

Matter of Rowlands v Baker

2023 NY Slip Op 32372(U)

July 7, 2023

Supreme Court, Albany County

Docket Number: Index No. 905208-23

Judge: L. Michael Mackey

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STATE OF NEW YORK
SUPREME COURT

COUNTY OF ALBANY

In the Matter of the Application of

**DECISION, ORDER
AND JUDGMENT**

Kellin Rowlands,

Petitioner,

Index #905208-23

-against-

Jeff Baker, as Objector, and the Albany County
Board of Elections,

Respondents.

For an Order Pursuant to Section 16-102 of the Election Law,
Declaring Valid the Petition filed by or on behalf of Kellin
Rowlands with the Albany County Board of Elections, on May
26,2023, seeking to Nominate him as a Candidate of the
Independent Body known and styled as "Uniting Bethlehem"
to the Public Office of Member, Bethlehem Town Council

(Albany County Supreme Court, All-Purpose Term, June 27, 2023)

APPEARANCES:

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Mackey, J.:

Petitioner Kellin Rowlands commenced this proceeding pursuant to Election Law § 16-102 to validate his independent nominating petition (the “Nominating Petition”), by which he seeks to run in the November 7, 2023 general election as a candidate of the “Uniting Bethlehem” party for the public office of Member, Bethlehem Town Council.

On May 26, 2023, petitioner filed the Nominating Petition, containing 1,078 signatures, with respondent Albany County Board of Elections (the “Board”). Thereafter, respondent Jeff Baker timely filed both general and specific objections with the Board. Of the 1,078 signatures contained in the Nominating Petition, Mr. Baker alleged that “at least 256” were invalid and that it was, therefore, lacking the number of valid signatures needed. In his specific objections, Mr. Baker alleged that certain line-by-line signatures were, *inter alia*, illegible, did not contain the first name of the individual who allegedly signed the petition, were printed, or otherwise could not be matched to voter registration.

On June 9, 2023, the Board sent written notification to petitioner and Mr. Baker that it had made its preliminary rulings with respect to the specification of objections, enclosing a copy of the specification with staff notations thereon and advising the parties that a hearing had been scheduled for Wednesday, June 14, 2023, at 0900 to review the objections and staff worksheets and to determine the validity of the specific objections. The parties were further advised that any challenges should be in the form of a written submission.

Accompanying the Board’s notice was a staff worksheet summary, which indicated that the Board had preliminarily determined that there were 1,078 signatures filed in support of the Nominating Petition and that 156 of them were found to be invalid, leaving 922 valid signatures. The Board had also determined that the minimum number of valid signatures needed to qualify was 929, meaning that it was short by 7 signatures.

In response thereto, both parties sent written submissions to the Board. On June 14, 2023, at the time of the scheduled hearing, the Board, through its commissioners, announced that it had reviewed the parties’ submissions and had determined to uphold its preliminary findings with one exception, which went in favor of the petitioner, thereby

reducing the shortage to 6. As a result, the Board invalidated the Nominating Petition and petitioner thereafter commenced this proceeding. According to petitioner, the Board: 1) miscalculated the minimum number of signatures needed to qualify the Nominating Petition and 2) of the 156 signatures disallowed by the Board, 28 are valid and should be counted, thus increasing his number of valid signatures well above the minimum requirement.

Respondents argue that the court should not reach the merits of the case because, according to them, petitioner's pleadings are defective. Citing *Matter of Hennessy v Oneida County Bd. of Elections*, __ AD3d __ 2023 WL 3962394 (4th Dept June 13, 2023), respondents assert that this proceeding should be dismissed because the petition does not give them notice of what signatures petitioner claims the Board improperly invalidated. In *Hennessy* the board of elections had invalidated 585 signatures and petitioner brought a validation petition in which he "sought to challenge '[e]ach and every one of the determinations of the Board' adverse to him" (*id.* at 1). The court held that "petitioner's conclusory challenge ... failed to satisfy the specific pleading standard [as it did not] specify which determinations of the Board petitioner claimed were erroneous" (citations and internal quotation omitted). Contrary to the petition in *Hennessy*, however, that in the case at bar clearly and succinctly provides notice of petitioner's claim that the Board improperly invalidated 28 specific signatures. As to each of those signatures, petitioner also states why he believes the Board was wrong.¹ The fact that a petition does so by incorporating an attached exhibit does not render it invalid, so long as the exhibit is "sufficiently particularized" (*id.*), which it certainly is in the case at bar.

