

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

D32737
W/prt

_____AD3d_____

Argued - September 27, 2011

ANITA R. FLORIO, J.P.
JOHN M. LEVENTHAL
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2010-10452

DECISION & ORDER

In the Matter of Edward M. Walsh, Jr., etc., appellant,
v Joseph Verdi, etc., et al., respondents.

(Index No. 700034/10)

Leventhal and Sliney, LLP, Roslyn, N.Y. (Steven G. Leventhal of counsel), for appellant.

Martin E. Connor, Brooklyn, N.Y. (Kathy B. Huang of counsel), for respondents Louis A. Civello, Robert G. Murphy, John P. Hnat, Peter Conte, Louis K. Molinari, and Louis Tutone.

In a proceeding pursuant to Election Law § 16-110(2) to cancel the enrollments of certain individuals in the Conservative Party, the petitioner appeals from a final order of the Supreme Court, Kings County (R. Miller, J.), dated September 17, 2010, which, after a hearing, dismissed the petition and the proceeding.

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

Where, as here, the chairperson of the county committee of a political party, or a subcommittee appointed by the chairperson, conducts hearings, pursuant to the procedures set forth in Election Law § 16-110(2), to determine whether certain members of that party are not in sympathy with that party's principles, those members must receive notice of such hearings, in person or by mail, at least two days before the hearing (*see* Election Law § 16-110[2]).

Here, the petitioner did not offer sufficient proof that the notices were duly addressed

November 1, 2011

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and mailed and, therefore, the petitioner failed to show that the members received the required notice (*cf. Nassau Ins. Co. v Murray*, 46 NY2d 828, 829; *New York & Presbyt. Hosp. v Allstate Ins. Co.*, 29 AD3d 547, 547-548; *Residential Holding Corp. v Scottsdale Ins. Co.*, 286 AD2d 679, 680; *Matter of Rodriguez v Wing*, 251 AD2d 335, 336; *Clark v Columbian Mut. Life Ins. Co.*, 221 AD2d 227; *City of Yonkers v Clark & Son*, 159 AD2d 535). Accordingly, the Supreme Court properly dismissed the petition and the proceeding.

In light of our determination, we need not reach the parties' remaining contentions.

FLORIO, J.P., LEVENTHAL, CHAMBERS and LOTT, JJ., concur.

ENTER:


Matthew G. Kiernan

Clerk of the Court