

Matter of Ringel v Schwartz

2022 NY Slip Op 34637(U)

April 28, 2022

Supreme Court, Kings County

Docket Number: Index No. 511469/22

Judge: Peter P. Sweeney

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At Special Election Part 1 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 28th day of April 2022.

P R E S E N T:

HON. PETER P. SWEENEY,
Justice.

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In the Matter of the Application of
PINCHAS RINGEL,

Petitioner-Aggrieved Candidate,

-against-

Index No. 511469/22

DAVID SCHWARTZ,

Respondent-Candidate

and

The BOARD OF ELECTIONS IN THE CITY OF
NEW YORK,

Respondents.

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The following e-filed papers read herein:

NYSCEF Nos.:

| | | |
|---|-------|-------|
| Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed _____ | _____ | 1-13 |
| Opposing Affidavits (Affirmations) _____ | _____ | _____ |
| Affidavits/ Affirmations in Reply _____ | _____ | _____ |
| Other Papers: _____ | _____ | _____ |

Upon the foregoing papers, and after oral argument held remotely on the record in this proceeding commenced pursuant to Election Law § 16-102 to invalidate the designating petition filed by respondent-candidate David Schwartz for the party position

of Male Member of the Democratic State Committee from the 48th Assembly District in the June 28, 2022 Democratic Party Primary Election, the court rules as follows.

On April 20, 2022, petitioner-aggrieved candidate Pinchas Ringel (petitioner) commenced the instant invalidating proceeding against respondent-candidate David Schwartz (respondent). On that same day, petitioner filed a proposed order to show cause which was signed by the court after certain modifications were made to the order. Among other things, the order to show cause directed that respondent be served with a copy of the order to show cause and verified petition on or before April 20, 2022 by overnight mail, first-class mail, and by “affixing same to the outer or inner door of the residence of . . . such Respondent-Candidate at the address set forth in his or her designating petition filed with the Board of Elections in the City of New York (the Board).” In this regard, it is undisputed that the address set forth on respondent’s designating petition is 2162 57th Street, Brooklyn NY 11204.

On April 25, 2025, respondent filed a verified answer which asserted several affirmative defenses. In particular, respondent’s third affirmative defense alleges that the service of process on respondent is defective inasmuch as the legal papers were not affixed to the door of his residence. In support of this contention, respondent submits his own affidavit in which he concedes that he resides at 2162 57th Street in Brooklyn, but that he occupies the unit on the second floor and his neighbor, Pinchus Milstein, occupies the downstairs unit at this same address. Respondent also states that there is only one door to his residence, which can only be reached by walking up a flight of stairs. Respondent further states that no legal papers involving Pinchas Ringel were affixed to

this door. In further support of his claims, respondent submits an affidavit by Mr. Milstein in which he states that he resides at 2162 57th Street in Brooklyn “on the first floor downstairs” and that the door to enter his unit is exclusively the entrance to his home and no other units. Mr. Milstein also states that legal papers were affixed to the door of his unit addressed to David Schwartz. As a final matter, respondent submits two photographs which depict the door to Mr. Milstein’s downstairs apartment with legal papers affixed to it as well as an outdoor stairway that leads to the front door of respondent’s unit. Based upon these allegations, respondent moves to dismiss petitioner’s invalidating proceeding due to the failure to affix the order to show cause and petition to the door to his residence as directed in the order to show cause.

In opposition to respondent’s motion, petitioner submits an affidavit by his process server in which he states that, on April 20, 2022 at 2162 57th Street, Brooklyn NY 11204, he served a copy of the order to show cause and petition by leaving true copies on the door of respondent’s place of residence. Petitioner further states that he complied with the precise terms of the service provision of the order to show cause inasmuch as his process server affixed copies of the legal papers to the door of respondent’s residence “at the address set forth in his or her designating petition filed with the [Board]”. In this regard, petitioner notes that respondent’s designating petition merely set forth the address 2162 57th Street, Brooklyn NY 11204 and did not specify that he resided in the second-floor unit of this residence.¹

¹ At oral argument on the record, both parties agreed that a Traverse hearing was not necessary inasmuch as the relevant facts are undisputed.

“In a proceeding pursuant to Election Law § 16-102, ‘[t]he method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with’” (*Matter of Streng v Westchester County Bd. of Elections*, 131 AD3d 652, 653 [2015], quoting *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505 [2005]). Contrary to respondent’s claim, petitioner strictly complied with the service provision in the order to show cause by arranging to have the legal papers affixed to the door of the residence located at 2162 57th Street, Brooklyn NY 11204 since this was the address set forth in respondent’s designating petition. While it is true that these papers were affixed to the door of Mr. Milstein’s unit, as opposed to respondent’s unit, such action can only be attributed to respondent’s own failure to specify that he resided in the upstairs unit when he set forth his address on his designating petition. Furthermore, respondent’s reliance on *State Farm Fire and Cas. Co. v Apple Pool & Contr. Corp.*, (36 Misc.3d 134[A] [2012]) is misplaced since that case did not involve an order to show cause where the method of service was directed by the court.

As a final matter, there is no merit to respondent’s first affirmative defense, which alleges that the court lacks personal jurisdiction over respondent since the process server’s affidavit does not state his actual residence, but instead provides a P.O. Box mailing address. “An improperly executed affidavit of service is a mere irregularity and not a jurisdictional defect” (*Mendez v Kyung Yoo*, 23 AD3d 354, 355-356 [2005]). Moreover, since petitioner’s process server did affix the legal papers to the door of the address set forth in respondent’s designating petition as directed in the order to show cause and respondent has conceded that a Traverse hearing is unnecessary, respondent

has not been prejudiced by the process server's failure to state his actual residence in his affidavit of service.

Accordingly, respondent's motion to deny and dismiss the instant invalidating petition based upon lack of personal jurisdiction is denied.

ENTER FORTHWITH,

P.P.S.

J. S. C.

HON. PETER P. SWEENEY, J.S.C.

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