

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

D34577  
C/mv

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

Submitted - March 13, 2012

PETER B. SKELOS, J.P.  
MARK C. DILLON  
RANDALL T. ENG  
LEONARD B. AUSTIN, JJ.

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2011-05237

DECISION & JUDGMENT

In the Matter of Patricia Simpson, petitioner, v  
New York State Office of Children and Family  
Services, respondent.

(Index No. 29293/10)

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Audrey A. Thomas, Rosedale, N.Y. (Omar S. Long and Sean-Patrick A. Coy on the  
brief), for petitioner.

Eric T. Schneiderman, Attorney General, New York, N.Y. (Cecilia C. Chang and  
Anne P. Zybert of counsel), for respondent.

Proceeding pursuant to CPLR article 78 to review a determination of John Franklin  
Udochi, as designee of the commissioner of the respondent, the New York State Office of Children  
and Family Services, dated August 2, 2010, which, after a hearing, affirmed a prior determination  
of the New York State Office of Children and Family Services to suspend and revoke the petitioner's  
license to operate a group family day care home.

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 violated relevant regulations concerning the  
supervision of children in group family day care centers is supported by substantial evidence in the  
record (*see Matter of Berenhaus v Ward*, 70 NY2d 436, 443; *300 Gramatan Ave. Assoc. v State Div.  
of Human Rights*, 45 NY2d 176, 180-181; *Matter of Occhiogrosso v New York State Off. of Children  
& Family Servs.*, 72 AD3d 1092; *Matter of Alexander v New York State Off. of Children & Family*

April 17, 2012

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AND FAMILY SERVICES

*Servs.*, 50 AD3d 895; *Matter of Tender Loving Care Day Care, Inc. v New York State Off. of Children & Family Servs.*, 47 AD3d 940, 940-941).

Furthermore, the penalty of license revocation was neither arbitrary and capricious nor so disproportionate to the misconduct so as to shock one's sense of fairness as a matter of law (see *Matter of Ellis v Mahon*, 11 NY3d 754; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 234; *Matter of Alexander v New York State Off. of Children & Family Servs.*, 50 AD3d 895; *Matter of Tender Loving Care Day Care, Inc., v New York State Off. of Children & Family Servs.*, 47 AD3d at 941).

SKELOS, J.P., DILLON, ENG and AUSTIN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court