

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

ANSWER and
CROSS-MOTION

Petitioners,

Index No.

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,

Respondent HON. FRANCIS A. NICOLAI by his attorney
THOMAS J. ABINANTI, ESQ. respectfully answers the Petition
herein as follows:

1. Denies each and every allegation contained in
Paragraphs of the Petition designated as 33 and 34.

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2. Denies sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs of the Petition designated as 1, 2, 14, 15, 18, 19, 20, 21, 22, 28, 31, 35 and 36.

3. With respect to the allegations contained in Paragraphs of the Petition designated as 7 and 9, admits that Richard L. Weingarten, Esq. and Louis A. Brevetti, Esq. were Chairman and legal counsel of the Democratic County Committee for some of the times relevant to this matter but denies that their terms continued through all of the times covered by the Petition.

4. With respect to the allegations contained in Paragraphs of the Petition designated as 16 and 17, Respondent respectfully refers this Honorable Court to the referenced sections of the Constitution and Election Law, as they speak for themselves.

5. With respect to the allegations contained in Paragraphs of the Petition designated as 23 and 25, admits the allegations therein except denies sufficient knowledge to form a belief as to whether the Resolution was passed "to implement" a "contract" and denies that the Election is "assured" or "guaranteed."

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6. With respect to the allegations contained in the Paragraph of the Petition designated as Paragraph 29, denies sufficient knowledge or information to form a belief as to the truth of the allegations contained therein except denies that the election is "guaranteed."

7. With respect to the allegations contained in the Paragraph of the Petition designated as 30, admits that the subject judicial convention was convened on September 18, 1990 but denies that said convention was conducted "in violation of Election Law."

8. With respect to the allegations contained in the Paragraph of the Petition designated as 32, denies sufficient knowledge or information to form a belief as to the truth of the allegations contained therein concerning the filing of Objections and denies the remaining material allegations thereof.

AS AND FOR A FIRST SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

9. Petitioners are not person authorized by law to institute these proceedings and therefore lack legal capacity to bring this action.

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AS AND FOR A SECOND SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT IN LAW

10. Petitioners are not persons authorized by law to challenge the subject Democratic Judicial Convention nor the procedures employed at said convention as Petitioner CASTRACAN is not an enrolled voter in the Democratic Party and neither Petitioner was elected as a delegate or alternate to said Democratic Judicial Convention. Therefore Petitioners lack legal capacity to bring this action.

AS AND FOR A THIRD SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

11. Petitioners are not persons authorized by law to challenge the subject Republican Judicial Convention nor the procedures employed at said convention as Petitioner BONELLI is not an enrolled voter in the Republican Party and neither Petitioner was elected as a delegate or alternate to said Republican Judicial Convention. Therefore Petitioners lack legal capacity to bring this action.

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AS AND FOR A FOURTH SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

12. Petitioners are not persons authorized by law to institute these proceedings and therefore lack legal capacity to bring this action as Petitioners failed to file Objections and Specifications timely as required by law.

AS AND FOR A FIFTH SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

13. This Honorable Court lacks jurisdiction to hear this matter as parties necessary to its determination have not been named and are not before this Court and this Court should not proceed in the absence of persons who should be parties, which persons include the presiding officer and secretary of the subject Democratic Judicial Convention and the other nominees of both Conventions, Honorable George H. Roberts and Honorable Joan B. Lefkowitz.

AS AND FOR A SIXTH SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

14. This Honorable Court lacks jurisdiction to hear this matter as the Proceeding is fatally defective in

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the Order to Show Cause was issued by a Supreme Court Justice of the Second Judicial Department sitting in Westchester County returnable in the Third Judicial District in Albany County.

AS AND FOR A SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

15. The Verified Petition is invalid, insufficient and should be dismissed in that it fails to allege facts sufficient to state a cause of action upon which this Court may grant relief.

AS AND FOR A EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE
AND OBJECTION IN POINT OF LAW

16. Respondent Candidate's Certificates of Nomination were filed with Respondent NEW YORK STATE BOARD OF ELECTIONS in proper form within the dates specified by the New York State Election Law.

AS AND FOR A FIRST CROSS-MOTION

17. The Respondent NEW YORK STATE BOARD OF ELECTIONS has determined that Respondent Candidate's

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Certificates of Nomination are valid, proper and legally sufficient. This Honorable Court is respectfully requested to affirm that Decision.

WHEREFORE, Respondent respectfully requests that this Court:

1. Deny and dismiss the Petition herein;
2. Affirm the Decision of Respondent NEW YORK STATE BOARD OF ELECTIONS that Respondent Candidate's Certificate of Nomination is valid, proper and legally sufficient;
3. Grant such other and further relief as this Court may deem just and proper.

Dated: White Plains, New York
October 10, 1990

THOMAS J. ABINANTI, ESQ.
Attorney for Respondent
HON. FRANCIS A. NICOLAI
Six Chester Avenue
White Plains, NY 10601
(914) 328-9000

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

FRANCIS A. NICOLAI being duly sworn, deposes and says:

I am Respondent herein. I have read the foregoing Answer and know the contents thereof. The same is true to my own knowledge, except as to matters stated therein on information and belief, and as to those matters, I believe them to be true.

5/
FRANCIS A. NICOLAI

Sworn to before me
October 11 1990

5/

THOMAS J. ABINANTI
Notary Public, State of New York
No. 60-4615477
Qualified in Westchester County
Commission Expires *April* 30, 1991

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