

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

D33068
O/kmb

_____AD3d_____

Submitted - November 7, 2011

REINALDO E. RIVERA, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2010-09116

DECISION & ORDER

In the Matter of Richard DiSanza, appellant, v Town
Board of Town of Cortlandt, et al., respondents.

(Index No. 10189/10)

Richard DiSanza, Carmel, N.Y., appellant pro se.

Thomas F. Wood, Town Attorney, Montrose, N.Y., for respondents.

In a proceeding pursuant to CPLR article 78 to review a determination of the Town Board of the Town of Cortlandt dated January 12, 2010, which abolished the position of environmental analyst, and to reinstate the petitioner to that position with back pay, the petitioner appeals from a judgment of the Supreme Court, Westchester County (Cacace, J.), entered August 12, 2010, which denied the petition and dismissed the proceeding.

ORDERED that the judgment is affirmed, with costs.

A public employer may abolish civil service positions for the purpose of economy or efficiency (*see Matter of Hritz-Seifts v Town of Poughkeepsie*, 22 AD3d 493; *Matter of Rose v City of Newburgh*, 239 AD2d 587). One who challenges the validity of such an act has the burden of proving that the employer did not act in good faith in abolishing the position (*see Matter of Hritz-Seifts v Town of Poughkeepsie*, 22 AD3d at 493; *Matter of Rose v City of Newburgh*, 239 AD2d at 588; *Matter of Rosenthal v Gilroy*, 208 AD2d 748, 749; *see also Matter of Aldazabal v Carey*, 44 NY2d 787, 788). Here, the Supreme Court properly determined that the petitioner failed to sustain his burden of proving that the Town Board of the Town of Cortlandt did not act in good faith (*see Matter of Hritz-Seifts v Town of Poughkeepsie*, 22 AD3d at 493; *Matter of Rose v City of Newburgh*, 239 AD2d at 588; *see also Matter of Linney v City of Plattsburgh*, 49 AD3d 1020, 1021-1022).

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Moreover, the petitioner's contention that the Town Board of the Town of Cortlandt violated Civil Service Law § 75-b is without merit, as the record contains no evidence that the petitioner's position was eliminated in retaliation for whistle-blowing activities (*see* Civil Service Law § 75-b[2][a]; *Suarez v New York City Dept. of Probation*, 268 AD2d 203).

Contrary to the petitioner's contention, he failed to raise a triable issue of fact that would have necessitated a hearing (*see* CPLR 7804[h]; *Matter of Civil Serv. Empls. Assn., Inc., Local 1000, AFSCME, AFL-CIO v Rockland County Bd. of Coop. Educ. Servs.*, 39 AD3d 641, 643; *cf. Matter of Weber v County of Nassau*, 215 AD2d 567, 569).

The petitioner's remaining contention is not properly before this Court, as it is raised for the first time on appeal (*see Dance Magic, Inc. v Pike Realty, Inc.*, 85 AD3d 1083, 1089).

RIVERA, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court