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

D18504
G/kmg

_____AD3d_____ Submitted - February 29, 2008

WILLIAM F. MASTRO, J.P.
JOSEPH COVELLO
THOMAS A. DICKERSON
RANDALL T. ENG, JJ.

2007-03609 DECISION & JUDGMENT

In the Matter of Elaine Sicardo, appellant,
v Peter Smith, etc., respondent.

(Index No. 21906/06)

Barbara Finkelstein, White Plains, N.Y. (Rebecca Praus of counsel), for appellant.

Koob & Magoolaghan, Yonkers, N.Y. (Joan Magoolaghan of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the Municipal Housing Authority for the City of Yonkers, dated July 14, 2006, which, after a hearing, found that the petitioner had violated certain rules specified in 24 CFR 982.551 for Section 8 participants and thereupon confirmed an administrative determination dated March 14, 2006, to terminate the petitioner's participation in the Section 8 Housing Choice Voucher Program (*see* 42 USC § 1437f[b][1]).

ADJUDGED that the petition is granted, on the facts, without costs or disbursements, to the extent that so much of the determination as confirmed the penalty of termination is vacated; the petition is otherwise denied, the determination is otherwise confirmed on the merits, and the matter is remitted to the respondent for the imposition of a lesser penalty.

The determination finding the petitioner in violation of the Section 8 Housing Choice Voucher Program regulations due to her failure to notify the respondent that her former husband was living in the subject residence with her and her children (*see* 24 CFR 982.551[h][2]) was supported by substantial evidence (*see 300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176;

Matter of Steward v Mulligan, 47 AD3d 822; *cf. Matter of Pena v Mulligan*, 32 AD3d 952, 953). However, under the particular circumstances of this case, the penalty imposed was so disproportionate to the offense as to be shocking to one's sense of fairness (*see generally Matter of Kreisler v New York City Tr. Auth*., 2 NY3d 775, 776; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 237; *see also* 24 CFR 982.552[c][2][i]; *cf. Matter of Smith v New York City Hous. Auth*., 40 AD3d 235, 235). Accordingly, we remit the matter to the respondent for the imposition of a lesser penalty.

The petitioner's remaining contentions are without merit.

MASTRO, J.P., COVELLO, DICKERSON and ENG, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court