

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

D35753
Y/hu

____AD3d____

Argued - June 12, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS, JJ.

2011-05948

DECISION & JUDGMENT

In the Matter of Morris Ware, appellant, v Board of
Fire Commissioners of the Roosevelt Fire District,
et al., respondents.

(Index No. 977/11)

Mitchell Dranow, Sea Cliff, N.Y., for appellant.

Cooke & Clarke, Hempstead, N.Y. (Lance D. Clarke of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of the respondent Board of Fire Commissioners of the Roosevelt Fire District dated September 8, 2010, made after a hearing, which found the petitioner guilty of charges of insubordination and gross misconduct, and terminated his membership with the Roosevelt Fire Department.

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 was guilty of misconduct is supported by substantial evidence and, therefore, may not be set aside (*see Matter of Mooney v Board of Fire Commrs. of Bethpage Fire Dist.*, 79 AD3d 941, 942; *Matter of Loscuito v Scoppetta*, 50 AD3d 905, 906; *Matter of Morris v Calderone*, 49 AD3d 741, 742; *Matter of Maher v Cade*, 15 AD3d 489). Further, under the circumstances presented, the penalty of termination of the petitioner's membership in the Roosevelt Fire Department did not constitute an abuse of discretion as a matter of law, as it was not so disproportionate to the offense as to be shocking to one's sense of fairness (*see Matter of Martin v Board of Trustees of the Vil. of Pelham Manor*, 86 AD3d 645, 646; *Matter of Mooney*

August 1, 2012

Page 1.

MATTER OF WARE v BOARD OF FIRE COMMISSIONERS OF
ROOSEVELT FIRE DISTRICT

v Board of Fire Commrs. of Bethpage Fire Dist., 79 AD3d at 942; *Matter of Kurot v East Rockaway Fire Dept.*, 61 AD3d 760, 761; *Matter of Morris v Calderone*, 49 AD3d at 742; *Matter of Maher v Cade*, 15 AD3d at 490).

The petitioner's remaining contention is without merit.

ANGIOLILLO, J.P., DICKERSON, LEVENTHAL and CHAMBERS, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court