

Coleman v Board of Elections in the City of N.Y.

2023 NY Slip Op 31436(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 153663/2023

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 41

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SANDREA COLEMAN,

Index No. 153663/2023

Petitioner

- against -

DECISION AND ORDER

BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent,

and

HILDA SOLOMON,

Candidate-Respondent,

and

MARY L. JIMPERSON,

Objector-Respondent
-----x

LUCY BILLINGS, J.S.C.:

The purpose of verification requirements in New York Election Law § 16-116 and C.P.L.R. § 3020 is to assure that specified pleadings, such as petitions in election proceedings, are based on personal knowledge. The absence of an attestation upon personal knowledge is a substantial defect that strikes at the heart of the verification requirement. Goodman v. Hayduk, 45 N.Y.2d 804, 806 (1978).

In this proceeding, the verification of the petition attests: "Arthur Z. Schwartz . . . is the attorney for

Petitioner in the within proceeding; he has read the foregoing petition and knows the contents thereof; the same are true to petitioner's own knowledge, and records in his possession" V. Pet. at 5 (emphasis added). Setting aside the confusing final comma in the quoted text, the verification's central flaw is that attorney Schwartz is incompetent to attest what petitioner knows upon her own knowledge. Although attorney Schwartz might be competent to attest to the petition's contents upon his own personal knowledge, he does not do so.

Petitioner suggests that "petitioner's own knowledge" is a typographical error in text intended to state "his own knowledge," referring to attorney Schwartz's own knowledge. While this error may be careless, it is not the product of a slip of the fingers on the keyboard, and care is required to comply with the core requirement of verifications: that a person attests upon that person's own knowledge, not based on another person's knowledge, that the pleading's contents are true. Had petitioner taken the trouble to verify the petition herself, this error likely would not have occurred.

Despite the verification's use of "he" and "his," referring to attorney Schwartz elsewhere, that use does not suggest, let alone unambiguously, that the possessive pronoun "his" is intended to preface "own knowledge." The use of "petitioner's" is not an obvious error that renders the clause meaningless and

is not susceptible of an interpretation as "his."

Petitioner concedes that attorney Schwartz was not verifying the petition because petitioner does not reside in the county where his office is. C.P.L.R. § 3020(d)(3); Page v. Ceresia, 265 A.D.3d 730, 731 (3d Dep't 1999). Nor are the circumstances here akin to a potential defect in the notary's qualifications. In fact, in the authority on which petitioner relies, the court determined that the notary was qualified to verify the petition despite being a nominal adversary of the petitioners, since he had with no interest aligned with them or even at all in the proceeding. Harder v. Kuhn, 153 A.D.3d 1119, 1120 (3d Dep't 2017).

The defect here is akin to an unverified pleading. Frisa v. McCarthy, 298 A.D.2d 457, 457-58 (2d Dep't 2002). Since respondents timely notified petitioner that respondents were treating the defectively verified pleading as a nullity, they are entitled to do so, and the court must do so as well. C.P.L.R. § 3022; DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d 1645, 1645 (4th Dep't 2019). "To find an unverified petition nonetheless acceptable to institute the special proceeding would not serve practical purposes or advance the policy behind section 16-116 of the Election Law." Goodman v. Hayduk, 45 N.Y.2d at 806.

Nor may petitioner cure her defectively verified petition by

amendment. The defective verification is fatal to the petition.

DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d at 1645;

Niebauer v. Board of Elections in the City of N.Y., 76 A.D.3d

660, 660 (2d Dep't 2010); Frisa v. McCarthy, 298 A.D.2d at 458;

Frisa v. O'Grady, 297 A.D.2d 394, 395 (2d Dep't 2002).

Consequently, for the reasons explained above, the court denies the petition and dismisses this proceeding to validate the designating petitions filed by petitioner Sandra Coleman with respondent Board of Elections in the City of New York to be placed on the ballot in the Democratic Primary Election June 27, 2023, as a candidate for District Leader for Part A of the 68th Assembly District.

DATED: May 1, 2023

Lucy Billings

LUCY BILLINGS, J.S.C.

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J.S.C.