

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

D21451
G/kmg

_____AD3d_____

Argued - November 7, 2008

ROBERT A. SPOLZINO, J.P.
JOSEPH COVELLO
DANIEL D. ANGIOLILLO
CHERYL E. CHAMBERS, JJ.

2007-10090

DECISION & ORDER

In the Matter of Van Guard Hose Company
No. 1 Drill Team of Patchogue Fire Department,
etc., appellant, v Suffolk County Volunteer
Fireman's Parade & Drill Team Captains
Association, et al., respondents.

(Index No. 304/06)

Gullo & Associates, LLP, Brooklyn, N.Y. (Michael Gullo of counsel), for appellant.

Siler & Ingber, LLP, Garden City, N.Y. (Jeffrey B. Siler of counsel), for respondents.

In a hybrid proceeding pursuant to CPLR article 78, inter alia, to review Rule 7.01E of the Official Drill Rules and Regulations of the respondent New York State Volunteer Firemen's Parade and Drill Team Captains Association, Inc., and action, inter alia, for a judgment declaring the invalidity of that rule, the petitioner appeals, as limited by its brief, from so much of an order and judgment (one paper) of the Supreme Court, Suffolk County (Tanenbaum, J.), dated September 20, 2007, as, in effect, denied that branch of the petition which was to annul the rule and dismissed the cause of action for declaratory relief.

ORDERED that the order and judgment is modified, on the law, by deleting the provision thereof dismissing the cause of action for declaratory relief and substituting therefor a provision declaring that Rule 7.01E of the Official Drill Rules and Regulations of the respondent New York State Volunteer Firemen's Parade and Drill Team Captains Association, Inc., is valid; as so modified, the order and judgment is affirmed insofar as appealed from, with costs to the respondent New York State Volunteer Firemen's Parade and Drill Team Captains Association, Inc.

December 16, 2008

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MATTER OF VAN GUARD HOSE COMPANY NO. 1 DRILL TEAM OF PATCHOGUE
FIRE DEPARTMENT v SUFFOLK COUNTY VOLUNTEER FIREMAN'S
PARADE & DRILL TEAM CAPTAINS ASSOCIATION

The petitioner, a fire department's competitive "drill team," is a member of the respondent New York State Volunteer Firemen's Parade and Drill Team Captains Association, Inc. (hereinafter the Association), an incorporated, voluntary association. In the instant hybrid proceeding and action, the petitioner challenges a particular rule promulgated by the Association. However, the petitioner failed to demonstrate any basis for annulling that rule (*see* CPLR 7803[3]). Accordingly, the Supreme Court properly, in effect, denied that branch of the petition which was to annul the rule. The Supreme Court, however, should not have dismissed the cause of action for declaratory relief; rather, since this is, in part, a declaratory judgment action, the Supreme Court should have included in the judgment appealed from an appropriate declaration in favor of the Association (*see Lanza v Wagner*, 11 NY2d 317, 324, *appeal dismissed* 371 US 74, *cert denied* 371 US 901).

SPOLZINO, J.P., COVELLO, ANGIOLILLO and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court