

BEFORE THE POLICE BOARD OF THE CITY OF CHICAGO

IN THE MATTER OF CHARGES FILED AGAINST)
POLICE OFFICER MARCOS HERNANDEZ,) **No. 14 PB 2867**
STAR No. 7917, DEPARTMENT OF POLICE,)
CITY OF CHICAGO,)
) **(CR No. 1039797)**
RESPONDENT.)

FINDINGS AND DECISION

On July 2, 2014, the Superintendent of Police filed with the Police Board of the City of Chicago charges against Police Officer Marcos Hernandez, Star No. 7917 (hereinafter sometimes referred to as “Respondent”), recommending that the Respondent be discharged from the Chicago Police Department for violating the following Rules of Conduct:

- Rule 1: Violation of any law or ordinance.
- Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 4: Any conduct or action taken to use the official position for personal gain or influence.
- Rule 6: Disobedience of an order or directive, whether written or oral.
- Rule 41: Disseminating, releasing, altering, defacing, or removing any Department record or information concerning police matters except as provided by Department orders.
- Rule 46: Advising any person engaged in a professional or commercial service that such professional or commercial services may be needed.

The Police Board caused a hearing on these charges against the Respondent to be had before Jacqueline A. Walker, Hearing Officer of the Police Board, on December 2, 2014.

Following the hearing, the members of the Police Board read and reviewed the record of the proceedings and viewed the video-recording of the testimony of the witnesses. Hearing

Officer Walker made an oral report to and conferred with the Police Board before it rendered its findings and decision.

POLICE BOARD FINDINGS

The Police Board of the City of Chicago, as a result of its hearing on the charges, finds and determines that:

1. The Respondent was at all times mentioned herein employed as a police officer by the Department of Police of the City of Chicago.

2. The written charges, and a Notice stating when and where a hearing on the charges was to be held, were personally served upon the Respondent more than five (5) days prior to the hearing on the charges.

3. The Respondent was properly notified of the hearing by first-class and certified U.S. mail to the address listed on the notice of charges. The Respondent did not appear at the hearing and was not represented by counsel. The hearing officer proceeded with the hearing in the Respondent's absence in accordance with the Police Board *Rules of Procedure*, Section III-G.

4. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about September 13, 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, intentionally accessed and caused to be accessed a Chicago Police Department computer, specifically a mobile computer, and exceeded his authorized access, and thereby obtained information from a department or agency of the United States, namely, the National Crime Information Center ("NCIC") database which is housed at the Federal Bureau of Investigation's Criminal Justice Information Services Division in Clarksburg, West Virginia, in violation of Title 18, United

States Code, Section 1030(a)(2)(b).

Competent evidence was presented by the Superintendent that on June 28, 2010, the United States government filed a criminal complaint in the United States District Court for the Northern District of Illinois, Eastern Division, *United States of America v. Marcos Hernandez*, Case No. 10 CR 551. The charges in the federal criminal complaint were identical to the charges above and related to the allegations that occurred on September 13, 2006.

On August 16, 2011, Officer Hernandez entered into a knowing and voluntary plea agreement with the U.S. Attorney's Office, in which he pled guilty to these charges, and the plea agreement was accepted by the Honorable Judge Elaine Bucklo and was entered into the public record in the U.S. District Court for the Northern District of Illinois.

By engaging in the conduct described in the indictment and subsequently the plea agreement and by pleading guilty to the federal criminal charges, Officer Hernandez violated Rule 1, as charged.

5. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about September 13, 2006, Police Officer Marcos Hernandez knowingly conducted one or more license plate queries on one or more license plate numbers, obtained personal information from one or more motor vehicle records, and/or subsequently disclosed personal information from one or more motor vehicle records to a non-Department member for an unpermitted use, in violation of the Driver's Privacy Protection Act of 1994 (18 U.S.C. §2721 and/or §2722).

The Superintendent marked and entered into evidence as an exhibit the Driver's Privacy

Protection Act of 1994. Specifically, Section 2721 is titled Prohibition on Release and Use of Certain Personal Information from State Motor Vehicle Records, and Section 2722 is titled Additional Unlawful Acts. This Act prohibits the use of queries on one's license plate number and the disclosing of the information obtained to a non-Department member for an unpermitted use.

