detailed charges related to Mr. Rea's time and attendance. The City of Kingston also charged Mr. Rea with incompetence and dereliction of duty for failing to secure required safety equipment in his capacity as Assistant Fire Chief and Training Officer of the City of Kingston and failing to submit training records to the State of New York as required pursuant to the Minimum Standards

for Firefighting Personnel. Finally, Appellant was charged with further misconduct for downloading and storing sexually explicit material onto his work computer.

On or about September 11, 2013, John T. Trella was appointed as Hearing Officer to "hold a hearing on the disciplinary charges preferred against Christopher Rea" and to "cause a transcript to be made of such hearing and, following your analysis, you shall submit the record of such hearing to me, with your recommendation, for my review and decision".

Thereafter, on or about November 27, 2013, amended disciplinary charges were filed which alleged that on approximately thirty-six occasions, Mr. Rea was not at his post in the City of Kingston during his regular work day without charging the time to his annual leave or compensatory time. These additional charges were based upon telephone records secured from Verizon which established that on these thirty-six occasion, at various times during Mr. Rea's work day, the signal from Mr. Rea's cellular telephone was directed to cellular towers in locations outside of the City of Kingston, including towers throughout Dutchess and Ulster Counties when Mr. Rea was scheduled to be at his post in the City of Kingston. Mr. Rea's cellular telephone was also directed to towers in the State of Connecticut.

The hearing on the charges took place over five dates. After the conclusion of the hearing, both parties submitted written summations to the Hearing Officer and on or about July 18, 2014, Hearing Officer Trella issued a written decision regarding the disciplinary charges. After review of the totality of the record, including the testimony elicited at the hearing and the exhibits which were introduced into evidence, for the foregoing reasons, the findings and recommendations of Mr. Trella are hereby rejected.

ANALYSIS

Mr. Trella's "Opinion and Recommendation" is a fifty page document which was issued on July 18, 2014. The document begins with a six page recitation of the procedural history of the proceedings against Mr. Rea without specific citations to testimony or documentary evidence. The document continues by reciting verbatim approximately twelve pages of charges brought against Mr. Rea. Mr. Trella then sets forth a nine page summary of the City's argument and then a fourteen page summary of Respondent's argument. Notably, throughout the first forty one pages of his decision, Mr. Trella does not outline or discuss any testimony or documentary evidence that was introduced at the hearing and does not make any findings of fact regarding the credibility or weight properly accorded to any of the evidence.

Mr. Trella's "discussion" of the charges begins with the conceded statement of law that the charges levied against Respondent must be proven by "substantial evidence" and he cites Sticker v. Town of Hunter, 3 A.D.3d 727 (3rd Dept., 2004) as defining "substantial evidence" as "a term of art related to administrative decision making . . . it means such relevant proof as a reasonable person may accept as adequate to support a conclusion or alternate fact . . . it is less than preponderance of the evidence, overwhelming evidence or evidence beyond a reasonable doubt".

After setting forth the definition of "substantial evidence", Mr. Trella briefly addressed the City's argument that Mr. Rea's conduct must be considered in the wider context of the time and attendance issues at the Fire Department that resulted in the departure of Mr. Salzmann. Mr. Trella rejected the City's argument regarding the climate of misconduct that pervaded the Fire Department, and finds that "extending the wrong doing of the previous Chief of the Fire Department to the Respondent is not supported by the facts and proofs in the record and are an

unsupported over-reach of those facts". In reaching this conclusion, Mr. Trella fully ignored the evidence in the record that Chief Salzmann pled guilty to filing a false report when he swore that he was at work when he was actually in the State of Florida on vacation. Mr. Trella also ignored the clear admission by Mr. Rea that he always knew the location of the Chief (transcript, page 280).

Contrary to the findings of Mr. Trella, it is the opinion of the undersigned that Mr. Rea's testimony that he always knew the location of Chief Salzmann, coupled with Chief Salzmann's guilty plea to filing a false instrument, established by substantial evidence the climate within which Mr. Rea committed his own acts of wrong doing. This climate of wrong doing was fostered and supervised in cooperation by Mr. Salzmann and Mr. Rea and substantial evidence established that the two men facilitated and covered up each other's dishonest and fraudulent actions.

The deficiencies in Mr. Trella's analysis continue with his discussion of the specifications that Mr. Rea improperly collected approximately $11,300.00 in supplemental pay and his findings regarding Mr. Rea's written contract being the result of a "mutual mistake". Mr. Trella begins this section of his opinion by stating that "the first major issue to be dealt with is the "Parole Evidence Rule" regarding the individual contract between the City and Respondent versus "Mutual Error" as to the continuation of benefits under the KPFFA collective bargaining agreement". Mr. Trella then proceeds to find that, contrary to the clear written terms of Mr. Rea's contract, and contrary to the intent of the Parole Evidence Rule, the parties to the contract actually intended that Mr. Rea receive the KPFFA benefits.

