

Abulafia v Board of Elections in the City of N.Y.

2020 NY Slip Op 35647(U)

May 12, 2020

Supreme Court, Queens County

Docket Number: Index No. 705003/2020

Judge: Phillip Hom

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SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

PRESENT: HON. PHILLIP HOM
JUSTICE

ALLISON C. ABULAFIA, PETER W. BEADLE,
JESSE LAYMON, and MARIA D. KAUFER

Index No. 705003/2020

Petitioner- Candidates,

Seq. No. 1

-against-

BOARD OF ELECTIONS IN THE CITY
OF NEW YORK,

Respondent,

For an Order Pursuant to Sections 16-100,
16-102, and 16-116, and 16-132 of The Election Law,
Declaring Valid the Petitions Designating Petitioners as
Candidates for Various Democratic Party Offices, in the
County of Queens, New York, in the Democratic Party
Primary Election to be held June 23, 2020, and to Order
Respondent Board of Elections of the City of New York to
Print and Place the Names of Candidates Upon the
Official Ballots of Such Primary Election.

The following papers were read on Petitioner-candidates' petition to validate
their designating petition.

<u>Document</u>	<u>Number</u>
Petition and Exs.	E1-13
Order to Show Cause	E17
Affirmation in Opposition and Ex.	E18-19
Affirmation Opposing Dismissal and Exs.	E21-30

Upon the foregoing papers it is ordered that the motion is determined as
follows:

Petitioners Alison C. Abulafia("Abulafia"), Peter W. Beadle("Beadle"), Jesse
Laymon("Laymon") and Maria D. Kaufer ("Kaufer") (collectively, the "Petitioner-
Candidates") are all duly qualified and enrolled members of the Democratic party.

Abulafia is a candidate for Female District Leader in the 28th Assembly District, Part B, Queens County. Beadle is a candidate for Male District Leader in the 28th Assembly District, Part B. Laymon is a candidate for Democratic State Committee and Delegate to the Democratic Party Judicial Convention in the 37th Assembly District. Kaufer is a candidate for the Democratic Party Judicial Convention in the 28th Assembly District.

Abulafia and Beadle

Abulafia and Beadle filed their two volume designating petitions on March 19, 2020. Their coversheets have two volumes listed, but one had an incorrect volume number. They allege their correct volume number had enough signatures to qualify them for their positions under Governor Andrew Cuomo's executive order No. 202.2 that reduced the number of signatures required as a safety precaution with the Covid-19 crisis. The Board of Elections ("BOE") mailed a 3-day undated cure letter by express mail to Abulafia and Beadle's contact person. The envelope indicated it was mailed on April 3, 2020, but it was mailed to the contact person's business address and the contact person did not receive it until April 10, 2020. On April 13, 2020, the contact person filed an amended coversheet. On April 22, 2020, Abulafia and Beadle received a letter dated April 17, 2020 stating their cure was late.

Laymon

Laymon filed his designating petitions on March 19, 2020. His coversheet had the wrong zip code. BOE mailed a 3-day cure letter dated April 3, 2020 by express mail to his contact person who did not receive it until April 10, 2020. On April 13, 2020, the contact person filed an amended coversheet for Laymon with the correct zip code. On April 22, 2020, Laymon received a letter dated April 17, 2020 stating his cure was late.

Kaufer

Kaufer's designating petition was filed without her name listed on the coversheet. Kaufer alleges the BOE never sent her a cure letter and she only became aware of the defect when her attorney notified her she was on the legal prima facie schedule for the April 23, 2020 virtual Commissioner's hearing. Kaufer filed an amended cover sheet on April 20, 2020.

The Order to Show Cause

The Petitioner-Candidates filed a verified petition to validate their designating petitions on April 24, 2020. Among the relief sought in ¶ 33 of the verified petition is that the Court allow service upon any Commissioner of Elections or upon the Board of Elections at its office at 32 Broadway in Manhattan, or by

email. The Court signed the Order to Show Cause on April 28, 2020, directing personally service on the Board of Elections or any of the Commissioners of the Board of Elections on or before April 28, 2020. The Court left the date for service by email blank. The Court emailed the OSC to petitioner-candidates counsel at approximately 2:55 pm on April 28, 2020. Petitioners-candidates did not serve the BOE until April 29, 2020 by emailing a copy of the OSC, without a copy of the Verified Petition, as directed by the OSC.

The Appellate Division has held that under Election Law § 16-102, "[t]he method of service provided for in an order to show cause is jurisdictional in nature and must be strictly complied with," *Matter of Jean-Louis v Laurent*, 172 A.D.3d 1454 (2nd Dept. 2019), citing *Streng v Westchester Cty. Bd. Of Elec.*, 131 A.D.3d 652 (2nd Dept. 2015); *Matter of Hennessey v DiCarlo*, 21 AD3d 505, 505, 800 NYS2d 576 [2nd Dept. 2005]; and *Matter of Nunziato v Messano*, 87 AD3d 647, 647, 928 NYS2d 585 [2nd Dept. 2011]. In *Jean-Louis*, Appellant Claude M. Jean Louis ("Jean Louis") appealed the dismissal of his petition to invalidate the designating petitions of Rudolph Schneider Laurent, Sr., ("Laurent") as a candidate in a primary election to be held on June 25, 2019, for the nomination of the Democratic Party as its candidate for Rockland County Legislator for the Eighth Legislative District.

In *Jean-Louis*, the order to show cause directed that service upon Laurent could be accomplished in one of several ways, including by affixing a copy of the papers to the door of Laurent's residence at the address set forth in his designating petition, and by mailing a copy of the papers to the same address. At the hearing, Laurent opposed the petition, arguing, among other things, that he had not been properly served in accordance with the terms of the order to show cause. After the hearing, the Supreme Court issued a final order denying the petition and dismissing the proceeding. Jean-Louis appealed the decision and the Second Department upheld the Supreme Court's determination that service upon Laurent by the affix and mail method was not made in accordance with the provisions of the order to show cause because the papers were mailed to an address other than the one set forth in the designating petition for Laurent. The Second Department further held that this jurisdictional defect warranted dismissal of the proceeding citing *Matter of Fonvil v Audain*, 131 AD3d 630, 630-631, 15 NYS3d 689 [2nd Dept. 2015]; *Matter of Rotanelli v Board of Elections of Westchester County*, 109 AD3d 562, 563, 970 NYS2d 471 [2nd Dept. 2013]; *Matter of Quis v Putnam County Bd. of Elections*, 22 AD3d 585, 586, 802 NYS2d 709 [2nd Dept. 2005]).


As in *Jean Louis*, the Petitioner-Candidates in the present case did not comply with the directives in the OSC to serve BOE by personal service by April 28th. Petitioner-Candidates did not serve the OSC until April 29th and did so by email, a method that was not authorized. Petitioner-Candidates argue that by not putting a date into the OSC's directive to serve by email, the Court allowed them to serve by email until the end of April. This argument is not persuasive. It makes no

sense that the Court would require the personal service of the OSC by April 28th, but allow Petitioner-Candidates to serve the OSC by email until April 30th. But, even if the Court did allow service by email until April 30th, the Petitioner-Candidates also did not attach the Verified Petition, as directed by the OSC. Under *Jean-Louis*, the failure to comply with the method of service in an OSC is a jurisdiction defect warranting dismissal of the proceeding.

Accordingly, the Petitioner-candidates' Petition seeking to validate their designating petitions is dismissed.

This constitutes the order and judgment of the Court.

Dated: May 12, 2020



Hon. Phillip Hom, J.S.C.

