

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

D29512  
W/prt

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

Argued - November 29, 2010

WILLIAM F. MASTRO, J.P.  
STEVEN W. FISHER  
SHERI S. ROMAN  
SANDRA L. SGROI, JJ.

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2009-06320

DECISION & JUDGMENT

In the Matter of Timothy Mooney, petitioner, v  
Board of Fire Commissioners of Bethpage Fire  
District, et al., respondents.

(Index No. 96/09)

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Thomas F. Liotti, Garden City, N.Y. (Edward A. Paltzik of counsel), for petitioner.

Furey, Furey, Leverage, Manzione, Williams & Darlington, P.C., Hempstead, N.Y.  
(Ingrid M. Rodriguez of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Board of Fire Commissioners of the Bethpage Fire District dated September 10, 2008, which adopted the findings and recommendations of a hearing officer dated April 18, 2008, made after a hearing, finding the petitioner guilty of misconduct, and terminated his membership in the Bethpage Fire Department.

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

The determination that the petitioner was guilty of misconduct is supported by substantial evidence and, therefore, may not be set aside (*see Matter of Loscuito v Scoppetta*, 50 AD3d 905; *Matter of Morris v Calderone*, 49 AD3d 741; *Matter of Maher v Cade*, 15 AD3d 489; *Matter of Saccone v Garden City Park Water/Fire Dist.*, 13 AD3d 460). Further, under the circumstances presented, the penalty of termination of the petitioner's membership in the Bethpage Fire Department did not constitute an abuse of discretion as a matter of law as it was not so

December 17, 2010

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disproportionate to the offense as to be shocking to one's sense of fairness (see *Matter of Gallagher v Jackson*, \_\_\_\_\_ AD3d \_\_\_\_\_, 2010 NY Slip Op 08107 [2d Dept 2010]; *Matter of Kurot v East Rockaway Fire Dept.*, 61 AD3d 760; *Matter of Loscuito v Scoppetta*, 50 AD3d 905; *Matter of Morris v Calderone*, 49 AD3d 741; *Matter of Saccone v Garden City Park Water/Fire Dist.*, 13 AD3d 460).

MASTRO, J.P., FISHER, ROMAN and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court