

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

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_____AD3d_____

Argued - August 19, 2008

PETER B. SKELOS, J.P.
ROBERT A. LIFSON
ANITA R. FLORIO
JOSEPH COVELLO
RUTH C. BALKIN, JJ.

2008-07427

DECISION & ORDER

In the Matter of Donovan J. Richards, Jr.,
appellant, v Board of Elections of the City
of New York, respondent, Eric L. DeBerry,
respondent-respondent.

(Index No. 18979/08)

In a proceeding pursuant to Election Law § 16-102, inter alia, to validate a petition designating Donovan J. Richards, Jr., as a candidate in a primary election to be held on September 9, 2008, for the nomination of the Democratic Party as its candidate for the public office of Member of the Assembly, 31st Assembly District, the petitioner appeals from a final order of the Supreme Court, Queens County (Thomas, J.), entered August 8, 2008, which, upon granting the oral motion of Eric L. DeBerry to dismiss the petition for failure to establish a prima facie case, dismissed the proceeding.

ORDERED that the final order is reversed, on the law, without costs or disbursements, the oral motion to dismiss the petition is denied, the proceeding is reinstated, and the matter is remitted to the Supreme Court, Queens County, for a hearing forthwith on all of the issues raised in this proceeding, and a determination thereafter.

Under the circumstances of this case, the Supreme Court erred in failing to consider any of the evidence submitted to it or to address any of the issues raised in this proceeding before making its determination. Therefore, the matter must be remitted to the Supreme Court, Queens

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County, to consider the evidence and issues, to make appropriate findings of fact, and for a determination thereafter (*cf. Hanney v Commissioners of Elections of Westchester County*, 59 AD2d 707).

SKELOS, J.P., LIFSON, FLORIO, COVELLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court