Quart v Koffman
2020 NY Slip Op 31309(U)
May 7, 2020
Supreme Court, New York County
Docket Number: 100430/2020
Judge: Carol R. Edmead

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. CAROL R. EDMEAD** **PART** **IAS MOTION 35EFM**

Justice

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DAN QUART,

Plaintiff,

- v -

CAMERON KOFFMAN, THE BOARD OF ELECTIONS IN THE CITY OF NEW YORK

Defendant.

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INDEX NO. 100430/2020

MOTION DATE 05/07/2020

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Upon the foregoing documents, it is

OREDERED, ADJUDGED and DECLARED that the application of Petitioner Dan Quart for an Order Pursuant to Sections 6-122, 16-100, 16-102 and 16-116 of the Election Law, Declaring the Respondent-Candidate Cameron Alex Koffman Ineligible to be a Candidate for Member of the Assembly from the 73rd Assembly District, in the Democratic Party Primary Election to be held on June 23, 2020 and Restraining the Respondent Board of Elections from Printing and Placing the Name of Said Candidate Upon the Official Ballot of Such Primary Elections is granted; and it is further

ORDERED that Mr. Koffman's request for a stay to preserve his right of appeal is DENIED.

FINAL DISPOSITION

MEMORANDUM DECISION

Petitioner commenced this proceeding by Order to Show Cause seeking, *inter alia*, an Order declaring Respondent Cameron Alex Koffman (Mr. Koffman) ineligible to hold the office of Member of the Assembly from the 73rd Assembly District, New York County, State of New York, and enjoining Respondent Board of Elections of the City of New York (BOE)[1] from printing and placing Mr. Koffman's name on the official ballots to be used at the Democratic Primary Election to be held on June 23, 2020.

Background Facts

In support of the Petition, Petitioner submitted copies of Mr. Koffman's voter registration records showing that he registered to vote in New Haven, Connecticut in 2015 (*see* Verified Petition, Exhibit A) and in New York in 2017 (*Id.*, Exhibit D). Petitioner also submitted copies of Mr. Koffman's voting history information showing that he participated in the General Elections in Connecticut held in 2015, 2016, 2017 and 2018 (*Id.*, Exhibit B) and of news articles where Mr. Koffman admitted that he indeed voted in Connecticut within the past five years (*Id.*, Exhibit C). On the basis of this evidence, Petitioner maintains that Mr. Koffman is not eligible to hold the office of Member of the Assembly as he failed to meet the five-year residency requirement under the New York State Constitution.

In his Answer, Mr. Koffman admitted that he registered to vote in Connecticut in 2015 and voted there while he was an undergraduate student at Yale University (NYSCEF doc No. 3, ¶¶ 9, 12-13 and 15). Mr. Koffman, however, raises the defense that the Petition fails to state a cause of action or is otherwise dismissible to the extent that a final order, including the resolution of any

[1] On May 4, 2020, the BOE submitted the Affirmation of Mr. Stephen Kitzinger stating that the BOE does not express an opinion as to the merits of this case as BOE does no have jurisdiction to rule on matters of residency which are reserved for the Court (NYSCEF doc No. 17, ¶¶ 5-6).

appeals, cannot be made pursuant to Election Law § 16-102(4) and prior to the distribution of absentee ballots (*Id.*, ¶¶ 32-34).

Petitioner now moves for summary judgment in his favor on the ground that there are no factual issues in dispute and that, as a matter of law, Mr. Koffman chose Connecticut as his "electoral residency," disqualifying him from running for public office under the New York State Constitution.

In Opposition, Mr. Koffman advances three arguments. *First*, he maintains that there is no bright-line rule that any act – including the act of registering to vote and voting in another state – automatically disqualifies one from running for public office under New York law since the question of residence is dependent upon a variety of factors and the particular circumstances presented (NYSCEF doc No. 19, pp. 11-13). *Second*, Mr. Koffman contends that his electoral residence never changed given that Connecticut law did not require him to abandon his New York electoral residency in order to register and vote, and that his status as a student when he voted demonstrates that his residence in Connecticut was temporary (NYSCEF doc No. 19, pp. 13-17). *Finally*, Mr. Koffman highlights his "intent" to remain as a New York electoral resident and, in support thereof, he submitted evidence that he used his New York home as his permanent address on paper (*see* Opposition to Motion for Summary Judgement, Exhibits M and N), maintained his New York driver's license (*Id.*, Exhibit L), paid New York taxes (*Id.*, Exhibits E to H), completed New York jury service (*Id.*, Exhibit O), maintained New York-based bank accounts (*Id.*, Exhibit J) and lived in New York when school was not in session (*Id.*, Exhibits B, C and D). Although compelling, the Court finds Mr. Koffman's arguments unpersuasive.

