

Matter of Sasson v Trikas

2009 NY Slip Op 31926(U)

August 17, 2009

Supreme Court, Queens County

Docket Number: 20318/09

Judge: Patricia P. Satterfield

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Short Form Judgment

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE PATRICIA P. SATTERFIELD Election Matters, Part F
Justice

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In the Matter of the Application of
ISAAC SASSON, aggrieved candidate and objector

Index No: 20318/09
Petition Date: 8/11/09
Petition Cal. No: 6

Petitioner-Candidate,

- and -

JAMES TRIKAS, Objector

-against-

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent-Board

- and -

CONSTANTINE E. KAVADAS,

Respondent-Candidate,

for an order pursuant to the Election Law declaring invalid the petition purporting to designate the aforesaid respondent as candidate for the public office of Member of the City Council from the 20th Council District, County of Queens, City and State of New York, in the Democratic Primary to be held on September 15, 2009, and enjoining the Respondent Board from placing the name of said respondent-candidate upon the primary ballot to be used in said primary election.

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The following papers numbered 1 to 5 read on this special proceeding by petitioner Isaac Sasson for an order and judgment declaring that the petition of candidate Constantine Kavadas is invalid and enjoining the Board of Elections from placing him on the September 15, 2009 Democratic Primary Ballot.

	PAPERS NUMBERED
Order to Show Cause-Petition-Exhibits.....	1 - 4
Transcript of Trial Testimony, Exhibits and Arguments.....	5

Upon the foregoing papers, it is hereby ordered that the petition is disposed of as follows:

This is a special proceeding testing the validity of designating petition involving Constantine E. Kavadas (“respondent Kavadas”), a candidate for the New York City Council, 20th Council District, City of New York. Petitioner Isaac Sasson (“petitioner”), a candidate for the same councilmanic seat, and James Trikas, objector, seek an order, inter alia, invalidating designating petitions filed with the Board of Elections in the City of New York (“respondent Board”) on behalf of respondent Kavadas and enjoining respondent Board from placing him on the September 15, 2009 Democratic Primary Ballot. The Order to Show Cause and petition seek to invalidate the designating petition of respondent Kavadas on the ground that respondent Board may have made sufficient errors in its original determination by failing to find additional signatures which should be ruled invalid; 900 valid signatures are required to meet threshold to be place on the ballot for the councilmanic seat. Petitioner also alleged that the designating petitions are permeated with fraud both of the part of respondent Kavadas and another subscribing witness. The matter was set down for a hearing on the petition to dismiss, which was held August 11, 12 and 13, 2009.

Respondent Kavadas’ Motion to Dismiss the Petition

At the beginning of the hearing, respondent Kavadas moved for an order dismissing the petition on several grounds. First, he contends that this Court lacks jurisdiction because the Order to Show Cause that was served upon him was not conformed properly, inasmuch as it did not include the insertion of “July 30, 2009,” as the service deadline for the provision which allowed for service by overnight mailing. The second basis for dismissal is the contention that the fraud claims were not pled with the requisite specificity. The third, and last ground upon which respondent Kavadas seeks dismissal is based on the contention that he was not given adequate notice of the additional objections. This Court considered argument on the record with regard to the oral application of respondent Kavadas, decision thereon was reserved, and subsequent thereto, the parties were granted leave to proffer written submissions in support of their respective positions. As a result, petitioner submitted a Memorandum of Law and respondent Kavadas proffered Respondent Outline of Cases, deemed Court Exhibits “2” and “3,” respectively, setting forth their arguments in support of their applications, both oral and written, pending before this Court.

With regard to the lack of proper conformity issue, the Order to Show Cause provided several alternative methods of service, two of which were employed by petitioner, to wit, the mailing of a copy to respondent Kavadas’ residence, and affixing a copy to the outer door of his residence. As that service was effective to obtain personal jurisdiction over respondent Kavadas, petitioner’s failure to properly conform the copy of the Order to Show Cause by inserting the date for which service by overnight delivery was to be effected, neither is fatal to this application nor divests this Court of

personal or subject matter jurisdiction, as argued by respondent Kavadas.

