

**Matter of Schwartz v Board of Elections in the City of
N.Y.**

2023 NY Slip Op 31462(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 153650/2023

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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In the Matter of the Application of

ARTHUR Z. SCHWARTZ,

Index No. 153650/2023

Petitioner

- against -

DECISION AND ORDER

BOARD OF ELECTIONS IN THE CITY OF NEW
YORK,

Respondent

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LUCY BILLINGS, J.S.C.:

I. UNDISPUTED FACTS

Between April 4 and 10, 2023, designating petitions were filed with respondent Board of Elections in the City of New York to place petitioner on the ballot in the Democratic Primary Election June 27, 2023, as a male candidate for District Leader for Part A of the 66th Assembly District. A cover sheet accompanied his six volumes of designating petitions, listing the six volume numbers: NY2305448, NY2305449, NY2305450, NY2305451, NY2305718, and NY2305723. On the line for "Total Number of Volumes in Petition," however, the cover sheet stated "1" rather than "6." V. Pet. Ex. B; V. Answer Ex. 2.

In an noncompliance notice dated April 11, 2023, the Board notified petitioner that the "Number of volumes claimed does not agree with claimed identification numbers" on his cover sheet and

gave him an opportunity to file an amended cover sheet. V. Pet. Ex. C; V. Answer Ex. 3. The notice advised that: "This defect may be cured within three (3) business days after the date of this letter by filing an amended Cover Sheet Failure to file the amended Cover sheet within the three (3) day period shall be a fatal defect." V. Pet. Ex. C; V. Answer Ex. 3.

On April 12, 2023, petitioner filed an amended cover sheet. The amended cover sheet again listed the six volume numbers: NY2305448, NY2305449, NY2305450, NY2305451, NY2305718, and NY2305723, but on the line for "Total Number of Volumes in Petition" stated "5" rather than "6." V. Pet. Ex. D, at 1; V. Answer Ex. 4, at 1. On April 18, 2023, the Board notified petitioner that he will not appear on the ballot for the Primary Election June 27, 2023, because this amended cover sheet "stated the 'Total Number of Volumes In Petition' as '5' but listed six Volume Identification Numbers." V. Pet. Ex. F; V. Answer Ex. 5.

II. APPLICABLE LAW

9 N.Y.C.R.R. § 6251.1 requires that: "All petitions containing 10 or more sheets shall be accompanied by a cover sheet." The cover sheet must include "identification of the volumes comprising the petition." 9 N.Y.C.R.R. § 6251.2(a)(2). Respondent does not dispute that petitioner met this mandatory requirement applicable to all cover sheets. 9 N.Y.C.R.R. § 6251.2(a)(2) also allows that: "When multiple volumes are filed

. . . , a single cover sheet may be filed with volumes identified by listing the identification number of each volume . . . and the total number of volumes in the petition." While this provision uses the precatory term "may," it refers to the option of filing a single cover sheet for multiple volumes. Once this option is pursued, the regulation requires the cover sheet to list the total number of volumes as well as the number of each volume. Petitioner's amended cover sheet did list a total number of volumes, although the number did not conform to the six volumes listed by their identification numbers.

The requirements for designating petitions under the New York Election Law "shall be liberally construed, not inconsistent with substantial compliance thereto and the prevention of fraud." N.Y. Elec. Law § 6-134(10). In rejecting petitioner's amended cover sheet and denying him a place on the Primary Election ballot, the Board admits that it made no determination whether petitioner's amended cover sheet substantially complied with 9 N.Y.C.R.R. § 6251.2(a)(2), but determined only that he did not meet the requirement to include the number of volumes on which he relied. V. Answer ¶ 56. In fact petitioner did include the number of volumes on which he relied; it simply did not match the number of volumes listed by their identification numbers. Given petitioner's un rebutted sworn attestation that "[a]ny one of the . . . volumes of the designating petition contain[s] many times

the 500 valid signatures required for designation pursuant to Election Law § 6-136(2)(i)," then any five of the volumes listed surely did so. V. Pet. ¶ 10. See Flacks v. Board of Elections in the City of N.Y., 109 A.D.3d 423, 423 (1st Dep't 2013); Powell v. Marchi, 153 A.D.2d 540, 541-42 (1st Dep't 1989). Therefore the basis for concluding that his listing of "5" total number of volumes failed to comply with 9 N.Y.C.R.R. § 6251.2(a)(2)'s express terms is unclear.

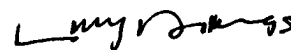
Even if the Board's conclusion of technical noncompliance is rational, however, the court's role is to determine substantial compliance. Election Law § 6-134(2) further requires that a regulation such as 9 N.Y.C.R.R. § 6251.2(a)(2) "shall be no more restrictive than is reasonably necessary for the processing of . . . petitions by the board of elections." A failure to match the total number of volumes of petitions as specified on a cover sheet with the number of volumes listed by their identification numbers does not impede the Board in its duties. The Board claims no possible fraud upon the Board or potential voters, other impermissible purpose, or even confusion in determining which volumes of designating petitions petitioner relied on, when the six volume identification numbers were listed, or in determining whether he filed the number of signatures required for designation as a District Leader. N.Y. Elec. Law § 6-136(2)(i); Rosen v. McNab, 25 N.Y.2d 798, 799 (1969); Flacks v.

Board of Elections in the City of N.Y., 109 A.D.3d at 423; Krance v. Chiarmonite, 87 A.D.3d 669, 669 (2d Dep't 2011); Magelaner v. Park, 32 A.D.3d 487, 488 (2d Dep't 2006). See Staber v. Fuller, 65 N.Y.2d 529, 534 (1985). Therefore, even if petitioner did not technically comply with 9 N.Y.C.R.R. § 6251.2(a)(2), he substantially complied. The amended cover sheet's inaccurate listing of the number of volumes is an insubstantial irregularity that does not amount to grounds for invalidating his petitions and overriding the electorate's right to exercise their franchise fully. Flacks v. Board of Elections in the City of N.Y., 109 A.D.3d at 424; Powell v. Marchi, 153 A.D.2d at 541-42; Krance v. Chiarmonite, 87 A.D.3d at 669; Magelaner v. Park, 32 A.D.3d at 488. See Rosen v. McNab, 25 N.Y.2d at 799.

III. CONCLUSION

Consequently, for the reasons explained above, the court grants the petition and validates Arthur Z. Schwartz's designating petitions filed 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 male candidate for District Leader for Part A of the 66th Assembly District.

DATED: May 1, 2023



LUCY BILLINGS, J.S.C.

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