

Matter of Meehan v Giunta

2010 NY Slip Op 31390(U)

June 1, 2010

Supreme Court, Nassau County

Docket Number: 009648/10

Judge: Randy Sue Marber

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SHORT FORM ORDER

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

Present: **HON. RANDY SUE MARBER**

Justice

TRIAL/IAS PART 20

X

In the Matter of the Application of

MICHAEL T. MEEHAN and PATRICK B. GIBSON,
as aggrieved candidates

Petitioners,

-against-

GIOVANNA GIUNTA, as the Manorhaven
Revival Party Candidate for the Office of
Mayor of the Incorporated Village of Manorhaven,

Respondent-Candidate,

-and-

DORIT ZEEVI-FARRINGTON and MARK LAZAROVIC,
as the Manorhaven Revival Party Candidates for the office
of Trustee of the Incorporate Village of Manorhaven,

Respondent-Candidates,

-and-

THE BOARD OF ELECTIONS OF THE COUNTY OF
NASSAU and JOHN A. DeGRACE and WILLIAM
BIAMONTE, as the Commissioners of The Board of
Elections of the County of Nassau,

Respondents,

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-and-

JONATHAN P. FIELDING, Village Clerk for
the Incorporated Village of Manorhaven,

Respondent,

For an Order pursuant to Election Law §16-100,
§16-102, §6-146 and §1-106 (2) declaring the
nominations of the Respondents GIOVANNA
GIUNTA, DORIT ZEEVI-FARRINGTON and
MARK LAZAROVIC null and void.

X

Papers Submitted:

- Order to Show Cause.....X
- Memorandum of Law.....X
- Verified Answer.....X

This proceeding was commenced (1) to declare as null and void the nomination of the Respondent, GIOVANNA GIUNTA (“GIUNTA”) as the Manorhaven Revival Party candidate for the office of Mayor of the Incorporated Village of Manorhaven in the election to be held on June 15, 2010; (2) to declare as null and void the nomination of the Respondent, DORIT ZEEVI-FARRINGTON (“ZEEVI-FARRINGTON”) as the Manorhaven Revival Party candidate for the office of Trustee of the Incorporated Village of Manorhaven in the election to be held on June 15, 2010; and (3) to declare as null and void the nomination of the Respondent, MARK LAZAROVIC (“LAZAROVIC”) as the Manorhaven Revival Party candidate for the office of Trustee of the Incorporated Village of Manorhaven in the election to be held on June 15, 2010.

The Petitioners allege that the Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC failed to comply with the requirements of Election Law § 6-146 (1) in that they failed to have their signatures on their acceptance certificates acknowledged.

The Respondents GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC oppose the Petition alleging that the Petition was not properly served; that the Petitioners did not have standing to commence the instant proceeding; and that the Respondents' certificates of acceptance were not required to be acknowledged.

The Respondents, THE BOARD OF ELECTIONS OF THE COUNTY OF NASSAU and JOHN A. DeGRACE and WILLIAMBIAMONTE, as the Commissioners of The Board of Elections of the County of Nassau and JONATHAN P. FIELDING, Village Clerk for the Incorporated Village of Manorhaven, take no position with regard to the instant Petition.

Service:

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC allege that the Order to Show Cause, signed by this Court on May 18, 2010, required the Petitioners to effectuate service upon the Respondent, Nassau County Board of Elections, by personal delivery to the Office of the Nassau County Attorney, at One "Wall" Street, Mineola, New York. The Respondents argue that service upon the Nassau County Attorney at One "West" Street was improper. The Order to Show Cause contained a typographic error listing the address for the Nassau County Attorney as One "Wall" Street instead of the correct street

name “West” Street. In fact, there is no “Wall” Street with in the Village of Mineola, State of New York. This error appears to be ministerial in nature. Further, service was properly effectuated at the County Attorney’s Office at the correct address, “One West Street, Mineola, New York”. Said Respondents appeared and did not object to the service. As the error was insignificant and did not affect the proper service of the Order to Show Cause, the Court deems that service upon the Nassau County Attorney was proper.

Standing:

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC also seek the dismissal of the Petition on the grounds that the Petitioners lack standing to challenge the certificates of acceptance alleging that the Petitioners failed to timely file objections to the certificates of acceptance with the Village Clerk.

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC argue that, pursuant to Election Law § 16-102, “Candidates Aggrieved” may institute proceedings against a Village Independent Nominating Petition, but not against a “Certificate of Acceptance.” In so arguing, they contend that the only means by which the Petitioners may commence proceedings to challenge a certificate of acceptance is pursuant to Election Law § 6-154(2). Pursuant to Election Law § 6-154(2), the Respondents aver that the Petitioners were required to fulfill a condition precedent to commencing these proceedings, to wit, filing written objections to the certificates of acceptance with the Village Clerk. It is undisputed that the Petition objecting to the form/content of the certificates of acceptance was timely

filed by way of Order to Show Cause with this Court. It is also not disputed that the Petitioners, MICHAEL T. MEEHAN and PATRICK B. GIBSON are candidates in the Manorhaven Village General Election. The only issue to be decided herein is whether the Petitioners lack standing to bring this petition as a result of their failure to file objections and specifications prior to commencing this proceeding.

