(15)

MICHAEL A. SIRAGUSA
ERIE COUNTY ATTORNEY

COUNTY OF ERIE

MARK C. POLONCARZ
COUNTY EXECUTIVE
DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

July 25, 2014

Mr. Scott W. Kroll, Clerk
Erie County Legislature
92 Franklin Street. 4th Floor
Buffalo, New York 14202

Dear Mr. Kroll:

In compliance with the Resolution passed by the Erie County Legislature on June 25, 1987, regarding notification of lawsuits and claims filed against the County of Erie, enclosed please find a copy of the following:

File Name:	*Haderer, William and Kmiotek, Mark v. Erie County Board of Elections, Ralph M. Mohr, Dennis E. Ward and Sylvia L. Przywuski*
Document Received:	Order to Show Cause
Name of Petitioners:	William Haderer and Mark Kmiotek
Petitioners' attorney:	James Ostrowski, Esq. 63 Newport Avenue Buffalo, New York 14216

Should you have any questions, please call.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Jeremy C. Toth
Second Assistant County Attorney
jeremy.toth@erie.gov

JCT/dld
Enc.

At a Special Term of the Supreme Court held in and for the County of Erie, at the Courthouse in the City of Buffalo, New York, on the 24th day of July, 2014.

FILED
ACTIONS & PROCEEDINGS

JUL 24 2014

ERIE COUNTY CLERK'S OFFICE

PRESENT: JEREMIAH J. MORIARTY III

Matter of WILLIAM HADERER and MARK KMIOTEK,

Petitioners,

-against-

Index No.2014-006/22

ORDER TO SHOW CAUSE

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
SYLVIA L. PRZYWUSKI, Objector,

Respondents.

Upon the annexed Verified Petition of WILLIAM HADERER and MARK KMIOTEK, , duly verified the 23rd day of July, 2014, and the affidavit of Derrick Mertowski, 4/23/14, it is hereby

ORDERED that the Respondents herein show cause before this Court at a Special Term, Part 15, to be held at 25 Delaware ave, in the City of Buffalo, on the 1st day of ~~July~~ August, 2014, at 9:30 o'clock in the am of that day, or as soon thereafter as counsel can be heard, why an order should not be made and entered herein:

1. Directing the respondents to validate the Democratic designating petition of the petitioners for the office of Member of the County Committee, Cheektowaga, District 49, Democratic Party.

2. Overturning the ruling of the Erie County Board of Elections Commissioners, dated July 22, 2014 in all respects;

FILED
07/24/2014 12:22:43
ERIE COUNTY CLERK
RCPT # 14113672
J 20140000122

This paper received at the Erie County Board of Election's Office
From Jim Ostrowski
On the 24 day of July 20 14
At 3:54 am/pm
Beth Bochnecito
Signature of BOE Employee

Dir - W/F - 1

3. Granting all other, further, and/or alternative relief as it deems just and proper.

Sufficient cause appearing therefore, leave is hereby granted to the petitioner to submit upon the return day of this Order to Show Cause, and on the argument and hearing thereof, such additional affidavits, exhibits and other proof as may be necessary, and it is further

ORDERED that the respondent Board and respondent Commissioners produce in Court all original papers (or certified copies) related to this proceeding including their determination, any and all staff worksheets the determination is based on, the original objections and the designating petition.

ORDERED that good and sufficient service shall be had herein by the service of a copy of this Order to Show Cause together with the Petition and supporting papers upon which it was granted by the following:

1. Upon the ERIE COUNTY BOARD OF ELECTIONS and Commissioners MOHR and WARD, by delivering a copy for each of them to the Board of Elections by 5:00 p.m. on July 24, 2014.
2. Upon SYLVIA L. PRZYWUSKI, by personal delivery on or before July 25, 2014;

or

[by affixing a copy to the door at her address, 45 Lewan Dr., Cheektowaga, New York, by 5:00 p.m., on July 24, 2014;

and

by mailing her a copy by U. S. Express Mail to the residence address listed on her specific objections, 45 Lewan Dr., Cheektowaga, New York, said mailing to be delivered to the Post Office by 5:00 p.m. on July 24, 2014.]

