

<b>Miah v Safa</b>
2020 NY Slip Op 31275(U)
May 4, 2020
Supreme Court, Kings County
Docket Number: 527781/2019
Judge: Richard Velasquez
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At an IAS Term, Part 66 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 4<sup>th</sup> day of May 2020.

P R E S E N T:  
HON. RICHARD VELASQUEZ  
Justice.

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A.K. MIAH (HANIF), IDRISH ALAM and MOHAMMED ALAUDDIN, in behalf of themselves and others Similarly situated and in the right of SANDWIP SOCIETY USA,

Plaintiffs,

Index No.: 527781/2019

Decision and Order

NURUS SAFA, MOHAMMED M. SUJAN, LUTFUL KARIM, SAYED A. HOSSAIN, MOHAMMMED TOHA, As members of the SANDWIP SOCIETY ELECTION COMMISSION 2019 and SANDWIP SOCIETY USA,

Defendant(s).

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The following papers numbered 1 to 23 read on this motion:

<u>Papers</u>	<u>Numbered</u>
Notice of Motion/Order to Show Cause Affidavits (Affirmations) Annexed _____	1-7
Opposition Affidavits (Affirmations) _____	9-22
Reply Affidavits (Affirmations) _____	23

After oral argument and a review of the submissions herein the Court finds as follows:

Plaintiff's move by Order to Show Cause for an Order (a) declaring the alleged elections for membership to the Executive Committee of SANDWIP SOCIETY USA held on November 17, 2019; (b) enjoining and restraining the alleged newly elected members

of the Executive Committee of SANDWIP SOCIETY USA from acting or representing SANDWIP SOCIETY USA as such and to engage in any installation or swearing in ceremony; (c) appointing an impartial Election Commission to conduct and supervise proper elections for Executive Committee membership as provided by law and the Constitution of the SANDWIP SOCIETY USA; (d) Enjoining and restraining the defendant members of the SANDWIP SOCIETY USA Election Commission 2019, its agents, employees and those acting in privity or in concert with them, from destroying, altering, transferring and otherwise disposing all its records involved in the election proceedings of November 17, 2019, and to preserve and produce forthwith and to deposit with the Court all of said records involved in the proceedings of said election. Defendants oppose the same.

### ***Arguments***

The plaintiffs contend that the election commission engaged in or permitted fraud in the elections held on November 17, 2019.

In opposition the defendants contend this matter should be dismissed as the plaintiffs failed to follow required procedure when objection to an election before bringing it before the court. In response to the claim that an additional slate of candidates was presented after the allotted time frame the board conducted a meeting and by majority vote on October 29, 2019 in which the additional candidates and slates were approved despite the technicalities. Defendants also contend that there is documentary evidence that refutes each of the fraud claims raised by the plaintiff's.

### ***Analysis***

This matter comes before the court by Order to Show cause requesting a declaratory judgment setting aside the election result of November 17, 2019, and ordering a new election to be held. It is well settled that "this court has "broad equitable powers

and may direct a new election where the election under review is so clouded with doubt or tainted with questionable circumstances that the standards of fair dealing require the court to order a new, clear and adequate election" see (*Faraldo v. Standardbred Owners Ass'n, Inc.*, 63 AD2d 1010 [2d Dept 1978] quoting *Matter of Wyatt v. Armstrong*, 186 Misc 216, 220 [Sup Ct, NY Cty 1945]; see *Jackson v. First Dist. Dental Soc.*, 240 AD2d 265 [1997] ); quoting *Minsun Kim v. Korean Am. Ass'n of Greater New York, Inc.*, 50 Misc 3d 1222(A), 36 NYS3d 48 (NY Sup Ct 2016).

In the present case the petitioners fail to demonstrate there was any fraud conducted in the aforementioned election. Pursuant to all documents submitted to this court the elections of November 17, 2019 were conducted and overseen by an independent entity in compliance with the constitution of SANDWIP SOCIETY USA. This court would also like to note that the election results were not challenged pursuant to the constitution of SANDWIP SOCIETY USA before bringing an action in Supreme Court. The action before this court is the first objection made by any party regarding the November 17, 2019 elections.

Additionally, the petitioners have failed to establish that the unlawful acts complained of would have affected the result of the election. See (*Matter of Schurman v. Goldstein*, 257 AD 623, 15 NYS2d 102). The petitioners allege the presence of a few irregularities which were untainted by fraud. Specifically, the Petitioners claim that an additional slate of candidates was presented after the allotted time frame. However, in opposition the respondents annex proof that the board conducted a meeting and by majority vote on October 29, 2019 in which the additional candidates and slates were approved despite technicalities. Next the Petitioners allege the elections being delayed for approximately 30 minutes, caused people to be unable to vote. However, this delay was done so at the agreement of all parties due to an issue with the order of the slates

on the voting machines. To overcome this irregularity the polling site voting time was extended at the end of the day to accommodate for this delay in opening the sites. Moreover, no complaints were filed by any eligible voter stating they were unable to vote in the election. The next irregularity is regarding the allegation that people were allowed to vote who did not have the right to vote in the election and that they voted more than once are unfounded allegations. The independent entity conducting the election checked photo ID's and kept logs of those who voted so no one person could vote numerous times. This court finds that these alleged irregularities would not change the outcome of the election. Moreover, the petitioners fail to submit any proofs supporting their allegations. Under such circumstances the elections will not be overturned. See (*Matter of Gross v. Thaler*, 18 AD2d 716, 236 NYS2d 394.); quoting, *Boyes v. Allen*, 32 A.D.2d 990, 991, 301 NYS2d 664, 667 (1969), *aff'd*, 26 NY2d 709, 257 NE2d 52 (1970). This court finds that there was no showing of fraud in the November 17, 2019 election. The manner in which the election was conducted was proper, and done so by an independent entity and that the constitutional requirements of SANDWIP SOCIETY USA were substantially complied with and, therefore, the majority of the objections raised by the petitioners fail. See *Boyes v. Allen*, 32 AD2d 990, 990-91, 301 NYS2d 664, 666 (1969), *aff'd*, 26 NY2d 709, 257 NE2d 52 (1970). As such, there is nothing in this record that warrants the overturning of said election results and ordering a new election.

Accordingly, Petitioners request for a declaratory judgment is hereby denied and this matter is hereby dismissed, for the reasons stated above.

This constitutes the Decision and Order of the Court.

Date: May 4, 2020

  
RICHARD VELASQUEZ, J.S.C.

So Ordered  
Hon. Richard Velasquez

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