Officer Hernandez pled guilty to these infractions by entering into the plea agreement that is mentioned in paragraph no. 4 above, and he therefore violated Rule 1 of the Department's Rules.

6. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count III: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC or other database, and disseminated information from the NCIC or other database to a private citizen in exchange for one or more cash payments, thereby receiving, retaining, or agreeing to accept any property or personal advantage which he is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him to influence the performance of acts related to his employment and/or functions as a public officer and/or employee, in violation of the Illinois Compiled Statutes ("Bribery") (720 ILCS 5/33-1(d)).

The Superintendent marked and entered into evidence as an exhibit the Illinois Compiled Statute on Bribery (720 ILCS 5/33-1). This statute prohibits receiving, retaining, or agreeing to accept any property or personal advantage which he is not authorized by law to accept knowing that the property or personal advantage was promised or tendered with intent to cause him to

influence the performance of acts related to his employment and/or functions as a public officer and/or employee. Officer Hernandez's pleading guilty to this charge in his plea agreement supports the charge that he violated this statute by his actions, and the Superintendent has therefore proven the violation of this statute.

7. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count IV: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC or other database, and disseminated information from the NCIC or other database to a private citizen in exchange for one or more cash payments, thereby knowingly performing an act which he knows he is forbidden by law to perform, in violation of the Illinois Compiled Statutes ("Official Misconduct") (720 ILCS 5/33-3(b)).

The Superintendent marked and entered into evidence as an exhibit the Illinois Compiled Statute on Official Misconduct (720 ILCS 5/33-3). Officer Hernandez's pleading guilty to this charge in his plea agreement supports the charge that he violated this statute by his actions, and the Superintendent has therefore proven the violation of this statute.

8. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count V: On one or more occasions in or around 2006, Police Officer Marcos Hernandez,

while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC or other database, and disseminated information from the NCIC or other database to a private citizen in exchange for one or more cash payments, thereby performing an act in excess of his lawful authority with the intent to obtain a personal advantage for himself or another, in violation of the Illinois Compiled Statutes (“Official Misconduct”) (720 ILCS 5/33-3(c)).

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

9. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count VI: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC or other database, and disseminated information from the NCIC or other database to a private citizen in exchange for one or more cash payments, thereby soliciting and/or knowingly accepting for the performance of any act a fee or reward which he knows is not authorized by law, in violation of the Illinois Compiled Statutes (“Official Misconduct”) (720 ILCS 5/33-3(d)).

See the findings set forth in paragraph no. 7 above, which are incorporated here by reference.

10. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count VII: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, utilized a cellular telephone to contact a private tow truck driver (“Tow Driver A”) and advised Tow Driver A of services needed at traffic accidents that occurred within the Chicago Police Department’s 14th District and received payment for such information and/or advice, thereby knowingly performing an act which he knows he is forbidden by law to perform, in violation of the Illinois Compiled Statutes (“Official Misconduct”) (720 ILCS 5/33-3(b)).

The Superintendent presented uncontradicted evidence that Officer Hernandez, while a patrol officer in 2006, on one or more occasions contacted a private citizen and tow truck driver via cellular telephone when a car accident occurred in the Department’s 14th District in order for the tow truck driver or one of his workers to respond to the scene and tow a damaged vehicle. Furthermore, Officer Hernandez provided the tow truck driver with license plate registration information for vehicles involved in accidents. Officer Hernandez’s actions were in violation of 720 ILCS 5/33-3(b)), and therefore in violation of the Department’s Rules.

11. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count VIII: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, utilized a cellular telephone to contact a private tow truck driver (“Tow Driver A”) and advised Tow Driver A of services needed at traffic accidents that occurred within the Chicago Police Department’s 14th District and received payment for such information and/or advice, thereby performing an act in excess of his lawful authority with the intent to obtain a personal advantage for himself or another, in violation of the Illinois Compiled Statutes (“Official Misconduct”) (720 ILCS 5/33-3(c)).

