

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS

Present:

Hon. Maria G. Rosa, Justice

In the Matter of the Application of

BARD COLLEGE, ELECTION@BARD, LEON BOTSTEIN,
ERIN CANNAN, CYNTHIA DEANN AUSTIN CUNNINGHAM,
MARIA ALEJANDRA RODRIGUEZ ORTIZ,
SARINA JACQUELINE CULAJ and THOMAS F. FORMAN,

Petitioners,

DECISION AND ORDER

-against-

Index No. 52777/21

DUTCHESS COUNTY BOARD OF ELECTIONS,
ERIK J. HAIGHT, in his official capacity,
HANNAH BLACK, in his official capacity,

Respondents,

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules.

The following papers were read on Respondent Haight's motion by order to show cause to vacate portions of this court's September 22, 2021 judgment and for leave to answer.

ORDER TO SHOW CAUSE
AFFIRMATION IN SUPPORT

AFFIRMATION IN OPPOSITION
AFFIRMATION IN OPPOSITION

REPLY AFFIRMATION

This is a special proceeding in which Petitioners sought an order designating polling places for the 5th Legislative District for the Town of Red Hook in the County of Dutchess, State of New York ("District 5") in connection with the November 2, 2021 general election. Respondent Haight moved to dismiss the petition alleging that it was untimely and that the Dutchess County Board of Elections had already designated polling places for the general election at a special meeting held on February 25, 2021. In a decision, order and judgment dated September 22, 2021, the court denied

the motion to dismiss and found as a matter of law that the Board of Elections had not designated polling places by March 15, 2021 as required by the Election Law. Accordingly, the court held that the polling places reverted to those used in 2020, namely the Bertelsmann Campus Center and the St. John's Episcopal Church. Respondent Haight then filed the instant motion by order to show cause asserting that this court erred in issuing its September 22, 2021 decision, order and judgment without giving him the opportunity to file an answer in accordance with CPLR §7804(f).

CPLR §7804(f) provides that where a respondent raises an objection in point of law by setting it forth in a motion to dismiss a petition and such motion is denied, "the court shall permit the respondent to answer, upon such terms as may be just." While the statute uses the term "shall," this court is permitted to reach the merits of a petition and award judgment notwithstanding the lack of an answer when "the facts are so fully presented in the papers of the respective parties that it is clear that no dispute as to the facts exist and no prejudice will result from the failure to require an answer." In re Universal Metal & Ore, Inc. v. Westchester Cty. Solid Waste Comm'n, 145 AD3d 46, 59-60 (2nd Dept 2016); Lucas v. Bd. of Educ. of E. Ramapo Cent. Sch. Dist., 188 AD3d 1065 (2nd Dept 2020).

The gravamen of this proceeding is Petitioners' claim that the Board of Elections failed to designate polling sites by the March 15, 2021 statutory deadline, and as a result the polling places for the 2021 general election should revert to those used in the 2020 general election. In moving to dismiss, Respondent Haight contended that the petition was untimely based on a claim that the Board of Elections did designate polling places at the February 25, 2021 public meeting. However, Commissioner Haight also acknowledged that the respective motions of the two election commissioners at that meeting did not pass. There is no question of fact as to what occurred at that meeting. Commissioner Haight erroneously asserts that the failure to agree resulted in a designation, claiming that because both motions failed the polling place reverted to the 2019 designation of the St. John's Episcopal Church. There was no such designation, only Commissioner Haight's unilateral and erroneous conclusion. He skipped 2020's designation even though he admits in his affidavit that the practice in Dutchess County when the commissioners have not agreed has been to use the **last** designated polling place. Although he claimed that the St. John's Episcopal Church was the last polling place the Board of Elections had designated, that occurred in 2019. Petitioners correctly asserted that the last designated polling places were the Bertelsmann Campus Center at Bard College and St. John's Episcopal Church as agreed to by both commissioners in a consent order dated October 30, 2020.

Resolution of the petition and Respondents' motion to dismiss required the court to make a determination of whether a designation of polling places had been made at the February 25, 2021 public meeting. There was no factual dispute that if a designation had not been made at that meeting, then the practice in Dutchess County was to use the last designated polling place. Upon reviewing the record, the court held that no polling place designation was made at the February 25, 2021 meeting. It further held that Commissioner Haight's unilateral determination that this resulted in a reversion to the 2019 polling place, and to ignore the 2020 designation, was arbitrary and capricious.

As all salient facts were before the court, it held that under the circumstances of this proceeding the last designated polling places were those the parties agreed to in 2020. There was no relevant question of fact which is why the court was able to reach the merits of the petition. Accordingly, the court granted the petition to the extent that it held the polling places revert to those used in 2020, the Bertelsmann Campus Center and the St. John's Episcopal Church.

In moving to vacate that order and judgment, Respondent Haight fails to demonstrate the existence of disputed facts or that prejudice resulted from the lack of an answer. While counsel claims that Respondent Haight's affidavit in support of the motion to dismiss only addressed issues pertinent to the motion, he fails to articulate what additional facts or subject matter Respondent Haight would address relevant to disposition of the proceeding were he granted leave to file an answer. Counsel merely asserts that Respondent Haight's answering papers will provide additional information about other potential polling places, details on the Fisher Center and the Bertelsmann Campus Center and evidence regarding established practices of the Dutchess County Board of Elections. None of these contentions, however, is relevant to the court's resolution of this proceeding. As noted, Respondent Haight expressly asserted that the practice in Dutchess County when there is a failure to make a designation by the March 15th Election Law deadline is to resort to the previously designated polling places. The previously designated polling places are the Bertelsmann Campus Center and the St. John's Episcopal Church as those are the polling places that the parties agreed to on October 30, 2020 and used in the 2020 general election. Respondent Haight fails to demonstrate how providing the court additional information about the virtues of various polling sites or information about unspecified historical practices of the Dutchess County Board of Elections would impact this court's disposition of this proceeding. The court is further cognizant that this is an Election Law matter that requires a timely disposition to enable the public to have adequate notice of the designated polling sites. Based on the foregoing, it is

ORDERED that Respondent Haight's motion to vacate this court's September 22, 2021 decision, order and judgment is denied.

The foregoing constitutes the decision and order of the Court.

Dated: October 13, 2021
Poughkeepsie, New York

ENTER:



MARIA G. ROSA, J.S.C.

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Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.

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