

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

D26837
Y/ct

_____AD3d_____

Argued - February 16, 2010

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
LEONARD B. AUSTIN, JJ.

2009-01587

DECISION & ORDER

In the Matter of Board of Education of Byram Hills
Central School District, appellant, v Gregory E.
Carlson, respondent.

(Index No. 7229/08)

Shaw, Perelson, May & Lambert, LLP, Poughkeepsie, N.Y. (Mark J. Rushfield and David Shaw of counsel), for appellant.

Jay Worona and Patricia Gould, Latham, N.Y., for New York State School Boards Association, Inc., amicus curiae.

In a proceeding pursuant to CPLR article 75 and Education Law § 3020-a to vacate a determination of a hearing officer dated March 18, 2008, which, after a hearing, dismissed disciplinary charges against the respondent, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Colabella, J.), dated January 2, 2009, which denied the petition, confirmed the determination, and, in effect, dismissed the proceeding.

ORDERED that the judgment is affirmed, without costs or disbursements.

The Supreme Court properly confirmed the hearing officer's determination to dismiss the charges against the respondent. The petitioner did not demonstrate any basis for vacating the determination under CPLR 7511 (*see* Education Law § 3020-a[5]), and the determination has a rational basis and is supported by the record (*see Matter of Saunders v Rockland Bd. of Coop. Ed.*

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Servs. 62 AD3d 1012, 1013; *Matter of Bd. of Educ. of William Floyd Union Free School Dist. v Lemay*, 60 AD3d 943; *Matter of Board of Educ. of Great Neck Union Free School Dist. v Brandman*, 286 AD2d 735, 736; *Matter of Board of Educ. of Westhampton Beach Union Free School Dist. v Ziparo*, 275 AD2d 411).

Contrary to the petitioner's contentions, the hearing officer did not err in refusing to give substantial weight to the tape recording and the documents which had been submitted by the petitioner into evidence. It was up to the hearing officer to determine what, if any, weight should be given to the evidence, and a court should not substitute its judgment for that of a hearing officer (*see Altsheler v Board of Educ. of Great Neck Union Free School Dist.*, 62 NY2d 656, 657; *Matter of Barad v State Bd. for Professional Med. Conduct*, 282 AD2d 893, 894; *Matter of McSweeney v Board of Educ. of Johnsbury Cent. School Dist.*, 138 AD2d 847, 848; *Matter of Fitzpatrick v Board of Educ. of Mamaroneck Union Free School Dist.*, 96 AD2d 557, 558; *Matter of Soucy v Board of Educ. of N. Colonie Cent. School Dist.*, 51 AD2d 628, 629).

MASTRO, J.P., LEVENTHAL, LOTT and AUSTIN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court