

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13275
Y/cb

_____AD3d_____

Submitted - November 17, 2006

ROBERT W. SCHMIDT, J.P.
FRED T. SANTUCCI
GABRIEL M. KRAUSMAN
REINALDO E. RIVERA, JJ.

2005-11057

DECISION & ORDER

In the Matter of Kevin P. Gallagher, respondent, v
City of New York, et al., appellants.

(Index No. 11217/04)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Edward F. X. Hart and
Tahirih M. Sadrieh of counsel), for appellants.

In a proceeding pursuant to CPLR article 78 to review a determination of the Commissioner of the Fire Department of the City of New York which terminated the petitioner's employment as a New York City Firefighter, the appeal is from so much of an order of the Supreme Court, Kings County (Schneier, J.), dated August 2, 2005, as, upon reargument, granted that branch of the petition which was for a name-clearing hearing, which had previously been denied in an order of the same court dated December 2, 2004.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and upon reargument, the determination in the order dated December 2, 2004, denying that branch of the petition is adhered to.

The parties' stipulation of settlement with respect to previous disciplinary charges provided that the petitioner, in exchange for having the charges against him dropped, would be subject to random testing for controlled substances and that a finding of a controlled substance in his blood or urine would result in termination "without a hearing of any kind." Accordingly, the

December 26, 2006

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petitioner knowingly waived his right to a name-clearing hearing to challenge the results of the random drug test (*see e.g. Matter of Brothers v Pilgrim Psychiatric Ctr. of N.Y. State Off. of Mental Health*, 131 AD2d 756; *Matter of Nedd v Koehler*, 159 AD2d 344; *Montiel v Kiley*, 147 AD2d 402).

SCHMIDT, J.P., SANTUCCI, KRAUSMAN and RIVERA, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court