

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

D28336  
C/prt

\_\_\_\_\_AD3d\_\_\_\_\_

Argued - August 17, 2010

REINALDO E. RIVERA, J.P.  
FRED T. SANTUCCI  
DANIEL D. ANGIOLILLO  
RANDALL T. ENG  
L. PRISCILLA HALL, JJ.

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2010-07724

DECISION & ORDER

In the Matter of Ely V. Chaimowitz, et al.,  
petitioners-respondents, v Regina M. Calcaterra,  
etc., appellant, et al., respondents.

(Index No. 25663/10)

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In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate petitions designating Regina M. Calcaterra as a candidate in a primary election to be held on September 14, 2010, for the nominations of the Democratic Party and the Working Families Party, respectively, for the public office of State Senator, 1st Senatorial District, Regina M. Calcaterra appeals from a final order of the Supreme Court, Suffolk County (Bivona, J.), dated August 9, 2010, which, after a hearing, in effect, granted the petition and invalidated the designating petitions.

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

Contrary to the appellant's contention, under the circumstances of this case, the Supreme Court correctly determined that the appellant was properly served.

The petitioners established, by clear and convincing evidence, that the appellant failed to meet the constitutional and statutory residency requirements (*see* NY Const, art III, § 7; Election Law § 6-122; *Matter of Willis v Suffolk County Bd. of Elections*, 54 AD3d 436, 437; *Matter of Stavisky v Koo*, 54 AD3d 432, 433; *Matter of Fernandez v Monegro*, 10 AD3d 429; *Matter of Camardi v Sinawski*, 297 AD2d 357, 358). "As used in the Election Law, the term 'residence' is synonymous with 'domicile'" (*Matter of Stavisky v Koo*, 54 AD3d at 434, quoting *Markowitz v Gumbs*, 122 AD2d 906, 907 [internal quotation marks omitted]; *see Matter of Fernandez v Monegro*,

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10 AD3d 429). “The crucial determination whether a particular residence complies with the requirements of the Election Law is that the individual must manifest an intent [to reside there], coupled with physical presence ‘without any aura of sham’” (*People v O’Hara*, 96 NY2d 378, 385, quoting *Matter of Gallagher v Dinkins*, 41 AD2d 946, 947; see Election Law § 1-104[22]; *Matter of Willis v Suffolk County Bd. of Elections*, 54 AD3d at 437; *Matter of Stavisky v Koo*, 54 AD3d at 434; *Matter of Fernandez v Monegro*, 10 AD3d 429).

“The question of residence is a factual one, based on a variety of factors and circumstances” (*Matter of Diamondstone v Connor*, 32 AD3d 482, 483; see *Matter of Fernandez v Monegro*, 10 AD3d at 430). Here, the evidence adduced at the hearing supported the Supreme Court’s determination that the appellant failed to meet the constitutional and statutory residency requirements (see *Matter of Willis v Suffolk County Bd. of Elections*, 54 AD3d at 437; *Matter of Ramos v Gomez*, 196 AD2d 620, 621; *Matter of Carey v Foster*, 164 AD2d 930; *Matter of Thompson v Hayduk*, 45 AD2d 955, 956, *affd* 34 NY2d 980). Accordingly, the Supreme Court properly, in effect, granted the petition and invalidated the designating petitions.

RIVERA, J.P., SANTUCCI, ANGIOLILLO, ENG and HALL, JJ., concur.

ENTER:



James Edward Pelzer  
Clerk of the Court