

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

D28413
O/kmg

_____AD3d_____

Argued - September 10, 2010

WILLIAM F. MASTRO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
SANDRA L. SGROI, JJ.

2010-08553

DECISION & ORDER

In the Matter of Everly Brown, etc., appellant, v
Malcolm A. Smith, respondent-respondent, et al.,
respondent.

(Index No. 19172/10)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Malcolm A. Smith as a candidate in a primary election to be held on September 14, 2010, for the nominations of the Democratic Party, the Independence Party, and the Working Families Party, respectively, as their candidate for the public office of State Senator for the 14th Senatorial District, Everly Brown appeals from a final order of the Supreme Court, Queens County (Flug, J.), dated August 10, 2010, which granted his oral application, in effect, to withdraw the petition to invalidate the designating petition.

ORDERED that the appeal is dismissed, without costs or disbursements.

Only an aggrieved party or a person substituted for him or her may appeal from an appealable judgment or order (*see* CPLR 5511; *Swazey v Pathmark Stores, Inc.*, 74 AD3d 786, 787). “Where a party obtains the relief [he or she] seeks from the Supreme Court, [that party] is not aggrieved” (*AMS Prods., LLC v Signorile*, 66 AD3d 929; *see DiMare v O’Rourke*, 35 AD3d 346). Here, the final order appealed from granted the appellant’s oral application, in effect, to withdraw the petition to invalidate the petition designating Malcolm A. Smith as a candidate in the primary election. Therefore, the appellant is not aggrieved by the final order, and the appeal must be dismissed (*see AMS Prods., LLC v Signorile*, 66 AD3d at 929).

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We note that the appellant failed to properly commence a separate proceeding to validate his designating petition by not purchasing a second index number (*see Matter of White v Bilal*, 21 AD3d 573, 574; *Matter of Mennella v Deputy Chief Admin. Judge, N.Y.C. City Cts.*, 302 AD2d 530, 530-531; *Matter of Pal v Aponte*, 237 AD2d 443, 444).

MASTRO, J.P., DICKERSON, CHAMBERS and SGROI, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan
Clerk of the Court