

**Pineda v Santana**

2025 NY Slip Op 31508(U)

April 21, 2025

Supreme Court, New York County

Docket Number: Index No. 154819/2025

Judge: Jeffrey H. Pearlman

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JEFFREY H. PEARLMAN PART 44M**

*Justice*

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ALEXANDER LORENZO REYES PINEDA, TOMAS RAMOS

Petitioner,

- v -

RAYMOND SANTANA, BOARD OF ELECTIONS IN THE CITY OF NEW YORK,

Respondent.

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INDEX NO. 154819/2025

MOTION DATE 04/14/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35

were read on this motion to/for ELECTION LAW - INVALIDATE PETITION.

In this Election Law proceeding, Petitioner-objector Alexander Lorenzo Reyes Pineda and Petitioner-Objector Tomas Ramos (collectively, Petitioner-Objectors) move by Order to Show Cause for an order finding the Designating Petition of the Respondent-candidate Raymond Santana (Respondent-Candidate) as candidate of the Democratic party for the public office of Member of the New York City Council from the 8th Council District in the Primary Election to be held on June 24, 2025 to be invalid and declaring the designating petition filed with Respondent Board of Elections in the City of New York (Respondent Board of Elections) purporting to designate Respondent-candidate as candidate for the above public office on the official ballots to be used at the Primary Election to be held on June 24, 2025 to be a legal nullity, reversing any contrary determination of Respondent Board of Elections that have been made or may hereinafter be made (Motion Seq. 001). This memorandum decision is limited to addressing Petitioner - Objectors' claim that "signatures have been forged and/or other fraud has been committed" (Verified Petition, ¶15(q); 4/25/25 Oral Argument) as well as the renewed

request advanced by Counsel for Petitioner-Objectors for this Court to issue three so-ordered subpoenas for Respondent-Candidate Raymond Santana, Javier Abril, and Rosalie Abreu (4/25/25 Oral Argument; 4/25/25 Affirmation of Aaron Foldenauer NYSCEF Doc. No. 32; Subpoenas, NYSCEF Doc. No. 33, 34, 35).

CPLR § 3016(b) requires that fraud be plead with specificity, and this requirement applies to all Election Law Proceedings (Thomas v Eugene, 41 Misc3d 418 [Supreme Court, Kings Co. 2013]; Matter of Robinson v Edwards (54 AD3d 682 [2d Dept 2008])). While an “unassailable proof of fraud” is not required, there needs to be sufficient facts to apprise the candidate of the allegations being made against the designating petition (Matter of Robinson (54 AD3d 682)). This is precisely why the 2025 Election Law Part Rules for New York County contains a requirement for a party alleging fraud to present a complete written offer of proof, “including a statement as to the number of witnesses expected to be called, the identification of each such witness (by name, address, volume, page and line) and the status of each such witness (e.g., candidate, signatory, subscribing witness, notary public, etc.)” (2025 New York County Election Law Part Rules, <https://www.nycourts.gov/legacypdfs/courts/1jd/suptctmanh/PDF/NYCounty-Election-PartRules2025.pdf>).

Petitioner-Objectors did not present a complete written offer of proof as required by the 2025 New York County Election Law Part Rules. They argue that the written Objections and Specifications of Objections to the Respondent-Candidate’s Designating Petition filed with the Respondent Board of Elections on April 7, 2025 and April 14, 2025 pursuant to Election Law § 6-154, which are to be incorporated with the Verified Petition and considered in support of the

request for relief (Verified Petition ¶¶ 6,7), is sufficient proof of claims of fraud. The Objections and Specifications of Objections to the Respondent-Candidate's Designating Petition claimed filed with the Respondent Board of Elections by Petitioner-Objectors, however, are not annexed to the Petition or the Order to Show Cause and were not presented to the Court at Oral Argument (NYSCEF Doc. Nos. 1, 3, 5).

