

Matter of Kane v Hanif

2023 NY Slip Op 31500(U)

May 2, 2023

Supreme Court, New York County

Docket Number: Index No. 451187/2023

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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 In the Matter of the Application of

NICKIE KANE,

Index No. 451187/2023

Petitioner-Candidate-Aggrieved

- against -

DECISION AND ORDER

SHAHANA HANIF,

Respondent-Candidate

BOARD OF ELECTIONS IN THE CITY OF NEW
 YORK,

Respondent-Board
 -----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 to invalidate designating petitions "shall be instituted" within 14 days after the last day to file designating petitions. The last day for respondent Hanif to file her designating petitions that petitioner challenges was April 10, 2023. Thus petitioner knew then 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 verified 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 respondents by that date.

Petitioner's order to show cause bringing the verified 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 10, 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 verified 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.

Even were the statute of limitations extended to the deadline of April 27, 2023, 12:00 noon, that the court set in the order to show cause for service of the order to show cause and verified petition, petitioner failed to comply with the order to show cause's requirements for service on respondent Hanif, a necessary party. Although petitioner served Hanif by delivery of the order to show cause and verified petition to a person of suitable age and discretion at Hanif's residence, C.P.L.R. § 308(2), petitioner failed to mail the order to show cause and verified petition via overnight mail to Hanif. Petitioner's transmission of the document to Hanif via email did not meet the service requirements in either the order to show cause or C.P.L.R. § 308. This noncompliance with the order to show cause's service requirements is an independent basis to dismiss the petition. Angletti v. Morreale, 25 N.Y.3d 794, 797 (2015); Rotanelli v. Board of Elections of Westchester County, 109 A.D.3d 562, 563 (2d Dep't 2013).

Finally, at the hearing on the petition April 28, 2023, and in her reply to respondent Board filed May 2, 2023, petitioner repeatedly admitted that she failed to file timely objections to Hanif's designating petitions. For all these reasons as

explained above, the court denies the petition and dismisses this proceeding to invalidate Shahana Hanif'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 2, 2023



LUCY BILLINGS, J.S.C.

LUCY BILLINGS
J.S.C