

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

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_____AD3d_____

Argued - November 1, 2010

ANITA R. FLORIO, J.P.
JOHN M. LEVENTHAL
L. PRISCILLA HALL
SHERI S. ROMAN, JJ.

2010-00412

DECISION & ORDER

In the Matter of Michael D'Angelo, respondent, v
Nicholas Scoppetta, etc., et al., appellants.

(Index No. 27156/08)

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Stephen J. McGrath and Susan B. Eisner of counsel), for appellants.

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Michael N. Block and Stephen C. Glasser of counsel), for respondent.

In a proceeding pursuant to CPLR article 78, inter alia, to review a determination of the Fire Commissioner of the City of New York dated May 28, 2008, which, without a hearing, adopted the recommendation of the Equal Employment Opportunity Office of the Fire Department of the City of New York, dated May 21, 2008, finding that the petitioner made "inappropriate and offensive comments of a racial nature" to another employee, and recommending that the petitioner sign and acknowledge an Advisory Memorandum regarding the rights and responsibilities of an employee with the Fire Department of the City of New York and that he receive additional Equal Employment Opportunity training, the appeal is from a judgment of the Supreme Court, Kings County (Vaughan, J.), dated December 1, 2009, which granted the petition to the extent of annulling the determination and directing that a certain letter dated June 5, 2008, be expunged from the petitioner's Equal Employment Opportunity Office file. Justice Roman has been substituted for the late Justice Fisher (*see* 22 NYCRR 670.1[c]).

ORDERED that the judgment is affirmed, with costs.

Contrary to the appellants' contentions, the subject letter dated June 5, 2008, cannot be properly characterized as a "critical evaluation[]" or "*Holt*" letter (*Holt v Board of Educ. of*

February 15, 2011

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Webutuck Cent. School Dist., 52 NY2d 625, 633; *see Myers v Chester Union Free School Dist.*, 300 AD2d 287, 287-288; *Matter of Civil Serv. Empls. Assn. v Southold Union Free School Dist.*, 204 AD2d 445, 446-447). Moreover, the record does not substantiate the appellants' contention that there is "ample evidence" that they comported with the requirements of due process. Accordingly, the Supreme Court properly granted the petition to the extent of annulling the determination and directing that the subject letter be expunged from the petitioner's Equal Employment Opportunity Office file (*see Matter of Civil Serv. Empls. Assn. v Southold Union Free School Dist.*, 204 AD2d at 447).

FLORIO, J.P., LEVENTHAL, HALL and ROMAN, 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