

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

D22942  
W/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - March 18, 2009

PETER B. SKELOS, J.P.  
STEVEN W. FISHER  
HOWARD MILLER  
RANDALL T. ENG, JJ.

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2008-02385

DECISION & JUDGMENT

In the Matter of Gregory Smith, petitioner,  
v Mack Carter, etc., et al., respondents.

(Index No. 9149/07)

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James M. Rose, White Plains, N.Y., for petitioner.

Littler Mendelson, P.C., New York, N.Y. (Bruce R. Millman, Orit Goldring, and  
George Pauta of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of Lawrence Salley, as Acting Director of the White Plains Housing Authority, dated February 21, 2007, which adopted the recommendation of a hearing officer, made after a hearing, finding the petitioner guilty of nine charges of misconduct, neglect of duty, and/or insubordination, comprising 19 specifications, and terminated his employment.

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

The review of administrative determinations in employee disciplinary cases made after a hearing under Civil Service Law § 75 is limited to a consideration of whether the determination was supported by substantial evidence (*see* CPLR 7803[4]; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176; *Matter of Saccone v Garden City Park Water/Fire Dist.*, 13 AD3d 460, 460-461; *Matter of Maher v Cade*, 15 AD3d 489; *Matter of Jones v Mahon*, 11 AD3d 692). Contrary to the petitioner's contention, the determination that he was guilty of nine charges of misconduct, neglect of duty, and/or insubordination, comprising 19 specifications, was supported by substantial evidence (*see Matter of Jones v Mahon*, 11 AD3d 692; *Matter of Mann v Town of*

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*Monroe*, 2 AD3d 527; *cf. Waldren v Town of Islip*, 18 AD3d 566, 567). Moreover, under the circumstances, the penalty imposed was not “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 & Mamaroneck, Westchester County*, 34 NY2d 222, 237; see *Matter of Kelly v Safir*, 96 NY2d 32, 38; see also *Matter of Torrance v Stout*, 9 NY3d 1022, 1023; *Matter of McClean v City of Albany*, 13 AD3d 851; *Matter of Parker v Blauvelt Volunteer Fire Co.*, 222 AD2d 437; *Matter of Secor v Hyde Park Cent. School Dist.*, 142 AD2d 682).

The petitioner's remaining contention is without merit.

SKELOS, J.P., FISHER, MILLER and ENG, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court