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

D35921
C/kmb

_____AD3d_____ Argued - August 14, 2012

MARK C. DILLON, J.P.
ANITA R. FLORIO
RANDALL T. ENG
JEFFREY A. COHEN, JJ.

2012-07281 DECISION & ORDER

In the Matter of Naushad Shahzad, et al., appellants,
v Michael A. Montesano, respondent-respondent,
et al., respondents.

(Index No. 9368/12)

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Michael A. Montesano as a candidate in a primary election to be held on September 13, 2012, for the nomination of the Conservative Party as its candidate for the public office of Member of the Assembly, 15th Assembly District, Naushad Shahzad and Mario Ferone appeal from a final order of the Supreme Court, Nassau County (Murphy, J.), dated August 2, 2012, which, after a hearing, denied the petition and dismissed the proceeding.

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

Pursuant to Election Law § 6-132(1), a person seeking a nomination as a candidate must provide, inter alia, his or her place of residence on the designating petition. Here, the petitioners contend that Michael A. Montesano's designating petition should be invalidated because it listed the incorrect address for his residence. Although it is undisputed by the parties that the designating petition contained the wrong address, a petition should not be invalidated where "there is no proof of any intention on the part of the candidate or of those who have solicited signatures on his [or her] behalf to mislead or confuse, and no evidence that the inaccuracy did or would lead or tend to lead to misidentification or confusion on the part of those invited to sign the petition" (*Matter of Ferris v Sadowski,* 45 NY2d 815, 817; *see Matter of Pagones v Irizarry,* 87 AD3d 648, 649; *Matter of Maloney v Ulster County Bd. of Elections,* 21 AD3d 692, 693). Here, there was no evidence in the record of any intention to mislead or confuse. Indeed, the evidence showed, and the

petitioners concede, that the listing of the inaccurate address was inadvertent. Moreover, there was no showing that the inaccurate address did or would lead or tend to lead to misidentification or confusion, as Montesano was the incumbent and there was no other Michael A. Montesano registered to vote in Nassau County. Therefore, the Supreme Court properly denied the petition and dismissed the proceeding.

DILLON, J.P., FLORIO, ENG and COHEN, JJ., concur.

ENTER:

Aprilanne Agostino
Clerk of the Court