

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

D34770  
W/ct

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Submitted - March 20, 2012

MARK C. DILLON, J.P.  
THOMAS A. DICKERSON  
L. PRISCILLA HALL  
LEONARD B. AUSTIN, JJ.

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2011-01092

DECISION & ORDER

In the Matter of James Borkowski, petitioner-respondent,  
v Robert Bennett, et al., respondents, Andrew DeStefano,  
appellant; Pat Bonnano, nonparty-respondent.

(Index No. 2702/09)

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In a proceeding, in effect, pursuant to Election Law § 16-102 to invalidate a petition designating Andrew DeStefano as a candidate in a primary election that was held on September 15, 2009, for the nomination of the Republican Party as its candidate for the public office of Putnam County Sheriff on the ground, inter alia, that the candidate did not meet the statutory residency requirements, and pursuant to CPLR article 78 in the nature of mandamus to compel the Putnam County Board of Elections to remove the name of Andrew DeStefano from the ballot, Andrew DeStefano appeals, as limited by his brief, from so much of an order of the Supreme Court, Putnam County (Nicolai, J.), dated January 24, 2011, as denied his motion pursuant to 22 NYCRR 130-1.1(c) to impose sanctions upon the petitioner and nonparty Pat Bonnano.

ORDERED that the order is affirmed insofar as appealed from, with one bill of costs.

The appellant's motion for the imposition of sanctions was properly denied. In light of, among other things, the appellant's signed and notarized letter dated September 9, 2009, to the Putnam County Board of Elections, in which he stated that he was relocating from Putnam County to New York County and that he was changing his voter registration accordingly, and in which he requested that his name be removed from the relevant ballot, the appellant failed to show that the litigation conduct complained of was frivolous within the meaning of 22 NYCRR 130-1.1.

DILLON, J.P., DICKERSON, HALL and AUSTIN, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court

May 1, 2012

MATTER OF BORKOWSKI v BENNETT