

Matter of Lord v New York State Bd. of Elections

2012 NY Slip Op 33994(U)

May 18, 2012

Supreme Court, Wyoming County

Docket Number: Index No. 2871-2012

Judge: Sam D. Walker

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This opinion is uncorrected and not selected for official publication.

To commence the statutory time for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER
PRESENT: HON. SAM D. WALKER, J.S.C.**

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**In the Matter of the Application of
KATHLEEN M. LORD and SCOTT TILLITT**
Petitioners,

CONSOLIDATED DECISION
AND ORDER
INDEX # 2871-2012

-against-
NEW YORK STATE BOARD OF ELECTIONS
Respondent,
-and-
NAN HAYWORTH
Respondent- Candidate ,

For an Order Pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, declaring invalid the designating petitions purporting to designate the said Respondents-Candidate as a candidate for Public Office of Member of Congress from the 18th Congressional District in the Independence Party Primary election to be held June 26, 2012

FILED
MAY 18 2012
TIMOTHY C. IDONI
COUNTY CLERK
COUNTY OF WESTCHESTER

-----x
**In the Matter of the Application of
NAN HAYWORTH,**
Petitioner

INDEX NO: 2946-12

-against-
**BRUCE YABLOW, DOROTHY E. GILMAN,
JANET S. HOWE, MARY F. GRAETZER,
KATHLEEN M. LORD, PATRICIA O'DWER, SCOTT TILLITT
and THE NEW YORK STATE BOARD OF ELECTIONS**
Respondents

For an Order Pursuant to Sections 16-100, 16-102 and 16-116 of the Election Law, declaring valid the designating petitions which designated the petitioner as a candidate of the Independence Party for the public Office of Representative in Congress from the 18th Congressional District in the Independence Party Primary election to be held June 26, 2012

The following papers were read on two petitions, the first (2871-2012) to compel the New York State Board of Elections to declare invalid the petitions filed by congressional candidate Nan Hayworth to become an Independence Party candidate in the Independence party Primary on June 26th 2012. The second petition (2946-2012) seeks to declare valid the designating petitions filed by Nan Hayworth that have been filed with the New York State Board of Elections.

<u>PAPERS</u>	<u>NUMBERED</u>
Order to Show Cause To Declare Invalid Designating Petition	1
Verified Petition (Index No: 2871-2012)	2
Respondent Board Exhibits	
Independence Party Designating Petitions # 1through #170	3
Petitioner's Exhibits 1-42	4
Verified Answer of Respondents New York State Board of Elections	5
Order to Show Cause To Declare Valid Designating Petition	1
Verified Petition (Index No: 2946-2012)	2
Respondent 's Exhibits A-HH	3
Respondent Board of Election Exhibits 2 & 2-A	4
Verified Answer of Respondents New York State Board of Elections	5

Upon the foregoing papers it is ordered that the petition Index No: 2946-12 is PARTIALLY GRANTED to the extent that an additional twenty- six (26) signatures that had previously been invalidated by the Board of Elections, are now deemed validated. The petition Index No: 2871-12 is GRANTED to the extent that sixty- five (65) signatures that had previously been validated by the Board fo Elections are now deemed invalidated. The Respondent Candidate's total signature count is seven hundred and forty nine (749).

On April 17, 2012 Respondent -Candidate Nan Hayworth, seeking the elected office of Member of Congress for the 18th Congressional District , filed an Independence Party Designating Petition with the New York State Board of Elections. The designating petition consisted of a cover sheet and one hundred seventy (170) numbered sheets that collectively contained 1,043 signatures. 770 valid signatures are required to qualify Respondent Candidate

to be included on the primary ballot during the upcoming June 26, 2012 primary to select the Independence Party candidate for the office. Petitioners Kathleen M. Lord and Scott Tillitt filed both general and specific objections with respect to the respondent candidate's designating petition. The New York State Board of Elections initially invalidated 229 signatures.

Petitioner Candidate elected to challenge the Board's determination and filed a petition brought by Order To Show Cause (Index No: 2946/12). Prior to the return date of the motion the parties consented to an additional 26 validated signatures bringing the candidates total validated signatures to 788.

