

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

943

TP 10-00789

PRESENT: MARTOCHE, J.P., CENTRA, CARNI, LINDLEY, AND GREEN, JJ.

IN THE MATTER OF LAWRENCE M. SELTZER, PETITIONER,

V

MEMORANDUM AND ORDER

CITY OF ROCHESTER, RESPONDENT.

SCOTT M. GREEN, ROCHESTER, FOR PETITIONER.

THOMAS S. RICHARDS, CORPORATION COUNSEL, ROCHESTER (IGOR SHUKOFF OF COUNSEL), FOR RESPONDENT.

Proceeding pursuant to CPLR article 78 (transferred to the Appellate Division of the Supreme Court in the Fourth Judicial Department by order of the Supreme Court, Monroe County [David Michael Barry, J.], entered November 17, 2009) to review a determination of respondent. The determination, inter alia, terminated the employment of petitioner.

It is hereby ORDERED that the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: Petitioner commenced this proceeding seeking to annul the determination finding him guilty of disciplinary charges and terminating his employment as Municipal Parking Coordinator for respondent. We conclude that the determination is supported by substantial evidence, i.e., "such relevant proof as a reasonable mind may accept as adequate to support a conclusion or ultimate fact" (*300 Gramatan Ave. Assoc. v State Div. of Human Rights*, 45 NY2d 176, 180; see CPLR 7803 [4]; see generally *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale & Mamaroneck, Westchester County*, 34 NY2d 222, 230-231). We further conclude that the penalty of termination from petitioner's employment is not "so disproportionate to the offense[s] as to be shocking to one's sense of fairness," and thus it does not constitute an abuse of discretion as a matter of law (*Matter of Kelly v Safir*, 96 NY2d 32, 38, rearg denied 96 NY2d 854).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court