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

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_____AD3d_____ Argued - December 14, 2007

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
ROBERT A. LIFSON
JOSEPH COVELLO, JJ.

2007-02097 DECISION & JUDGMENT

In the Matter of Tender Loving Care Day Care, Inc., et al., petitioners, v New York State Office of Children and Family Services, et al., respondents.

(Index No. 4949/05)

Law Office of Robert S. Sunshine, P.C., Pearl River, N.Y., for petitioners.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Benjamin N. Gutman and Robert C. Weisz of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the New York State Office of Children and Family Services, dated March 16, 2005, which, after a hearing, found that the petitioners had violated certain regulations concerning the supervision of children in child care centers and revoked the license of the petitioner Tender Loving Care Day Care, Inc.

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

Contrary to the petitioners' contention, adequate notice was given of the fair hearing on the issue of license revocation (*see Matter of Moschella v Romano,* 110 AD2d 702; *Matter of Hirsch v Shaffer,* 108 AD2d 815; *Matter of Schevchik v Blum,* 89 AD2d 680, 680-681). Furthermore, the determination of the respondent New York State Office of Children and Family Services that the petitioners violated certain regulations concerning the supervision of children in child care centers is supported by substantial evidence in the record (*see Matter of Berenhaus v Ward,* 70

NY2d 436, 443; *300 Gramatan Ave. Assoc. v State Div. of Human Rights,* 45 NY2d 176, 180-181). Finally, the penalty of license revocation was neither arbitrary and capricious, nor disproportionate to the misconduct (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County,* 34 NY2d 222, 234; *Matter of Eich v Shaffer,* 136 AD2d 701, 703).

SPOLZINO, J.P., SANTUCCI, LIFSON and COVELLO, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court