

2-april 4-11

F-12

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----X
In the Matter of the Application of
MARIO M. CASTRACAN and VINCENT F. BONELLI,
acting Pro Bono Publico,

Affirmation in Reply
and in Opposition to
later Cross-Motions
by Respondents other
than N.Y. State
Board of Elections

Petitioners-Appellants,

Appeal No. 62134

for an Order, pursuant to Sections
16-100, 16-102, 16-104, 16-106 and
16-116 of the Election Law,

-vs-

ANTHONY J. COLAVITA, Esq., Chairman,
WESTCHESTER REPUBLICAN COUNTY COMMITTEE,
GUY T. PARISI, Esq., DENNIS MEHIEL, Esq.,
Chairman, WESTCHESTER DEMOCRATIC COUNTY
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,
LOUIS A. BREVETTI, Esq., Hon. FRANCIS A.
NICOLAI, HOWARD MILLER, Esq., ALBERT J.
EMANUELLI, Esq., R. WELLS STOUT,
HELENA DONAHUE, EVELYN AQUILA, Commissioners
constituting the NEW YORK STATE BOARD
OF ELECTIONS, ANTONIA R. D'APICE,
MARION B. OLDI, Commissioners constituting
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents-Respondents,

-----X

ELI VIGLIANO, an attorney duly licensed to
practice law in the Courts of the State of
New York affirms the following to be true
under penalty of perjury:

1. Respondents have cross-moved this Court to impose
sanctions on Petitioners and/or their attorneys, both present and

former¹.

2. Subpart 130-1.1 of the Uniform Rules of Civil Courts provides:

"(c) For purposes of this Part, conduct is frivolous if:

(i) it is completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; or

(ii) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another."

3. Even assuming that the foregoing rule would authorize imposition of sanctions by an appellate court, this Court, by its May 2, 1991 Decision affirmed that:

"petitioners undoubtedly raise several interesting issues relating to the propriety and appropriateness of the practice of judicial cross endorsements".

4. To suggest that Petitioners and their past and present attorneys, seeking review of the lower court's decision refusing to strike down a patently illegal bartering of judgeships and mandate relief therefrom, are engaged in frivolous litigation is itself frivolous. Indeed, such application by Respondents would justify sanctions under Subpart 130-1.1(c), para. 2.

¹ By reason of the suspension of Doris L. Sassower by the Second Department's Order, affirmant was substituted as attorney of record for Petitioners. Doris L. Sassower defends the sanction application against herself personally, pro se. The arguments set forth therein in her defense are adopted by Affirmant and are respectfully submitted in further support of Appellants' motion and in opposition to Respondents' cross-motion for sanctions against Appellants and myself.

5. By the same token, considering that the applicable standard relative to recusal is "the appearance of impropriety" rather than impropriety, the suggestion that the motion seeking recusal is frivolous is likewise wholly devoid of merit.

6. The lower court did not impose sanctions and properly so. It acknowledged that the issues raised have been long the subject of a healthy debate and the case would probably "fuel the debate". It must be noted that extended research has failed to unearth a previous case remotely akin to the subject proceeding--a callous agreement by two political leaders to divide seven judgeships over a three-year period--including an eight-month bench-warmer--and then dividing the judicial patronage flowing therefrom. Perhaps in days of yore political "bosses" were more discreet and practiced a "gentlemen's code".

7. Appellants choose not to burden the Court further with replies to the papers submitted in opposition to the motion for reargument, other than the accompanying Memorandum of Law. No facts to refute or rebut our statements nor any cogent arguments advanced warrant denial of the relief requested.

8. This Affirmation is directed to the application for sanctions. I adopt the Affidavit of Doris L. Sassower, bearing even date, insofar as the same fully expounds the specific facts demonstrating the lack of merit for such relief requested by Respondents.

WHEREUPON, I respectfully request that Appellants' motion be granted and Respondents' cross-motion seeking sanctions be denied.

Dated: White Plains, New York
September 6, 1991

ELI VIGLIANO

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ELENA RUTH SASSOWER, being duly sworn, deposes and says:

deponent is not a party to the action, is over 18 years of age and resides at

On September 7, 1991 deponent served the within: Affirmation and Reply Memorandum of Law upon:

John Ciampoli, Esq.
Attorney for N.Y. State Board of Elections
One Commerce Plaza
P.O. Box 4
Albany, New York 12260

Thomas J. Abinanti, Esq.
Attorney for Respondent Nicolai
Six Chester Avenue
White Plains, New York 10601

Marilyn J. Slaatten, Esq.
County Attorney
Attorney for Westchester County Board of Elections
148 Martine Avenue
White Plains, New York 10601

Scolari, Brevetti, Goldsmith & Weiss, P.C.
Attorneys for Brevetti
230 Park Avenue
New York, New York 10169

Hall, Dickler, Lawler, Kent & Friedman
Sam Yasgur, Esq.
Attorneys for Emanuelli
11 Martine Avenue
White Plains, New York 10606

Aldo V. Vitagliano, P.C.
Guy T. Parisi, Esq., Of Counsel
150 Purchase Street
Rye, New York 10580

Hashmall, Sheer, Bank & Geist
Attorneys for Mehiel, Westchester Democratic
County Committee & Weingarten
235 Mamaroneck Avenue
White Plains, New York 10605

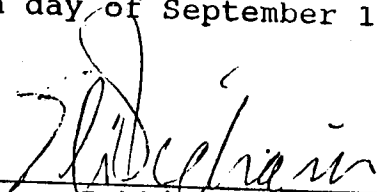
Sanford S. Dranoff, Esq.
Attorney for Miller
One Blue Hill Plaza
P.O. Box 1629
Pearl River, New York 10965-8629

Robert Abrams, Esq.
Attorney General
Department of Law
120 Broadway
New York, New York 10271

by depositing true copies of same in post-paid properly addressed
wrappers in an official depository under the exclusive care and
custody of the United States Post Office within the State of New
York directed to said attorneys at the address last furnished by
them or last known to your deponent.


ELENA RUTH SASSOWER

Sworn to before me this
7th day of September 1991


Notary Public

ELI VIGLIANO
Notary Public, State of New York
No. 4967383
Qualified in Westchester County
Commission Expires June 4, 1992