JUSTICE OF THE SUPREME COURT
JEREMIAH J. MORIARTY III

GRANTED

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

Matter of WILLIAM HADERER and
MARK KMIOTEK,

Petitioners,

-against-

Index No.2014-000122

VERIFIED PETITION

ERIE COUNTY BOARD OF ELECTIONS,
RALPH M. MOHR, As Commissioner of the Erie County Board of Elections,
DENNIS E. WARD, as Commissioner of the Erie County Board of Elections,
SYLVIA L. PRZYWUSKI, Objector,

Respondents.

The Petitioners WILLIAM HADERER and MARK KMIOTEK, by their attorney, JAMES OSTROWSKI, for their verified petition, allege as follows:

1. This is a special proceeding pursuant to Election Law Section 16-102 seeking an order compelling respondents to validate the Democratic designating petition of the petitioners for election to Erie County Democratic Committee Member from the Town of Cheektowaga, Election District 49 at the September 9, 2014 primary election.
2. This proceeding is being timely filed within the time limits set forth in Article 16 of the Election Law.
3. Petitioner WILLIAM HADERER resides at 95 Lillie Ln, Cheektowaga, New York.
4. Petitioner MARK KMIOTEK resides at 87 Brentwood Dr., Cheektowaga, New York.
5. Petitioners appeared on the same designating petition (attached as Exhibit "A") which was timely filed with the Erie County Board of Elections.

6. The Erie County Board of Elections is the agency charged with administering elections and petitions concerning County Committee Member.

7. The Board consists of the following Commissioners: RALPH M. MOHR and DENNIS E. WARD.

8. SYLVIA L. PRZYWUSKI filed objections to the petition.

9. She resides at 45 Lewan Dr., Cheektowaga, New York, 14043.

10. The Board of Elections ruled the petition invalid on July 22, 2014. See Exhibit "B".

11. The Board found that the Petition contained 0 valid signatures.

12. The law requires 14 valid signatures for the office of Committee Member in the 49th District.

13. The Board's determination is erroneous and invalid for the following reasons.

14. The Board sustained an objection that the petition failed to set forth the town of the subscribing witness, Justin P. Borowski, under "Witness Identification Information at the bottom of the petition.

15. However, that same information, "Town of Cheektowaga" is correctly listed under "Statement of Witness."

16. The petition substantially complies with the Election Law and should be validated in the absence of any indication of fraud.

17. Several cases have held petitions to be valid under identical circumstamces. E.g., Matter of Dalton v Wayne County Bd. of Elections, 65 AD3d 817 (4th Dept. 2009); *Matter of Curley v Zacek*, 22 AD3d 954 (3rd Dept. 2005).

18. In all, the Board erroneously voided 25 signatures because of the alleged missing witness information.

19. Thus, if this Court rules that the witness statement substantially complies with the statute, the petitioner will have enough valid signatures to qualify for ballot status.

20. There were only two line-by-line objections, however, even if upheld, they would not invalidate the petition.

Wherefore, we respectfully request that the Court;

1. grant the relief requested in the attached order to show cause;
2. order the respondents to validate the designating petition and place petitioner on the primary election ballot; and
3. grant such other and further relief as the Court deems proper.

Dated: Buffalo, New York
July 23, 2014

JAMES OSTROWSKI
Attorney for Petitioners
WILLIAM HADERER and
MARK KMIOTEK
63 Newport Ave.
Buffalo, New York 14216
(716) 435-8918
Jameso@apollo3.com

VERIFICATION

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

MARK KMIOTEK, being duly sworn, deposes and says that he is petitioner in the within proceeding; that deponent has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief and that, as to those matters, he believes them to be true.

Mark A. Kmiotek

Subscribed and sworn to before
me this 23rd day of July 23, 2014

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

VERIFICATION

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

WILLIAM HADERER, being duly sworn, deposes and says that he is petitioner in the within proceeding; that deponent has read the foregoing petition and knows the contents thereof; that the same is true to his own knowledge, except as to those matters therein stated to be alleged upon information and belief and that, as to those matters, he believes them to be true.

Subscribed and sworn to before
me this 23rd day of July 23, 2014

JAMES OSTROWSKI
Notary Public
Qualified in Erie County
My Commission Expires 7/5/15

DEMOCRATIC DESIGNATING PETITION

I, the undersigned, do hereby state that I am a duly enrolled voter of the Democratic Party and entitled to vote at the next primary election of such party, to be held on September 9, 2014; that my place of residence is truly stated opposite my signature hereto and I do hereby designate the following named person as a candidate for the nomination of such party for public office or for election to a party position of such party.

