

**Tuck v Board of Elections in the City of N.Y.**

2023 NY Slip Op 31437(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 153664/2023

Judge: Lucy Billings

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 41

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BRIDGET TUCK and FRANCISCO E. GONZALEZ, Index No. 153664/2023

Petitioners

- against -

DECISION AND ORDER

BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent,

and

AURA OLAVARRIA and MARQUIS JENKINS,

Candidates-Respondents,

and

CAMILLE NAPOLEON,

Objector-Respondent

-----x

LUCY BILLINGS, J.S.C.:

The purpose of verification requirements in New York Election Law § 16-116 and C.P.L.R. § 3020 is to assure that specified pleadings, such as petitions in election proceedings, are based on personal knowledge. The absence of an attestation upon personal knowledge is a substantial defect that strikes at the heart of the verification requirement. Goodman v. Hayduk, 45 N.Y.2d 804, 806 (1978).

In this proceeding, the verification of the petition attests: "Arthur Z. Schwartz . . . is the attorney for

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Petitioner in the within proceeding; he has read the foregoing petition and knows the contents thereof; the same are true to petitioner's own knowledge, and records in his possession . . . ." V. Pet. at 8 (emphasis added). Setting aside the failure to specify which of the two petitioners the verification refers to and the confusing final comma in the quoted text, the verification's central flaw is that attorney Schwartz is incompetent to attest what either petitioner knows upon her or his own knowledge. Although attorney Schwartz might be competent to attest to the petition's contents upon his own personal knowledge, he does not do so.

Petitioners suggest that "petitioner's own knowledge" is a typographical error in text intended to state "his own knowledge," referring to attorney Schwartz's own knowledge. While this error may be careless, it is not the product of a slip of the fingers on the keyboard, and care is required to comply with the core requirement of verifications: that a person attests upon that person's own knowledge, not based on another person's knowledge, that the pleading's contents are true. Had at least one of petitioners taken the trouble to verify the petition personally, this error likely would not have occurred.

Despite the verification's use of "he" and "his," referring to attorney Schwartz elsewhere, that use does not suggest, let alone unambiguously, that the possessive pronoun "his" is

intended to preface "own knowledge." The use of "petitioner's" is not an obvious error that renders the clause meaningless and is not susceptible of an interpretation as "his."

Petitioners concede that attorney Schwartz was not verifying the petition because petitioners do not reside in the county where his office is. C.P.L.R. § 3020(d)(3); Page v. Ceresia, 265 A.D.3d 730, 731 (3d Dep't 1999). Nor are the circumstances here akin to a potential defect in the notary's qualifications. In fact, in the authority on which petitioners rely, the court determined that the notary was qualified to verify the petition despite being a nominal adversary of the petitioners, since he had with no interest aligned with them or even at all in the proceeding. Harder v. Kuhn, 153 A.D.3d 1119, 1120 (3d Dep't 2017).

The defect here is akin to an unverified pleading. Frisa v. McCarthy, 298 A.D.2d 457, 457-58 (2d Dep't 2002). Since respondents timely notified petitioners that respondents were treating the defectively verified pleading as a nullity, they are entitled to do so, and the court must do so as well. C.P.L.R. § 3022; DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d 1645, 1645 (4th Dep't 2019). "To find an unverified petition nonetheless acceptable to institute the special proceeding would not serve practical purposes or advance the policy behind section 16-116 of the Election Law." Goodman v. Hayduk, 45 N.Y.2d at

806.

Nor may petitioners cure their defectively verified petition by amendment. The defective verification is fatal to the petition. DeMarco v. Monroe County Bd. Of Elections, 176 A.D.3d at 1645; Niebauer v. Board of Elections in the City of N.Y., 76 A.D.3d 660, 660 (2d Dep't 2010); Frisa v. McCarthy, 298 A.D.2d at 458; Frisa v. O'Grady, 297 A.D.2d 394, 395 (2d Dep't 2002). Consequently, for the reasons explained above, the court denies the petition and dismisses this proceeding to validate the designating petitions filed by petitioner Bridget Tuck and Francisco E. Gonzalez with respondent Board of Elections in the City of New York to be placed on the ballot in the Democratic Primary Election June 27, 2023, as candidates for District Leader for Part A of the 74th Assembly District.

DATED: May 1, 2023



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LUCY BILLINGS, J.S.C.

**LUCY BILLINGS**  
J.S.C