

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

D18669  
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Argued - March 13, 2008

ROBERT A. LIFSON, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
CHERYL E. CHAMBERS, JJ.

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2008-02127

DECISION & ORDER

In the Matter of Frank Occhipinti, petitioner-respondent, v Westchester County Board of Elections, respondent, Mario DiFelice, et al., appellants.

(Index No. 2798/08)

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In a proceeding pursuant to Election Law article 16 to (1) invalidate a certificate nominating Mario DiFelice, Sandra Morales, and Andrew Murray as candidates of the Independence Party for the public office of Village Trustee of the Village of Sleepy Hollow in an election to be held on March 18, 2008, (2) enjoin the Westchester County Board of Elections from placing and printing the names of Mario DiFelice, Sandra Morales, and Andrew Murray on the ballot as candidates of the Independence Party for the public office of Village Trustee of the Village of Sleepy Hollow in an election to be held on March 18, 2008, and (3) enjoin the Westchester County Board of Elections from printing, issuing, or distributing for use during the election to be held on March 18, 2008, any official ballots upon which the names of Mario DiFelice, Sandra Morales, and Andrew Murray appear as candidates of the Independence Party for the public office of Village Trustee of the Village of Sleepy Hollow, Mario DiFelice, Sandra Morales, Andrew Murray, and Kathleen Doorley appeal from an order of the Supreme Court, Westchester County (Lefkowitz, J.), entered February 28, 2008, which denied their motion to dismiss the petition pursuant to CPLR 3211(a)(3) on the ground that the petitioner lacked standing to commence this proceeding.

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

The petitioner, who is the Chairperson of the Democratic Party in the Village of Sleepy Hollow, filed specific objections to a certificate of nomination dated January 27, 2008, signed

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by the respondent Kathleen Doorley, and purporting to nominate Mario DiFelice, Sandra Morales, and Andrew Murray as candidates of the Independence Party for the public office of Village Trustee of the Village of Sleepy Hollow. The petitioner thereafter commenced this proceeding to invalidate the nominations. Doorley, DiFelice, Morales, and Murray (hereinafter the appellants) moved to dismiss the petition pursuant to CPLR 3211(a)(3) on the ground that the petitioner lacked standing to commence this proceeding challenging the certificate of nomination. The Supreme Court denied the appellants' motion. We affirm.

As an objecting nonparty voter, the petitioner had standing to commence this proceeding to challenge an alleged failure to comply with the statutory requirements governing the nomination of candidates by party caucus, set forth in Election Law § 15-108(2)(a), (c) (*see* Election Law § 15-108[2][a], [c], [d]; § 16-102[1]; *Scoville v Cicoria*, 65 NY2d 972, 974; *Matter of McHoul v Sellick*, 153 AD2d 721; *cf. Matter of Powers v New York State Bd. of Elections*, 122 AD2d 970, 972; *Matter of Martin v Tutunjian*, 89 AD2d 1034).

Contrary to the appellants' contention, because this proceeding concerns a caucus, rather than a primary election, the petitioner was not deprived of standing based upon his status as the Chairperson of the Democratic Party in the Village of Sleepy Hollow, under Election Law § 16-102(1) (*cf. Matter of Levine v Turco*, 43 AD3d 618, 619; *Matter of D'Alvia v DiGiacomo*, 175 AD2d 891, 892; *Matter of Davis v Dutchess County Bd. of Elections*, 153 AD2d 716, 717).

In light of the foregoing, we need not reach the parties' remaining contentions.

LIFSON, J.P., FLORIO, ENG and CHAMBERS, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court