

Taylor v Board of Elections in the City of N.Y.

2021 NY Slip Op 31372(U)

April 20, 2021

Supreme Court, Kings County

Docket Number: 508210/21

Judge: Edgar G. Walker

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KING'S COUNTY CLERK
FILED

2021 APR 21 AM 9:41

At the Special Election Part of the Supreme Court of the State of New York, County of Kings, on the 20th day of April, 2021.

P R E S E N T:

HON. EDGAR G. WALKER,
Justice.

-----X

JOYCELYN TAYLOR,

Petitioner,

- against -

Index No. 508210/21

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

-----X

The following e-filed papers read herein:

NYSCEF Docket No.:

Notice of Motion/Order to Show Cause/
Petition/Cross Motion and
Affidavits (Affirmations) Annexed _____

1- 11 _____

Opposing Affidavits (Affirmations) _____

Reply Affidavits (Affirmations) _____

In this special proceeding, brought pursuant to Article 16 of the Election Law, the petitioner Joycelyn Taylor (petitioner) seeks an order declaring valid her designating petition purporting to designate her as a candidate for the public office of Mayor of the City of New York in the Democratic Primary Election to held on June 22, 2021, and directing that the respondent Board of Elections in the City of New York (the Board) place petitioner's name on the ballot for such Primary Election for the public office of Mayor of the City of New York.

On March 25, 2021, petitioner filed with the Board a designating petition seeking placement on the ballot for the above stated office in the June 22, 2021 Democratic Party primary election. At the same time, she also filed three separate cover sheets. In particular, each cover sheet listed multiple petition volumes that, while stapled separately and paginated separately, had been bound together with a metal clip and filed with the Board. In this regard, the court notes that petition volume NY2102839 was filed with 18 other volumes attached to it, which were all separately tabbed, sequentially numbered and bearing a separate and distinct identification number.¹ In addition, two petition volumes (NY2102829 and BX2100216) were attached and bound with volume NY212819. Although attached by a metal clip, the volumes were also each tabbed bearing a separate identification number and separately numbered sequentially. Petition volume KG2100506 was also bound with six² other volumes that were each tabbed bearing a separate identification number and separately numbered sequentially.

In a noncompliance letter dated March 26, 2021, the Board advised petitioner that her “petition volumes NY2102819 and NY2102839 fail[ed] to comply with the New York State Board of Elections Regulations 9 NYCRR Section 6215.1 which requires petition volumes

¹ The 18 volumes bound with NY2102839 are the following: BX2100213, BX2100217, BX2100214, RH2100144, QN2100512, QN2100532, QN2100551, KG2100496, QN2100513, QN2100523, QN2100514, QN2100550 KG2100486, KG2100487, KG2100469, KG2100478, KG2100479, KG2100498.

² The six volumes attached to KG2100506 are the following: KG2100497, KG2100507, KG2100467, KG2100488, KG2100468 and KG2100480

to be filed separately and requires the sheets of a petition be numbered sequentially. . .” The Board further advised that the petitioner had three (3) business days from the date of the letter to cure this defect “by filing an exact copy of the petition volume(s) (with the sheets thereof in the same order as originally filed) listed above note any changes or corrections” which is in compliance with the Board’s regulations (NYSCEF Doc. No. 3). In a second letter, also dated March 26, 2021, the Board advised the petitioner that petition volume KG2100506 also failed to comply with the Board’s regulations (9 NYCRR 6215.1) requiring petition volumes to be filed separately and numbered sequentially. In addition, the Board sent a third notice to petitioner, also dated March 26, 2021, advising that her cover sheet was defective in that the “Number of volumes claimed doesn’t agree with claimed identification numbers on Cover Sheet” and that she had three days to cure said defect by filing an amended cover sheet.

On March 29, 2021, in an attempt to address the issues raised in the Board’s noncompliance notices, the petitioner re-submitted to the Board photocopies of her petition volumes, separated by petition identification number, along with three amended cover sheets. Specifically, petitioner resubmitted to the Board separate and exact photocopies of each of the original petition volumes that were originally bound together with volume numbers NY2102819, NY2102839 and KG2100506. She also filed three amended cover sheets, one of which indicated that there were nine total volumes in the petition, but only listed eight since one volume was listed twice. The second amended cover sheet that petitioner filed

indicated that a total of six volumes were in the petition and listed six identification numbers, and the third amended cover sheet indicated that there were a total of 23 volumes in the petition, but only listed the identification numbers for 21 volumes on the cover sheet. The Board deemed all of the petition volumes resubmitted by the petitioner as late as they were filed after March 25, 2021, the last day to file designating petitions.