As to the contention that the petition lacks the requisite specificity, it is beyond cavil that a claim of fraud must be pled with specificity. See, Robinson v. Edwards, 54 A.D.3d 682 (2nd Dept. 2008); Hennessey v. DiCarlo, 21 A.D.3d 505, 506-507 (2nd Dept.2005); Waugh v. Nowicki, 10 A.D.3d 437 (2nd Dept. 2004); Oberle v. Caracappa, 133 A.D.2d 202 (2nd Dept. 1987). The specificity requirement, however, may be met by “reference in [the] pleading to the objections and specifications of objections filed with respondent Board of Elections, coupled with the general statements in the petition of the types of improprieties on which petitioner intended to base [his] challenge.” Oberle v. Caracappa, supra. 133 A.D.2d 202 (2nd Dept. 1987). Here, the petition alleges, inter alia, that subscribing witnesses permitted people to sign the names of others, signed witness sheets that were not signed in their presence, and created an atmosphere of fraudulent behavior. Specifically, paragraph 4 “g” and “h,” of the petition state, in pertinent part, the following:

(g) the candidate Constantine Kavadas himself engaged in the fraud which permeates the petition, for example, he permitted people to sign the names of others on the petition sheets which he himself collected, signed as a subscribing witness sheets that were not signed in his presence, and created an atmosphere permeated with fraud which encouraged others to do the same. The signatures candidate Kavadas collected as subscribing witness also include an obvious forgery, made all the more obvious by the fact that the same purported signatory appears to have signed the same petition on a sheet subscribed to by a different witness, and that this other signature does in fact match that on the voter registration card, while the one the candidate collected does not.

(h)Among the other individuals influenced to commit fraud by the candidate, and committing fraud in a pattern established by the candidate is subscribing witness George Theodoridis, whose pages are permeated with forged signatures, names signed by others, and names signed or written not in his presence.

Each allegedly forged or questionable signature was identified in the specifications of objections. Although the grounds listed in the petitioner's pleading arguably were asserted in general terms, the specifications were incorporated by reference. Thus, notwithstanding respondent Kavadas' contentions to the contrary, the pleadings and specification combined together possessed the required specificity, and were sufficient “to apprise the candidate of the allegations being made against [his] designating petition.” Robinson v. Edwards, 54 A.D.3d 682 (2nd Dept. 2008). See, Hennessey v. DiCarlo, 21 A.D.3d 505, 506-507 (2nd Dept.2005); Waugh v. Nowicki, 10 A.D.3d 437 (2nd Dept. 2004); Oberle v. Caracappa, supra.

Finally, respondent Kavadas argues that he was not given adequate notice of the additional

objections, referred to in the hearing transcript as the “amended specifications,” which he contends in Respondent Outline of Cases that the “additional objections [are] on items previously not objected to in the first set of petitioner’s objections.” He asserts that the amended specifications were served by mail on August 10, 2009, and personally served upon him just prior to the calendar call on August 11, 2009. Respondent Kavadas asserts that as such service did not afford adequate notice, the petition should be stricken. In support of this contention, he proffers the Matter of Venuti v. Westchester Board of Elections, 43 A.D.3d 482 (2nd Dept. 2007) and Belak v. Rossi, 96 A.D.2d 1011 (3rd Dept. 1983).

In Venuti, the petitioner commence the underlying proceeding to invalidate a designating petition of respondent candidate where five signatures in the petition to invalidate were inaccurately identified in the petitioner’s objections filed with the Westchester Board of Elections. In reversing the final order and affirming the Supreme Court’s findings of fact with respect to the five challenged signatures, the Appellate Division, Second Department, found the following [43 A.D.3d at 483- 484]:

The Supreme Court, upon reviewing the merits of the proceeding in the alternative, properly determined that five of the signatures on Scattaretico-Naber's designating petition should be stricken as duplicative of earlier signatures on the designating petition of another candidate for the same public office. As a result, Scattaretico-Naber's designating petition does not contain the requisite number of valid signatures, and must be invalidated. Scattaretico-Naber contends that because the petitioner inaccurately identified the line or page numbers of the five signatures in question in presenting his objections to the Westchester County Board of Elections, the Supreme Court should not have entertained his petition, which did properly identify the five challenged signatures. The Supreme Court, however, has jurisdiction to entertain objections to signatures on designating petitions, even where an objector asserts “grounds other than those asserted before the Board of Elections” (Matter of Smith v Marchi, 143 AD2d 325, 325 [1988]; see Election Law § 16-100 [1]; Matter of Flowers v Wells, 57 AD2d 636 [1977]). Since the petition filed in the Supreme Court afforded Scattaretico-Naber adequate notice as to precisely which signatures were being challenged, and the grounds for objecting to those signatures, the Supreme Court properly entertained the petitioner's objections (see Matter of Edelstein v Suffolk County Bd. of Elections, 33 AD3d 945 [2006]; Matter of Brotherton v Suffolk County Bd. of Elections, 33 AD3d 944 [2006]).

