

Matter of D'Abramo v Schirillo
2013 NY Slip Op 31974(U)
August 10, 2013
Supreme Court, Suffolk County
Docket Number: 13-19656
Judge: John J. Leo
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HON. JOHN J. LEO

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

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In the Matter of the Application of
IRENE D'ABRAMO, MANUEL CORDEIRO and
CHARLES VANDEWATER,

Petitioners-Objector,

DECISION AND
ORDER

Index No. 13-19656

-against-

THOMAS SCHIRILLO, CHRIS ANN KELLEY, VIVIAN
VILORIA-FISHER, LORI BALDASSARE, JONATHAN A.
COHEN, MICHAEL MILLER, WAYNE E.
FELLRATH and CONSTANCE KEMPERT,

Respondent-Candidates,

-and-

SUFFOLK COUNTY BOARD OF ELECTIONS, ANITA
S. KATZ, Commissioner of the Suffolk County Board of
Elections, and WAYNE T. ROGERS, Commissioner of the
Suffolk County Board of Elections, together constituting the
Suffolk County Board of Elections,

Respondents,

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Attorney for the Petitioners:
Kenneth J. Lauri, Esq.
503 Main Street
Port Jefferson, NY 11777

Attorney for Respondents:
Lawrence Silverman, Esq.
350 Veterans Memorial Hwy
Commack, New York, 11725

Attorney for Respondent:
Commissioner Katz
Anthony La Pinta, Esq
35 Arkay Drive, Suite 200
Hauppauge, New York 11788

Attorney for Respondent:
Commissioner Rogers
Garrett Swenson, Jr. Esq.
76 Bay Road
Brookhaven, NY 11719

The Court in its deliberations has considered the following papers and held a hearing upon this motion for relief:

1. Order to Show Cause, Verified Petition, Affirmation, & Exhibits
2. Order to Show Cause, Verified Petition, Affirmation, Supplemental Affirmation & Exhibits
3. Verified Answers , Verified Return

Petitioner seeks an Order: (1) pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, Declaring Invalid the petitions the Respondent-Candidate as candidates of The Working Families

Party for the Public Office of Suffolk County Legislator for Eighth District for the General Election on the Tenth day of November 2013; and (2) Restraining the Board of Elections from printing and placing the name of said Respondent-Candidates, as such, upon the Official Ballots of such General Election.

Respondent-Candidates seek an Order : (1) Dismissing the above-captioned Election Law proceeding upon the grounds that both the Order to Show Cause and Petition in support thereof are defective on their face as none of the respondent candidates are candidates of the Working Families Party for Suffolk County Legislator, Eighth Legislative District and as such said Petition requests relief that may not be granted, or alternatively, if granted would be a nullity; and (2) Dismissing the above-captioned proceeding as to Michael Miller, upon the grounds that none of the petitioners have standing to challenge the designating petition filed on his behalf for the nomination of the Working Families Party to be voted on at the Primary Election to be held on September 10, 2013.

Respondent Suffolk County Board of Elections Commissioner , files a Verified Return.

Pursuant to Election Law 16-102 a proceeding regarding the designation of a candidate for public office must be instituted in the Supreme Court by an aggrieved candidate or by a person has filed general and specific objections in accord with Election Law 6-154(2).

In the instant matter, the parties stipulated and agreed there was no basis for a line-by-line review of the designating petition. The Petitioner also stipulated that there were no specific objections as filed by Petitioner D'Abramo and that none were attached to the invalidating petition. Consequently, Petitioner D'Abramo, had no standing and it was stipulated she withdrew as a petitioner. Also as to petitioner Charles Vandewater, there were no general or specific objections set forth as part of the invalidating petition and thus Petitioner's attorney stipulated to withdrawing Vandewater as a petitioner.

The remaining Petitioner, Manuel Cordeiro, filed general and specifications of objections and is deemed to be an objector, who has standing. However the general and specification of

objections filed by Cordeiro, made no reference to Respondents Miller, Fellrath or Keppert , thus Petitioner's attorney withdrew any objections as to the designating petition of each of those candidates. Neither the general nor the specifications of objections references any candidate, cover sheet or designating petition regarding the Eighth Legislative District of Suffolk County.