It is the finding of the undersigned that Mr. Trella's statement that the omission of KPFFA benefits from Mr. Rea's contract is "[t]he first major issue to be dealt with"

demonstrates the depth of his misunderstanding of his role as the Hearing Officer. Mr. Rea has been charged with sixty-three specifications of misconduct. Mr. Trella was appointed to hear and determine whether those acts of misconduct were proven by substantial evidence. He was not appointed to arbitrate a contract claim. Therefore, the omission of the KPFFA language from the contract is far from "a major issue" in the disciplinary proceedings. Moreover, it is the finding of the undersigned that Mr. Trella's finding that the omission of the KPFFA language was a mistake of fact is unsupported by the record. In point of fact, both Mr. Rea and the former Mayor testified that they did not read the contract before they signed the document. As such, they were not mistaken as to a controlling fact. Rather, at best, due to their own lack of care, they were not aware of the controlling terms rather than mistaken regarding the contents of the document. In addition, Mr. Trella's findings were made in excess of his authority. By agreement, this matter was not heard before an arbitrator with binding authority and was rather heard by a Hearing Officer with the final decision resting with the undersigned. Inherent in that agreement was the recognition that Mr. Rea is not entitled to all the benefits provided under the KPFFA contract, including the right to supplemental pay.

Mr. Trella's finding that an adverse inference should be drawn against the City due to the undersigned not testifying at the hearing was a further incorrect application of the law and an abuse of discretion. There was no basis in the record for Mr. Trella to find that the undersigned has any knowledge regarding the factual issues before the Court. Moreover, Mr. Trella's reasoning regarding the adverse inference wholly ignores the fact that the undersigned remains the ultimate trier of fact in these proceedings, a role which, had the undersigned testified, would have required the undersigned to make credibility determinations regarding my own testimony.

For these reasons, Mr. Trella's finding that an adverse inference was appropriate is not supported by the law or the facts and, accordingly, it is rejected.

After rendering his erroneous findings and unsupported findings regarding Mr. Rea's contract, Mr. Trella addresses the remainder of the charges against Mr. Rea by simply stating that "the record does not support any of the other charges, including the Verizon Charges, the Computer Charges and the Charges regarding Incompetency/Dereliction of Duty have been proven and it is recommended that they be dismissed/withdrawn in their entirety as well".

In making this minimal and dismissive finding regarding over sixty specifications, Mr. Trella offers no summary of the testimony or exhibits introduced into evidence, he does not analyze the exhibits or evidence and he utterly fails to make any findings regarding the credibility of the witnesses or the veracity of their testimony. This failure on the part of the Hearing Officer to address any of the controlling facts is the most significant and fatal defect in his "Opinion and Recommendation" and leaves the undersigned with no choice but to reject the minimal "Opinion and Recommendation" and to make independent findings based upon the evidence introduced at the hearing.

FINDINGS OF FACT

It is the finding of the undersigned that Charge 1, Specification 1 through 3 were established by substantial evidence. According to the specifications, on February 22, 2006, September 25, 2006, and February 23, 2007, Mr. Rea received compensation from the City of Kingston without performing services or using leave time (City of Kingston Exhibits Numbers 9, 10). The charges continue that on said dates, Mr. Rea submitted a voucher to the New York State Department of State for work allegedly performed at the New York State Fire Academy in

Montour Falls (City of Kingston Exhibit Number 1). The documentary evidence introduced at the hearing establishes these charges by substantial evidence.

Mr. Rea initially defends these charges on the grounds that the conduct alleged falls outside the eighteen month statute of limitations set forth section 75 of the Civil Service Law. It is the finding of the undersigned that the charge is not barred by the statute of limitations. The record clearly reflects that time sheets were maintained by Mr. Rea and that each time sheet includes a total of accrued time carried over from the previous time sheet. Mr. Rea's fraudulent accruals continued until the time that Mr. Rea was suspended. The wrongdoing alleged is therefore part of a pattern of conduct that continued well into the eighteen months preceding the filing of charges. Mr. Rea's statute of limitations argument therefore has no merit.

Moreover, as set forth in Civil Service Law, Section 75, subdivision 4, the statute of limitations does not bar charges when the conduct alleged would constitute a crime. As Mr. Rea's conduct would minimally constitute violations of Sections 155 and 195 of the Penal Law, the statute of limitations is not a bar to proceeding[2].