See the findings set forth in paragraph no. 10 above, which are incorporated here by reference.

12. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 1: Violation of any law or ordinance,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count IX: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, utilized a cellular telephone to contact a private tow truck driver (“Tow Driver A”) and advised Tow Driver A of services needed at traffic accidents that occurred within the Chicago Police Department’s 14th District and received payment for such information and/or advice, thereby soliciting and/or knowingly accepting for the performance of any act a fee or reward which he knows is not authorized by law, in violation of the Illinois Compiled Statutes (“Official Misconduct”) (720 ILCS 5/33-3(d)).

See the findings set forth in paragraph no. 10 above, which are incorporated here by reference.

13. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count I: On or about September 13, 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed and caused to be accessed a Chicago Police Department computer, specifically a mobile computer, and exceeded his authorized access, and thereby obtained information from a department or agency of the United States, namely, the NCIC database which is housed at the Federal Bureau of Investigation’s Criminal Justice Information Services Division in Clarksburg, West Virginia, thereby impeding the Department’s efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

14. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count II: On or about September 13, 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed and caused to be accessed a Chicago Police Department computer, specifically a mobile computer, and exceeded his authorized access, and thereby obtained information from a department or agency of the United States, namely, the NCIC database which is housed at the Federal Bureau of Investigation's Criminal Justice Information Services Division in Clarksburg, West Virginia, which resulted in the filing of a criminal complaint against Police Officer Marcos Hernandez in the United States District Court for the Northern District of Illinois, Eastern Division, on June 28, 2010, for violating Title 18, United States Code, Section 1030(a)(2)(B). Thus, Police Officer Marcos Hernandez's conduct and the resulting criminal complaint impeded the Department's efforts to achieve its policy and goals and/or brought discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by reference.

15. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count III: On or about August 16, 2011, Police Officer Marcos Hernandez entered a plea of guilty to Title 18, United States Code, Section 1030(a)(2)(B) before the Honorable Judge Elaine Bucklo in the United States District Court for the Northern District of Illinois, Eastern Division, and the plea of guilty was accepted by Judge Bucklo and entered into the public record, thereby impeding the Department's efforts to achieve its policy and goals or bringing discredit upon the Department.

See the findings set forth in paragraph no. 4 above, which are incorporated here by

reference.

16. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count IV: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC database, and disseminated information from the NCIC database to a private citizen in exchange for one or more cash payments, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

17. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department,

in that the Superintendent proved by a preponderance of the evidence the following charge:

Count V: On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, utilized a cellular telephone to contact a private tow truck driver ("Tow Driver A") and advised Tow Driver A of services needed at traffic accidents that occurred within the Chicago Police Department's 14th District, thereby impeding the Department's efforts to achieve its policy and goals and/or bringing discredit upon the Department.

See the findings set forth in paragraph no. 10 above, which are incorporated here by

reference.

18. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 4: Any conduct or action taken to use the official position for personal gain or influence,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On one or more occasions in or around 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, accessed a Chicago Police Department computer, specifically a mobile computer, obtained information from the NCIC or other database, and disseminated information from the NCIC or other database to a private tow truck driver ("Tow Driver A") in exchange for one or more cash payments, thereby using his official position for personal gain and/or influence.

See the findings set forth in paragraph no. 6 above, which are incorporated here by reference.

19. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 6: Disobedience of an order or directive, whether written or oral,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about September 13, 2006, Police Officer Marcos Hernandez accessed the Chicago Police Department's computerized information system and/or database, specifically the NCIC database, and accessed information from the NCIC database for non-official police business and/or for personal purposes, in violation of Department General Order 98-07-04A, Section VII-A-2 ("Access to Computerized Data, Dissemination and Retention of Computer Data"), in effect on September 13, 2006, and/or Department General Order 09-01-01, Section VI-A-2 ("Access to Computerized Data, Dissemination and Retention of Computer Data"), which is currently in effect.

See the findings set forth in paragraph no. 4 above, which are incorporated here by

reference.

20. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 41: Disseminating, releasing, altering, defacing, or removing any Department record or information concerning police matters except as provided by Department orders,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On or about September 13, 2006, Police Officer Marcos Hernandez conducted one or more queries on one or more license plate numbers using the Chicago Police Department's computerized information system and/or database, obtained personal information from one or more license plate queries, and/or subsequently disseminated personal information to a non-Department member, specifically a private tow truck driver ("Tow Driver A") without an official police purpose and/or for personal purposes.

See the findings set forth in paragraph no. 5 above, which are incorporated here by reference.

21. The Respondent, Police Officer Marcos Hernandez, Star No. 7917, charged herein, is **guilty** of violating, to wit:

Rule 46: Advising any person engaged in a professional or commercial service that such professional or commercial services may be needed,

in that the Superintendent proved by a preponderance of the evidence the following charge:

On one or more occasions, including September 13, 2006, Police Officer Marcos Hernandez, while working in his official capacity as a Chicago Police Department patrol officer, utilized a cellular telephone to contact a private tow truck driver ("Tow Driver A"), a person engaged in a professional and/or commercial service, and advised Tow Driver A of services needed at traffic accidents that occurred within the Chicago Police Department's 14th District, thereby advising a person engaged in a professional or commercial service that such professional or commercial services may be needed.

See the findings set forth in paragraph no. 10 above, which are incorporated here by

reference.

22. The Police Board has considered the facts and circumstances of the Respondent's conduct, and the Respondent's complimentary and disciplinary histories (the Respondent did not appear at the hearing to offer any evidence in defense and mitigation). The Board determines that the Respondent must be discharged from his position due to the serious nature of the conduct of which it has found him guilty.

The Respondent violated federal law, Illinois law, and Chicago Police Department policy by taking bribes for disseminating the personal information of individuals and for telling a tow truck driver that the driver's services were needed at traffic accidents. The Respondent engaged in criminal behavior, and exhibited a significant lack of integrity, honesty, and trustworthiness. Such conduct is incompatible with continued service as a police officer.

The Board finds that the Respondent's conduct is sufficiently serious to constitute a substantial shortcoming that renders his continuance in his office detrimental to the discipline and efficiency of the service of the Chicago Police Department, and is something that the law recognizes as good cause for him to no longer occupy his office.

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POLICE BOARD DECISION

The Police Board of the City of Chicago, having read and reviewed the record of proceedings in this case, having viewed the video-recording of the testimony of the witnesses, having received the oral report of the Hearing Officer, and having conferred with the Hearing Officer on the credibility of the witnesses and the evidence, hereby adopts the findings set forth herein by the following votes:

By votes of 8 in favor (Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney) to 0 opposed, the Board finds the Respondent **guilty** of violating Rule 1, Rule 2, Rule 4, Rule 6, Rule 41, and Rule 46.

As a result of the foregoing, the Board, by a vote of 8 in favor (Carney, Foreman, Ballate, Conlon, Eaddy, Fry, Rodriguez, and Sweeney) to 0 opposed, hereby determines that cause exists for discharging the Respondent from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

NOW THEREFORE, IT IS HEREBY ORDERED that the Respondent, Police Officer Marcos Hernandez, Star No. 7917, as a result of having been found **guilty** of charges in Police Board Case No. 14 PB 2867, be and hereby is **discharged** from his position as a police officer with the Department of Police, and from the services of the City of Chicago.

This disciplinary action is adopted and entered by a majority of the members of the Police Board: Demetrius E. Carney, Ghian Foreman, Melissa M. Ballate, William F. Conlon, Michael Eaddy, Rita A. Fry, Elisa Rodriguez, and Rhoda D. Sweeney.

DATED AT CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, THIS 19th DAY OF FEBRUARY, 2015.

Police Board Case No. 14 PB 2867
Police Officer Marcos Hernandez

Attested by:

/s/ DEMETRIUS E. CARNEY
President

/s/ MAX A. CAPRONI
Executive Director

DISSENT

The following members of the Police Board hereby dissent from the Findings and Decision of the majority of the Board.

[None]

RECEIVED A COPY OF

THESE FINDINGS AND DECISION

THIS ____ DAY OF _____, 2015.

GARRY F. McCARTHY
Superintendent of Police