

SUPREME COURT - STATE OF NEW YORK  
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

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In the matter of the application of  
ALI MUHAMMAD,

Petitioner,

DECISION, ORDER &  
JUDGMENT

-against-

Index No: 1816/2017

MARCO CAVIGLIA and ERK HAIGHT,  
Commissioners constituting the Dutchess County  
Board of Elections,

Respondents.

-and-

LEE KYRIACOU and GEORGE MANSFIELD,

Respondents-Candidates,

-and-

CHARLES KELLY,

Respondent-Objector,

For an Order pursuant to Election Law §§16-100,  
16-102, and 16-116 declaring valid the designating  
petitions designating Petitioner as a candidate of the  
Democratic Party for the public office of Councilman  
At Large in the City of Beacon, County of Dutchess,  
and directing the Board of Elections to place the name  
of Petitioner on the official ballot of such primary  
election.

A hearing was held August 4, 2017 and August 7, 2017. An order to show cause was filed on July 27, 2017 in which the petitioner, Ali Muhammed, seeks an order declaring valid the designating petition that designates him as a candidate of the Democratic Party for the Public Office of Councilman at Large in the primary election to be held on September 12, 2017, directing the respondent Board of Elections to place his name on the ballot of the Democratic primary election, and granting him costs and disbursements in this action. The petitioner is a resident of the City of Beacon, New York residing at 30 Green Street, Beacon, New York 12508. He is a candidate for the Public Office of Councilman at Large.

The Board of Elections invalidated the designating petitions. The following is undisputed: 220 signatures are required. The petition contains 298 signatures. A general objection and specifications were both timely filed. The Republican commissioner of elections, Erik Haight, found 207 valid signatures. The Democratic commissioner, Marco Caviglia, found 90 invalid signatures and then stopped his review at sheet 13 line 18. The commissioners agreed that there weren't enough valid signatures and so they invalidated the petition. Petitioner timely commenced this proceeding.

There were between 207 and 209 valid signatures according to the Board of Elections' ruling. Therefore, if the petitioner can now prove that at least 13 of those signatures declared invalid were actually valid then he has the 220 signatures he needs to be on the primary ballot.

During the petitioner's attorney's questioning at the hearing held before the undersigned, commissioners Haight and Caviglia reviewed certain signatures which they found invalid on the basis that the signer's name was printed instead of signed in script. These included the following individuals from whom affidavits have been submitted by the petitioner.

Giada Amador, who signed sheet 9 line 20 whose signature was invalidated as "No such voter; no signature (printed)."

Steven Andersen, who signed sheet 12 at line 4 whose signature was invalidated as "No signature (printed)."

Destiny Aquino, who signed sheet 9 at line 15 whose signature was invalidated as "No signature (printed)."

Leonel Brito, who signed sheet 7 at line 9 whose signature was invalidated as "No signature (printed)."

Patrick Capriglione, who signed sheet 12 at line 8 whose signature was invalidated as "No such voter; no signature (printed)."

Kyle Duffy, who signed sheet 9 at line 9 whose signature was invalidated as "No such voter; no signature (printed)."

Michael Isabell, who signed sheet 6 at line 20 whose signature was invalidated as "No signature (printed); predates prior signature."

Christopher Janks, who signed sheet 16 at line 1 whose signature was invalidated as "No signature (printed)."

Richard Jewell; who signed sheet 17 at line 5 whose signature was invalidated as "No signature (printed)."

Joelle Price; who signed sheet 9 at line 16 whose signature was invalidated as "No such voter; no signature (printed)."

Jacob Rhodus; who signed sheet 11 at line 14 whose signature was invalidated as "No signature (printed)."

Elizabeth Velez; who signed sheet 6 at line 18 whose signature was invalidated as "No signature (printed); pre-dates prior signature."

All of these twelve individuals submitted affidavits which state, in sum, his/her name, his/her address, that he/she is a member of the Democratic Party and that he/she executed a Democratic Party designating petition for Ali Muhammed as candidate for the Office of Councilman at Large in the primary election to be held in September of 2017. Each individual refers to the date signed, the line signed and confirms that he/she printed rather than signed in cursive and that it was his/her intention to support petitioner's candidacy. As to the four that were marked "no such voter," the name and address used are confirmed in the affidavits and match that on the voter registration roles. Such objections are therefore not valid. As to the two marked "pre-dates prior signature," there is no requirement that dates on a designating petition have to be sequential. Election Law §6-130; §6-134. With the exception of Joelle Price (a registered Republican) the signatures of these voters were valid. By adding the voters who signed these 11 affidavits, the petitioner reaches 218 valid signatures.

Commissioner Haight testified that although the signature of Dennis Clayton on sheet seven at line 14 was invalidated, it was actually valid as he is a registered voter and the signature is valid. The petitioner therefore reaches 219 valid signatures, enough to place him on the primary ballot. There is also an affidavit by Ashley May who states that she signed on sheet 6 at line 19. The objections were "no signature (printed)" and "pre-dates prior signature." For the reasons state above, although invalidated by both commissioners, this is a valid signature. Therefore, petitioner has 220 valid signatures. Commissioner Caviglia testified that as to the objection to voter M. Owens on sheet 7 at line 5, the stated objection "no signature (printed)" was overruled by Commissioner Caviglia. The two commissioners did not agree on that objection.

Petitioner also claims six more valid signatures including for Robyn Wood, sheet 6, line 6; Maria Fandino, sheet 8, line 16; Challa Matias, sheet 13 line 3; Giselle Valentin, sheet 13 line 5; Sharon Allen-Ladson, sheet 15 at line 2. The court has compared the signatures on the designating petition with the signatures on the voter roll. With the exception of Maria Fandino, the signatures are not identical or sufficiently similar between the two documents for the court to make a determination as to whether they are in fact the claimed signatures. While there is no claim of fraud in this proceeding, no affidavits were submitted on behalf of these individuals, nor were they called to testify. Moreover, Giselle Valentin is not a registered Democrat. Therefore, petitioner has not met his burden of proof with respect to five of these six voters. Adding Maria Fandino brings the total to 221 valid signatures.

The respondent pointed out that with respect to voter Kyle Duffy, his address is different on the voter roll as compared to his affidavit. The only difference was that on the voter roll, his address was 115 Spring Valley Street, #1, whereas the #1 is not included on his affidavit. While an inaccurate address may be a fatal defect on a designating petition, it may be corrected by an affidavit. Fall v Luthman, 109 AD3d 540 (2<sup>nd</sup> Dep't 2013). Mr. Duffy states in his affidavit that this is in fact his correct address and was in fact his signature on the petition.

Based on the foregoing, it is hereby

ORDERED that the petition is granted to the extent that the designating petition designating Ali Muhammed as the candidate for the Democratic Party for the Office of Councilman at Large in the City of Beacon in the primary election to be held September 12, 2017 is valid. It is further

ORDERED that the respondent Board of Elections shall place the petitioner's name on the official ballot of the Democratic primary election. It is further

ORDERED that in the court's discretion neither party is granted costs or disbursements.

The foregoing constitutes the decision, order and judgment of the court.

Dated: August 8, 2017  
Poughkeepsie, New York

ENTER:

  
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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.