Petitioners Lord and Tillitt elected to challenge the Board's determination on their petition to invalidate additional signatures on Candidate Hayworth's petitions and filed the instant petition brought by Order To Show Cause (Index No: 2871/12), dated April 23, 2012. Pursuant to the accelerated timetable required in the applicable provisions of NY Election Law, both petitions were made returnable on May 9, 2012. A verified answer to the petition was filed by the Respondent Board of Elections. The initial hearing before this Court took place on May 9, 2012 and during that hearing, the parties consented to the validation of an additional 19 signatures. Following the hearing this Court ruled that of the thirty five (35) petition signatures in dispute, seven (7) additional signatures were found to be valid. At this stage in the proceedings the candidates total validated signatures was 814.

The hearing on the challenge to the board's validations continued on May 14, 2012.

The objections raised to the designation petition sheets and the individual lines, fall into three separate categories. The first category concerns petition signatures that are printed and not written in script. Sixteen (16) instances of this alleged defect were challenged and were found on Petition Sheets 2 line 3, Sheet 17 line 3, Sheet 92 line 10, Sheet 94 line 7, Sheet 97 line 3, Sheet 97 line 8, Sheet 97 line 9, Sheet 97 line 10, Sheet 102 line 11, Sheet 106 line 2, Sheet 106 line 6, Sheet 121 line 5, Sheet 121 line 7, Sheet 123, line 5, Sheet 132, line 4, Sheet 165, line 3.

When the petition signatures are individually compared with the signatures found on Petitioner's Exhibits 1-16, the Court found clear and apparent differences in the manner each challenged signature appeared on the petition compared to how the registered voter had signed their voter registration application, registration information form or DMV address change form. In *Matter of Henry v. Trotto*, 54 AD 3d 424 (2nd Dept. 2008), the Appellate Division upheld the Suffolk County Supreme Court's invalidation of those signatures that were printed on the designating petitions where signatories had signed their registration forms in script and where there was an absence of any credible evidence from them or the subscribing witnesses attesting to the identity of those signatories. See Election Law § 5-210 [5] [k] [xi]; § 6-134 [5], [13]; *Matter of Jaffee v Kelly*, 32 AD3d 485 (2nd Dept. 2006); *Matter of Rabadi v Galan*, 307 AD2d 1014 (2nd Dept. 2003). It has long been the law that a printed signature on a designating petition is valid only if the voter's signature is similarly printed on the official registration books. *Matter of Hall v. Heffernan*, 185 Misc. 742, 744 (Sup.Ct. Richmond County 1945), affirmed, 269 App. Div. 953 (2nd Dept. 1945), affirmed, 295 N.Y. 599 (1945). Clearly it would be much easier for a person seeking to commit fraud to print a voter's signature than it would be to execute a cursive signature, especially if the malefactor did not have access to the voter's registration signature. Conversely, it would be very difficult, if not impossible, to prove fraud if all the signatures on a petition were printed. Thus, the law sensibly permits those who print their names on a registration card to print their names in similar fashion on a petition but it does not permit a person who signs his or her name in a cursive fashion to use a printed name on a petition. *Henry v. Trotto*, 872 NYS2d 690 (Sup Ct, Suffolk, 2008) af'd 862 NYS2d 605 (2nd Dept. 2008). Consistent with precedent and the Election Law, this Court invalidates the 16 signatures identified by Petitioners on the Petition sheets and lines referred to above. See also, Election Law § 6-134 (10).

The second category of objections are specific objections to particular sheets and lines.

a) With respect to the date affixed to the signatures found on Petition Sheet 25. The first signature is dated April 12, 2012, however the second and third signature lines on Sheet 25 are dated April 11, 2012. Election Law §6-130 requires that the sheets of a designating petition, must set forth in every instance the signer's name, residence address and the date when the signature is affixed. Strict compliance with this requirement of election Law is mandated as applied to the content of nominating petitions Election Law §6-132, and the requirement that each signature be dated is a requirement of content not form. *DeBerandis v. Sunderland*, 185 Misc.2d 892 (Sup. Ct. West. Co.), aff'd 277 AD2d 187(2nd Dept. 2000) The incorrect sequence of dates without testamentary or documentary proof to explain the nature of the apparent discrepancy, invalidates the initial signature and logically renders the subsequent two signatures also invalid.

b) Petitioners object to an alteration of the date of the signature on Sheet 98 at line 8. The date has been changed without being initialed by the subscribing witness. This unacknowledged alteration under the circumstances present in this case is not inconsequential. *Abraham v. Ward*, 43 AD3d 1271 (4th Dept. 2007) citing *Matter of Sternberg v. Hill*, 269 AD2d 730 (3rd Dept. 2000) (where the subscribing witness signed her initials next to the date corrections such corrections do not invalidate the signatures).