Mr. Rea further defends against this specification by arguing that on February 22, 2006 he worked a full day in the City of Kingston and then traveled some two hundred fifteen miles to Montour Falls to teach an evening class. This testimony was directly rebutted by the sworn affidavit of John B. Gilmore, Jr., introduced into evidence as City's Exhibit Number 30 wherein Mr. Gilmore clarifies that the courses at issue started at 1:00 P.M. Moreover, Mr. Rea offered no documentary evidence to support his patently incredible claim. Most notably, he failed to produce a single toll receipt, meal receipt or other document to establish that he drove seven

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[2] Mr. Rea raises the statute of limitations as a defense to most of the other specifications. It is the determination of the undersigned that each of Mr. Rea's statute of limitation defenses are similarly without merit and they will not be addressed individually in this decision.

hours round trip after his regular work day and taught an evening class to a group of firefighters. He failed to produce a written schedule from the Fire Academy or a single witness to testify that the course was in fact taught from 6:00 P.M. to 8:00 P.M. When evidence would normally be available to the proponent of a version of the controlling facts, and that evidence is not proffered at trial, it is appropriate to draw an adverse inference. Here, Mr. Rea's claim that he taught an evening course could have easily been corroborated. Absent such corroboration, and given the contents of Mr. Gilmore's affidavit, it is reasonable to conclude that Mr. Rea's sworn testimony that the course was given in the evening is simply untrue.

It is the finding of the undersigned that Charge 1, Specification 4 was not established by substantial evidence. According to the specification, on March 7, 2008 Mr. Rea received compensation from the City of Kingston without performing services or using leave time. The charge continues that on said date, Mr. Rea submitted a voucher to the New York State Department of State for work allegedly performed at the New York State Fire Academy in Montour Falls.

Mr. Rea's defense to this charge is that it was the result of "a simple clerical error". He explains that while he worked on March 3, 2008, he was actually charged with a vacation day in error and that March 7 rather than March 3 should have been charged to his annual leave. While the undersigned is leery of Mr. Rea's claim of a mistake, particularly given that Mr. Rea relies on numerous other mistakes as defenses to the various allegations, given the proximity of dates and the uncontroverted fact that Mr. Rea worked on March 3 and charged the day to his leave accruals, it is appropriate to dismiss Specification 4.

It is the finding of the undersigned that Charge 1, Specification 5 through 13 were established by substantial evidence. According to the specifications, on August 18, 2009;

August 19, 2009; August 20, 2009; August 25, 2009; August 26, 2009; August 27, 2009; January 25, 2010; January 26, 2010 and January 27, 2010, Mr. Rea received compensation from the City of Kingston without performing services or using leave time. The charges continue that on said dates, Mr. Rea submitted a voucher to the New York State Department of State for work allegedly performed at the New York State Fire Academy in Montour Falls.

The uncontroverted documentary evidence establishes that Mr. Rea received compensation from both the City of Kingston and the New York State Fire Academy on each of these dates. The uncontroverted documentary evidence further establishes that Mr. Rea did not charge himself for annual leave or compensatory time for any of these dates. This documentary proof constitutes substantial evidence of the specifications (City of Kingston Exhibits Numbers 1, 9, 10).

Mr. Rea's defense that "he is sure that he put in a time slip" is wholly unsupported by the record and is incredible on its face. In essence, Mr. Rea argues that he should simply be believed when he states that he put in a slip for leave and the slip simply disappeared or was willfully destroyed by his successor. Unfortunately for Mr. Rea, given his pattern of conduct, the totality of his testimony, and his repeated claims that numerous specifications can be explained by a series of mistakes, he is not worthy of belief. Moreover, while the undersigned is reluctant but willing to accept Mr. Rea's "mistake" defense to Specification 4, and similarly reluctant to accept other mistakes and/or carelessness as outlined below, Mr. Rea's claims of repeated mistakes become less credible each time they are raised. With regard to Specifications 5 through 13, his claim is simply incredible and is therefore rejected.

It is the finding of the undersigned that Charge 1 Specification 14, 15 and 16 have been proven by substantial evidence. As addressed above, the documentary evidence and the

testimony elicited at trial established that Mr. Rea was absent from work on two days during 2006, six days during 2009 and three days during 2010 and he did not charge these dates against his annual accruals of compensatory time or vacation time. The evidence further established that each successive time sheet carried over the accruals from the preceding sheet. Therefore, the inaccuracies continued through the time when Mr. Rea was suspended. As such, his time sheets for the 2009, 2010 and 2011 calendar years falsely recorded his vacation and personal day usage.

