

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

D19613
C/prt

_____AD3d_____

Argued - May 12, 2008

HOWARD MILLER, J.P.
MARK C. DILLON
RUTH C. BALKIN
CHERYL E. CHAMBERS, JJ.

2005-10965

DECISION & ORDER

In the Matter of Edgar Romney, et al., appellants,
et al., petitioners, v Jay Mazur, et al.,
respondents-respondents, et al., respondents.

(Index No. 27548/04)

Kennedy, Jennik & Murray, P.C., New York, N.Y. (Thomas M. Kennedy and Christopher Gant of counsel), for appellants.

Perlman and Perlman, LLP, New York, N.Y. (Seth Perlman and Karen I. Chang of counsel), for respondent-respondent Irwin Solomon and respondent Theodore Bernstein, and Butler, Fitzgerald, Fiveson & McCarthy, P.C., New York, N.Y. (David J. McCarthy of counsel), for respondent-respondent Jay Mazur (one brief filed; Duval & Stachenfeld, LLP, New York, N.Y. [David G. Samuels] of counsel, for respondents-respondents Irwin Solomon and Jay Mazur and respondent Theodore Bernstein) (one brief filed).

Leahey & Johnson, P.C., New York, N.Y. (Peter James Johnson, Jr., James P. Tenney, and Joanne Filiberti of counsel), for respondents-respondents David Dinkins and Roy Godson.

In a proceeding pursuant to CPLR article 78, inter alia, to review three related determinations of the respondents-respondents, all dated November 9, 2004, removing the petitioners Edgar Romney, William Lee, May Chen, Susan Cowell, Christine Kerber, David Melman, Richard Rumelt, Robert Jordan, and Warren Pepicelli from their respective positions at the nonparty 21st Century ILGWU Heritage Fund, those petitioners appeal, as limited by their brief, from so much of an order and judgment (one paper) of the Supreme Court, Queens County (Hart, J.), dated October

June 10, 2008

Page 1.

MATTER OF ROMNEY v MAZUR

25, 2005, as granted those branches of the respondents-respondents' respective motions which were to dismiss the petition insofar as asserted by them and dismissed the petition insofar as asserted by them.

ORDERED that the order and judgment is affirmed insofar as appealed from, with one bill of costs to the respondents-respondents appearing separately and filing separate briefs.

Pursuant to the certificate of incorporation and bylaws of the 21st Century ILGWU Heritage Fund (hereinafter the Fund), directors, officers, and members of the Fund can be removed at any time with or without cause by a majority of the members and without a meeting with the written consent of the necessary number of members. Here, the appellants were properly removed from their respective positions as directors, officers, and/or members of the Fund pursuant to those provisions (*see* Not-For-Profit Corporation Law §§ 601[e], 706[a], [b], 714[a]). In addition, we agree with the Supreme Court that the appellants lacked standing to commence this CPLR article 78 proceeding on behalf of the Fund against the respondents, as the appellants were removed from their respective positions in November 2004, and thus did not represent any interest in the Fund at the time the proceeding was commenced in December 2004 (*see* Not-For-Profit Corporation Law § 623[a], [b]; 706[d]; 714[c]; 720[b]; *Bernbach v Bonnie Briar Country Club*, 144 AD2d 610).

The appellants' remaining contentions are without merit.

MILLER, J.P., DILLON, BALKIN and CHAMBERS, JJ., concur.

ENTER:


James Edward Pelzer
Clerk of the Court