

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

D31118
H/kmb

_____AD3d_____

Argued - April 11, 2011

REINALDO E. RIVERA, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
JEFFREY A. COHEN, JJ.

2010-01977

DECISION & ORDER

In the Matter of Gerard Prior, et al., appellants,
v Board of Trustees of City of New York Fire
Department Pension Fund, et al., respondents.

(Index No. 11979/06)

McLaughlin & Stern, LLP, New York, N.Y. (Steven J. Hyman, Aimee E. Saginaw, and Lindsay R. Pfeffer of counsel), and Norman Siegel, New York, N.Y., for appellants (one brief filed).

Michael A. Cardozo, Corporation Counsel, New York, N.Y. (Paul Rephen and Carolyn Wolpert of counsel), for respondent Board of Trustees of City of New York Fire Department Pension Fund.

Ungaro & Cifuni, New York, N.Y. (Robert A. Ungaro, Nicholas G. Cifuni, and Philip H. Seelig of counsel), for respondent Doreen Noone.

In a proceeding pursuant to CPLR article 78 to review a determination of the Board of Trustees of the City of New York Fire Department Pension Fund, which awarded Doreen Noone benefits pursuant to General Municipal Law § 208-f as the domestic partner of Kevin Prior, the petitioners appeal from a judgment of the Supreme Court, Kings County (Jacobson, J.), dated January 6, 2010, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

May 10, 2011

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MATTER OF PRIOR v BOARD OF TRUSTEES OF CITY OF
NEW YORK FIRE DEPARTMENT PENSION FUND

New York City firefighter Kevin Prior died in the line of duty at the World Trade Center on September 11, 2001. His name appears in chapter 468 of the Laws of 2002 (hereinafter the Act) as a firefighter whose “registered” or “unregistered domestic partner” is eligible to receive the special accidental death benefit provided by General Municipal Law § 208-f (L 2002, ch 468, 1238-1239, as amended by L 2003, ch 162, 792-796). Part A, section 1(b) of the Act defines a “domestic partner” as a person who “(i) was dependent upon the firefighter for support as shown by either unilateral dependence or mutual interdependence, as evidenced by a nexus of factors including, but not limited to, children in common, common ownership of real or personal property, signs of intent to marry, common householding, shared budgeting, and the length of the personal relationship with the firefighter; or (ii) was registered as the domestic partner of the firefighter . . . prior to the firefighter’s death” (L 2002, ch 468, § 1[b], 1239).

Contrary to the petitioners’ contention, the record supports the determination that Doreen Noone was Kevin Prior’s unregistered “domestic partner” within the meaning of the Act. The Act neither mandates that every factor must be satisfied nor does it require that every factor must be given the same weight. Further, the definition of “domestic partner” indicates that the factors are not exclusive.

RIVERA, J.P., DICKERSON, HALL and COHEN, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court