Mr. Rea defends against these specifications by claiming that he was not responsible for his own erroneous accruals because Mr. Rea and Mr. Salzmann were responsible for each other's time sheets. Mr. Rea impliedly argues that he is absolved of responsibility for the erroneous time accruals because his time sheets were "corrected" and "submitted" by Chief Salzmann rather than by Mr. Rea. The undersigned finds this argument to be not only wholly unpersuasive, the argument once again demonstrates Mr. Rea's disturbing tendency to deny responsibility for any wrongdoing and to posit blame anywhere but on himself. Contrary to Mr. Rea's argument, the record is clear that the timesheets at issue were signed by Mr. Rea, not by Mr. Salzmann and Mr. Rea swore to their accuracy. Moreover, Mr. Rea's "defense" that he was actually responsible for Mr. Salzmann's timesheets rather than his own is also noteworthy in that Mr. Salzmann pled guilty to criminal conduct based upon his admission that his own timesheets were inaccurate.

It is the finding of the undersigned that Charge 1, Specification 17 and 18 were established by substantial evidence. According to the specifications, Mr. Rea requested and received compensation for over $11,300.00 in supplemental pay and his validly executed contract did not entitle him to such pay. The uncontroverted evidence established that Mr. Rea entered into a valid contract with the City of Kingston on September 11, 2009 (Joint Exhibit Number 6). The terms of that contract were clear and unambiguous. While Mr. Rea's previous

contract granted him supplemental pay, his fully executed contract covering the period of June 1, 2009 through May 30, 2015 did not include this benefit. Insofar as the evidence is uncontroverted that the contract did not provide for this benefit, and the evidence is further uncontroverted that Mr. Rea requested and collected this benefit, the specifications have been proven by substantial evidence.

Mr. Rea's defense to these specifications is discussed and explained further above. It is noteworthy that once again Mr. Rea has defended the charges against him by claiming that he made a mistake and by arguing that he was simply careless when he signed his employment contract without first reading its contents. For the reasons already set forth, Mr. Rea's defense to Specifications 17 and 18 is without merit and rejected[3].

It is the finding of the undersigned that Charge 1, Specification 19 and 20 were not established by substantial evidence. According to the specifications, Mr. Rea used his City of Kingston owned computer to access, download, store, and/or view various non-work related, offensive and/or sexually explicit material from the internet or other sources in violation of the City of Kingston regulations for internet usage. While the evidence introduced at the hearing established that sexually explicit and inappropriate material was stored on the computer assigned to Mr. Rea, due to the lack of internal controls and oversight at the Fire Department, the City was unable to present satisfactory proof that Mr. Rea personally downloaded, accessed or stored the material on the computer at issue. As such, the charge cannot be sustained for the purpose of these proceedings.

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[3] While the undersigned finds Mr. Rea's claim that he did not read his contract to be wholly incredible, if the undersigned accepted the representations as accurate, Mr. Rea's argument that he is not bound by the terms of the agreement because he did not read the document is once again illustrative of why he is not suited for a command position with responsibility for oversight of a critical City Department.

Nevertheless, the facts underlying the charge and the defense raised by Mr. Rea raise further questions about his suitability for employment in a position of responsibility. Specifically, Mr. Rea testified under oath that while he was assigned a password protected computer, he did not secure his password. He also testified that his subordinates at the Fire Department used his password to access the computer at issue and he should not be responsible if one of these other individuals downloaded sexually offensive material from the internet. Finally, despite his supervisory responsibilities, Mr. Rea denied any knowledge of City of Kingston internet use policy and did not express any appreciation that the type of sexually offensive material that was found on his computer was unacceptable in the work place.

For these reasons, while Specifications 19 and 20 must be dismissed, it is the opinion of the undersigned that Mr. Rea's conceded conduct was inappropriate if not actionable and he once again demonstrated his disturbing tendency to deflect blame from himself and his equally disturbing practice of claiming ignorance of actionable conduct taking place under his direct supervision.

It is the finding of the undersigned that Specification 21 has been proven by substantial evidence. The records which outline Respondent's cell phone usage were introduced into evidence and Renada Lewis, the custodian of records at Verizon Wireless, clearly testified that when a call is initiated or received by a Verizon cellular telephone, it is routed to the closest cell phone site to serve the call. Ms. Lewis also testified that the radius for cell phone sites is up to five miles (Transcript, pages 146-148)[4].

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[4] It is noteworthy that the Verizon records establish the times that Mr. Rea was using his cellular telephone while he was outside the City of Kingston rather than the actual time he was away from his post. The records do not establish how much additional time Mr. Rea was away from his post before the telephone calls were made or after they had concluded.

The cell phone records establish that Mr. Rea was outside the City of Kingston on January 9, 2009 between the hours of 11:00 A.M. through 4:00 P.M. The records establish that he was using his cell phone in Montville, Preston and Uncasville, Connecticut at times when he was receiving compensation from the City of Kingston.

