

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

D20670  
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Submitted - September 11, 2008

STEVEN W. FISHER, J.P.  
MARK C. DILLON  
WILLIAM E. McCARTHY  
ARIEL E. BELEN, JJ.

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2007-10518

DECISION & ORDER

In the Matter of Bruce Cherry, appellant, v  
New York State Civil Service Commission,  
et al., respondents.

(Index No. 14182/07)

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Bruce Cherry, Brooklyn, N.Y., appellant pro se.

Andrew M. Cuomo, Attorney General, New York, N.Y. (Michelle Aronowitz and  
Diana R.H. Winters of counsel), for respondents.

In a proceeding, inter alia, pursuant to CPLR article 78 to review a determination of the New York State Civil Service Commission, which, in effect, affirmed a decision of the New York State Division of Housing and Community Renewal to promote certain individuals to the position of Rent Examiner 2, and not to promote the petitioner, the petitioner appeals from a judgment of the Supreme Court, Queens County (Kitzes, J.), entered October 4, 2007, which denied the petition and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

Contrary to the petitioner's contention, the decision of the New York State Division of Housing and Community Renewal to promote certain individuals to the position of Rent Examiner 2, and not to promote him, was in compliance with Civil Service Law § 61.1. Each of the selections for promotion was made from one of the three individuals certified with the highest scores on the eligible list who were willing to accept the appointment. Accordingly, the determination of the New

October 7, 2008

Page 1.

MATTER OF CHERRY v NEW YORK STATE CIVIL SERVICE COMMISSION

York State Civil Service Commission, which, in effect, affirmed the decision to promote these individuals, was not arbitrary or capricious (*see generally Matter of Hughes v Doherty*, 5 NY3d 100; *Matter of Purdy v Kreisberg*, 47 NY2d 354).

The petitioner's remaining contentions are without merit.

FISHER, J.P., DILLON, McCARTHY and BELEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer  
Clerk of the Court