The Court heard argument from Petitioner's , attorney regarding what he characterized were flaws in the assigning of certain identification numbers to the cover sheet filed with the challenged designating petition. The Parties placed on the record a stipulation as to what certain witnesses to the filing of the disputed cover sheet, would have testified to if called. On consent of the parties, the Court also entered into evidence, the Designating and Nominating Petition Guidelines and Requirements of the Board of Elections of Suffolk County. The Parties also stipulated that the Board of Elections did not send any written cure letter to any one regarding the cover sheets at question in this proceeding.

The basis of the Petitioner's objection is that , prior to the filing of petitions, the Working Families Party had requested the assignment of certain Suffolk County Identification Numbers to the cover sheets of their petitions. Nonetheless, at the time the petitions in question were filed, the cover sheets did not contain those pre-assigned identification numbers, but instead other numbers were assigned. Petitioners do not question or allege to the contrary, that the cover sheets contain proper references to the public office, residence, volumes, contact person, a statement that the designating petition had the number or in excess of the number of signatures, or required petition sheet numbers related to each candidate. It was also not alleged that the challenged designating petition with cover sheet was not timely filed.

Respondents' attorney interposed a motion to dismiss on the ground that the invalidating petition addresses only the office of Suffolk County Legislator for the Eighth Legislative District. As such, Respondents' attorney notes that the relief requested is for the Eighth Legislative District only. The parties stipulated that only a portion of the Eighth Legislative District is in the Town of Brookhaven. The Court notes that a review of the designating petition reveals that all the offices challenged by the invalidating petition and the underlying objections are offices to be voted upon wholly in the political subdivision of the Town of Brookhaven and are either a Town public office or a District Court Judge. Moreover, Petitioner Cordiero, verifies the foregoing invalidating petition which relates only to the Eighth Legislative District, as true.

The caption of the proceeding states the relief requested is directed to the Eighth Legislative District only. The body of the invalidating petition does not request invalidation for any other office other than the Eighth Legislative District. Similarly, there is no reference in the body of the invalidating petition to any other office sought to be invalidated. Paragraph 11 of the invalidating petition even states that there are 10 signatures required for the Eighth Legislative District designation but does not give a total for any other public office. The invalidating petition does incorporate by reference the objections of Cordiero and the work sheets related thereto. The invalidating petition is specifically captioned and states it is directed to the Eighth Legislative District as does the prayer for relief. This Court determines that it is that office only, which is the subject of the instant invalidating petition. Allowing the incorporation by reference of specifications

of objections not related to the named office, would open the door to placing any specifications of objections with any invalidating petition and would allow a petitioner, at their whim, to claim an objection is to an office other than that which is really being challenged. To this court that is not what pleadings may be posited for. Moreover, specifications of objections are the condition precedent to a valid invalidating petition and must relate to that invalidating petition, not the other way around. A valid invalidating petition must contain general and specifications of objections that relate to the claims in that invalidating petition. This is simply not the case here.

Thus, since there are no objections or specifications of objections for any candidates for a public office of the Eighth Legislative District, the invalidating petition is hereby dismissed.