While Mr. Rea claimed at the hearing that "he was likely traveling to a conference out of state and that he requested and was granted leave for that trip", he utterly failed to present any evidence to substantiate this claim. Most notably, he failed to identify this alleged "conference", he failed to produce any documentation that he requested or was granted permission to attend this unidentified conference, and he failed to produce a single receipt for travel, meals or other related expenses. Absent such evidence, Mr. Rea's self-serving claim that he was attending a conference with permission is wholly incredible.

It is the finding of the undersigned that Specification 22 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside of the City of Kingston on February 10, 2009 between the hours of 7:30 A.M. and 4:00 P.M. The records further establish that he was using his cell phone in Napanoch and Wawarsing at times when he was receiving compensation from the City of Kingston. When Mr. Rea testified, he testified that he was responding to "HAZMAT call in Ellenville" involving a "[w]hite powder substance in the town hall which got on a trooper". He testified that he knew the incident at issue occurred on February 10th because "[i]t was cold outside". Once again, Mr. Rea utterly failed to present any evidence to substantiate his claim regarding a hazardous material call in Ellenville. Absent such evidence, Mr. Rea's self-serving claim that he was attending to a hazardous material call is wholly incredible.

It is the finding of the undersigned that Specification 24 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on February 11, 2009 between the hours of 11:12 A.M. through 3:40 P.M. The records establish that he was using his cell phone in Port Ewen and Hyde Park at times when he was receiving compensation from the City of Kingston.

While Mr. Rea testified that "I could be over to Nichols Fire Equipment" he admitted that he "can only surmise where I was". Once again, Mr. Rea utterly failed to present any evidence to substantiate this claim. Mr. Rea failed to identify the fire supplies that he allegedly picked up and he failed to produce an invoice or voucher. Notably, if he was actually picking up supplies for the Department, the City voucher would require a signature from Mr. Rea confirming receipt in order to process payment and such documents could have been easily secured pursuant to a demand or subpoena. Moreover, Mr. Rea did not produce a witness to testify that he was actually at Nichols Equipment. Finally, Mr. Rea has not explained why a twenty mile trip to a vendor in Hyde Park to pick up supplies would take approximately four and one half hours. For these reasons, Mr. Rea's self-serving claim that he was "likely" at Nichols Fire Equipment is wholly incredible.

It is the finding of the undersigned that Specification 25 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on March 13, 2009 between the hours of 1:15 P.M. and 1:55 P.M. The records establish that he was using his cell phone in Highland and Poughkeepsie at times when he was receiving compensation from the City of Kingston. Mr. Rea's self-serving testimony that he was at a vendor picking up a part for the Fire Department, absent specifics or corroboration is wholly incredible.

It is the finding of the undersigned that Specification 26 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on March 27, 2009 between the hours of 1:17 P.M. and 4:00 P.M. The records establish that he was using his cell phone in Hyde Park and Poughkeepsie at times when he was receiving compensation from the City of Kingston.

While Mr. Rea testified at the hearing that in all likelihood he was picking up some unidentified equipment for the Fire Department at an unidentified vendor, he utterly failed to present any evidence to substantiate this claim. Again, if Mr. Rea was actually picking up equipment for the Department, there would be purchasing or other relevant records to document his claim. Moreover, as with Specification 24 above, Mr. Rea has not explained why a twenty mile trip to a vendor in Hyde Park to pick up equipment would take approximately two hours and forty five minutes. For these reasons, Mr. Rea's self-serving claim that he was likely at an unidentified vendor is wholly incredible.

It is the finding of the undersigned that Specification 27 has not been proven and it must be dismissed. While the aforementioned Verizon records established that Mr. Rea was outside of the City of Kingston on April 1, 2009 between the hours of 1:35 P.M. and 2:57 P.M., he credibly testified that he was attending a meeting of the Dutchess Community College Fire Safety Advisory Committee and he produced an e-mail communication to corroborate this claim. As such, his testimony regarding the incident was sufficient to rebut the City's evidence that he was compensated for time when he was not at work[5].

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[5] Notably, Mr. Rea's claim that he can travel round trip to Dutchess County and attend an advisory committee meeting in a period of less than ninety minutes must be contrasted against his claims that a trip to a vendor in Dutchess County to pick up an unidentified part or piece of equipment took between two and one half and four and one half hours. The inconsistencies in his testimony regarding these alleged trips to Dutchess County reinforce the undersigned's conclusions regarding Mr. Rea's overall credibility.

It is the finding of the undersigned that Specification 28 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on April 13, 2009 between the hours of 12:50 P.M. and 2:44 P.M. The records establish that he was using his cell phone in Hyde Park at times when he was receiving compensation from the City of Kingston. For the reasons set forth above with regard to Specification 24, Mr. Rea's self-serving claim that he was "likely" at Nichols Fire Equipment is wholly incredible.