Further, in Belak, the Appellate Division, Third Department, in a proceeding to invalidate a designation petition, stated the following [96 A.D.2d at 1011-1012]:

While petitioner is correct in his contention that Special Term has

jurisdiction to hear objections to signatures other than those objected to before the board of elections (*Matter of Halloway v Blakely*, 77 AD2d 932; *Matter of Flowers v Wells*, 57 AD2d 636), fundamental notions of due process require that a candidate be given some notice of which signatures on his petition are being challenged (see *Matter of Suarez v Sadowski*, 48 NY2d 620, 621). In *Matter of Flowers v Wells* (*supra*), which was a proceeding brought by the candidate to validate a petition, there could be no surprise to the petitioner if any of the signatures were challenged since his action in bringing the proceeding had the effect of placing the validity of the entire petition before the court. There was also no prejudice to the candidate in *Matter of Halloway v Blakely* (*supra*) resulting from the challenge to signatures against which no objections had been filed with the board of elections since the pleadings in that proceeding fairly apprised the parties which signatures were being contested.

In contrast to those cases, respondents Barber and Longo were not given notice in this proceeding that petitioner intended to challenge any of the signatures in their designating petition other than those challenged before the board of elections. Petitioner's pleading made reference to the objections filed against the designating petition with the board of elections, listed general objections to the signatures, and requested the right to submit additional proof "to sustain the allegations contained therein." Petitioner's specific objections, which challenged signatures not previously challenged before the board of elections, were not served with petitioner's pleading and it does not appear that the candidates had notice of them until the matter was heard at Special Term. Under these circumstances, we find no error in Special Term's decision denying petitioner the opportunity to challenge any signatures not challenged before the board of elections since a fair reading of the pleadings does not give notice that any other signatures were being contested.

Notwithstanding, respondent Kavadas' reliance upon these cases, which he presumably purports to stand for the proposition that the petition should be dismissed for failure to provide adequate notice, such reliance is misplaced.

From the outset, it is noted by this Court, as stated in the cases proffered by respondent, this Court has jurisdiction to hear and consider objections not previously submitted to the Board of Elections for consideration. See, *Edelstein v. Suffolk County Bd. of Elections*, 33 A.D.3d 945, 946 (2nd Dept. 2006); *Brotherton v. Suffolk County Bd. of Elections*, 33 A.D.3d 944 (2nd Dept. 2006). It is further noted by this Court that although petitioner served by mail a copy of the amended specifications and provided a courtesy copy upon respondent Kavadas on August 11, 2009, such

service was made within the statutory time period. Nevertheless, the argument made by respondent Kavadas, to wit, the petition should be dismissed due to a lack of adequate notice for this Court to consider the amended specifications, is unfounded. Although the Appellate Division, Second Department, in the Matter of Venuti v. Westchester Board of Elections, 43 A.D.3d 482 (2nd Dept. 2007), stated that the Supreme Court properly entertained the petitioner's objections where there was "adequate notice as to precisely which signatures were being challenged, and the grounds for objecting to those signatures," the adequate notice in that decision refers to the sufficiency of what is being challenged and not the time frame in which to defend those objections. Further, in Belak v. Rossi, 96 A.D.2d 1011 (3rd Dept. 1983), the Appellate Division, Third Department matter, likewise references the sufficiency of the objection, and not the time period. Thus, there appears to be no basis for dismissal on this ground, particularly, where, as here, the amended specifications added additional objections to signatures, almost exclusively witnessed, by subscribing witness George Theodoridis.

Nor is there any merit to respondent Kavadas' argument that respondent Board, upon engaging in a line by line analysis triggered by the objections, resuscitate signatures that respondent Board had previously improperly invalidated. Indeed, if respondent Kavadas was interested in such resuscitation, the proper mechanism to do so would have been through a cross-petition to validate, or an the interposition of an answer asserting an affirmative defense, neither of which was filed in this proceeding. See, Krueger v. Richards, 59 N.Y.2d 680 (1983); Suarez v. Sadowski, 48 N.Y.2d 620 (1979); Ramos v. Lawson, 298 A.D.2d 610 (2nd Dept. 2002). The Matter of Halloway v. Blakely, 77 A.D.2d 932 (1980), an Appellate Division, Second Department decision, is illustrative of this point. The Court held the following [id. at 932-933]:

In the present matter, the affirmative defense interposed in the answer, served upon petitioners' counsel, was adequate to alert the petitioners that the signatures previously declared invalid would be contested. However, the question then arises as to whether the answer was untimely since it was served four days after the expiration of the 14-day period within which a proceeding to validate or invalidate a designating petition must be commenced (Election Law, § 16-102, subd 2). In Matter of Pell v Coveney (37 NY2d 494) the Board of Elections did not reject the candidates' designating petitions until after the 14-day period (then Election Law, § 330) had expired. The Court of Appeals held that strict application of this statutory time period would be unjust and deemed the candidates prompt institution of a proceeding to validate their designating petitions, after notice of the board's determination, to be timely. In the matter at bar, notice of the petitioners' commencement of a proceeding to invalidate the designating petitions was not received until the final day for initiating a proceeding. Pursuant to Matter of Pell v Coveney (supra) we believe that strict application of the statutory time period would be unjust. We deem the answer of the appellants (who here too are the candidates), which was served within four days of commencement of the proceeding, to be timely. Therefore, those signatures which had been declared invalid by the Board of Elections should have been reviewed.

Finally, we hold that petitioners' challenges to signatures other than those objected to before the Board of Elections should also have been considered by Special Term (see *Matter of Flowers v Wells*, 57 AD2d 636). Although the Referee reported on these contested matters for purposes of appellate review, Special Term has not yet ruled upon the Referee's findings. Therefore, the matter must be remanded to Special Term for a determination, to be made with all convenient speed, after consideration of the Referee's findings.

Compare, Suarez v. Sadowski, 48 N.Y.2d 620 (1979) [court held that it was manifestly unfair to consider at proceeding evidence that the Board of Elections erroneously invalidated signatures in absence of petition to validate]. Here, there is no basis upon which this Court has jurisdiction to consider the restoration of any previously invalidated signatures.

Based upon the foregoing, the motion to dismiss is denied in its entirety.

Determination on the Merits

At issue in this special proceeding is whether, as claimed by petitioner, the designating petitions filed on behalf of respondents are permeated with fraud. “As a general rule, a candidate's designating petition will be invalidated on the ground of fraud only if there is a showing that the entire designating petition is permeated with that fraud (citations omitted). Even when the designating petition is not permeated with fraud, however, when the candidate has participated in or is chargeable with knowledge of the fraud, the designating petition will generally be invalidated (citations omitted).” Perez v. Galarza, 21 A.D.3d 508, 509 (2nd Dept. 2005). See, Fonvil v. Michel, 308 A.D.2d 424 (2nd Dept. 2003); Matter of McRae v. Jennings, 307 A.D.2d 1012 (2nd Dept. 2003); Ragusa v. Roper, 286 A.D.2d 516 (2nd Dept. 2001); Heitzner v. Neglia, 196 A.D.2d 616 (2nd Dept. 1993)[all standing for the proposition that a candidate's designating petition will be invalidated on the ground of fraud when the designating petition is permeated with fraud.]. “[W]hen the candidate [himself] has participated in the fraud, the petition should be invalidated even if there is a sufficient number of valid signatures independent of those fraudulently procured (citations omitted).” MacDougall v. Board of Elections of City of New York, 133 A.D.2d 198 (2nd Dept. 1987); see, also, Tapper v. Sampel, 54 A.D.3d 435, 436 (2nd Dept. 2008); Drace v. Sayegh, 43 A.D.3d 481 (2nd Dept. 2007). Petitioners have the burden of establishing by clear and convincing evidence widespread fraudulent practices sufficient to invalidate the petition at issue in this special proceeding. See, Butler v. Duvalle, 32 A.D.3d 514 (2nd Dept. 2006); Fonvil v. Michel, 308 A.D.2d 424 (2nd Dept. 2003); Leonard v. Pradhan, 286 A.D.2d 459 (2nd Dept. 2001); Del Pellegrino v. Giuliani, 153 A.D.2d 724 (2nd Dept. 1989). In the instant case, not only is the petition subject to invalidation on both grounds, but petitioner has met his burden of establishing by clear and convincing evidence that it should be invalidated.

