

**Matter of Seleznow v Garetano**

2011 NY Slip Op 32219(U)

August 10, 2011

Supreme Court, Suffolk County

Docket Number: 11-21996

Judge: Gary J. Weber

Republished from New York State Unified Court System's E-Courts Service.  
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

COPY

INDEX No. 11-21996

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 6 - SUFFOLK COUNTY**PRESENT:**Hon. Gary J. Weber MOTION DATE July 26, 2011  
Acting Justice of the Supreme Court Motion Seq. # 001

---

In the Matter of the Application of  
CHERYL SELEZNOW, an enrolled voter in the  
Town of Huntington and Seventeenth Legislative  
District in the County of Suffolk,

Petitioner,

-against-

DENNIS A. GARETANO,

-and-

SUFFOLK COUNTY BOARD OF ELECTIONS,  
WAYNE T. ROGERS and ANITA S. KATZ,  
Commissioners constituting the Suffolk County  
Board of Elections,

Respondents,

FOR AN ORDER INVALIDATING AND DECLARING  
NULL AND VOID A CERTAIN DESIGNATING  
PETITION OF THE INDEPENDENCE PARTY FILED  
WITH THE SUFFOLK COUNTY BOARD OF  
ELECTIONS PURPORTING TO DESIGNATE THE  
WITHIN-NAMED CANDIDATE FOR THE PUBLIC  
OFFICE SUFFOLK COUNTY LEGISLATOR FOR THE  
SEVENTEENTH DISTRICT TO BE VOTED UPON IN  
THE PRIMARY ELECTION TO BE HELD ON  
SEPTEMBER 13, 2011 AND ADJOINING THE  
SUFFOLK COUNTY BOARD OF ELECTIONS FROM  
PLACING THE RESPONDENT CANDIDATE'S NAME  
ON THE OFFICIAL BALLOT AND VOTING  
MACHINES FOR SAID ELECTION.

---

LAWRENCE H. SILVERMAN, ESQ.  
Attorney for Petitioner Cheryl Seleznow  
350 Veterans Memorial Highway  
Commack, New York 11725STEVEN E. LOSQUADRO, ESQ.  
Attorney for Dennis A. Garetano  
by: Mark Murray, Esq. and William Duffy, Esq.  
649 Route 25A, Suite 4  
Rocky Point, New York 11778ANTHONY M. LA PINTA, ESQ.  
Attorney for Respondent Anita Katz  
35 Arkay Drive, Suite 200  
Hauppauge, New York 11788CHRISTINE MALAFI  
Suffolk County Attorney  
by: CHRISTOPHER A. JEFFREYS  
Assistant County Attorney  
Attorney for Respondent  
Suffolk County Board of Elections  
H. Lee Dennison Building  
100 Veterans Memorial Highway  
P.O Box 6100  
Hauppauge, New York 11788-0099BACKGROUND

This is an Order to Show Cause brought on pursuant to Election Law Section 16-102 seeking the invalidation of a designating petition naming Dennis A. Garetano as a candidate for the nomination of the Independence Party for the Public Office of Suffolk County Legislator of the Seventeenth District.

I have the original Order to Show Cause dated July 26, 2011 and its supporting papers dated July 25, 2011, the Answer of the Respondent Dennis A. Garetano (hereinafter "the Respondent") by his attorney Steven E. Losquadro, Esq. dated August 1, 2011, the Verified Answer of the Suffolk County Board of Elections by Anthony M. La Pinta, Esq. dated August 1, 2011 and the return of the Suffolk County Board of Elections dated August 1, 2011 as well as the objection work sheet of the Suffolk County Board of Elections pertaining to the general and specific objections filed by the Petitioner Cheryl G. Seleznow (hereinafter "the Petitioner") dated August 4, 2011, as well as faxed letter dated August 9, 2011 from Petitioner's attorney Lawrence H. Silverman, Esq. relative to the issue of Petitioner's standing to object to the Petition.

The instant controversy involves an Independence Party Designating Petition in which the major parties have an interest. Since the Republican party has cross endorsed the Respondent, Republican orientated signature gatherers aided the candidate in obtaining the required signatures for this petition.