c) Petitioners object to an apparent alteration on the address line of the subscribing witness statement as found on Petition Sheet 162. The petitioners propose that the un initialed alteration renders the entire sheet invalid. In addition, the petitioners challenge the apparent misspelling of the subscribing witnesses first name and the registration and enrollment status of the witness. The Board did not invalidate the sheet and this Court is asked to conduct a de novo review of the objection and to consider invalidating the entire sheet on the grounds of alteration of the subscribing witness' address , the misspelling of the subscribing witness' name, the

witnesses lack of registration or enrollment in the party. It is permissible for the Court to make a determination on the petition based upon a *sua sponte* review of the exhibits and documents in evidence, and to pass on issues of fact such as are ordinarily raised by claims of fraud or forgery. *Bednarsh v. Cohen*, 267 A.D. 133(1st Dept. 1943); *Scaturro v. Maloney*, 906 NYS2d 617 (2nd Dept. 2010). Review of the documents reveals that the number "9" which identifies the witnesses' house or building number, has been altered and there is no initial to reflect that the alteration was that of the subscribing witness. While the alteration of the number of the building or house standing alone may not amount to a material alteration, this Court cannot ignore that the subscribing witness not only used an uncommon spelling for his very common first name, the street address "David Weider Boulevard" is also misspelled. Any adult is regularly and frequently called upon to write their street address. A mistake in writing both the number and the name of the street where you live, supports the implication that a false statement has been procured in this case. Section 6-130 of the Election Law requires that signers of designating petitions state their residence address. Failure to state a correct residence address has been held a fatal defect warranting invalidation. *Matter of Stoppenbach v. Sweeney*, 98 N.Y.2d 431 (2002); *Matter of Liepshutz v. Palmateer*, 65 N.Y.2d 965 (1985); *Matter of Gleason v. Longo*, 133 A.D.2d 289 (3rd Dept 1987) This error within the subscribing witness' statement, even in the absence of the Board's documentation of his status as a registered voter and member of the Independence Party, is resolved in favor of invalidating the subscribing witnesses statement and along with it, all fifteen (15) of the petition sheet signatures.

Sheet 162 and signatures contained on that sheet are invalidated on that ground.

The final category of objections relate to specific objections to individual signatures.

Line by Line Review and Findings by Court

Page 7, Line 9 — signature illegible; while the signature appears to be cursive, the Court

cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature.

Page 86, Line 12 — the name “Anne Morrison” is signed and above the signature the name “Caitlin” has been inserted. . Examination of the Petitioner's Exhibit 18 reveals that “Ann Morrison” and “Caitlin Morrison” report the same address, however, Caitlin is an Independent and Anne is a Democrat. The signature does not resemble either voter's sample and appears to contain a miss spelling of the surname. The Board's determination is reversed and the signature is invalidated.

Page 89, Line 14 — signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any of the three registered Independence Party voters at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 94, Line 13— signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 103, Line 7 — signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 106, Line 12 — signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's

determination is reversed and the signature is invalidated.

Page 109, Line 2— signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated

Page 111, Line 1 — Four (4) people registered to vote at that address but no Independence Party members . The Board's determination is reversed and the signature is invalidated.

Page 112, Line 5 — signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 112, Line 8 — The State Board cannot produce a registration card for this person and no County Board registration card has been located. The Board's determination is reversed and the signature is invalidated.

Page 117, Line 7 — “A Deluca”. There are 4 Delucca's at that address, however the A. Delucca is a Republican and only Margaret DeLuca is an Independent. The Board's determination is reversed and the signature invalidated.

Page 118, Line 2 — Only registered voter at that address is James Fisher and he is not registered with any party. The Board's determination is reversed and the signature invalidated.

Page 118, Line 5 — signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated

Page 122, Line 8 — signature illegible; the Court cannot relate the signature to the signature card of any registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidate

Page 127, Line 3— Two registered voters at that address; the Court relates the signature to the voter Michael J. DiGeronimo who is registered as a “blank”. The Board's determination is reversed and the signature is invalidated.

