

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

D22944
T/kmg

_____AD3d_____

Argued - March 10, 2009

ROBERT A. SPOLZINO, J.P.
STEVEN W. FISHER
HOWARD MILLER
RUTH C. BALKIN, JJ.

2008-02494

DECISION & JUDGMENT

In the Matter of Valerie DeNardo, petitioner,
v Board of Education of Mamaroneck Union
Free School District, et al., respondents.

(Index No. 23693/07)

James R. Sandner, New York, N.Y. (Damon S. Levenstein of counsel), for petitioner.

Ingerman Smith, LLP, Harrison, N.Y. (Christopher G. Kirby of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Board of Education of the Mamaroneck Union Free School District dated July 18, 2007, which, in effect, adopted the recommendation of a hearing officer, dated June 28, 2007, made after a hearing, finding the petitioner guilty of certain charges of misconduct and incompetence, and terminated her employment as a payroll clerk.

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

“The review of administrative determinations in employee disciplinary cases made as a result of a hearing required by Civil Service Law § 75 is limited to a consideration of whether the determination is supported by substantial evidence” (*Matter of Thomas v County of Rockland, Dept. of Hospitals*, 55 AD3d 745, 745-746 [internal quotation marks and citation omitted]). Furthermore, “[a]n 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” (*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*,

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MAMARONECK UNION FREE SCHOOL DISTRICT

34 NY2d 222, 237).

In this case, the determination that the petitioner was guilty of the subject charges was supported by substantial evidence. In addition, the penalty of termination of her employment was not so disproportionate to the offenses involved as to be shocking to one's sense of fairness. Accordingly, the challenged determination must be confirmed, the petition denied, and the proceeding dismissed on the merits.

The petitioner's remaining contentions are without merit.

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