In order to reflect a full record of the proceedings, the Court proffers its opinion on the issue of the Petitioner's cover sheet objections. Petitioners' argument as set forth in the adopted specification of objection, is that the numbering assigned to the cover sheet affixed to the challenged petition was not in compliance with the Suffolk County Board of Elections, Designating and Nominating Petition Guidelines and Requirements. The basis of the Petitioner's objection here is that, prior to the filing of the subject petitions, the Working Families Party had requested from the Board of Elections that certain Suffolk County Identification Numbers which would reflect a prefix of "SU", be used to number the cover sheets used to file their petitions. At the time the challenged petitions were filed, the cover sheets did not contain those numbers, and instead were assigned an identification number with prefix of "W". There is no dispute or allegation to the contrary, that the cover sheet contains the proper and sufficient references to: the public office, residence, volumes, required petition sheet numbers, a statement that the designating petition had the number or in excess of the number of signatures, related to each candidate. Nor is there any assertion that the designating petition with cover sheet was not timely filed. The dispute lies in the recitation of the course of events that took place at the time of the filing submission of the designating petition with cover sheet. On this issue, the parties placed on the record, a stipulation as to what certain witnesses who were present at the Board of Elections counter when the petition was filed, would have testified to, if called. It was stipulated that one Board of Elections Republican representative present, would have testified that upon the filing of the subject petition and cover sheet, he informed the filers that there were no Suffolk County identification numbers as had previously been applied for by someone from the Working Families Party, on the cover sheet, and that such identification numbers were needed to be placed on the filing. The Democratic representative would have testified that she was present at the Board of elections counter along with the Republican representative, when the designating petitions were filed, but did not recall such a conversation, and that she also did not believe it was for her to decide whether the Suffolk County Identification numbers were needed. The Court then, on consent of all parties, entered into evidence the Designating and Nominating Petition Guideline & Requirements of the Board of Elections of Suffolk County. The Parties also stipulated that the Board of Elections did not send any cure letter to any one regarding the cover sheet in question in this proceeding.

The Court notes that the designating petition with cover sheet was duly filed and given an Identification Number of W13-14. Pursuant to the Board of Elections rules regarding Identification numbers, when an application is filed pursuant to Rules B(1) and B(3), those rules mandate that such identification numbers appear on the petition volume cover sheet and on the list of any candidate. However, according to Rule B(5) if a petition volume is filed without a pre-assigned number, the Board will affix a number. Moreover, an identification number of W 13-14 was assigned to this designating petition and cover sheet because it was filed without a pre-assigned number. The Court notes that there is no proof in the record that the persons filing the designating petition and those who previously requested the pre-assigned Suffolk numbers were the same persons or representatives of the Working Families Party. The burden to provide such proof rests upon the Petitioner. (See, Boyland v Board of Elections of the City of New York, 104 A.D.2d 463; Dilan v Carulli, 57 A.D.2d 636). In addition, the Court also notes that the specifications of objections relate to Identification number 13-4 not 13-14 which were assigned. Therefore the specifications of objection are in part defective on its face, since there is no designating petition with identification number W 13-4 attached to the moving papers or addressed therein.

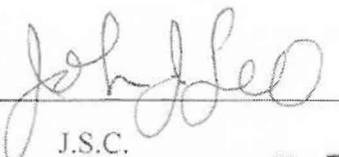
The specifications of objection relied upon by Petitioner posits that no SU identification number was assigned to the cover sheet and that the Board of Elections orally requested the filers, to cure defects in the cover sheet, regarding identification numbers . The record reflects that there was no written notice to cure the challenged cover sheet, as required by the Designating and Nominating Petition Rules of the Suffolk County Board of Elections, (See § 6215.1 of the New York State Board of Elections Rules and Regulations, and § 6-134 of the Election Law). If the subject cover sheet was deficient, there needed to be a written, not oral, notice to cure. The Court finds that in accordance with Suffolk County Board of Elections Rule B(5), the assigned identification numbers on the challenged cover sheet are sufficient. As previously noted, any cure procedures are absent in this matter.

Though this Court does not reach a conclusion that the challenged cover sheet and petition contained deficiencies in their assigned numbering, it is nonetheless noted , that even if this court were to find such deficiencies existed, it would not penalize a candidate set forth in the designating petition, due to the assigning of an alternate set of identification numbers or an error or mistake by election board officials in not sending a notice to cure or orally stating that the submission was defective. (See, Hailey v. Niagara County Board of Elections, 31 Misc. 2d 650; Cellar v. Larkin, 71 Misc. 2d 17, affirmed, 31 NY2d 658.)

This Court additionally finds no danger of confusion or fraud in the case before it.

The proceeding is hereby dismissed for the reasons set forth above.

Dated: August 10, 2013



J.S.C.
HON. JOHN J. LEO