

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

D20523
O/hu/prt

_____AD3d_____

Argued - September 4, 2008

ROBERT A. LIFSON, J.P.
ANITA R. FLORIO
RANDALL T. ENG
ARIEL E. BELEN, JJ.

2007-09481

DECISION & JUDGMENT

In the Matter of Luigi Cianciulli, petitioner, v Village of Bronxville Board of Police Commissioners, et al., respondents.

(Index No. 16925/06)

Quinn & Mellea, LLP, White Plains, N.Y. (Andrew C. Quinn of counsel), for petitioner.

Bond, Schoeneck & King, PLLC, Garden City, N.Y. (Terry O'Neil, Howard M. Miller, and Christopher T. Kurtz of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Village of Bronxville Board of Police Commissioners dated July 10, 2006, which, after a hearing, found the petitioner guilty of misconduct and terminated his employment as a police officer.

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

The petitioner was involved in an altercation with a fellow police officer. At a disciplinary hearing conducted by the Village of Bronxville Board of Police Commissioners (hereinafter the Board), evidence was presented that the petitioner punched a fellow officer in the face, breaking his nose. There was also evidence that the petitioner attempted to kick the other officer after that officer had fallen to the ground.

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Contrary to the petitioner's contention, the determination that he was guilty of misconduct relating to the altercation 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 Gustafson v Town of N. Castle, N.Y.*, 45 AD3d 766; *Matter of Maher v Cade*, 15 AD3d 489). The Board weighed the conflicting evidence presented at the hearing and assessed the credibility of the witnesses, and the record provides no basis to disturb its resolution of these issues (*see Matter of Berenhaus v Ward*, 70 NY2d 436; *Matter of Armstrong v Phillips*, 44 AD3d 759; *Matter of Maher v Cade*, 15 AD3d 489).

Furthermore, an administrative penalty must be upheld unless it is so disproportionate to the offense as to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (*see Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 235; *see also Matter of Rutkunas v Stout*, 8 NY3d 897, 899; *Matter of Featherstone v Franco*, 95 NY2d 550; *Matter of Maher v Cade*, 15 AD3d 489; *Matter of Whiting v Village of Old Brookville Police Dept.*, 220 AD2d 600). Here, it cannot be concluded, as a matter of law, that the penalty of dismissal shocks the judicial conscience (*see Matter of Kreisler v New York City Transit Auth.*, 2 NY3d 775, 776).

LIFSON, J.P., FLORIO, ENG and BELEN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court