By letter dated that same day, March 29, 2021, the Board notified petitioner that her cover sheet failed to comply with Board of Election Regulations stating that “Number of volumes claimed doesn’t agree with claimed identification numbers on Cover Sheet.” (NYSCEF Doc. No. 7). The notification further stated that petitioner was required to cure this defect within 3 business days by the filing of an amended cover sheet and that the failure to file same within that period would be a fatal defect to her petition. By letter dated April 1, 2021, the Board notified petitioner that her name will not appear as a candidate on the ballot for the June 22, 2021 Primary Election because of its determination that her amended cover sheet did not comply with New York State Election Law and/or the Rules of the Board of Elections in that “1. the attempted cure of the number of volumes claimed on the amended cover sheet was inaccurate and therefore not a valid cure” and “[t]he pagination issue for petition volume KG2100506 was not cured” (NYSCEF Doc. No. 8).

On April, 8, 2021, petitioner commenced this proceeding by the filing of an order to show cause and verified petition seeking to reverse the ruling of the Board and to validate her designating petition, and to order the Board to print and place her name upon the official

ballots for such primary election. Petitioner, who is self-represented, and the Board both appeared remotely before the court on April 14, 2021, at which time oral argument was heard on the record.

Petitioner argues that while the Board notified her of the volume separation and pagination issues, and the need to update her cover sheet, there was no indication in the notices as to which of the three cover sheets should be updated. She further argues that there was confusion and a lack of clarity from the Board regarding the cure that was required, and that, in any event, she properly cured the defects noted by the Board in its March 26, 2021 noncompliance notices. In this regard, petitioner contends that she properly resubmitted the petition volumes separately, and that the Board erroneously deemed such filings as late. She maintains that each of the separated petitions were originally timely filed on March 25, 2021, and were re-filed in the same order as indicated on the respective cover sheets submitted. In addition, petitioner contends that there is no proof that any alleged pagination error or cover sheet error was intended to mislead or confuse the Board or potential objectors. She further notes that her designating petition contains significantly more than the required number of signatures (2,250) for the position of Mayor of the City of New York.

Although the Board appeared on this matter on the return date and asserted that petitioner's submissions failed to comport with the Board's rules, it has not submitted any opposition papers.

Discussion

Election Law § 6-134 (2), which pertains to designating petitions, provides in pertinent part:

Sheets of a designating petition shall be delivered to the board of elections in the manner prescribed by regulations that shall be promulgated by the state board of elections . . . Such regulations shall be no more restrictive than is reasonably necessary for the processing of such petitions by the board . . . When a determination is made that a designating petition does not comply with such regulations, the candidate shall have three business days from the date of such determination to cure the violation.

The New York State Board of Elections has enacted various regulations in compliance with the provisions of Election Law § 6-134 (2) (*see* 9 NYCRR part 6215). Specifically, 9 NYCRR 6215.1 requires, as relevant here, that sheets of a petition shall be numbered sequentially at the foot of each sheet, that petitions containing 10 or more pages contain a cover sheet, and that each volume shall be filed individually bearing only one identification number (9 NYCRR 6215.1 [a], [b] and [e][1]). In addition, 9 NYCRR 6215.7(d), among other things, reiterates the provision of Election Law § 6-134 (2) that, when a board of elections determines that a designating petition does not comply with the regulations, the candidate shall have three business days to cure the violation (*see Matter of Armwood v McCloy*, 109 AD3d 558, 558–59, [2d Dept 2013]). Although the three-day cure provision for designating petitions (Election Law § 6-134[2]) is available for technical violations of the Board's regulations (*see Matter of Armwood*, 109 AD3d at 559), the Second Department has

held that the Board may not reject a designating petition based upon a minor cover sheet error when the cover sheet is otherwise in substantial compliance with the Election Law, and the underlying defect is neither fraudulent nor confusing to the Board or the voters (*see Matter of Krance v Chiaramonte*, 87 AD3d 669, 669 [2d Dept 2011]; *Matter of Pearse v New York City Bd. of Elections*, 10 AD3d 461 [2004] [“petitioner’s amended cover sheet was in substantial compliance with the Election Law and the rules promulgated by the Board”]; *Matter of Siems v Lite*, 307 AD2d 1016, 1016 [2d Dept 2003]; *Matter of Most v Walker*, 297 AD2d 356, 357 [2d Dept 2002] [“Substantial compliance is acceptable as to details of form in a cover sheet to a designating petition.”]; *Matter of Antoine v Boyland*, 21 Misc.3d 298, 302–303 [Sup. Ct. 2008] [court reinstated designating petitions invalidated by the Board due to minor cover sheet errors]).

