

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

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_____AD3d_____

Argued - November 3, 2008

DAVID S. RITTER, J.P.
ANITA R. FLORIO
HOWARD MILLER
MARK C. DILLON, JJ.

2007-10713

DECISION & JUDGMENT

In the Matter of Mary Lewis, petitioner, v Joshua
Lipsman, etc., et al., respondents.

(Index No. 17903/07)

James M. Rose, White Plains, N.Y., for petitioner.

Charlene M. Indelicato, County Attorney, White Plains, N.Y. (Stacey Dolgin-Kmetz
and Thomas G. Gardiner of counsel), for respondents.

Proceeding pursuant to CPLR article 78 to review a determination of Joshua Lipsman, as Commissioner of the Westchester County Department of Health, dated July 31, 2007, which adopted the finding and recommendation of a hearing officer dated July 17, 2007, made after a hearing, inter alia, finding the petitioner, Mary Lewis, guilty of certain charges of misconduct, and suspended her from employment without pay for a period of 45 days.

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

Contrary to the petitioner's contention, the determination that she engaged in misconduct is supported by substantial evidence in the record (*see Matter of Berenhaus v Ward*, 70 NY2d 436; *Alexander v New York State Off. of Children & Family Servs.*, 50 AD3d 895). Further, “[a]n administrative penalty must be upheld unless it ‘is so disproportionate to the offense as to be shocking to one’s sense of fairness,’ thus constituting an abuse of discretion as a matter of law” (*Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d 775, 776, quoting *Matter of Pell v Board of Educ. of Union Free School Dist. No. 1 of Towns of Scarsdale and Mamaroneck, Westchester*

December 9, 2008

Page 1.

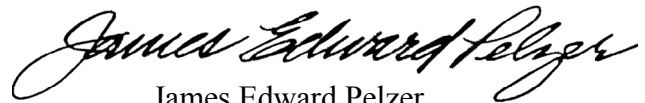
MATTER OF LEWIS v LIPSMAN

County, 34 NY2d 222, 237). Here, it cannot be concluded, “as a matter of law, that the penalty [imposed] shocks the judicial conscience” (*Matter of Kreisler v New York City Tr. Auth.*, 2 NY3d at 776; see *Ellis v Mahon*, 11 NY3d 754; *Matter of Torrance v Stout*, 9 NY3d 1022).

The petitioner’s remaining contentions are without merit.

RITTER, J.P., FLORIO, MILLER and DILLON, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court