Discussion

Summary judgment is granted when "the proponent makes 'a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact,' and the opponent fails to rebut that showing" (*Brandy B. v Eden Cent. School Dist.*, 15 NY3d 297, 302 [2010], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, [1986]). Once the proponent has made a prima facie showing, the burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact" (*Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 [1st Dept 2006], citing *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *see also, DeRosa v City of New York*, 30 AD3d 323, 325 [1st Dept 2006]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

Here, the Court finds summary judgment to be a proper remedy for Petitioner as all of the material facts alleged in the Verified Petition are not disputed. Mr. Koffman, in his Answer, admits that he registered to vote and actually voted in Connecticut while he was an undergraduate at Yale University in New Haven, Connecticut. Mr. Koffman also does not dispute the admissibility of the voter registration form (Exhibit A) and voting history information (Exhibit B) submitted by Petitioner, but merely refers the Court to the documents themselves “for a complete and accurate statement of [their] contents”. After examination, the Court finds that these documents support Petitioner’s allegations. Exhibit A shows that Mr. Koffman registered to vote in the State of Connecticut on August 28, 2015 and that his application was processed and approved on September 28, 2015. Exhibit B, on the other hand, shows that Mr. Koffman voted in person in the General Elections held in New Haven, Connecticut in 2015, 2016, 2017 and 2018. Having established these facts, the Court now turns to the issue of whether under the New York State

Constitution, Mr. Koffman can be disqualified from holding the office of Member of the Assembly.

The New York State Constitution provides that "[n]o person shall serve as a member of the legislature unless he or she is a citizen of the United States and has been a resident of the state of New York for five years, and . . . of the assembly or senate district for the twelve months immediately preceding his or her election" (Art III, § 7). One's "residence" is defined by the Election Law as "that place where a person maintains a fixed, permanent and principal home and to which he [or she], wherever temporarily located, always intends to return" (§ 1-104 [22]). New York courts recognize that in a modern and mobile society, an individual can maintain more than one bona fide residence but can choose only one for Election Law purposes (*see People v O'Hara*, 96 NY2d 378 [Ct App 2001]). The "crucial determination" for electoral residency purposes "is that the individual must manifest an intent, coupled with physical presence 'without any aura of sham'" (*Id.*)

Applying these principles, and based on the particular circumstances of this case, the Court concludes that Mr. Koffman lacked the requisite intent to establish "electoral" residency in New York for the five years required by our Constitution. Under Connecticut law, a qualified "elector" is defined, in part, as a "bona fide resident" (Constitution, Art VI, § 1, as amended). The Elections Enforcement Commission of the State of Connecticut (Elections Commission) has held that where an individual truly maintains two residences to which the individual has legitimate, significant, and continuing attachments, that individual can choose either one of those residences to be his "bona fide" residence for the purposes of election law so long as he possesses the requisite intent (*see e.g. Complaint of James Cropsey*, File No. 2008-047). More particularly, in case of a student who satisfies the residence requirement, the Connecticut Elections Commission has repeatedly

held that he "may vote where he resides, without regard to the duration of his anticipated stay or existence of another residence elsewhere [as] [i]t is for him alone to say whether his voting interest at the residence he selects exceed his voting interests elsewhere" (*Id., citing Farley v. Louzitis*, Superior Court New London County, No. 41032 [1972]). Thus, when Mr. Koffman registered to vote in the state of Connecticut in 2015, he effectively chose that state as his "bona fide" residence for electoral purposes and his voting interest there is deemed to have exceeded his voting interest in New York. This conclusion is supported by the fact that Connecticut recognizes that some college students would prefer to participate in the elections in their home state; thus, these students are allowed to vote by casting an absentee ballot in that state (*see* Connecticut Secretary of the State Voting Fact Sheet for Students, at https://portal.ct.gov/SOTS/Election-Services/Voter-Information/Student-Voter-Fact-Sheet). If Mr. Koffman intended to establish and maintain New York as his electoral residence, Mr. Koffman could have voted by casting an absentee ballot for the New York elections while he was a student at Yale, as pointed out by Petitioner (NYSCEF doc No. 14, p. 3). Mr. Koffman cites the case of *Matter of Dilan v Salazar* (164 AD3d 713 [2d Dept 2018]) to support his position that a candidate can meet the constitutional residency requirement notwithstanding being registered to vote in another state (NYSCEF doc No. 19, p. 12). The case of *Matter of Dilan* does not help Mr. Koffman. In that case, the candidate's voter registration in Florida was not cancelled until 2017 or just a year before the elections. The Court in *Dilan*, however, noted that the candidate last voted in Florida in 2010 and that "her failure to change her voter registration after she returned to New York in August 2011 does not preclude her from asserting that she changed her electoral residence after she last voted in Florida". Here, Mr. Koffman last voted in Connecticut in 2018. Even if the Court considers him to have changed his electoral residence after returning to New York after graduation and after voting in the November

