

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

D35691  
G/kmb

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

Argued - May 31, 2012

REINALDO E. RIVERA, J.P.  
RANDALL T. ENG  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2011-06860

DECISION & JUDGMENT

In the Matter of Joann Barthel, petitioner,  
v Town of Huntington, et al., respondents.

(Index No. 21459-10)

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William D. Friedman, Hempstead, N.Y., for petitioner.

James P. Clark, Northport, N.Y., for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the Director of the Department of Human Services of the Town of Huntington dated March 10, 2010, which adopted the findings and recommendation of a hearing officer, made after a hearing pursuant to Civil Service Law § 75, finding the petitioner guilty of certain disciplinary charges, and terminated the petitioner's employment.

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

The standard of review of an administrative determination made after a trial-type hearing required by law, at which evidence is taken, is limited to considering whether the determination was supported by substantial evidence (*see* CPLR 7803[4]; *Matter of Lahey v Kelly*, 71 NY2d 135, 140; *300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 179-180; *Matter of Rabadou v County of Dutchess*, 94 AD3d 1004; *Matter of Paul v Israel*, 90 AD3d 666; *Matter of Martin v Board of Trustees of the Vil. of Pelham Manor*, 86 AD3d 645, 646). Here, there is substantial evidence in the record to support the determination that the petitioner was guilty of the subject disciplinary charges.

Furthermore, the penalty of termination was not so disproportionate to the offense as

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to be shocking to one's sense of fairness, thus constituting an abuse of discretion as a matter of law (see *Matter of Ellis v Mahon*, 11 NY3d 754, 755; *Matter of Rutkunas v Stout*, 8 NY3d 897, 898; *Matter of Waldren v Town of Islip*, 6 NY3d 735, 736-737; *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 233).

The petitioner's remaining contentions are without merit.

Accordingly, we confirm the determination, deny the petition, and dismiss the proceeding on the merits.

RIVERA, J.P., ENG, LOTT and COHEN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court