It is well settled that “Candidates Aggrieved” are not required to file written objections prior to commencing proceedings to challenge the nomination of another candidate. *Burns v. Willtse*, 303 N.Y. 319 (1951); *McDonald v. Heffernan*, 196 Misc 465 (Kings County 1949), *affd.* 275 A.D. 1054 (2nd Dept. 1949), *affd.* 300 N.Y. 488 (1949); *Trosk v. Cohen*, 149 Misc. 298 (NY County 1933), *affd.* 240 A.D. 825 (1st Dept. 1933), *affd.* 262 N.Y. 430 (1933); *see also*, *Magee v. Camp*, 253 A.D.2d 573 (3rd Dept. 1998) (because petitioner is an aggrieved candidate within the meaning of Election Law § 16-102 (1), he was not required to file objections and specifications to the petition prior to commencing this proceeding.) The Respondents urge this Court to apply Election Law § 6-154(2) which addresses the right of any registered voter to file written objections to certificates of acceptance. This section, however, does not affect the rights of candidates aggrieved to commence judicial proceedings.

In *Baird v. Ness*, 109 A.D.2d 975 (3rd Dept. 1985), the petitioners commenced proceedings to declare invalid the independent nominations of two candidates for the office of trustee in a village general election. Those proceedings, notably related to a challenge

regarding certificates of acceptance, were properly commenced pursuant to Election Law § 16-102(1). In *Baird*, the Third Department rejected the petitioners' argument that time limitations set forth in Election Law § 16-102(2) were inapplicable to those proceedings as it was not a "proceeding with respect to a petition." This Court similarly rejects the Respondents' argument herein.

Election Law § 16-102(1) specifies the manner in which an aggrieved candidate may commence a judicial proceeding to challenge the nomination of a candidate for public office. This Court rejects the Respondents' argument that an aggrieved candidate may only institute a proceeding to challenge a "petition" and not a certificate of acceptance. The requirement of first filing objections with the Village Clerk prior to commencing judicial proceedings are for persons "who shall have filed objections, pursuant to this chapter," and is not a requirement for aggrieved candidates. *Election Law § 16-102 (1)*.

Accordingly, this Court finds that the Petitioners are "Candidates Aggrieved" pursuant to Election Law § 16-102 (1) and thus, have standing to object to the certificates of acceptance.

Acknowledgment:

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC timely filed independent nominating petitions with the Respondent, JONATHAN P. FIELDING, Village Clerk for the Incorporated Village of Manorhaven, on May 11, 2010 as candidates for Mayor, and Trustees, respectively, for the Manorhaven Revival Party.

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC timely filed their certificates of acceptance. All parties have stipulated that the certificates of acceptance, marked as Court Exhibit I, were not acknowledged.

Election Law § 15-108 (8) (b) provides:

A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general or special village election shall be filed not later than three days after the last day to file the petition which made such independent nomination.

Election Law § 6-146 (1) provides:

A person designated as a candidate for nomination or for party position, or nominated for an office, otherwise than at a primary election, may, in a certificate signed and acknowledged by him, and filed as provided in this article, decline the designation or nomination; provided, however, that, if designated or nominated for a public office other than a judicial office by a party of which he is not a duly enrolled member, or if designated or nominated for a public office other than a judicial office by more than one party or independent body or by an independent body alone, such person shall, in a certificate signed and acknowledged by him, and filed as provided in this article, accept the designation or nomination as a candidate of each such party or independent body other than that of the party of which he is an enrolled member, otherwise such designation or nomination shall be null and void.

The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC argue that Election Law § 6-146(1) only applies to certificates of acceptance filed under Article 6 and not certificates of acceptance filed in village elections under Article 15 of the Election Law.

Election Law § 15-138 provides:

The supreme court or any justice thereof within the judicial district and the county court or any judge thereof within the county, in which the village is

located, shall have summary jurisdiction to determine any question arising and make such order as justice may require, in respect to village elections and registration therefor.

There are no allegations that the certificates of acceptances filed by the Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC were signed by anyone other than them. The Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC have evidenced their intent to accept their respective nominations. (*See Bates v. Beyer*, 36 A.D.2d 735 [2d Dept. 1971])

Notably, Election Law § 15-108(8)(b) applies to certificates of acceptance and certificates of declination pertaining to village elections. By adopting the Respondents' reasoning, the potential for fraud increases. For instance, if an unacknowledged declination of a nomination was submitted, a third party may possibly decline on behalf of a viable candidate without that candidate's knowledge. Requiring an acknowledgment lessens these possible fraudulent occurrences.

Accordingly, this Court determines that, in the absence of fraud and inasmuch as there are no allegations that the signatures contained on the certificates of acceptances are not those of the Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC, in the exercise of the Court's discretion, the certificates of acceptances filed by the Respondents, GIUNTA, ZEEVI-FARRINGTON and LAZAROVIC shall be deemed valid and timely filed.


For the reasons set forth above, the Petition is **DISMISSED**.

Accordingly, it is hereby

ORDERED, that the Respondents, Village Clerk and/or the Board of Elections are directed to place and/or print the name of Respondent, GIOVANNA GIUNTA for the public office of Mayor for the Incorporated Village of Manorhaven in the Village election scheduled to be held on June 15, 2010, and the names of the Respondents, DORIT ZEEVI-FARRINGTON and MARK LAZAROVIC on the ballot for the public office of Trustees for the Incorporated Village of Manorhaven in the village election scheduled to be held on June 15, 2010.

This constitutes the Decision, Order and Judgment of the Court.

DATED: Mineola, New York
June 1, 2010



Hon. Randy Sue Marber, J.S.C.
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ENTERED
JUN 03 2010
NASSAU COUNTY
COUNTY CLERK'S OFFICE