It is the finding of the undersigned that Specification 29 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on April 14, 2009 between the hours of 8:47 A.M. and 4:00 P.M. The records establish that he was using his cell phone in High Falls and Rhinebeck at times when he was receiving compensation from the City of Kingston. When Mr. Rea testified, he admitted that he has no explanation for why he was in these locations on the day in question.

It is the finding of the undersigned that Specification 30 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on April 15, 2009 between the hours of 3:15 P.M. and 3:20 P.M. The records establish that he was using his cell phone in Hyde Park and Poughkeepsie at times when he was receiving compensation from the City of Kingston. When Mr. Rea testified, he explained his absence from the City on April 15, 2009 as "probably something to do with Nichols". Under the circumstances, Mr. Rea's self-serving claims without any detail or corroboration is wholly incredible.

It is the finding of the undersigned that Specification 31 through 34 have been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on May 13, 2009 between the hours of 8:00 A.M. and 4:00 P.M.; July 31, 2009 from

approximately 2:54 P.M through 4:00 P.M.; August 3, 2009 from approximately 3:30 P.M. through 4:00 P.M. and November 17, 2009 from 9:56 A.M. through 10:20 A.M. The records establish that he was using his cell phone in various locations in Ulster and Dutchess Counties at times when he was receiving compensation from the City of Kingston. While Mr. Rea attributed his absence from his post in Kingston on August 3 to "[p]icking up something at Nichols, then heading back up north", he offered no specifics regarding this alleged trip to Nichols, no documentation that he purchased or picked up any part or supply at the vendor and no other evidence to corroborate his claim. Mr. Rea was similarly non-committal and vague when he testified that, with regard to Specification 34, the pattern "sounds like a McDonald & McDonald trip". For the reasons set forth above, Mr. Rea's self-serving claims without any detail is wholly incredible.

It is the finding of the undersigned that Specification 35 has been proved by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on November 23, 2009 between the hours of 9:22 A.M. and 12:27 P.M. The records establish that he was using his cell phone in Rosendale, New Paltz, and Wallkill at times when he was receiving compensation from the City of Kingston. Once again, when Mr. Rea testified, he provided a vague and non-committal explanation for his absence from his assigned post when he indicated that "[i]t could have been a HAZMAT call". Again, Mr. Rea did not provide any specifics regarding this alleged call and no collateral evidence to corroborate his claim.

It is the finding of the undersigned that Specification 36 and 37 have not been proved by substantial evidence. The cell phone records for January 18, 2010 and January 22, 2010 are not included in Exhibit Number 24. As such, the charge must be dismissed.

It is the finding of the undersigned that Specification 38 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on February 22, 2010 between the hours of 7:54 A.M. and 4:00 P.M. The records establish that he was using his cell phone in Hyde Park, Rhinebeck and Esopus at times when he was receiving compensation from the City of Kingston. Mr. Rea has not provided any work related reason why he would be using his cellular telephone in these locations.

It is the finding of the undersigned that Specification 39 has not been proven by substantial evidence. While the cell phone records establish that Mr. Rea was outside the City of Kingston on March 16, 2010 between the hours of 2:36 P.M. to 3:05 P.M., Mr. Rea testified that he was at McDonald & McDonald picking up a truck spring part for the Fire Department. While Mr. Rea has not submitted any documentation of this claim, insofar as the time allegedly expended for this errand is reasonable, the undersigned finds his explanation to be credible and accordingly Specification 39 must be dismissed.

It is the finding of the undersigned that Specification 40 has not been proven by substantial evidence. The documentary evidence establishes that Mr. Rea used compensatory time on March 18, 2010.

It is the finding of the undersigned that Specification 41 has not been proven by substantial evidence. While the cell phone records establish that Mr. Rea was outside the City of Kingston on March 29, 2010 between the hours of 3:28 P.M. and 4:00 P.M., Mr. Rea testified that he was at Nichols Fire Equipment picking up a truck part. While Mr. Rea has not submitted any documentation of this claim, insofar as the time allegedly expended for this errand is reasonable, and the phone records demonstrate that he was in the vicinity of the vendor, the

undersigned finds his explanation to be credible and accordingly Specification 41 must be dismissed.

It is the finding of the undersigned that Specification 42 has not been proven and it must be dismissed. While the documentary evidence established that Mr. Rea was outside of the City of Kingston on April 1, 2010 between the hours of 8:36 A.M. and 11:38 A.M.., he credibly testified that he was attending a meeting of the Dutchess Community College Fire Science committee. The time he was outside of Kingston is reasonable given his explanation and the undersigned finds that it is sufficiently credible to rebut the City's evidence that he was compensated for time when he was not at work.