For reasons not needing any repeating for anyone who has cause to read this decision, such efforts nearly always involve the use of notaries. The candidate's efforts here were not an exception to this general rule.

The Petitioner, an enrolled Republican voter, has filed General and Specific Objections with the Suffolk County Board of Elections, as well as this Invalidation Proceeding.

In the context of the Invalidation Proceeding, the Petitioner seeks to invalidate certain signatures gathered by the Respondent's notaries public on the basis that such signatures were not gathered in accordance with the Election Law - an allegation cognizable only before the Court and not the Board of Elections. The Petitioner is of the belief that when the number of signatures properly invalidated at either the Board or Court level involving the normal "line by line" challenges is combined with those invalidated by the Court for notarial misconduct, that the total number of signatures that ought to be credited to the Respondent Candidate will sink below the required number of 92.

#### THE STANDING ARGUMENT

Respondent's counsel argues that since the Petitioner-Objectant is an enrolled Republican, she has no statutory right to file objections or to sue.

As Petitioner's counsel points out Election Law Section 6-154 states in pertinent part:

"2. Written objections to any ... designating petition may be filed by any voter registered to vote for such public office".

The situation is otherwise with respect to party positions.

Accordingly, the Court finds that the Petitioner has standing to file objections and maintain this invalidation proceeding.

#### JURISDICTION

Respondent's counsel argues that the Show Cause Order initiating this proceeding had no provision for mailing or delivery by commercial delivery services.

A reading of the last proviso of the service provision of the Order to Show Cause clearly shows that such service was allowed by the authorizing Justice.

Petitioner's Exhibit "A" shows that service by overnight delivery was made on July 27, 2011 (the cut off for receipt being July 28, 2011).

No one claims that Respondent did not receive the required papers by July 28, 2011.

Accordingly, the application to dismiss this proceeding on a jurisdictional basis is without merit.

THE OBJECTIONS RELATING TO THE  
PAGES AND SIGNATURES WITNESSED  
BY NOTARY PUBLIC

The Court heard testimony in open Court in the presence of all counsel on August 2, 2011 and August 5, 2011, while awaiting the result of the Suffolk County Board of Elections canvass of the General and Specific Objections already filed by the Petitioner. An additional witness, one Francine Beneventin, was called by the Petitioner on August 8, 2011.

In this regard, the Court, working from its notes, will offer a synopsis of the testimony and make findings of fact.

A  
THE TESTIMONY OF AUGUST 2, 2011

1. Thomas Clemens was called to testify and testified that he signed the Petition at page 32, line 4 for his wife, Ann Clemens.

The notary public on page 32 was Brett Anthony Robinson. The page contained a total of 5 signatures.

2. Notary Brett Robinson was called to testify and he testified that he not only properly obtained the signature of Ann Clemens but that of all other signers whose signatures he gathered.

The Court notes that Mr. Robinson is a heavy set man and he was not described as such by Mr. Clemens.

3. Signer Konstantinis Tsavaris was called to testify and testified that he signed the subject Petition at Page 31, line 1.

He stated that the notary public, one Dimitrios Lagias, did not swear him to tell the truth.

4. Louise Whitehead was called to testify and stated that she signed the Petition for the candidate at Page 31, line 3.

She stated that notary public Dimitrios Lagias asked her if everything she was signing for in the Petition was true.

5. Dimitrios Lagias was called to testify and stated that he had gathered signatures as a notary public for the Respondent and that, although there were times when he did not specifically ask a signer, such as Tsavaris, whether he was a member of the Independence Party, that he only went to the houses of people who were shown to be Independence Party members by the enrollment book from which he obtained the address where he went to look for the particular potential signer.

Once the person said that he or she was the person named in the enrollment book, Lagias would proceed to ask the person to sign the Petition on this basis.

6. Lynn M. Rojas testified that she signed the Petition at Page 28, line 2 for notary public Nicholas Ciappetta..
7. Cassandra Erskine testified that she signed the Petition at Page 26, line 4 for notary public Christopher Como but does not remember whether she was asked to affirm or swear to the Petition.
8. Christopher Como testified that he was a notary public who gathered signatures in connection with the Respondent's Petition drive.

