

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

D28986  
H/prt

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

Argued - October 12, 2010

MARK C. DILLON, J.P.  
ANITA R. FLORIO  
DANIEL D. ANGIOLILLO  
THOMAS A. DICKERSON, JJ.

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2009-09496

DECISION & JUDGMENT

In the Matter of Martin Gallagher, petitioner,  
v John E. Jackson, etc., et al., respondents.

(Index No. 19623/09)

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

Robert F. Meehan, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz and  
Justin R. Adin of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Westchester County Department of Emergency Services, dated June 26, 2009, which adopted the findings and recommendations of a hearing officer dated June 15, 2008, made after a hearing, finding the petitioner guilty of misconduct and/or incompetence, and demoted him from the position of Senior Communications Operator to the position of Communications Operator.

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

Contrary to the petitioner's contentions, the determination of the Westchester County Department of Emergency Services, that the petitioner was guilty of specifications four and six, is supported by substantial evidence (*see Matter of Huth v Barr*, 56 AD3d 556). Further, the penalty of demotion 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 [citations omitted]; *see Matter of Huth v Barr*, 56 AD3d 556).

November 9, 2010

Page 1.

MATTER OF GALLAGHER v JACKSON

The petitioner's remaining contentions are without merit.

DILLON, J.P., FLORIO, ANGIOLILLO and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive style with a large, prominent initial "M".

Matthew G. Kiernan  
Clerk of the Court