Petitioner’s forensic expert, Jeffrey Luber, testified that he conducted an analysis of signatures

contained in various designating petitions by comparing those signatures with known signatures taken from respondent Board's voter registration records. The signatures at issue were contained in designating petitions that identified either respondent candidate as the subscribing witness. Admitted into evidence were charts prepared by Luber that compared signatures on designating petition with the known signatures. He testified that he looked at approximately 40 sheets subscribed by George Theodoridis, and determined that "probably 100 different signatures that were in question which would represent about 35 pairs or multiples of those signatures." His findings with respect to pages in the designating petition for which George Theodoridis was the Subscribing Witness was as follows:

<u>Page</u>	
4	Olga Papademetriou, Alkis Papademetriou [signatures written by common writer]
5	Niki Pantelatos, Peter Pantelatos [signatures written by common writer]
35	Marika Delikanlis [did not sign name]
39	Panagiotis Doulos, Eleftheria Doulos, Katina Doulos, Lambros Doulos [signatures all written by same writer, with the signatures spelled incorrectly]
76	Efstratios Giannikos, Merrcina Giannikos [neither signed]
147	Sanjeev Sharma, Puran Sharma [signatures written by common writer]
167	Nick Tsatsaronis, Angi, Tsatsaronis, Christos Tsatsaronis [Nick Tsatsaronis probably signed; others did not sign; signatures by common writer]
174	Christy Katopodis, Kostas Katopodis [neither signed; signatures by common writer with similarities to the handwriting of George Theodoridis]
241	Mike Condomanolis, Georgia Condomanolis, John Condomanolis, Nick Condomanolis [Mike Condomanolis signed his name; others did not; signatures written by common writer]
258	Anna Drimalitis, Dimitrios Drimalitis [Anna Drimalitis signed her name, Dimitrios Drimalitis did not]

- 266 George Kouros Maria Papadopoulos
- 289 Christina Pollatos, Dimitrios Pollatos [neither signed]
- 298 Efterpi Tassopoulos, Dimitrios Tassopoulos, Thomas Tassopoulos [Dimitrios Tassopoulos and Thomas Tassopoulos did not sign; all signatures written by common writer]
- 299 Theodore Fillos, Panorea Fillos, Panagiota Fillos, Maria Fillos Christopher Fillos [Theodore Fillos did not sign and all of the other Fillos signatures were written by common writer]
- 407 Martha Kakonikos, John Kakonikos [neither signed]

Of the 417 pages of the designating petition, each with a maximum of five (5) signatures per page, nearly one-third were obtained by subscribing witness George Theodoridis, who though subpoenaed to testify, did not appear; an adverse inference may be drawn from respondent Kavadas' failure to produce his subscribing witness, George Theodoridis. See, Haskell v. Gargiulo, 51 N.Y.2d 747 (1980); Bennett v. Phillips, 75 A.D.2d 934 (2nd Dept. 1991); see, also, Haas v. Costigan, 14 A.D.2d 809 (2nd Dept. 1961), aff'd, 10 N.Y.2d 889 (1961)[“it becomes the moral and the legal duty of the respondents, the challenged candidates, even in the absence of a subpoena, to produce the subscribing witnesses who must be presumed to be under their control.”].

Luber's findings with respect to pages in the designating petition for which respondent Kavadas was the subscribing witness were as follows:

- | <u>Page</u> | |
|-------------|---|
| 29 | Gregory Kosssaris, George Kosssaris [Gregory Kosssaris probably signed, George Kosssaris did not; both signatures by common writer] |
| 57 | Diamanto Prassakos, George Prassakos [Did not sign names] |
| 87 | Angelo Vasiliou, Zepur Vasiliou, Andreas Vas(s)iliou [Zepur Vasiliou and Andreas Vas(s)iliou did not sign names-common authors] |
| 122 | Helen Amvrosiasto [Nick Amvrosiasto did not sign] |
| 252 | Evangelia Papapostolou, Theodoros Papapostolou [Theodoros Papapostolou did not sign] |

- 286 Kalliopi Verivakis, Evangelos Verivakis, Samantha Verivakis
[Inconclusive whether Evangelos Verivakis signed, but
Kalliopi Verivakis and Samantha Verivakis did not sign]
- 384 G. Papadopoulos, John Papadopoulos, Anthony Papadopoulos
[George Papadopoulos signed his name; others did not;
signatures written by common writer]

Luber concluded:

I would say, your Honor, most of the petitions that I looked at had common authorship of signatures from either two— of people with the same last name and address, so whether one person signed for one or somebody else, I don't know. . . the conclusion I would draw that just about every petition that I looked at had either a common writer for several names or the true person did not sign their names.

Testimony of witnesses confirmed his conclusion, as one witness after another took the stand to testify that he or she did not sign the name appearing on the petition.

Witness Anastasia Sarigfiannis testified with respect to page 382 of the designating petition. She denied that she signed the petition, even though her name appear both in script and print formats. On cross examination, she admitted that she lived with her aunt, Theodora Hartofilis. Respondent Kavadas was the subscribing witness.