He testified as to his routine in gathering such signatures and stated that he went so far as to identify himself to each signer that he was a notary public looking for signatures, and have them in one way or another attest to this.

Based upon his testimony and demeanor the Court finds this particular witness to have been extremely credible.

9. Nicholas Stolte testified that he signed the Petition at Page 24, line 3 for notary public Chad Lupinacci, whom he knew.
10. Deborah Bosquet testified that she signed the Petition at Page 24 line 6 and did not fully recall the facts and circumstances attendant to this, but believed the notary asked her to affirm the truth of the required information given by her.
11. Notary Public Chad Lupinacci testified to the effect that, as to each of his signatories, he asked them to affirm who they were and that they had not signed any previous rival petitions.  
  
As to signatory Nicholas Stolle, Mr. Lupinacci said he had known him for 8 years or so, before obtaining his signature.
12. Barbara Armstrong testified that she signed the Petition at Page 14, line 1 after it was passed to her through the fence by notary public Ralph Shelley.  
  
Ms. Armstrong is of the belief that she is an enrolled Democrat but the records of the Suffolk County Board of Elections show her to be an enrolled Independence Party member.
13. Michael Drazka testified that he signed the Petition at Page 15, line 5 and that the notary public concerned, one Ralph Shelley, did ask him to swear that his name, address and other pertinent information were accurate.
14. Thomas Oates testified that he signed the Petition at Page 16, line 1 but that he did not remember his conversations with notary public Shelley regarding an affirmation of the truth of the statements contained in the Petition.
15. Gary Assa testified that he signed the Petition at Page 28, line 1 before notary public Ciapetta. and was asked to affirm the information given by him to the notary, to which he answered "no problem".
16. Ralph Shelley testified that he was the Notary Public for Pages 14, 15 16 and 17 of the candidate's Petition and that he asked each signer to affirm that he or she was the enrolled Independence Party member who he had found on the enrollment list at the address where the person was located by him.

Further, he asked if each signer would agree to sign the Petition in support of the candidate.

#### THE TESTIMONY OF AUGUST 5, 2011

17. Marlene Schliemer testified that she only remembers that a female person got her to sign the candidate's Petition at sheet 25, line 2.

Ms. Schliemer stated that she has vertigo, was dizzy and did not feel well while in Court. Beyond this, Ms. Schliemer really had no information to share.

The Court notes that the notary public on this signature was evidently a female named Amy Hsu.

18. Joseph Marchionda testified that he signed the Petition at Page 28, line 10 and that he knew the notary public (Nicholas Ciapetta) and liked the candidate.
19. John Luna testified that he signed the Petition of the candidate at Page 26, line 6 before notary public Como.
20. Nicholas Ciapetta testified that he was a notary public who obtained signatures for the candidate on the subject Petition and that, among other things, he asked signatories if they would agree to sign the Petition in support of the candidates named on them.
21. Thomas J. Walsh Jr. testified that he signed the Petition at Page 14, line 3 which was notarized by notary public Ralph Shelley.
- Mr. Walsh stated that he thought the Petition was for the Liberal Party, but did not say he told this to Mr. Shelley when he signed the Petition.
22. Robert Dwyer testified that he signed the Petition at Page 24, line 5 at the request of notary public Chad Lupinacci.

#### THE TESTIMONY OF AUGUST 9, 2011

23. Francine Beneventin testified that she signed the subject Petition at Page 28, line 3 but that the Petition was presented to her by a grey haired lady with greyish hair.

Her signature appears at Page 28, line 3 and was witnessed by Notary Public Nicholas Ciapetta who is obviously not a grey haired lady.

#### THE CANVASS AT THE BOARD OF ELECTIONS HELD ON AUGUST 9, 2011 RELATIVE TO THE GENERAL AND SPECIFIC OBJECTIONS

The Suffolk County Board of Elections originally found that 92 valid signatures were required to support this Petition. A total of 190 were submitted by the Respondent.

However, the Board invalidated 49 signatures and 49 others were left for a commissioner's decision.

This left the Respondent with 92 valid signatures agreed upon by the Board and the potential for 49 more from the split decision pool, all of which would be valid unless the Court were to rule otherwise.

