

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

1132

TP 13-00486

PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND VALENTINO, JJ.

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IN THE MATTER OF PAMELA MARCOTTE, PETITIONER,

V

MEMORANDUM AND ORDER

PAUL HOLAHAN, COMMISSIONER OF ENVIRONMENTAL  
SERVICES AND CITY OF ROCHESTER, RESPONDENTS.

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CHAMBERLAIN D'AMANDA OPPENHEIMER & GREENFIELD LLP, ROCHESTER (MATTHEW  
J. FUSCO OF COUNSEL), FOR PETITIONER.

ROBERT J. BERGIN, CORPORATION COUNSEL, ROCHESTER (YVETTE CHANCELLOR  
GREEN OF COUNSEL), FOR RESPONDENTS.

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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 [Evelyn Frazer, J.], entered March 18, 2013) to annul a determination finding petitioner guilty of specified acts of misconduct and imposing a penalty of demotion.

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

Memorandum: Petitioner, an employee of respondent City of Rochester, commenced this CPLR article 78 proceeding seeking to annul the determination finding her guilty of specified acts of misconduct and imposing a penalty of demotion. Contrary to petitioner's contention, 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). Additionally, we conclude that the penalty of demotion "is not so disproportionate to the offense[s] as to be shocking to one's sense of fairness, and thus does not constitute an abuse of discretion as a matter of law" (*Matter of Szczepaniak v City of Rochester*, 101 AD3d 1620, 1621 [internal quotation marks omitted]).

Entered: November 8, 2013

Frances E. Cafarell  
Clerk of the Court