

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

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_____AD3d_____

Argued - March 18, 2008

STEVEN W. FISHER, J.P.
HOWARD MILLER
EDWARD D. CARNI
THOMAS A. DICKERSON, JJ.

2007-04876

DECISION & JUDGMENT

In the Matter of Anthony Loscuito, petitioner,
v Nicholas Scoppetta, as Fire Commissioner of
the City of New York, et al., respondents.

(Index No. 26711/06)

Raymond E. Kerno, Mineola, N.Y., for petitioner.

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Pamela Seider Dolgow
and Fay Ng of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of Nicholas Scoppetta, as Fire Commissioner of the City of New York, dated June 28, 2006, which adopted the recommendation of a hearing officer dated June 14, 2006, made after a hearing, finding the petitioner guilty of six charges of misconduct and terminating his employment as a firefighter with the Fire Department of the City of New York.

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

The determination that the petitioner knowingly made false statements to investigators in the course of the Inspector General's investigation and was guilty of other misconduct is supported by substantial evidence and therefore may not be set aside (*see* CPLR 7803[4]; *Rainer N. Mittl, Ophthalmologist, P.C. v New York State Div. of Human Rights*, 100 NY2d 326, 331; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180). In light of the fact that the petitioner made false statements, under oath, relating to serious charges implicating the integrity of the Fire

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Department of the City of New York, the penalty of dismissal was not so disproportionate to the offenses as to be shocking to one's sense of fairness (*see Matter of Harp v New York City Police Dept.*, 96 NY2d 892, 894; *see also Matter of Kelly v Safir*, 96 NY2d 32, 38; *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).

FISHER, J.P., MILLER, CARNI and DICKERSON, 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