Nor do the remaining cases cited by respondents support their argument that the petition is invalid because the details of petitioner's claim are set forth in an attached exhibit. Rather, in both *Matter of Maio v McNamara*, 180 AD3d 965 (2nd Dept 2020) and *Matter of Fuchs v Park*, 205 AD3d 849 (2nd Dept 2022) the courts affirmed dismissal

¹ For each signature at issue petitioner states concisely why he believes it should be counted, such as "[u]se of initials does not invalidate signature (6-134[5])," "[s]ignature substantially compares with that on registration record," and "[s]ignatory is 93 years old. Exemplar was taken in 1960s. Signature substantially compares therewith" (see Exhibit E to petition, NYSCEF Doc. 1, p.139).

because the validating petitions and attached exhibits were not “sufficiently particularized.” They certainly do not stand for the proposition that it is somehow improper to provide the necessary details in an attached exhibit. Nothing in *Matter of Jennings v Board of Elections of City of N.Y.*, 32 AD3d 486 (2nd Dept 2006), also cited by respondents, indicates otherwise. In summary, because the petition and attached exhibits in the case at bar provided respondents “with adequate notice to prepare a defense” (*Matter of Hennessy, supra*), the motion to dismiss on the pleadings must be denied.

As to the merits, the court held an evidentiary hearing on June 27, 2023, at which petitioner called several witnesses to the stand and offered exhibits into evidence. At the conclusion of petitioner’s case the court adjourned the hearing to July 6, 2023, to allow respondents time to call witnesses or secure documentary proof if they wished to do so. Subsequently, respondents’ counsel advised the court that they did not wish to call any witnesses or continue the hearing but, rather, would “submit closing briefs.”

At the commencement of the hearing, respondents conceded that the minimum number of signatures needed was 928, not 929, thus reducing petitioner’s shortfall to just 5. Petitioner then called several people who had circulated the Nominating Petition and signed the same as witnesses, to wit: Edith Miskewicz, George Harder, Steven Peterson, Robert C. Dempf, and James Carriero. The court had the opportunity to observe the demeanor of those witnesses on the stand and fully credits their testimony as truthful.

Ms. Miskewicz testified as to three of the signatures that the Board disallowed - David Lewis (sheet 75, line 10), Kathleen Durivage (sheet 75, line 4), and Nicolle Martin (sheet 61, line 6). She explained that she knows each of those people, who are all neighbors of hers, and she personally saw them sign the petition and witnessed their signatures. That testimony alone establishes the validity of those signatures. Further, all three of the voters signed affidavits swearing that they signed the petition. Although respondents objected to the affidavits on hearsay grounds, the court overruled the objection and received them, as such proof is properly considered in this type of proceeding (*see Matter of Maclay v Dipasquale*, 197 AD3d 1502 [4th Dept 2021] and *Matter of Jaffee v Kelly*, 32 AD3d 485 [2nd Dept 2006] *leave denied* 7 NY3d 707).

Respondents declined the opportunity to contest the affidavits with proof to the contrary, such as calling the voters as witnesses. Thus, the affidavits serve to confirm Ms. Miskewicz' testimony that Mr. Lewis, Ms. Durivage, and Ms. Martin indeed signed the Nominating Petition. Finally, the court has compared the signatures to the signature cards on file with the Board and finds that they substantially compare. Accordingly, those three signatures are found to be valid.

Next, petitioner called George Harder, who testified concerning the signatures of Alba Giordano (sheet 58, line 1) and Pamela Seward (sheet 31, line 3). He explained that he knows both of those people, who are neighbors of his, and he personally saw them sign the petition and witnessed their signatures. The court finds that testimony alone to be sufficient to establish the validity of those signatures. Further, both of the voters signed affidavits swearing that they signed the petition, which proof has not rebutted in any way. Finally, the court has compared the signatures to the signature cards on file with the Board and finds that they substantially compare. Accordingly, those two signatures are found to be valid.

Petitioner called Steven Peterson, who testified concerning the signatures of Mark Metchick (sheet 95, line 2), Diane Easton (sheet 96, line 10), and Patricia Russum (sheet 70, line 5). He explained that he knows all of those people and he personally saw them sign the petition and witnessed their signatures. The court finds that testimony alone to be sufficient to establish the validity of those signatures. Further, all of those voters signed affidavits swearing that they signed the petition, which proof has not rebutted in any way. Finally, the court has compared the signatures to the signature cards on file with the Board and finds that they substantially compare. Accordingly, those three signatures are found to be valid.