Moreover, the court is cognizant that the provisions of Election Law § 6-134 “shall be liberally construed, not inconsistent with *substantial compliance* thereto and the prevention of fraud” (Election Law § 6-134 [10] [emphasis added]) in order to avoid the disenfranchisement of voters (*see also* 9 NYCRR 6215.6 [a] [“. . . these rules shall be liberally construed and technical defects shall be disregarded where there has been *substantial compliance* and where a strict construction is not required for the prevention of fraud” [emphasis added]; *Matter of Zulauf v Martin*, 131 AD3d 656 [2d Dept 2015]; *Matter of Pearse*, 10 AD3d at 462).

Here, as noted above, petitioner's designating petition is comprised of multiple petition volumes, three of which (KG2100506, NY2102819 and NY2102839), were bound together with other volumes (that were separately stapled and numbered) when they were originally filed with the Board on March 25, 2021, the last day to file designating petitions, along with three separate cover sheets. The Board's noncompliance notices, all dated March 26, 2021, specifically advised petitioner that petition volumes KG2100506, NY2102819 and NY2102839 failed to comply with the Board regulation (9 NYCRR 6215.1) requiring volumes to be filed separately and sequentially numbered. The Board's notices further advised the petitioner that she could cure said defects "by filing an exact copy of the petition volume (s) (with the sheets thereof in the same order as originally filed) listed above noting thereon any changes or corrections which is in compliance with Section 6215.1(a)" (NYSCEF Doc. No. 4, at 1-2). Pursuant to 9 NYCRR 6215.7 (d), the petitioner had until March 29, 2021, three days from the date of the Board's noncompliance notices, to correct the deficiencies in the above-referenced petition volumes. Pursuant to a third noncompliance notice dated March 26, 2021, petitioner also had until March 29, 2021 (three days) to amend her cover sheets to cure the discrepancy between the number of volumes claimed and the volumes actually identified on said cover sheets (NYSCEF Doc. No. 4, at 3).

Based upon a thorough review of all of petitioner's submissions with the Board, as well as the Board's records pertaining to petitioner's designating petition, the court finds that the petitioner has made a prima facie showing that she properly and timely cured the defects

referenced in the Board's March 26th notices pertaining to volumes NY2102819, NY2102839 and KG2100506. On March 29, 2021, petitioner re-filed exact photocopies, but separated, of all of the petition volumes that were originally bound together and filed with volumes KG2100506, NY2102819 and NY2102839. The court notes that the re-filed volumes are identical photocopies of the volumes originally filed on March 25, 2021, each bearing a separate petition identification number, and sequentially numbered. The only difference from petitioner's original submission is that the volumes that were originally bound together have all been separated in an effort to comply with the Board's noncompliance notices. Under these circumstances, the court finds that the petitioner has cured the noted defects pertaining to said volumes, and substantially complied with the Board's regulations that volumes be filed separately and numbered sequentially (*see* Election Law § 6-134 [2] and 9 NYCRR 6215.1]; *see also* Election Law § 6-134 [10]; 9 NYCRR 6215.6 [a]; *Matter of Bragman v Larsen*, 153 AD3d 813, 815 [2d Dept 2017] [court held that "by filing a complete and exact copy of the original designating petition with numbered and stapled pages within three days of the Board's determination that the designating petition was invalid, the candidates cured the defects of the original designating petition"]; *Matter of Zulauf*, 131 AD3d at 659 [candidates cured pagination defect in their designating petition by filing complete and exact photocopies of the original petitions with the addition of page numbers within the three-day cure period thereby substantially complying with Election Law and Board's regulations]).

Moreover, there is no showing that petitioner's re-filing of the separated petition volumes was in any way fraudulent or misleading, or that it had a prejudicial effect on the Board or potential voters (*see Matter of Magelaner v Park*, 32 AD3d 487, 488 [2d Dept 2006])[candidate's amended cover sheet, which was in substantial compliance with the Election Law and City Board's rules, "presented no danger of fraud or confusion either to the Board or to the voters"]; *Matter of Siems*, 307 AD2d at 1016 ["There is no justification for invalidating the designating petitions under those rules, which are to be liberally construed . . . where there has been substantial compliance and there is no evidence of confusion either by potential voters or the Board of Elections"]). In fact, petitioner's original cover sheets, as well as her amended cover sheets, correctly identified all of the volumes claimed in her petition with their proper identification numbers. Additionally, the ledger maintained by the Board also identified all of the petition volumes in her designating petition. Thus, there was no apparent prejudice to any potential objectors to petitioner's designating petition (*see Matter of Flacks*, 109 AD3d 423, 423-424 [1st Dept 2013]).

In addition, the omission of one page number (the first sheet) on petition volume KG2100506 does not render petitioner's designating petition, or that particular volume, defective.³ Notably, all of the subsequent pages after the first sheet in volume KG2100506 were in fact all numbered sequentially and, therefore, substantially in compliance with the

³ Based upon a review of the Commissioner's Committee meeting, which occurred on March 26, 2021, the Commissioners noted that the first page of volume KG210506 and the first page of KG2100468 were not numbered. On March 29, 2021, the petitioner corrected the omission of the first page number on volume KG2100468, but not on volume KG210506.

Board's regulations pertaining to the pagination of petition volumes (*see* Election Law § 6-134 [10]; 9 NYCRR 6215.6). Therefore, the court finds that the petitioner has made a prima facie showing that she properly and timely cured the defects referenced in the Board's March 26, 2021 notices pertaining to volumes NY2102819, NY2102839 and KG2100506.

The court now turns to the discrepancy between the number of volumes petitioner claimed on her cover sheets and the volumes that were actually identified on said sheets. While two of the three amended cover sheets still contained errors, in that the number of volumes claimed did not agree with the number of volumes actually listed on the amended cover sheets, such numerical errors are merely technical in nature and do not provide a basis to invalidate petitioner's designating petition under the circumstances presented herein. Specifically, one amended cover sheet indicated there were nine volumes claimed in the petition, but only eight volume identification numbers were listed on that amended cover sheet. The overstatement appears to have been due to the fact that one of the volumes (KG2100467) was listed twice on the amended cover sheet (NYSCEF Doc. No. 5, at 2). In addition, the last amended cover sheet filed by petitioner indicated there were 23 volumes claimed in the petition, but only listed 21 volume identification numbers on said sheet (NYSCEF Doc. No. 5, at 1). With the exception of these minor numerical errors, petitioner's amended cover sheets were otherwise in substantial compliance with the Election Law and the Board's regulations (*see* Election Law § 6-134[10]; 9 NYCRR 6215.6[a]; *Matter of Krance*, 87 AD3d at 669 ; *Matter of Magelaner*, 32 AD3d at 488; *Matter of Pearse*, 10

AD3d at 462; *Matter of Siems*, 307 AD2d at 1016; *Matter of Most*, 297 AD2d at 357; cf. *Matter of Hayon v Greenfield*, 109 AD3d 920, 921 [2d Dept 2013] [amended cover sheet substantially complied with Election Law and Board regulations where petitioner listed two additional volumes on his amended cover sheet which were not filed as part of his designating petition]). In any event, it has not been established, or even alleged, that the numerical errors on petitioner's amended cover sheets were fraudulent or misleading (*see Matter of Staber v Fidler*, 65 NY2d 529, 535 [1985])[minor discrepancies between the numbers of signatures indicated on cover sheets and the actual numbers of signatures contained in the designating petitions themselves were deemed "inconsequential" where there was no allegation or evidence of any fraud]; *Matter of Siems*, 307 AD2d at 1016; *Matter of Most*, 297 AD2d at 357).

Furthermore, the court notes that petitioner's designating petition contains over 7,000 collected signatures, and thus greatly exceeds the 2,250 valid signatures otherwise required to qualify as a Democratic Party candidate for the public office of Mayor of the City of New York. In so noting, the court is mindful of the basic policy considerations which disfavor the disenfranchisement of potential voters based upon technical cover sheet errors especially where, as here, there is no potential to cause confusion amongst said voters or the Board (*see Matter of Siems*, 307 AD2d at 1016; *Matter of Most*, 297 AD2d at 357). Indeed, "[w]hile the legislatively mandated requirements of [Election Law § 6-134] are designed to insure against fraud in connection with the collection of signatures, that goal would in no way be

furthered by permitting inconsequential arithmetic errors, wholly unrelated to any fraud, to be utilized as the basis for disenfranchising a large bloc of voters as would here be the case” (*Matter of Franco v Velez*, 112 AD2d 875, 877 [1st Dept 1985] [court declined to hold designating petition invalid due to misnumbering of certain petition volumes], *affd*, 65 NY2d 967 [1985]).

Based upon the foregoing, the court finds that the petitioner has made a prima facie showing that her amended cover sheets are in substantial compliance with the requirements of the Election Law and the Board’s regulations, and that her designating petition is valid (*see Matter of Siems*, 307 AD2d at 1016; *Matter of Most*, 297 AD2d at 357; *see also* Election Law § 6–134[10] and 9 NYCRR § 6215.6). Moreover, as noted above, the Board has submitted no opposition to the petitioner’s application to validate her petition.

Conclusion

ORDERED that petitioner, Joycelyn Taylor’s application to validate her petition designating her as a candidate for election for the public office of Mayor of the City of New York in the Democratic Party primary election to be held on June 22, 2021 is granted; and it is further,

ORDERED that respondent Board of Elections shall print and place the name of the petitioner Joycelyn Taylor as a candidate for election for the public office of Mayor of the City of New York upon the official ballots for the Democratic Party primary election to be

held on June 22, 2021; and it is further,

ORDERED that the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the Decision and Order of the Court.

E N T E R,



J. S. C.

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