

**Matter of Kane v Board of Elections in the City of
N.Y.**

2023 NY Slip Op 31470(U)

May 1, 2023

Supreme Court, New York County

Docket Number: Index No. 451186/2023

Judge: Lucy Billings

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

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

In the Matter of the Application of

NICKIE KANE,

Index No. 451186/2023

Petitioner

- against -

DECISION AND ORDER

BOARD OF ELECTIONS IN THE CITY OF NEW
 YORK,

Respondent
 -----x

LUCY BILLINGS, J.S.C.:

I. TIMELINESS OF THE PROCEEDING

New York Election Law § 16-102(2) requires that a proceeding such as this one regarding designating petitions "shall be instituted" within 14 days after the last day to file designating petitions or within three business days after respondent Board of Elections in the City of New York has determined that the designating petitions are invalid. The last day for petitioner to file her designating petitions was April 10, 2023. The Board notified her that it had determined her designating petitions to be invalid on April 14, 2023. Thus petitioner knew when she received that notice April 15, 2023, that she needed to institute this proceeding by April 24, 2023.

To have "instituted" this proceeding under Election Law § 16-102(2), petitioner was required to have commenced the

proceeding by filing her petition and completed service on all necessary parties by April 24, 2023. Facteau v. Clinton County Bd. of Elections, 197 A.D.3d 840, 842 (3d Dep't 2021); Mandell v. Board of Elections, 164 A.D.3d 719, 720 (2d Dep't 2018); DeStefano v. Borkowski, 153 A.D.3d 817, 818 (2d Dep't 2017); Nunziato v. Messano, 87 A.D.3d 647, 648 (2d Dep't 2011).

Petitioner filed her verified petition timely April 24, 2023, but concedes she did not serve it on respondent Board by that date.

Petitioner's order to show cause bringing the petition to be heard was not presented to the court until April 26, 2023, so at that point it was impossible for the court to order service of the order to show cause and verified petition by April 24, 2023. The deadline of April 27, 2023, 12:00 noon, for service of the order to show cause and verified petition that the court set in the order to show cause did not relieve petitioner of the requirement to serve the verified petition by April 24, 2023. Facteau v. Clinton County Bd. of Elections, 197 A.D.3d at 842; Wilson v. Garfinkle, 5 A.D.3d 409, 410 (2d Dep't 2004).

Moreover, since she knew by April 15, 2023, that she needed to institute this proceeding by April 24, 2023, she could have anticipated a possible delay in the presentation of her order to show cause to a justice for signature and not waited until the last minute to file her petition and proposed order to show cause. Because petitioner failed to institute this proceeding

timely, the court dismisses it. N.Y. Elec. Law § 16-102(2); Facteau v. Clinton County Bd. of Elections, 197 A.D.3d at 842; Mandell v. Board of Elections, 164 A.D.3d at 720; DeStefano v. Borkowski, 153 A.D.3d at 818; Nunziato v. Messano, 87 A.D.3d at 648.

II. VALIDITY OF PETITIONER'S DESIGNATING PETITIONS

Even were this proceeding timely, petitioner's designating petitions suffer from a fatal flaw. On April 10, 2023, petitioner filed designating petitions with respondent Board to be placed on the ballot in the Democratic Primary Election June 27, 2023, accompanied by a cover sheet that listed her as a candidate for "NYC City Council, District 39." V. Answer Ex. 2; Pet'r's Ex. F. The Board determined that this specification of a district and not an office was inadequate, also found several other deficiencies in petitioner's cover sheet that petitioner does not contest, notified her of all these defects, and gave her an opportunity to file an amended cover sheet curing them. The Board's noncompliance notice dated April 11, 2023, advised that these defects "may be cured within three (3) business days after the date of this letter by filing an amended Cover Sheet Failure to file the amended Cover Sheet within the three (3) day period shall be a fatal defect." V. Pet. Ex. B; V. Answer Ex. 3.

On April 13, 2023, petitioner filed an amended cover sheet, curing several of the conceded deficiencies in her original cover

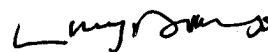
sheet, but listing her as a candidate for "Democratic District 39." V. Pet. Ex. C; V. Answer Ex. 4. Unquestionably this unspecified district, without any specification of an office for which she was a candidate, was inadequate. There is a New York State Senate District 39, albeit not in New York City, a New York State Assembly District 39 in Queens County, and a New York City Council District 39 in Kings County. Even if petitioner's original cover sheet adequately specified an office by specifying its district, petitioner may not fall back on that cover sheet due to its other conceded deficiencies.

9 N.Y.C.R.R. § 6215.1 requires that: "All petitions containing 10 or more sheets shall be accompanied by a cover sheet." The cover sheet must include the office and district for which the candidate seeks designation. 9 N.Y.C.R.R. § 6215.2(a)(1). Although the requirements for designating petitions under the New York Election Law "shall be liberally construed, not inconsistent with substantial compliance thereto," N.Y. Elec. Law § 6-134(10), petitioner's amended cover sheet was substantially non-compliant. Specification of the office and district for which the candidate seeks designation is fundamental. Sears v. Kimmel, 76 A.D.3d 1113, 1113-14 (3d Dep't 2010). While petitioner's actual designating petitions did specify that she sought designation for the office of City Council Member in District 39, if the cover sheet for multiple

petition sheets is for any valid purposes, they surely include the specification of the precise office and district for which the candidate seeks designation.

Because the fundamental omissions from petitioner's amended cover sheet invalidate the designating petitions for which the amended cover sheet was filed, on April 14, 2023, the Board notified petitioner that she will not appear on the ballot for the Primary Election June 27, 2023. For the reasons explained above, the court denies the petition to reverse that determination and dismisses this proceeding to validate Nickie Kane's designating petitions filed 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 a candidate for City Council Member for the 39th City Council District.

DATED: May 1, 2023



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C