

Matter of Mejia v Board of Elections in the City of N.Y.
2020 NY Slip Op 31780(U)
May 4, 2020
Supreme Court, Bronx County
Docket Number: 260287/2020
Judge: John W. Carter
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

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In the Matter of the Application of **JOSELIN MEJIA**, as
a **Candidate** for the Democratic Party Designation
for the Party Position of Female District Leader of the
79th Assembly District, Bronx County, City of New York
and the other Petitioners for Party Positions as Set Forth
in the Schedule of Petitioners annexed hereto and made
a Part Hereof as Exhibit "A",

Index No. 260287/2020

Memorandum

Decision

Petitioners,

- against -

**THE BOARD OF ELECTIONS IN THE
CITY OF NEW YORK.**

Respondent,

For an Order pursuant to Section 16-102 of
the Election Law, declaring the determination of
Respondent Board of Elections refusing to place the
petitioners on the ballot for Primary Election to be
held on June 23, 2020 invalid, and to compel the
Board of Elections to accept and file as valid the
cover sheets and Democratic Nominating Petitions
for the within named candidates for party positions
in the 79th Assembly District in Bronx County of
the City of New York to be voted upon in the
primary election to be held on June 23, 2020,
and directing the Board of Elections to
place the petitioners' names on the official
Ballot and voting machines for said primary
election.

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Hon. John W. Carter:

Oral argument was heard in this matter by Skype on April 27, 2020. Petitioners
were represented by Angel Cruz, Esq. Respondent was represented by Stephen
Kitzinger, Esq.

On or about March 20, 2020, the subject designating petitions were filed with the Board of Elections. At the time of filing, the designating petitions were not accompanied by a cover sheet as required by Election Law §6-134(2).

The staff at the Board of Elections made a preliminary determination that the petition suffered a defect that was not subject to be cured, and the petitioners were notified of this defect by letter dated April 15, 2020. The matter was then scheduled for consideration by the Board of Elections.

Thereafter, on or about April 20, 2020, cover sheets were filed with the Board that purported to be associated with the subject designating petitions.

At a duly noticed hearing on April 21, 2020, the full Board of Elections for the City of New York adopted the preliminary findings of its staff in connection with the designating petitions, to wit: that they were invalid in that they suffered from a fatal defect as a result of the omission of a cover sheet. See: *Armwood v. McCloy*, 109 A.D.3d 558 (2nd Dep't 2013); *Hudson v. Bass*, 54 N.Y.2d 772 (1981).

Petitioners argue that the cover sheets were timely filed because the time within which to file them was stayed pursuant to Executive Order 202.8.

The Petitioners reliance on Executive Order 202.8 is misplaced. On March 14, 2020 Governor Cuomo issued Executive Order 202.2 which addressed the primary elections. Chapter 24 of the Laws of 2020 was enacted shortly thereafter. That statute specifically addresses the time frames surrounding the filing of designating petitions as follows:

Section 1. Notwithstanding subdivision 1 of section 6-158 of the election

law, a designating petition for the June 2020 primary election shall be filed with the appropriate board of elections on March 17 through March 20, 2020 and the political calendar with respect to objections, acceptances, authorizations, declinations, substitutions and the last day to commence an election law article 16 proceeding shall be adjusted accordingly.

In this case the designating petition was delivered to the Board without a cover sheet. The staff at the Board reviewed the petition and notified the candidates of its "Prima Facie" defect.

Although certain cover sheet deficiencies may be corrected by the filing of an amended cover sheet, a candidate may not amend a cover sheet which was never filed in the first instance. The initial failure to file a cover sheet cannot be cured. *Armwood v. McCloy, supra*.

Accordingly, petitioners' application is denied and the proceeding is dismissed.

This constitutes the decision and judgment of the Court.

Dated: MAY - 4 2020


J. S. C.