2019 New York City elections, Mr. Koffman's residency is still short of the five years required under our Constitution.

The Court agrees with Mr. Koffman that his physical absence from New York while studying in Connecticut cannot in and of itself prevent him from establishing residency in New York for electoral purposes. Moreover, as a student in Connecticut, Mr. Koffman could not be barred from voting there even if he did not intend to stay in the college community beyond graduation (*see Matter of Notaristefano v Marcantonio*, 164 AD3d 721 [2nd Dept. 2018] *citing Symm v United States*, 439 US 1105 [1979]). However, by taking the affirmative steps of registering to vote in Connecticut and casting votes there in 2015, 2016, 2017 and 2018, Mr. Koffman effectively chose the state of Connecticut as his electoral residence (*Id.*). That these affirmative acts were made out of mere excitement to participate in the political process (*see* NYSCEF doc No. 19, pp. 4,8) contradicts Mr. Koffman's own media statement that his voting in Connecticut is informed by an "investigation" of "local issues" in New Haven (*see* Exhibit C to the Verified Petition). While Mr. Koffman is to be commended for casting his votes responsibly, his engagement on local issues in New Haven shows that he knowingly considered Connecticut as his electoral residence when he was a student there from 2015 to 2019. Mr. Koffman's argument that his status as out-of-state student cannot change his New York electoral residency also does not convince. The case of *Matter of Palla v Suffolk Cnty. Bd. Of Elecs.* (31 NY2d 36 [1972]), which he cites in support of this position, is inapposite here. *First*, that case involved the issue of residency for voting purposes currently governed by Election Law § 5-104 (2) which states that "[i]n determining a voter's qualification to register and vote, the board [of elections should] consider, in addition to the [voter's] expressed intent, his [or her] conduct and all attendant surrounding circumstances relating thereto," including, among other things, "business pursuits,

employment, income sources, residence for income tax purposes, age, marital status, residence of parents, spouse and children, … sites of personal and real property … , motor vehicle and other personal property registration, and other such factors that it may reasonably deem necessary." The Petition does not question Mr. Koffman's eligibility to register to vote in New York. In fact, Mr. Koffman was able to do so in 2017 (Exhibit D to the Verified Petition). What at issue here is Mr. Koffman's residency for purposes of running for public office which is governed by Art III, § 7 of our Constitution. *Second*, while the Court in *Palla* held that out-of-state student residency is evidence merely of an intention to reside there temporarily, the Court also said that it does not mean that a student may not change his residence for voting purposes as long as his intention to change concurs with acts independent of his presence as a student in the new locality. Here, the Court's finding that Mr. Koffman changed his electoral residence is based not on his being out-of-state from 2015 to 2019, but on his affirmative acts of registering to vote and actually casting votes in Connecticut.

The Court is cognizant of the fact that many New Yorkers signed the petition in support of Mr. Koffman's candidacy; however, the salient issue is whether Mr. Koffman is *qualified* to be a candidate in accordance with New York State Constitution. In light of the discussion above, the Court finds that Mr. Koffman is not.

Finally, while not clearly elaborated in the Opposition to the Motion for Summary Judgment, the Court rejects the affirmative defenses raised by Mr. Koffman in his Answer. Mr. Koffman's argument that the Petition should be denied pursuant to Election Law § 16-102(4) is without merit. Election Law § 16-102(4) states that "[a] final order including the resolution of any appeals in any proceeding involving the names of candidates on ballots or voting machines shall be made, *if possible*, at least five weeks before the day of the election at which such ballots or

voting machines are to be used, or if such proceeding is commenced within five weeks of such election, no later than the day following the day on which the case is heard" (emphasis added). The use of the word "if possible" here suggests that the timeline under this provision is not mandatory and cannot prevent this Court from hearing and resolving the Petition. Mr. Koffman's contention that the Petition should also be denied as its final resolution cannot be made prior to the distribution of absentee ballot also does not convince. The Court has found that even if a candidate is restored to the ballot, the relief of reprinting and remailing absentee ballots may be denied (*see King v. Bd. of Elec.*, 65 AD3d 1060 [2nd Dep't 2009]).

Conclusion

Based on the foregoing, it is hereby

ORDERED, ADJUDGED and DECLARED that the application of Petitioner Dan Quart for an Order Pursuant to Sections 6-122, 16-100, 16-102 and 16-116 of the Election Law, Declaring the Respondent-Candidate Cameron Alex Koffman Ineligible to be a Candidate for Member of the Assembly from the 73rd Assembly District, in the Democratic Party Primary Election to be held on June 23, 2020 and Restraining the Respondent Board of Elections from Printing and Placing the Name of Said Candidate Upon the Official Ballot of Such Primary Elections is granted; and it is further

ORDERED that Mr. Koffman's request for a stay to preserve his right of appeal is DENIED.

5/7/2020
DATE

HON. CAROL R. EDMEAD, J.S.C.
J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED	X	DENIED	GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE