

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

1064

TP 10-00459

PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, SCONIERS, AND PINE, JJ.

IN THE MATTER OF PHILLIP DRURY, PETITIONER,

V

MEMORANDUM AND ORDER

VILLAGE OF NORTH SYRACUSE AND JOHN HEINDORF,
MAYOR OF VILLAGE OF NORTH SYRACUSE, RESPONDENTS.

D. JEFFREY GOSCH, SYRACUSE, FOR PETITIONER.

THE WLADIS LAW FIRM, P.C., SYRACUSE (HEATHER M. COLE 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, Onondaga County [Brian F. DeJoseph, J.], entered February 17, 2010) to review a determination of respondents. The determination terminated petitioner's employment.

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, inter alia, to annul the determination terminating his employment as Code Enforcement Officer and Fire Marshall of respondent Village of North Syracuse following a hearing pursuant to Civil Service Law § 75. 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, under the circumstances of this case, the penalty of termination of employment does not constitute an abuse of discretion as a matter of law because it is not " 'so disproportionate to the offense as to be shocking to one's sense of fairness' " (*Matter of Kelly v Safir*, 96 NY2d 32, 38, rearg denied 96 NY2d 854; see *Matter of Smeraldo v Rater*, 55 AD3d 1298, 1299).

Entered: October 1, 2010

Patricia L. Morgan
Clerk of the Court