

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CAE 10-01687

PRESENT: MARTOCHE, J.P., PERADOTTO, LINDLEY, PINE, AND GORSKI, JJ.

IN THE MATTER OF CRAIG M. SCHULTZ,
PETITIONER-RESPONDENT,

V

MEMORANDUM AND ORDER

NIAGARA COUNTY BOARD OF ELECTIONS,
RESPONDENT-APPELLANT.

CLAUDE A. JOERG, COUNTY ATTORNEY, LOCKPORT (GARY LISOWSKI OF COUNSEL),
FOR RESPONDENT-APPELLANT.

DAVID W. POLAK ATTORNEY AT LAW, P.C., WEST SENECA (DAVID W. POLAK OF
COUNSEL), FOR PETITIONER-RESPONDENT.

Appeal from an order of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered August 13, 2010 in a proceeding pursuant to the Election Law. The order, inter alia, granted the petition and validated the designating petition of petitioner for the office of Republican Committeeman for the First Election District in the Town of Wheatfield.

It is hereby ORDERED that the order so appealed from is unanimously affirmed without costs.

Memorandum: Supreme Court properly granted the petition seeking validation of petitioner's designating petition for the office of Republican Committeeman for the First Election District in the Town of Wheatfield. We reject respondent's contention that the validation proceeding was not timely commenced pursuant to Election Law § 16-102 (2). That statute provides that "[a] proceeding with respect to a [designating] petition shall be [commenced] within [14] days after the last day to file the petition[] or within [3] business days after the . . . board with . . . which such petition was filed[] makes a determination of invalidity with respect [thereto], whichever is later" Nevertheless, " 'an aggrieved party need not commence judicial proceedings prior to receiving written notice of the [b]oard's ruling' . . . Thus, the three-day time period [does] not begin to run until [the] petitioner receive[s] the notice of [the] determination by mail" (*Matter of Richardson v Britt*, 242 AD2d 857, 858, *lv denied* 90 NY2d 805). Here, petitioner received notice of respondent's determination invalidating the designating petition on

August 2, 2010, and the proceeding therefore was timely commenced on August 5, 2010.

Entered: August 20, 2010

Patricia L. Morgan
Clerk of the Court