Sal F. Albanese & Sal 2013 v New York City Campaign Fin. Bd.
2016 NY Slip Op 31564(U)
August 5, 2016
Supreme Court, New York County
Docket Number: 152345/2016
Judge: Joan B. Lobis
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY: IAS PART 6

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SAL F. ALBANESE AND SAL 2013,

Petitioners,

Index No. 152345/2016

-against-

Decision, Order and Judgment

NEW YORK CITY CAMPAIGN FINANCE BOARD,

Respondents.

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Petitioner Sal F. Albanese ran for the position of Mayor of New York City in 2013. He initially provided startup money of $100,000 to SAL 2013, his campaign fund. Subsequently he made additional contributions totaling $14,850.00. The total exceeded the maximum contribution of $14,850.00 allowable under the New York City Campaign Finance Act (the Act) by $100,000, but Mr. Albanese intended to repay himself the $100,000 loan from his campaign contributions. Ultimately he did not raise sufficient funds, which he attributes to the fact that he was excluded from the mayoral debates that aired on the major television networks. In fact, ultimately Mr. Albanese felt compelled to loan SAL 2013 another $25,000 for the purpose of paying the campaign staff. Finally, on September 9, 2013, he loaned SAL 2013 $30,000 more in order to have the requisite amount of campaign funds to apply for matching public funding.

Respondent issued a final determination and an audit report on September 24, 2015 and November 19, 2015 respectively. Respondent determined that Mr. Albanese exceeded the maximum contribution limit to SAL 2013 by $155,000. When an individual violates this rule, a penalty of up to $10,000 may be imposed. Respondent imposed this amount and, along with other

minor infractions, fined petitioners $10,450. Petitioners currently challenge this determination, alleging that he was not guilty of moral turpitude, respondent irrationally did not consider the mitigating factor that he was precluded from participating in the two network debates, and respondent unconscionably imposed the maximum penalty of $10,000, which traditionally is imposed when there is deliberate misconduct. Had SAL 2013 been granted matching funding, they state, the campaign could have reimbursed Mr. Albanese and avoided the violation. They allege that their actions did not cause the public harm and therefore the punitive purpose of the Act was not triggered.

Respondent points out that petitioner undoubtedly made contributions in excess of the permissible limit and it was rational to conclude that he violated the Act. It notes that although there is a maximum penalty of $10,000, it could have treated each contribution in excess of the maximum contribution as a separate violation and this would have resulted in a much greater, and also permissible, penalty. Moreover, as this is a discretionary decision and there is no question of petitioners' violation, the imposition of the penalty at issue is not irrational and the Court should not disturb it. It states that it did not abuse its discretion when it did not reduce the fine due to the alleged mitigating factors and that it imposed the penalty with full knowledge that petitioners were not guilty of moral turpitude or fraud. It notes that petitioners signed their assent to the applicable guidelines and were aware of the consequences of a violation, and that Mr. Albanese nonetheless continued to spend money his campaign did not have, lending the campaign funds to make up the shortfall. It contends that a vacatur of the fine would cause public harm, as the finance rules exist to prevent wealthier candidates such as Mr. Albanese from outspending candidates who lack the same resources. Absent the imposition of the fine in this circumstance, it claims, wealthy

candidates may be encouraged to "loan" their campaigns funds to avoid the campaign finance restrictions, believing they would not suffer any consequences. In reply, petitioners distinguish the cases upon which respondent relies and reiterate their original arguments.

Courts cannot interfere with a respondent's determination "unless there is no rational basis" or if the decision is "arbitrary and capricious." Ward v. Mohr, 109 A.D.3d 694, 696 (4th Dep't 2013)(involving decision of Erie County Board of Elections); see Brodsky v. New York City Campaign Finance Bd., 57 A.D.3d 449, 449 (1st Dep't 2008). A decision is deemed rational and beyond judicial review if there is enough evidence to enable a reasonable person to render the challenged decision. Straker v. New York City Campaign Finance Bd., Index No. 21274/2012 (Sup. Ct. Kings County Oct. 16, 2013)(avail at 2013 WL 5630012, at *3). Courts similarly defer to the agency's understanding and application of the pertinent statutes and guidelines. Id.

In the petition at hand, it is clear, as respondent states and petitioners acknowledge, that Mr. Albanese and SAL 2013 violated the applicable guidelines. Further, respondent notes that it had the discretion, under these circumstances, to set the fine at $10,000, and there is nothing arbitrary about respondent's exercise of this discretion. As respondent states, there is also public harm in allowing wealthier candidates to loan money to their campaigns in an attempt to qualify for matching funds, in particular because not all candidates can afford to sponsor their own campaigns.

While the Court agrees with petitioner that the cases upon which respondent relies to support its $10,000 fine are distinguishable based on the apparently deceitful conduct of those

campaigns and candidates, respondent points out that it had the discretion not only to impose this fine but that it could have fined petitioner $10,000 for each improper contribution. Thus, it did not fine respondent the maximum amount possible. The fact that major newspapers felt that he should have been included in the debate for various reasons does not change this or render respondent legally responsible for SAL 2013's fundraising problems so that they are required to suspend his fine. The Court has considered all of the parties' contentions and they do not alter its position. Therefore, it is

ORDERED that the petition is dismissed and the Clerk shall enter judgment accordingly.

Dated: Aug. 5, 2016

ENTER:

JOAN B. LOBIS, J.S.C.