Witness Dimitrios Drimaloitis testified that the first name of the signature on line 5 of page 258 of the designating petition was written by him, but the last name looked like his wife's signature. He added that he did not know who signed the first name. He admitted that he signed two different petitions the same day for two different candidates. On cross examination, he stated:

He came to my house. Was about 6:00 in the afternoon. He introduced himself and he says I'm running for the city council, I think I need a certain amount of signatures to be on the ballot and do you mind signing for me? I say yes. And I sign the petition.

And then he was walking away and he turn back and he says that's for my running mate. Can you sign this one for me? I say yes. And I sign the petition.

George Theodoridis was the subscribing witness.

Witness Debra Kritikos testified that the signature on page 12, line 1 of the designating petition was not her signature, and that "when I sign my name I would sign Debra, not Debbie, and

it doesn't look like my signature." Witness Peter Kritikos, whose name followed that of his wife, also denied in his testimony that he signed the petition. He further testified that he is not registered to vote. George Theodoridis was the subscribing witness.

Witness Sarod Sharma testified that the signatures appearing on page 147, lines 4 and 5, of the designating petition were her signatures, stating:

Both are mine. Because that person came to me and he said, we are just counting the numbers of your family. And I told him, I never, we are not citizens, I don't have citizenship. And I never voted, we just got green card two-years ago. And he said, just sign it, we are just counting your family member.

She admitted to signing for her daughter, her husband and her son, who had not lived in the household for two years. George Theodoridis was the subscribing witness.

Witness Theodora Hartofilis testified that the last name of the signature on page 382 of the designating petition looked like her signature; however, she stated that she had been at work on the 17th when signature was taken, and that the "Dora" part is not her signature. She further testified that "when it comes to something which is really legal, like elections when I sign for elections, my driver's license, it's Theodora." Respondent Kavadas was the subscribing witness.

Witness Cleoniki Metropoulos testified that he signed his name and the names of Efterpi Tassopoulos, Dimitrios Tassopoulos and Thomas Tassopoulos on page 298 of the designating petition. He stated:

Yes. . . I receive a card with a picture with one Greek man go for election. And we talk with my brother and sister and we talk we're going to vote for him.

So after a couple of days a young man came to my door and he asked me are you Cleoniki Metropoulos. I say, yes I'm going to vote for him. He say, you can sign here? And I sign it. After he asked if I have children. I say, I have children but they don't live in New York, in Flushing. And he say, you know somebody? I say, my sister and my brother-in-law they're going to vote for him. And he say to me, you can write his name, their name. And I write the name. I didn't put signature. I write the name.

George Theodoridis was the subscribing witness.

Respondent Kavadas' own witnesses highlighted deficits in the petitioning process. One such witness, Alex Hirmagios, testified that respondent Kavadas, who was accompanied by two other men,

took his signature. He identified his signature on line 1 of page 394, and identified the names of his father, Ioannis Hirmagios; his mother; Fotini Hirmagios, his sister Efthimia Hirmagios; and his sister, Chrysoula Hirmagios, who signed her name as “Chrisoula” on the sign-in sheet for potential witnesses subpoenaed by petitioner’s attorney. Hirmagios testified that he saw respondent Kavadas, whom he has known from the neighborhood, take the signature of each of his family members. Hirmagios’ testimony established three facts: (1) that respondent Kavadas witnessed sheets that he did not sign as the subscribing witness; and (2) that he did petition with someone other than his mother; and (3) that contrary to respondent Kavadas’ testimony, he did know George Theodoridis. One of the two men with respondent Kavadas was George Theodoridis, who signed page 394 as the subscribing witness.

Witness George Kouros also was called to testify on behalf of respondent Kavadas, who signed line one of page 266 of the petition, along with entries for Maria Papadopulu, Jeannie Papadopoulus and Irene Kythreotis. He testified on direct that the names of the persons listed on lines 2, 3 and 4 “sound like my family members, but my mom wouldn’t sign Jeannie Papadopoulus, it would be Jeannie Kouros. I don’t know where they got these other names from.’ He further testified that his “grandmother is Papadopoulos, not Papadopulis.” On cross examination, Kouros testified that he had known respondent Kavadas since elementary school. He also testified that he actually lives at 151-55 18th Avenue, but he uses 37-14 147th Street, which is the address of his grandmother Maria Papadopoulos, for his driver’s license and credit cards. He further testified that the name on line 4, Irene Kythritis, with the address of 151-15 18th Avenue, is close to the name of his wife, Irene Kythreotis, but that the signature is “definitely not” that of his wife. He also testified that the printed name on the petition of Papadopulu is a different spelling from the Papadopoulos name of his family, and that his mother always uses the name Jeannie Kouros, but receives her mail at 37-14 147th Street. George Theodoridis was the subscribing witness.