It is the finding of the undersigned that Specification 43 and 44 have been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on May 13, 2010 between the hours of 8:03 A.M. and 12:09 P.M. and on May 20, 2010 between the hours of 10:34 A.M. and 1:42 P.M. The records establish that he was using his cell phone in the Town of Ulster, High Falls, Kerhonkson, Wawarsing and Stone Ridge at times when he was receiving compensation from the City of Kingston.

While Mr. Rea testified that he was "going to some type of incident down in 209 corridor" (T-319), he did not submit any evidence to corroborate this claim. Notably, if this explanation was true, records of such a call would be readily available to Mr. Rea. More importantly, Respondent did not offer any specifics regarding this alleged call. To the contrary, he merely testified that he was responding to some unidentified incident "down the 209 corridor". Mr. Rea's claim that he attended to two such calls during two consecutive weeks is also suspect. For these reasons, Mr. Rea's self-serving claim that he was responding to hazardous material calls is wholly incredible.

It is the finding of the undersigned that Specification 45 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on August 4, 2010 between the hours of 9:17 A.M. and 12:46 P.M. The records establish that he was using his cell phone in Red Hook, Poughkeepsie, Newburgh and New York City at times when he was receiving compensation from the City of Kingston. Mr. Rea offered no explanation for why he was in the localities at issue.

It is the finding of the undersigned that Specification 46 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on September 6, 2010 from 11:05 A.M. to 2:00 P.M. The records establish that he was using his cell phone in Taghkanic and Rhinebeck at times when he was receiving compensation from the City of Kingston. Mr. Rea has not provided any work related reason why he would be using his cellular telephone in these locations.

It is the finding of the undersigned that Specification 47 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on October 11, 2010 from 9:28 A.M. to 4:00 P.M. The records establish that he was using his cell phone in Red Hook and Hyde Park at times when he was receiving compensation from the City of Kingston. Mr. Rea has not provided any work related reason why he would be using his cellular telephone in these locations.

It is the finding of the undersigned that Specification 48 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on November 11, 2010 from 10:38 A.M. to 3:13 P.M. The records establish that he was using his cell phone in Red Hook, Taghkanic, and Rhinebeck when he was receiving compensation from

the City of Kingston. Mr. Rea has not provided any work related reason why he would be using his cellular telephone in these locations.

It is the finding of the undersigned that Specification 49 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on December 23, 2010 from 12:36 P.M. to 2:39 P.M. The records establish that he was using his cell phone in Rhinebeck, Hudson and Taghkanic when he was receiving compensation from the City of Kingston. Mr. Rea has not provided any specific work related reason why he would be using his cellular telephone in these locations. Once again, he merely states that he was responding to "some type of emergency incident outside the city".

It is the finding of the undersigned that Specification 50 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on December 29, 2010 between the hours of 9:51 A.M. and 1:36 P.M. The records establish that he was using his cell phone in Red Hook and Taghkanic at times when he was receiving compensation from the City of Kingston. While Mr. Rea claims that he participated in a "mutual aid call", he failed to identify the location of the alleged call or any specifics regarding the incident. He also failed to introduce any documentary evidence or any witnesses to establish that he was assisting another location with an emergency situation. As such, given Mr. Rea's overall lack of credibility and the overwhelming evidence that he regularly left his post without legitimate Fire Department business, Mr. Rea's self-serving claim that he was responding to a "mutual aid call" is wholly incredible.

It is the finding of the undersigned that Specification 51 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on February 9, 2011 between the hours of 1:28 P.M. and 2:49 P.M. The records establish that he

was using his cell phone in Port Ewen, Red Hook and Rhinebeck. When asked by his attorney to explain these telephone calls, Mr. Rea had no explanation. Absent some explanation for his absence from the City of Kingston, or collateral proof of some work related reason for Mr. Rea to leave the City of Kingston, the Specification has been established by substantial evidence.

It is the finding of the undersigned that Specification 52 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on April 15, 2011 between the hours of 9:04 A.M, and 10:11 A.M. The records establish that he was using his cell phone in Rosendale, Esopus and Port Ewen at times when he was receiving compensation from the City of Kingston. For the reasons set forth above with regard to numerous other specifications, absent some collateral proof, Mr. Rea's self-serving claim that he traveled to pick up "canvas based equipment from a City vendor" is wholly incredible.

It is the finding of the undersigned that Specification 53 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on May 3, 2011 between the hours of 11:54 A.M. and 1:32 P.M. The records establish that he was using his cell phone in Hyde Park and Taghkanic at times when he was receiving compensation from the City of Kingston. Mr. Rea has not provided any work related reason why he would be using his cellular telephone in these locations.

