

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

D16414  
O/kmg

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Argued - September 14, 2007

ROBERT W. SCHMIDT, J.P.  
FRED T. SANTUCCI  
ANITA R. FLORIO  
MARK C. DILLON, JJ.

2006-07655

DECISION & ORDER

In the Matter of Clover Construction Consultants, Inc.,  
appellant, v New York City Housing Authority, respondent.

(Index No. 29924/2003)

Rossi & Crowley, LLP, Douglaston, N.Y. (Thomas J. Rossi of counsel), for  
appellant.

Ricardo Elias Morales, New York, N.Y. (James E. Bayley of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review a determination of the  
respondent New York City Housing Authority, dated April 16, 2003, terminating its contract with  
the petitioner on the ground of default, the petitioner appeals from a judgment of the Supreme Court,  
Kings County (Schneier, J.), dated July 5, 2006, which denied the petition and, in effect, dismissed  
the proceeding.

ORDERED that the judgment is affirmed, with costs.

The petitioner contracted with the respondent New York City Housing Authority  
(hereinafter NYCHA) to be the general contractor for the construction of a community center.  
NYCHA's determination that the petitioner was in default of the contract based on, inter alia, its  
failure to maintain an adequate workforce, keep up with and update its own progress schedules,  
submit required shop drawings, and comply with NYCHA directives regarding cleanup of the work  
site was rational and not arbitrary or capricious (*see Matter of Pell v Bd. of Educ. of Union Free  
School Dist. No. 1 of Towns of Scarsdale & Mamaronek, Westchester County*, 34 NY2d 222, 231).

October 2, 2007

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Contrary to the petitioner's contention, there are no factual issues requiring a trial pursuant to CPLR 7804(h).

The petitioner's remaining contention is without merit.

SCHMIDT, J.P., SANTUCCI, FLORIO and DILLON, 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