Peter Boudouvas, who was hired by respondent Kavadas to oversee the petition gathering process, testified on behalf of respondent Kavadas. He described the daily procedure:

Typically the petition operation would be from 4 to 8:30 at night. Each petition gatherer would come to my headquarters, pick up a folder, inside the folder was a list of registered democratic voters and an election district highlighted.

He testified that the petition gatherers were each sent out individually, not in a group, and were paid by the campaign based upon time sheets he maintained at headquarters. He further testified that the signed time sheets were delivered to respondent Kavadas who wrote the checks and filled in all the required information for each petitioner gatherer; this testimony was contrary to respondent Kavadas’ testimony that he “would sign my checks and give it to Peter Boudouvas and he would write out the checks. . . would sign my name on the bottom and I would hand the blank checks to my petition guy, the guy who was running the petitions, and he would write out whatever the sum would be.”

Respondent Kavadas, who is a student at Queens College and whom petitioner called as a witness, initially was questioned concerning his involvement in running for two different offices at

Queens College. He described the “election” process at Queens College:

It’s college. There is no campaigning, there is no debates, there is no fund raising, there is no going door to door and collecting signatures. It’s just putting your name down and going to class. You have to maintain a GPA above 3.5 to run for student government.

He denied that was he ran as a NYPIRG Board member, stating: It’s just you put your name down and you are there. It’s not an election for the most part. It’s student government. You don’t do anything. You are in a club, a school club, you have no power or anything like that.”

With respect to his petition gathering for the councilmanic seat, he acknowledged that he collected signatures, and also testified that “the only person I went out with [petitioning] was my mother.” In response to questioning pertaining to collecting the signature of Anastasia Sarigfiannis, who denied that she signed the petition, and that of her aunt, Theodora Hartofilis, respondent Kavadas stated:

I remember for those two I – I really– I’s pretty sure that I either handed it to them and didn’t actually see them sign it, but I remember – I remember Miss Hartofilis and I remember another young woman at the house and I’m assuming that this is them; that this is their signatures because it’s the same address. Ms. Hartofilis said that’s her signature definitely. She was here. I heard her say that today.

With respect to his collection of the signature of Helen Amvrosiasto, who testified on behalf of respondent Kavadas that she signed her name twice, including over the printed name of her husband Nick Amvrosiasto, respondent Kavadas acknowledged that he did “witness her signatures,” and that it “[l]ooks like she made a mistake and signed her name two times in a row;” he denied printing her husband’s name, stating that “she must have done that accidently or something, I don’t know.” And, with respect to his collecting signatures on page 87 of the designating petition, he stated that it would “surprise” him that the person who purportedly signed line 3 had moved to Cyprus five years ago.

The testimony of the above witnesses clearly demonstrated that respondent Kavadas actively participated in or was chargeable with the knowledge of fraud with respect to signatures witnessed by him. See, Perez v. Galarza, 21 A.D.3d 508 (2nd Dept. 2005); McRae v. Jennings, 307 A.D.2d 1012 (2nd Dept. 2003); Ragusa v. Roper, 286 A.D.2d 516 (2nd Dept. 2001); Saitta v. Rivera, 264 A.D.2d 490 (2nd Dept. 1999). “The signing of another's name, even if the other be a friend, a relative or a spouse, and the authentication of such false signatures by the subscribing witnesses who must have known that the signatures were false, constituted a gross fraud. And such fraud cannot be tempered or rendered innocuous: (a) by the forger's specious unsupported assertion that the false signature was authorized by the person whose name he inscribed; or (b) by the fact that such forgery

involved only a few names on most of the [] sheets.” Haas v. Costigan, 14 A.D.2d 809 (2nd Dept. 1961); *aff’d*, 10 N.Y.2d 889 (1961).

