

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

D22065  
W/kmg

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Argued - December 9, 2008

ROBERT A. SPOLZINO, J.P.  
STEVEN W. FISHER  
HOWARD MILLER  
EDWARD D. CARNI, JJ.

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2008-04048

DECISION & ORDER

In the Matter of Leroy Kurot, respondent,  
v East Rockaway Fire Department, et al.,  
appellants.

(Index No. 19634/07)

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Miranda Sokoloff Sambursky Slone Verveniotis LLP, Mineola, N.Y. (Adam I. Kleinberg and Kelly C. Hobel of counsel), for appellants.

Thomas F. Liotti, Garden City, N.Y. (Edward A. Paltzik of counsel), for respondent.

In a proceeding pursuant to CPLR article 78 to review so much of a determination of the East Rockaway Fire Department Fire Council dated October 4, 2007, as, upon finding the petitioner guilty of misconduct, terminated his membership in the East Rockaway Fire Department, the East Rockaway Fire Department, East Rockaway Fire Department Fire Council, and Incorporated Village of East Rockaway appeal from a judgment of the Supreme Court, Nassau County (LaMarca, J.), dated April 4, 2008, which, inter alia, granted the petition, annulled so much of the determination as terminated the petitioner's membership in the East Rockaway Fire Department, and reduced the penalty to a suspension of his membership in the East Rockaway Fire Department for a period of eight months retroactive to October 4, 2007.

ORDERED that the judgment is reversed, on the law, with costs, the petition is denied, the determination is confirmed, and the proceeding is dismissed on the merits.

The petitioner, who was a member of the East Rockaway Fire Department, engaged in a willful course of conduct in which he lied to his supervisor, fabricated documents in order to

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cover up his misconduct, and failed to follow a departmental policy of which he was well informed. Under the circumstances presented here, we cannot conclude that the penalty of termination of the petitioner's membership in the East Rockaway Fire Department “‘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” (*Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d 775, 776, quoting *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester County*, 34 NY2d 222, 237; see *Matter of Torrance v Stout*, 9 NY3d 1022, 1023; *Matter of Rutkunas v Stout*, 8 NY3d 897, 899; *Matter of Thomas v County of Rockland, Dept. of Hosp.*, 55 AD3d 745, 746).

Accordingly, the petition should have been denied, and the proceeding should have been dismissed on the merits.

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