

Attachment
for Page 1 Opinion BB/low

State of New York

Court of Appeals

*Decided and Entered on the
twenty-second day of September, 2022*

Present, Hon. Anthony Cannataro, *Acting Chief Judge, presiding.*

Mo. No. 2022-689
In the Matter of Skiboky Stora,
Appellant,

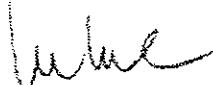
v.
New York State Board of Elections,
Respondent.

Appellant having appealed and moved for a stay in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no substantial constitutional question is directly involved; and it is further

ORDERED, that the motion for a stay is dismissed as academic.



Lisa LeCours
Clerk of the Court

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

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Y/afa

AD3d

Argued - September 13, 2022

COLLEEN D. DUFFY, J.P.
JOSEPH J. MALTESE
LINDA CHRISTOPHER
JANICE A. TAYLOR, JJ.

2022-06428

DECISION & ORDER

In the Matter of Skiboky Stora, appellant,
v New York State Board of Elections, respondent.

(Index No. 700003/22)

In a proceeding pursuant to Election Law § 16-102, *inter alia*, to validate an independent nominating petition nominating Skiboky Stora as a candidate of the Freedom Party for the public office of Governor of the State of New York in a general election to be held on November 8, 2022, Skiboky Stora appeals from a final order of the Supreme Court, Kings County (Peter P. Sweeney, J.), dated August 4, 2022. The final order, after a hearing, denied the petition, *inter alia*, to validate and dismissed the proceeding.

ORDERED that the final order is affirmed, without costs or disbursements.

In June 2022, the petitioner, Skiboky Stora, commenced this proceeding pursuant to Election Law § 16-102, *inter alia*, to validate an independent nominating petition that he filed with the respondent, New York State Board of Elections, nominating himself as a candidate of the Freedom Party for the public office of Governor of the State of New York in a general election to be held on November 8, 2022. Service of the petition on the respondent was required to be completed by “overnight mail next day delivery” on or before June 29, 2022. The respondent answered the petition and opposed it on the grounds, among others, that the petition was untimely pursuant to Election Law § 16-102(2), and that the independent nominating petition was defective, as it made no provision for the office of Lieutenant-Governor. In a final order dated August 4, 2022, the Supreme Court, after a hearing, denied the petition, *inter alia*, to validate and dismissed the proceeding. The petitioner appeals. We affirm.

“A proceeding with respect to a petition shall be instituted within fourteen days after the last day to file the petition, or within three business days after the officer or board with whom

or which such petition was filed, makes a determination of invalidity with respect to such petition, whichever is later" (*id.*). "A petitioner raising a challenge under Election Law § 16-102 must commence the proceeding and complete service on all the necessary parties within the period prescribed by Election Law § 16-102(2)" (*Matter of Mandell v Board of Elections of the City of N.Y.*, 164 AD3d 719, 720, quoting *Matter of Nunziato v Messano*, 87 AD3d 647, 648 [internal quotation marks omitted]; *see Matter of DeStefano v Borkowski*, 153 AD3d 817, 818). Here, there is no dispute that June 30, 2022, was the final day that the proceeding could be commenced. The petitioner, in support of his order to show cause, submitted evidence in the form of post office mailing receipts that he had mailed the petition by overnight delivery on June 29, 2022. The respondent, however, submitted evidence that it did not receive the petition until July 1, 2022, and the petitioner failed to controvert the respondent's evidence (*see Matter of Hill v Board of Elections in the City of N.Y.*, 205 AD3d 851, 852; *Matter of Wilson v Garfinkle*, 5 AD3d 409, 410). Inasmuch as the evidence before the Supreme Court demonstrated that delivery of the order to show cause and supporting papers was not accomplished within the statutory period, the court properly determined that this proceeding was not timely commenced (*see Matter of Angletti v Morreale*, 25 NY3d 794; *Matter of Mandell v Board of Elections of the City of N.Y.*, 164 AD3d at 720; *Matter of DeStefano v Borkowski*, 153 AD3d at 818).

Even if the proceeding had been timely commenced, the independent nominating petition was defective, as it failed to make a provision for the office of Lieutenant-Governor (*see Matter of Thompson v Cohn*, 77 AD3d 1016, 1017).

The petitioner's contention that the Supreme Court engaged in an ex parte communication with the respondent is unpreserved for appellate review and, in any event, without merit. The respondent's remaining contentions need not be reached in light of our determination.

DUFFY, J.P., MALTESE, CHRISTOPHER and TAYLOR, JJ., concur.

ENTER:



Maria T. Fasulo
Clerk of the Court