

**IN THE MATTER OF THOMAS D. MALONEY
COIB CASE NO. 2016-733
DEP CASE NO. 0114-2016D
OATH INDEX NO. 17/0706
JANUARY 27, 2017**

SUMMARY: In a three-way settlement with the Board and the New York City Department of Environmental Protection (“DEP”), a DEP Sewage Treatment Worker admitted to stealing \$13,700 worth of metal from DEP and agreed to: (1) resign his DEP employment; (2) accept DEP’s prior imposition of a sixty-five-day suspension valued at approximately \$15,904; and (3) pay \$13,700 in restitution to DEP. The Sewage Treatment Worker also pled guilty to criminal charges related to the conduct. *COIB v. Maloney*, COIB Case No. 2016-733 (2017).

STIPULATION AND DISPOSITION:

WHEREAS, the New York City Department of Environmental Protection (“DEP”) served disciplinary charges against Thomas D. Maloney (“Respondent”), pursuant to Section 75 of the New York Civil Service Law, alleging violations of Chapter 68 of the New York City Charter (“Chapter 68”), the New York State Penal Law, and the DEP Uniform Code of Discipline;

WHEREAS, given that related disciplinary action was pending at DEP, the New York City Conflicts of Interest Board (the “Board”) referred this matter to DEP pursuant to Section 2603(e)(2)(d) of Chapter 68; and

WHEREAS, the Board, DEP, and Respondent wish to resolve this matter on the following terms;

IT IS HEREBY AGREED, by and among the parties, as follows:

1. In full satisfaction of the above-captioned matter, Respondent admits to the following:
 - a. Since September 30, 2002, I have been employed by DEP as a Sewage Treatment Worker. As such, I have been and continue to be a “public servant” within the meaning of and subject to Chapter 68.
 - b. Between January 1, 2015, and October, 2016, I stole 11,328 pounds of metal materials from DEP’s Owl’s Head Wastewater Treatment Plant and sold those materials for personal profit. The total value of the materials I stole was approximately \$13,700.
 - c. I acknowledge that, by stealing DEP property, I violated Rules E. 6 and E. 37 of the DEP Uniform Code of Discipline, as well as Section 2604(b)(2) of the New

York City Charter, pursuant to Section 1-13(b) of the Rules of the Board, Title 53, Rules of the City of New York, which provide:

No public servant shall engage in any business, transaction or private employment, or have any financial or other private interest, direct or indirect, which is in conflict with the proper discharge of his or her official duties. [City Charter § 2604(b)(2)]

Except as provided in subdivision (c) of this section, it shall be a violation of City Charter § 2604(b)(2) for any public servant to use City letterhead, personnel, equipment, resources, or supplies for any non-City purpose. [Board Rules § 1-13(b)]

2. Respondent further admits that, on November 29, 2016, he pleaded guilty to Petit Larceny to resolve criminal charges relating to the conduct described in Paragraph 1 above (Kings County Criminal Court Case Number 2016KN59533). Pursuant to my plea agreement, I agreed to resign my position at DEP and to perform seven (7) days of community service.

3. DEP and the Board, after reviewing prior Board cases and DEP disciplinary actions involving City employees who stole City resources, have determined that the appropriate penalty in this case is: (1) a 65-day unpaid suspension valued at approximately \$15,904; (2) immediate resignation; and (3) full restitution to DEP in the amount of \$13,700.

4. In recognition of the foregoing, Respondent agrees to the following:

- a. I agree to accept DEP's prior imposition of a 65-day unpaid suspension, which has a value of approximately \$15,904.
- b. I agree to resign my DEP employment effective November 23, 2016.
- c. I agree to pay restitution to DEP in the amount of \$13,700. Pursuant to an agreement with DEP, my payments shall be made, by money order or by cashier check, bank check, or certified check, in twelve (12) installments, as follows: (a) eleven (11) payments of \$1,141.66 due on the 15th of each month, beginning in February 2017 and ending in December 2017 and (b) one final payment of \$1,141.74 due on January 15, 2018. Checks or money orders shall be made payable to "New York City Department of Environmental Protection" and sent to the attention of Johnny T. Vasser, Jr., 59-17 Junction Boulevard, 19th Floor, Elmhurst, New York 11373.
- d. I agree that this disposition is a final and public resolution of the charges against me.
- e. I knowingly waive, on my behalf and on behalf of my successors and assigns, any rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision,

or office of the City or the State of New York or the United States, and to contest the lawfulness, authority, jurisdiction, or power of the Board or DEP in imposing the penalty which is embodied in this Disposition, and I waive any right to make any legal or equitable claims or to initiate legal proceedings of any kind against the Board or DEP, or any members or employees thereof relating to or arising out of this Disposition or the matters recited therein.

- f. I confirm that I have entered into this Disposition freely, knowingly, and intentionally, without coercion or duress, and after having been represented by the union representative of my choice; that I accept all terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board or DEP; and that I fully understand all the terms of this Disposition.
- g. I agree that any material misstatement of the facts of this matter, including of the Disposition, by me or by my attorney or agent shall, at the discretion of the Board, be deemed a waiver of confidentiality of this matter.

5. The Board and DEP accept this Disposition and the terms contained herein as a final disposition of the above-captioned matter only, and affirmatively state that other than as recited herein, no further action will be taken by the Board or DEP against Respondent based upon the facts and circumstances set forth herein, except that the Board and DEP shall be entitled to take any and all actions necessary to enforce the terms of this Disposition.

6. This Disposition shall not be effective until all parties have affixed their signatures below.

Dated: December 22, 2016

_____/s/
Thomas D. Maloney
Respondent

Dated: December 22, 2016

_____/s/
Fausto E. Zapata, Jr.
The Law Offices of Fausto E. Zapata, Jr., P.C.
Attorney for Respondent

Dated: January 3, 2017

_____/s/
David M. Cohen
Deputy Commissioner and
Acting Chief Administrative Officer
NYC Department of Environmental Protection

Dated: January 27, 2017

_____/s/
Richard Briffault
Chair
NYC Conflicts of Interest Board