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

D26949
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_____AD3d_____ Argued - March 15, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
RUTH C. BALKIN
JOHN M. LEVENTHAL, JJ.

2009-05589 DECISION & JUDGMENT

In the Matter of Caesar Bellamy, appellant, v Tino Hernandez, etc., respondent.

(Index No. 27279/08)

Martin S. Needelman, Brooklyn, N.Y. (Paul J. Acinapura and Terry Herman of counsel), for appellant.

Sonya M. Kaloyanides, New York, N.Y. (Nancy M. Harnett and Byron S. Menegakis of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of the New York City Housing Authority dated May 28, 2008, adopting the recommendation of a hearing officer dated May 14, 2008, made after a hearing, finding that the petitioner was ineligible for continued occupancy in a public housing development on the ground of, inter alia, nondesirability, and terminated his tenancy.

ADJUDGED that the determination is confirmed, the petition is denied, and the proceeding is dismissed on the merits, without costs or disbursements.

The petitioner is a tenant in a public housing development administered by the New York City Housing Authority (hereinafter the Housing Authority). The Housing Authority sought to terminate the petitioner's tenancy on the ground of, inter alia, nondesirability, after an incident involving a confrontation between three dogs, which the petitioner had brought up to the roof of his building without leashes, and three police officers who were conducting a routine patrol of the building. During the incident, one of the dogs attacked and injured one of the officers. Following

an administrative hearing, the hearing officer recommended that the petitioner's tenancy be terminated. The Housing Authority adopted the hearing officer's recommendation, and terminated the petitioner's tenancy.

The Housing Authority's determination was supported by substantial evidence (*see Matter of Zeigler v New York City Hous. Auth.,* 35 AD3d 624; *Matter of Bradford v New York City Hous. Auth.,* 34 AD3d 463, 464). Moreover, the penalty of termination of the petitioner's tenancy 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 (*see Matter of Rutkunas v Stout,* 8 NY3d 897, 899; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County,* 34 NY2d 222, 233; *Matter of Singleton v New York State Off. of Children & Family Servs.,* 70 AD3d 706).

RIVERA, J.P., ANGIOLILLO, BALKIN and LEVENTHAL, JJ., concur.

ENTER:

James Edward Pelzer
Clerk of the Court