The Court conducted a line by line review of those signatures disputed by the parties and has concluded, as a matter of fact, that, without regard to the objections raised, relative to the signatures obtained by the Notary Publics, that the Respondent had 138 valid signatures at the conclusion of Board and Court review of the General and Specific Objections filed with the Board and that 92 signatures were required.

#### THE OBJECTIONS RELATIVE TO THE NOTARY PUBLIC WITNESSED SIGNATURES

##### A FINDINGS OF FACT

The Court concludes from their demeanor and testimony on the witness stand before the Court that the testimony of all of the notaries public was credible in all material respects.

Using the same standard, the testimony of most of the Petition signers was not entirely credible or complete, most of them were hazy as to their memory of what exactly went on as the respective Petitions were signed. These signatories expressed the feeling that they were mostly interested in getting the notary public signature gatherers to leave as quickly as possible, which they accomplished by signing the Petition.

By contrast, each of the notaries testified as to a routine in which, in one way or another, they were able to ascertain the identity of the Independence Party individual voter (in no instance brought to the attention of the Court in these proceedings did any notary misidentify any Independence Party voter), that the voter was resident where he or she was found and that he or she was willing to at least support the placement of the candidate on the ballot and that the prospective signer was eligible to sign the Petition and that the information given by the signers was correct in these respects.

#### CONCLUSIONS OF LAW RELATIVE TO THE NOTARY PUBLIC ISSUE

In light of the Findings of Fact above made the Court finds that two signatures obtained by the notary public witnesses should be disallowed - those of Ann Clemens and Francine Beneventin, since there was testimony that the signers were not as represented. This testimony was disputed, but the Court will give the benefit of the doubt to the Petitioner since the witnesses making these claims were more than a little disinterested.

On the other hand, there were no other instances where such claims were made as to any of the notaries.

The pages in question were not witnessed by the candidate and there has been no showing that the Petition, as a whole or any group of signatures as submitted by any particular witness is permeated with fraud.

In fact the witnesses (except in the two instances above mentioned) all swore that they signed the Petitions.

Under these circumstances the Court will apply the reasoning employed in *Graber v. Mahoney* 143 A.D.2d 502, 533 N.Y.2d 155, "Absent any allegation of fraud, falsification, or undue influence, the failure of a notary public to administer a formal oath to a party signing a designating petition is insufficient to overcome the presumption of regularity (see, *Matter of LaMendola v. Mahoney*, 49 A.D.2d 798, 373 N.Y.S.2d 234). See also *Conklin v. Conary*, 112 A.D.2d 1062, 493 N.Y.S.2d 45.

The Court concludes that 2 additional signatures should be deducted from the Respondent's total in respect to the Notary Public issues raised by the Petitioner.

## ANALYSIS AND DECISION

The Court, for the reasons above stated, finds that the Respondent has a total of 136 valid signatures while the required number is 92.

This Invalidating Proceeding should be dismissed.

ORDER

This action and proceeding is dismissed; and it is further

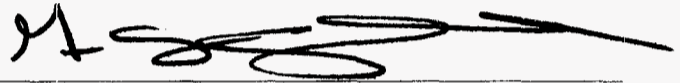
ORDERED, That the Designating Petition filed with the Suffolk County Board of Elections designating Dennis A. Garetanto as an Independence Party candidate for public office of Suffolk County Legislator for the 17<sup>th</sup> Legislative District, is valid and the Suffolk County Board of Elections is directed to place his name on the ballot for that office in the Primary Election to be held on September 13, 2011, and it is further

ORDERED, that any open motion or application by either party consistent with this order is to be deemed granted and any open motion or application inconsistent with this order is to be deemed as denied, and it further

ORDERED, that Petitioner's attorney serve a copy of this memorandum decision and order with notice of entry on all counsel as soon as may be practicable; and it is further

ORDERED, that this memorandum decision and order shall constitute the order of the court.

Dated: August 10, 2011



\_\_\_\_\_  
Gary J. Weber, Acting J.S.C.

Final Disposition - Scan

\* In order to facilitate any appellate review the Exhibits submitted by the parties and marked into evidence have been forwarded with the rest of the file and this Memorandum Decision and Order to the Clerk of the County.