

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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

Petitioners,

Index No.

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

-against-

ANSWER TO PETITION
BY RESPONDENT
HOWARD MILLER

ANTHONY M. 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, Commis-
sioners constituting the NEW YORK STATE
BOARD OF ELECTIONS, ANTONIA R. D'APICE,
MARION B. OLDI, Commissioners constituting
the WESTCHESTER COUNTY BOARD OF ELECTIONS,

Respondents,

for an Order declaring invalid the Certificates
purporting to designate Respondents Hon FRANCIS A.
NICOLAI and HOWARD MILLER, Esq. as candidates for
the office of Justice of the Supreme Court of the
State of New York, Ninth Judicial District, and
the Petitioners purporting to designate ALBERT
J. EMANUELLI, Esq., a candidate for the office
of Surrogate of Westchester County to be held in
the general election of November 6, 1990.

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Respondent HOWARD MILLER, by his attorney, SANFORD S.
DRANOFF, ESQ., for his answer to the petition, respectfully shows
and alleges:

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1. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4, 7, 8, 9, 14, 15, 24, 28, and 36 of the petition.

2. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph 13 of the petition, except admits that a certificate nominating Joan Lefkowitz and respondents Nicolai and Miller as the candidates of the Democrat Party for election to the office of Justice of the Supreme Court of the State of New York for the Ninth Judicial District was filed with respondent New York State Board of Elections at its office in Albany, New York.

3. Denies the allegations contained in paragraph 17 of the petition, except admits that Sections 6-124 and 6-126 of the Election Law relate to judicial conventions and the rules for holding same. Respondent respectfully refers the court to Sections 6-124 and 6-126 of the Election Law for the contents thereof and for their meaning and legal effect.

4. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 19, 20, 21, 22, 23 and 31, except specifically denies that any "contract" was entered into which would bind delegates to the Judicial Conventions of the Republican and Democrat Parties.

5. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph 25 of the petition, except specifically denies, upon information and belief, that Rockland County adopted the Resolution referred to.

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6. Denies having knowledge or information sufficient to form a belief as to the allegations contained in paragraph 29 of the petition, except admits that respondent EMANUELLI resigned as Justice of the Supreme Court of the State of New York, Ninth Judicial District in or about August of 1990, and is the candidate of both the Republican and Democrat Parties for the office of Surrogate of Westchester County in the election to be held November 6, 1990.

7. Denies the allegations contained in paragraph 30 of the petition, except admits that respondent COLAVITA convened the Republican Judicial Convention on September 18, 1990.

8. Denies the allegations contained in paragraphs 18, 32, 33, 34 and 35 of the petition.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

9. This court lacks subject matter jurisdiction of the issues raised in the petition.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

10. This court lacks personal jurisdiction over the respondent HOWARD MILLER.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

11. Petitioners have failed to name and serve indispensable parties.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

12. Petitioners have failed to serve the Attorney General in accordance with CPLR 2214(d).

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AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

13. Petitioners have failed to comply with Section 6204.1(b) of the Rules and Regulations of the State Board of Elections.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

14. This proceeding is barred by laches and the statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

15. The petition fails to state a cause of action against respondent HOWARD MILLER.

Dated: October 11, 1990
Pearl River, New York

SANFORD S. DRANOFF, ESQ.
Attorney for Respondent
HOWARD MILLER
Office & P. O. Address
P. O. Box 1629
One Blue Hill Plaza
Suite 900
Pearl River, New York 10965
(914-735-6200)

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Check Applicable Box

certify that the annexed has been compared by me with the original and found to be a true and complete copy thereof.

say that: I am the attorney of record, or of counsel with the attorney(s) of record, for I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon the following:

The reason I make this affirmation instead of _____ is _____

I affirm that the foregoing statements are true under penalties of perjury.
Dated: _____

STATE OF NEW YORK, COUNTY OF Rockland ss: _____
(Print signer's name below signature)

HOWARD MILLER being sworn says: I am one of the defendants

Check Applicable Box

in the action herein; I have read the annexed Answer to Petition know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

the _____ of _____ a corporation, one of the parties to the action; I have read the annexed know the contents thereof and the same are true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true.

My belief, as to those matters therein not stated upon knowledge, is based upon the following:

Sworn to before me on October 10, 19 90

Risa Lynne Fuld

RISA LYNNE FULD
Notary Public, State of New York
No. 4942285
Qualified in Rockland County
Commission Expires 9/9/92

Howard Miller

(Print signer's name below signature)
HOWARD MILLER

STATE OF NEW YORK, COUNTY OF _____

age and reside at _____ being sworn says: I am not a party to the action, am over 18 years of

On _____, 19 _____, I served a true copy of the annexed _____ in the following manner:
 by mailing the same in a sealed envelope, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

by delivering the same personally to the persons and at the addresses indicated below:

Sworn to before me on _____, 19 _____

(Print signer's name below signature)

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