

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

D32215
H/kmb

_____AD3d_____

Argued - August 16, 2011

WILLIAM F. MASTRO, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
SHERI S. ROMAN
ROBERT J. MILLER, JJ.

2011-07009

DECISION & ORDER

In the Matter of Vilair Fonvil, appellant, v Denet
Alexandre, respondent-respondent, et al., respondents.

(Index No. 5231/11)

In a proceeding pursuant to Election Law § 16-102 to invalidate a petition designating Denet Alexandre as a candidate in a primary election to be held on September 13, 2011, for the nomination of the Democratic Party as its candidate for the public office of Member of the Rockland County Legislature for the 8th Legislative District, the petitioner appeals from a final order of the Supreme Court, Rockland County (Garvey, J.), entered August 4, 2011, which, after a hearing, and upon the denial of his application for an adjournment, in effect, denied the petition and dismissed the proceeding.

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

The petitioner contends that the Supreme Court should have granted his application made during the hearing for an adjournment to secure the attendance of certain witnesses. The determination of that application was a matter resting within the Supreme Court's sound discretion (*see Farrell v Gelwan*, 30 AD3d 563; *Herbert v Edwards Super Food Stores-Finast Supermarkets*, 253 AD2d 789; *Klombers v Lefkowitz*, 131 AD2d 815, 816; *Michaels v Dalimonte*, 121 AD2d 370). Considering, among other things, the petitioner's lack of due diligence in securing the attendance of those witnesses (*see Telford v Laro Maintenance Corp.*, 288 AD2d 302, 303; *Herbert v Edwards Super Food Stores-Finast Supermarkets*, 253 AD2d at 789), and that proceedings pursuant to the Election Law "require immediate action" because they are "subject to severe time constraints" (*Matter of Master v Pohanka*, 44 AD3d 1050, 1052; *see Matter of Tenneriello v Board of Elections*

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in City of N.Y., 104 AD2d 467, 468, *aff'd* 63 NY2d 700), the Supreme Court providently exercised its discretion in denying the petitioner's application for an adjournment.

MASTRO, J.P., LEVENTHAL, CHAMBERS, ROMAN and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court