It is the finding of the undersigned that Specification 54 has been proven by substantial evidence. The cell phone records establish that Mr. Rea was outside the City of Kingston on September 15, 2011 between the hours of 3:29 P.M. and 3:52 P.M. The records establish that he was using his cell phone in Highland and Poughkeepsie at times when he was receiving compensation from the City of Kingston. For the reasons set forth above with regard to

numerous other specifications, absent some collateral proof, Mr. Rea's self-serving claim that he was "involved in a pick up from a City vendor" is wholly incredible.

It is the finding of the undersigned that Charge 2, Specification 1 has not been proven by substantial evidence. While the evidence established that Mr. Rea was responsible for ensuring that proper safety equipment was available for the firemen in the Department, and safety equipment that was required pursuant to Part 800.7 of Title 12 of the New York Code of Rules and Regulations was not available to the firemen, he did not have the authority to purchase equipment without authority of the Common Council.

While Mr. Rea has not introduced any persuasive evidence that he requested the equipment and was denied, nor did he present any evidence of efforts that he made to convince the Fire Chief, the Common Council or the former Mayor that the equipment was necessary, insofar as he did not have the independent ability to purchase the equipment, his failures with regard to the safety rescue ropes did not rise to the level of being actionable. Nevertheless, his failure to make reasonable attempts to persuade the Fire Chief, the Common Council or the former Mayor that the equipment was necessary was certainly a dereliction of his duties as Assistant Fire Chief and once again demonstrates his pattern of blaming others for circumstances that he could have done more to address.

It is the finding of the undersigned that Specification 6 has not been proven by substantial evidence. While the evidence established that Mr. Rea was responsible for ensuring that the self-contained breathing apparatus units were properly calibrated as required by New York State regulations, and the evidence further established that the apparatus was not properly calibrated, Mr. Rea has once again successfully deflected blame for this charge. Specifically, Mr. Rea claims that Chief Salzmann "specifically ordered him not to perform the tests".

While Mr. Rea has not introduced any persuasive evidence that he was ordered not to perform the tests, nor did he present any evidence of efforts that he made to convince the Fire Chief, the Common Council or the former Mayor that the tests were necessary, insofar as he did not have the independent ability to authorize payment for this service, his failures with regard to the breathing apparatus did not rise to the level of being actionable. Nevertheless, his apparent failure to make reasonable attempts to persuade the Fire Chief, the Common Council or the former Mayor that the calibrations were necessary was certainly a dereliction of his duties as Assistant Fire Chief and once again demonstrates his pattern of blaming others for circumstances that he could have done more to address.

CONCLUSIONS

For the foregoing reasons, the documentary evidence and the testimony elicited at the hearing established by the required quantum of proof Charge 1, Specifications 1, 2, 3, 5-18, 21-26, 28-35, 38, 43-54. All other Specifications in Charge 1 are hereby dismissed based upon a lack of substantial proof. All Specifications of Charge 2 are dismissed based upon a lack of substantial proof.

It is notable that while certain specifications cannot be sustained due to the City's inability to secure sufficient proof, an analysis of those charges, and Mr. Rea's defenses thereto, bear upon Mr. Rea's overall credibility and reinforce the conclusions reached by the undersigned regarding the charges which are sustained. Furthermore, it is notable that certain of the charges cannot be sustained simply because prior to the investigation by the City Comptroller, the Fire Department had little if any internal controls, no reliable process to verify when supervisors were present or absent from work, and most notably, little if any command oversight regarding critical issues.

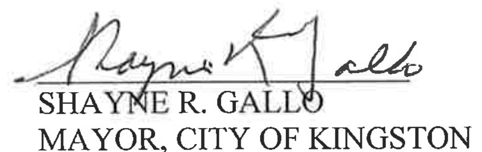
supported by the record. To the contrary, as outlined below, the record establishes that Mr. Rea is not fit to return to work in a position of any responsibility.

PENALTY

For the foregoing reasons, it is the decision of the undersigned to reject the findings and recommendations of John Trella entered on July 18, 2014 as the findings are in no way supported by the record. It is the opinion and determination of the undersigned that given the responsibilities attendant to the position of Assistant Fire Chief, specifically the responsibility to supervise and administer the operation of such an important department of City government, the sheer number of instances of misconduct involving time and attendance, the overall lack of honesty and the complete absence of any insight regarding his conduct or acceptance of responsibility, that the offenses which have been proven warrant the penalty of termination.

For the foregoing reasons, Christopher Rea is hereby terminated from his employment with the City of Kingston effective immediately. Any issues regarding back pay shall be held in abeyance pending further proceedings in the Appellate Division, Third Department and/or the Ulster County Supreme Court.

Dated:



SHAYNE R. GALLO
MAYOR, CITY OF KINGSTON