Other testimony proffered was equally incredible. He testified that he only “barely knows” Emil Skandul, who ran for president of the Queens College student government as a candidate for the Democratic Student Alliance (“DSA”) at the time respondent Kavadas, also a member of DSA, was running for the position of Adult Continuing Education Representative, and who was a petition gatherer for respondent Kavadas. He also denied knowing George Theodoridis or ever meeting him during the course of the campaign. Indeed, a substantial amount of testimony was taken regarding respondent Kavadas’ political involvement at Queens College, which unexpectedly became an issue when his credibility was called into doubt due to his denial of running for two separate offices at the time that he also made clear his intentions to run for the City Council. Petitioner called as a witness Daniel Muchnick, who won the election as president of the student body against Emil Skandul, and who testified that respondent Kavadas’ did run for the position of Adult Collegiate Education Representative, as well as for a NYPIRG position. He, as well as respondent Kavadas’ witness, Vimonsiri Aunaetitkrakul, the party chair for DSA, described the petition process that is a condition precedent to being placed on the slate. He testified that he had observed respondent Kavadas and Emil Skandul together at the student government debate, was aware of newspaper articles concerning respondent Kavadas running for both the City Council and as a candidate of DSA. He further testified the before the election, respondent Kavadas offered him a job with his campaign for the City Council, which he turned down, and that after the election, which he won, he had a conversation with respondent Kavadas by telephone text message, in which in response to respondent Kavadas’ offer of congratulations, Muchnick sent him back a text “[a]dmittedly a sarcastic one that said: Sorry I don’t work for losers. Best of luck to you and your City Council campaign. And then he sent a text to me which says you’re a typical Jew; how sad.” Respondent Kavadas first gave his home phone number in response to the Court’s request for his telephone number; the witness then was asked by the Court to call the telephone number embedded in that text message. The number embedded in the text messages was dialed on speaker in open court, and the words, “This is Constantine Kavadas, I cannot take your call right now;” were heard. Muchnick’s testimony defeated any denial by respondent Kavadas that the text message did not come from his cellular phone number. Further, the testimony, coupled with newspaper articles, and information on social websites, including Facebook, also rebutted his prior testimony related to his political campaigning, or lack thereof, at Queens College.

Ms. Aunaetitkrakul testified that respondent Kavadas never campaigned, never showed up, never called, adding:

The reason we put him there is because he is running for City Council and we want some attention. We are running against United People, UP, which is a party that has been around at Queens College for more 35 years, and our party is only 4 years old, and we never won an election at all, and we wanted something that would gain attention from the students. That’s why he is there.

The totality of the evidence presented clearly established, not only that the petition gathering process and the petition that was a product thereof, was permeated by fraud, but that respondent Kavadas was an active participant in that process, as well as being chargeable with knowing the fraud perpetuated by his subscribing witness, George Theodoridis. This Court finds respondent Kavadas' testimony to be replete with inconsistencies and improbabilities and accordingly rejects such testimony as incredible, crediting the testimonies of petitioner's witnesses as more accurately representing the facts. Consequently, those branches of the petition seeking to invalidate the petition on the grounds that it is permeated by fraud and that respondent Kavadas, the candidate, participated in the fraudulent procuring of signatures are granted.

Even if that were not the case, the petition would have to be invalidated for the simple reason that respondent Kavadas did not reach the threshold for inclusion on the primary ballot. To qualify for placement on the primary ballot as a candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009, respondent Kavadas needed at least 900 valid signatures. Of the 1750 total number of signatures, respondent Board determined that there were 909 invalid signatures, and 841 valid signatures. Of those valid signatures, respondent Board identified those that were objected to on the grounds of either "similar handwriting" or "forgery," which the Court, not respondent Board, has the sole jurisdiction to determine. After a line by line review of the signatures witnessed by subscribing witnesses respondent Kavadas and George Theodoridis, this Court determined that of the 111 signatures that were objected to as being questionable because of "similar handwriting" or "forgery," respondent Board invalidated 54 of those signatures on other grounds. The Court invalidated the remaining 57 on the ground of either similar handwriting or forgery or both, which reduced the number of valid signatures to 784, a number well below the number needed. Accordingly, as respondent Kavadas lacked the necessary signatures, the petition also must be invalidated on that ground, as well, and respondent Board must be enjoined, restrained and prohibited from putting the name of the respondent Kavadas on the primary ballot for lack of necessary signatures. It therefore hereby is

ORDERED AND ADJUDGED, that the petition by petitioner Isaac Sasson for a declaration invalidating the designating petition filed with the Board of Election for the City of New York on behalf of respondent Constantine E. Kavadas, a candidate for the New York City Council, 20th Council District, City of New York, in the Democratic primary election to be held September 15, 2009, is granted, and it is further

ORDERED and ADJUDGED, that the designating petition naming Constantine E. Kavadas, as candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009, hereby is invalidated, and it is further

ORDERED and ADJUDGED, that the respondent Board of Elections in the City of New York is enjoined, restrained and prohibited from putting the name of Constantine E. Kavadas, the respondent-candidate, on the official ballot as candidate for the public office of Member of the City Council, 20th Councilmanic District, in the Democratic primary to be held on September 15, 2009.

Dated: August 17, 2009

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J.S.C