

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

D16972  
O/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - October 29, 2007

DAVID S. RITTER, J.P.  
GABRIEL M. KRAUSMAN  
JOSEPH COVELLO  
THOMAS A. DICKERSON, JJ.

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2006-04830

DECISION & JUDGMENT

In the Matter of Leo Gustafson, petitioner,  
v Town of North Castle, New York, et al., respondents.

(Index No. 1249/06)

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Lovett & Gould, LLP, White Plains, N.Y. (Jonathan Lovett and Drita Nicaaj of counsel), for petitioner.

Little Mendelson, P.C., New York, N.Y. (Bruce R. Millman and Lisa M. Brauner of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Town of North Castle, New York, dated September 28, 2005, which confirmed the report and recommendation of a Hearing Officer finding the petitioner guilty of misconduct and dismissed him from his position as a building inspector with the Town of North Castle.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, with costs.

The petitioner, an assistant building inspector, was assigned a town vehicle for the purpose of making field inspections in connection with his employment. On the basis of a global positioning system installed in that vehicle which transmitted information to the town's computer regarding the vehicle's location and movements, the respondent Town of North Castle, New York (hereinafter the respondent) found that the petitioner, inter alia, falsified town records as to his whereabouts.

November 20, 2007

Page 1.

MATTER OF GUSTAFSON v TOWN OF NORTH CASTLE, NEW YORK

Contrary to the petitioner's contention, the respondents' determination is supported by substantial evidence (see *Matter of Berenhaus v Ward*, 70 NY2d 436; *300 Gramatan Ave. Assoc v State Div. of Human Rights*, 45 NY2d 176, 180; *Matter of Duda v Board of Educ. of Uniondale Union Free School Dist.*, 34 AD3d 580; *Matter of Maher v Cade*, 15 AD3d 489; *Matter of Mann v Town of Monroe*, 2 AD3d 527; *Matter of Whiting v Village of Old Brookville Police Dept.*, 220 AD2d 600), and the penalty of dismissal was not so disproportionate to the offense as to be shocking to one's sense of fairness (see *Matter of Pell v Board of Educ. of Union Free School District. No 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222; *Matter of Maher v Cade*, 15 AD3d 489; *Matter of Lassiter v County of Dutchess*, 256 AD2d 578; *Matter of Whiting v Village of Old Brookville Police Dept.*, 220 AD2d 600).

RITTER, J.P., KRAUSMAN, COVELLO and DICKERSON, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court