Counsel for Respondent-Candidate correctly states in his Affirmation in Opposition that the claims advanced as they relate to fraud were required to be particularized in the pleading pursuant to CPLR 3016(b). Equally correct is the assertion that the Petitioner-Objectors specifications against signatures claiming forgery do not constitute the allegation of fraud, as merely writing "fraud" or "forgery" on a petition sheet objection does not satisfy establish a permeation of fraud (Matter of Saal v Board of Elections for County of Nassau, 25 NY2d 793 [1969]). What Petitioner-Objectors needed to do, was to plead their fraud claims with particularity and then submit their offer of proof in accordance with the directions of this Part (2025 New York County Election Law Part Rules). They did not.

Counsel for Respondent-Candidate also correctly notes that Petitioner-Objectors do not have a right to file a Bill of Particulars in this special proceeding. CPLR § 402 limits pleadings in a special proceeding to a petition, an answer, and a reply to any counterclaim asserted unless the Court permits the submission of other pleadings. The 2025 Election Law Part Rules for New York County specifically permits only an aggrieved candidate to file a Bill of Particulars (2025 New York County Election Law Part Rules). The reason for this limitation is because the non-candidate objector, as part of these proceedings, already had the opportunity to file both general

and specific objections with the Board of Elections and should not be given additional time to plead their claim of fraud.

As Petitioner-Objectors claim of fraud is pled insufficiently, the claim of fraud alleged in the Petition must be, and is, dismissed (*Matter of Waugh v Nowicki*, 10 AD3d 437 [2d Dept 2004]; *Green v Mahr*, 231 AD2d 480 [2d Dept 1996]; *Ford v D'Apice*, 133 AD2d 191 [2d Dept 1987], *Bradley v D'Apice*, 91 AD2d 691 [2d Dept 1982]).

With respect to the renewed request for subpoenas, after careful consideration, the Court declines to so-order the subpoena for the Respondent-Candidate because the claim advanced, relating to the candidate's residency, was not advanced in the Petition and as such is time-barred.

The request for so-ordered subpoenas for Javier Abril and Rosalie Abreu, which seem to relate to specific line-by-line challenges, is granted and said subpoenas will be contemporaneously uploaded with this Decision and Order.

Accordingly, it is

**ORDERED** that the portion of Petitioner-Objectors Order To Show Cause seeking to invalidate the Designating Petition of the Respondent-candidate Raymond Santana as candidate of the Democratic party for the public office of Member of the New York City Council from the 8th Council District in the Primary Election to be held on June 24, 2025 and declare said designating petition a legal nullity based on the claim that "signatures have been forged and/or other fraud

has been committed” (Verified Petition, ¶15(q); is denied and the claim dismissed for failure to plead fraud with particularity pursuant to CPLR 3016(b); and it is further

**ORDERED** that the request advanced by Petitioner-Objectors for this Court to issue so-ordered subpoenas ad testificandum is granted solely as to Javier Abril and Rosalie Abreu and denied as to Respondent-Candidate Raymond Santana; and it is further

**ORDERED** that Counsel for the parties are directed to appear in the Election Law Part (IAS Part 44), New York State Supreme Court, Room 321, 60 Centre Street New York, New York, 10007 at 9:30 a.m. on Tuesday April 29, 2025 to provide updates to the Court as to status of all outstanding Board of Elections Rulings and for assignment, as necessary, to a Special Referee for resolution of any outstanding issues.

This constitutes the Decision and Order of the Court.

4/21/2025  
DATE

**HON. JEFFREY H. PEARLMAN**  
JEFFREY H. PEARLMAN, J.S.C. J.S.C.

CHECK ONE:  CASE DISPOSED  DENIED  NON-FINAL DISPOSITION  OTHER

APPLICATION:  GRANTED  SETTLE ORDER  GRANTED IN PART  SUBMIT ORDER

CHECK IF APPROPRIATE:  INCLUDES TRANSFER/REASSIGN  FIDUCIARY APPOINTMENT  REFERENCE