

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D13908
C/mv

_____AD3d_____

Argued - February 2, 2007

STEPHEN G. CRANE, J.P.
GABRIEL M. KRAUSMAN
STEVEN W. FISHER
THOMAS A. DICKERSON, JJ.

2007-01099

DECISION & ORDER

In the Matter of James L. Kapsis, et al., appellants,
v Neil W. Kelleher, et al., respondents, State Committee
of the New York State Independence Party, et al.,
respondents-respondents.

(Index No. 1364/07)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate certificates of nomination and authorization designating Maureen O’Connell as the candidate of the Independence Party for the public office of State Senator for the 7th Senatorial District, in a special election to be held on February 6, 2007, the petitioners appeal from a final order of the Supreme Court, Nassau County (Brandveen, J.), dated January 29, 2007, which granted the motion of, among others, the State Committee of the New York State Independence Party and the Nassau County Committee of the New York State Independence Party to dismiss the petition, and dismissed the proceeding.

ORDERED that the final order is affirmed, without costs or disbursements.

The order to show cause, which was drafted by the petitioners’ attorney, and was returnable at 9:30 A.M. on January 26, 2007, in effect, required the petitioners to ensure that the order to show cause and supporting papers were received by the respondents (other than the Board of Elections) “at or before 11:59 P.M.” on January 25, 2007. Several of the respondents did not receive the papers by the prescribed time. Therefore, the petitioners failed to comply with the order to show cause (*see Matter of McGreevey v Simon*, 220 AD2d 713; *Matter of Bell v State Univ. of N.Y. at Stony Brook*, 185 AD2d 925).

February 5, 2007

Page 1.

MATTER OF KAPSIS v KELLEHER

In light of our determination, we need not reach the petitioners' remaining contentions.

CRANE, J.P., KRAUSMAN, FISHER and DICKERSON, JJ., concur.

ENTER:

A handwritten signature in cursive script that reads "James Edward Pelzer".

James Edward Pelzer
Clerk of the Court