

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

1624

TP 09-01031

PRESENT: SCUDDER, P.J., CENTRA, FAHEY, CARNI, AND PINE, JJ.

IN THE MATTER OF HELPING HANDS OF WNY, INC.,
PETITIONER,

V

MEMORANDUM AND ORDER

GLADYS CARRION, COMMISSIONER, NEW YORK STATE
OFFICE OF CHILDREN AND FAMILY SERVICES, AND
RICHARD E. DAVIDSON, BUREAU OF SPECIAL HEARINGS,
RESPONDENTS.

CHELUS, HERDZIK, SPEYER & MONTE, P.C., BUFFALO (ANTHONY J. CERVI OF
COUNSEL), FOR PETITIONER.

ANDREW M. CUOMO, ATTORNEY GENERAL, ALBANY (ZAINAB A. CHAUDHRY OF
COUNSEL), FOR RESPONDENTS.

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, Erie County [Paula L. Ferroletto, J.], dated May 19, 2009) to review a determination of respondents. The determination denied petitioner's application for a license to operate a daycare center.

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

Memorandum: Petitioner commenced this CPLR article 78 proceeding seeking to annul the determination denying its application for a license to operate a daycare center. Contrary to petitioner's contention, the determination is supported by substantial evidence (*see Matter of Gates of Goodness & Mercy v Johnson*, 49 AD3d 1295; *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, 231). The evidence presented at the hearing established that the proposed site for the daycare center did not comply with the relevant provisions of the New York State Uniform Fire Prevention and Building Code and other safety regulations (*see* 18 NYCRR 418-1.3 [o]; 418-1.4 [h]), and that the proposed director of the daycare center did not meet the minimum qualifications set forth in 18 NYCRR 418-1.13 (g).

Entered: February 11, 2010

Patricia L. Morgan
Clerk of the Court