Petitioner also called Robert C. Dempf, who testified concerning the signature of Patrick Scalzo (sheet 67, line 7). Mr. Dempf is an attorney and testified that he knows Mr Scalzo well, as he is a client of his. He stated that he saw Mr. Scalzo sign the petition and witnessed his signature, which testimony alone establishes the validity of the signature. Also, Mr. Scalzo signed an affidavit swearing that he signed the petition and the court has

compared his signature to the signature card on file with the Board and finds that it substantially compares. Accordingly, the court finds that signature to be valid.

Finally, petitioner called James Carriero, who testified concerning the signature of Nicole Collins (sheet 59, line 5). Mr. Carriero stated that Ms. Collins is a neighbor, whom he knows personally, and that he saw her sign the petition and witnessed her signature. As with the others discussed above, the court finds that testimony sufficient to establish the validity of Ms. Collins' signature. Also, Ms. Collins signed an affidavit swearing that she signed the petition and the court has compared her signature to the signature cards on file with the Board and finds that it substantially compares. Accordingly, the court finds that signature to be valid.

The 10 signatures discussed above are, alone, sufficient to validate the Nominating Petition, giving petitioner 5 more signatures than the minimum number needed. The court, however, has also reviewed the remaining 18 signatures and finds 15 of them to be valid. The court has compared the signatures of the following voters with the signature cards on file with the Board and finds that they substantially compare and are valid:

Robert L. Crocker, Sr. (sheet 12, line 9)²

Julie B. Crocker (sheet 12, line 10)³

Julia Decker (sheet 13, line 6)⁴

Peter Anderson (sheet 15, line 1)

Mansoor Umar (sheet 16, line 1)

Dawn Garabedian (sheet 29, line 7)⁵

Philip Sternklar (sheet 34, line 3)

Sarah English (sheet 39, line 2)

Joseph Balnis (sheet 39, line 4)

Christine Ferguson (sheet 41, line 8)

Chris Kot (sheet 44, line 1)

² Mr. Crocker also submitted an affidavit attesting that he signed the Nominating Petition.

³ Ms. Crocker also submitted an affidavit attesting that she signed the Nominating Petition.

⁴ Ms. Decker also submitted an affidavit attesting that she signed the Nominating Petition.

⁵ Ms. Garabedian also submitted an affidavit attesting that she signed the Nominating Petition.

Jeannette Maturo (sheet 56, line 3)
Nancy Hogan (sheet 74, line 3)
Thor Sandwick (sheet 88, line 2)
Margaret Casey (sheet 90, line 9)

There were three signatures (sheet 47, line 9; sheet 87, line 8; and sheet 92, line 1) that the Board ruled invalid on the ground that the voters had already signed designating petitions of candidates for the same position sought by petitioner. The court finds insufficient evidence in the record to validate the same.

In summary, the court finds 25 of the 28 contested signatures to be valid, as detailed above. That increases the total of valid signatures on the Nominating Petition to 948, 20 more than the minimum required number needed.

Based upon the foregoing, it is hereby

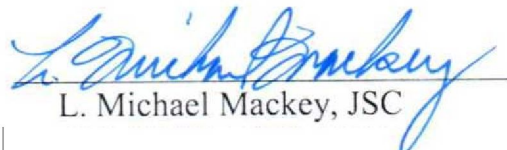
ORDERED and ADJUDGED that the Verified Petition to validate the independent nominating petition designating Kellin Rowlands as candidate for the public office of Member, Bethlehem Town Council in and for the Town of Bethlehem, New York at the General Election to be held on November 7, 2023, is granted; and it is further

ORDERED and ADJUDGED that the independent nominating petition filed with the Albany County Board of Elections designating Kellin Rowlands as candidate for the public office Member, Bethlehem Town Council in and for the Town of Bethlehem, New York, at the General Election to be held on November 7, 2023, contains the required number of valid signatures and is valid; and it is further

ORDERED that the Albany County Board of Elections is directed to print and place the name of Kellin Rowlands as candidate for the public office of Member, Bethlehem Town Council in and for the Town of Bethlehem, New York, on the official ballots to be used in the General Election to be held on November 7, 2023.

ENTER.

Dated: Albany, New York
July 7, 2023


L. Michael Mackey, JSC



07/07/2023

This memorandum constitutes the Decision and Order of court. The court has uploaded the original Decision and Order to the case record in this matter maintained on the NYSCEF website, whereupon it is to be entered and filed by the Office of the Albany County Clerk. Counsel are not relieved from the applicable provisions of CPLR 2220 regarding service and notice of entry.

Papers Considered: NYSCEF Doc Nos. 1 - 16.