Page 132, Line 1— signature illegible; the Court cannot relate the signature to the signature card of any of the three registered voters at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 157, Line 6— signature illegible; while the signature appears to be cursive, the Court cannot relate the signature to the signature card of the registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 160, Line 1— signature illegible; the Court cannot relate the signature to the signature card of the registered voters at the instant address, neither of whom is registered as an Independent, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 160, Line 3— Printed signature on a designating petition is not the same name or similar in appearance to either of the two Independence party voters registered at stated address. The Board's determination is reversed and the signature invalidated.

Page 161, Line 7 — Printed signature on a designating petition. No registration card or other material located by the Board for this individual. The Board's determination is reversed and the

signature invalidated.

Page 164, Line 11 — signature illegible; the Court cannot relate the signature to the signature card of the registered Independence Party voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated

Page 164, Line 12 — Board has no record of this street in Monroe or an associated registration

Page 166, Line 11 — signature illegible; the Court cannot relate the signature to the signature card of any one of the five registered voters at the instant address, two of whom are registered as Independence Party voters and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated

Page 167, Line 13 — signature illegible; the Court cannot relate the signature to the signature card of the registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 168, Line 7 — signature illegible; the Court cannot relate the signature to the signature card of the registered voter at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated

Page 170, Line 5 — the Court relates the signature to the signature card of a registered voters at the instant address, however the voter is registered as a Democrat, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 170, Line 9 — signature illegible; the Court cannot relate the signature to the signature card of Zalman Schreiber, the registered voters at the instant address, and no witness was

produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Last Sheet is unnumbered—the Sheet and the one signature that it bears is invalid as it does not comply with the Board requirements. The Board determination is reversed and the signature is invalidated.

The Putnam County Objections

Page 9, Line 8 — Printed signature on a designating petition. In Court the Parties conceded that the signature can be related to the signature as it appears on the registration material. The Board's determination is sustained and the signature validated.

Page 11, Line 7 —signature illegible; the Court cannot relate the signature to the signature card of the registered voters at the instant address, and no witness was produced to validate the authorship of the signature. The Board's determination is reversed and the signature is invalidated.

Page 142, Line 1 — No registration information available for this individual who signed the petition. The Board's determination is reversed and the signature invalidated.

Page 151, Line 1 — No registration information available for this individual who signed the petition. The Board's determination is reversed and the signature invalidated.

SUMMARY OF DETERMINATIONS

The parties having consented to the validation of an additional 19 signatures, and this Court finding that an additional 7 signatures should be validated, the Candidate began this review with a total of 814 petition signatures. The determinations made herein result in the invalidation of 66 signatures that had not previously been invalidated by the Board of Elections. The candidate Nan Hayworth is left with 748 signatures, 22 short of the required 770 signatures.

Accordingly, the Nan Hayworth Designating Petition is found to lack the required number of valid signatures and, hence, is not valid. The Petition to invalidate the Nan Hayworth Designating Petition is therefore GRANTED.

To the extent any relief requested in this motion was not addressed by the Court, it is hereby deemed denied. Based on the papers herein, and upon the evidence received, and for the reasons above stated, it is hereby

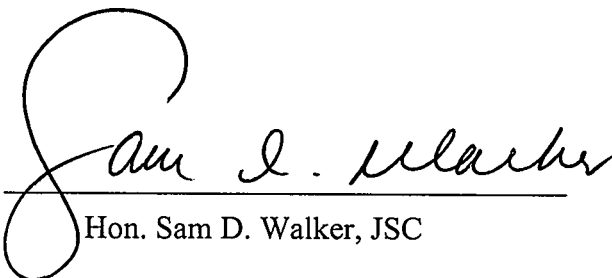
ORDERED that the designating petition filed with the New York State Board of Elections designating Nan Hayworth as a candidate for the public office of member of Congress from the 18th Congressional District State of New York in the Independence Party Primary Election to be held on June 26, 2012 is declared to lack the required number of valid signatures and therefore invalid; and it is further

ORDERED that the New York State Board of Elections is enjoined and restrained from printing and placing the name of Nan Hayworth as candidates for the public office of member of Congress from the 18th Congressional District State of New York on the official ballots to be used in the Independence Party Primary Election to be held on June 26, 2012 .

The foregoing constitutes the Decision and Order of this Court.

Dated; White Plains, New York

May 18, 2012



Hon. Sam D. Walker, JSC

To; Henry T. Berger, Esq.

Fax No: (212) 799-0886

Counsel is directed to promptly deliver a copy of this decision to counsel for each party that has appeared in this action .