NAME OF CANDIDATE	PARTY POSITION	PLACE OF RESIDENCE
[illegible]	Erie County Democratic Committee Member Town of Cheektowaga 49 Election District State of New York	15 Lillee Ln Cheektowaga, NY 14227
MARK [illegible]	Erie County Democratic Committee Member Town of Cheektowaga 49 Election District State of New York	87 Pinewood Dr Cheektowaga, NY 14227

I do hereby appoint: Frank C. Max Jr., 50 Red Oak Drive, Cheektowaga, NY 14227
Timothy J. Meyers, 136 Broad Street, Cheektowaga, NY 14225
James P. Rogowski, 131 Strasmer Road, Depew, NY 14043 (Town of Cheektowaga)

all of whom are enrolled members of the Democratic Party, as a committee to fill vacancies in accordance with the provisions of the Election Law.

IN WITNESS WHEREOF, I have hereunto set my hand, the day and year set opposite my signature.

	DATE 2014	Name of Signer (signature)	Residence	Town of
1	7-3-14	[illegible]	9 Lewan Dr	CKTW
2	7-3-14	Patricia [illegible]	46 Lewan Dr	CKTW
3	7-3-14	Kimberly Bullock	60 Lewan Dr	CKTW
4	7-3-14	[illegible]	36 Lewan Dr	CKTW
5	7-3-14	[illegible]	36 Lewan Dr	CKTW
6	7-3-14	[illegible]	35 Lewan Dr	CKTW
7	7-3-14	[illegible]	9 Lewan Dr	CKTW
8	7-3-14	[illegible]	21 Green Terr	CKTW
9	7-3-14	[illegible]	46 Green Terr	CKTW
10	7-3-14	[illegible]	49 Green Ter	CKTW
11	7-3-14	Susan Nabach	56 Green Terrace	CKTW
12	7-3-14	[illegible]	56 Green Terrace	CKTW
13	7-3-14	[illegible]	46 Green Terrace	CKTW
14	7-3-14	[illegible]	100 Green Terrace	CKTW
15	7-3-14	[illegible]	87 Claude Dr	CKTW
16	7-3-14	[illegible]	79 Claude	CKTW
17	7-3-14	[illegible]	46 Claude Dr Depew	CKTW
18	7-3-14	[illegible]	46 Claude Dr	CKTW
19	7-3-14	[illegible]	34 Claude Depew	CKTW
20	7-3-14	[illegible]	34 Claude Dr	CKTW
21	7-3-14	[illegible]	35 Claude Dr	CKTW
22	7-3-14	[illegible]	11 Claude Dr	CKTW
23	7-3-14	[illegible]	36 Norman Dr	CKTW
24	7-3-14	[illegible]	24 Norman Dr	CKTW
25	7-3-14	[illegible]	24 Norman Dr	CKTW

STATEMENT OF WITNESS

I, (name of witness) Justin P. Rogowski, state: I am a duly qualified voter of the State of New York, and am an enrolled voter of the Democratic Party.

I now reside at 65 Burke Dr. Depew N.Y. 14043 (Town of Cheektowaga)
(residence address)

Each of the individuals whose names are subscribed to this petition sheet containing 25 signatures, subscribed *(fill in number)* the same in my presence on the dates above indicated and identified himself or herself to be the individual who signed this sheet. I understand that this statement will be accepted for all purposes as the equivalent of an affidavit and, if it contains a material false statement, shall subject me to the same penalties as if I had been duly sworn.

Date: July 9, 2014

(Signature of Witness)

WITNESS IDENTIFICATION INFORMATION: The following information for the witness named above must be completed prior to filing with the board of elections in order for this petition to be valid.

Town or City _____ County Erie

"A"

Sheet No. _____

NOTICE OF DETERMINATION

BOARD OF ELECTIONS, COUNTY OF ERIE, STATE OF NEW YORK

(Pursuant To §6-154(3) of the Election Law)

Name and Address of Candidate:		Name and Address of Objector:
William Harderer	Mark Kmiotek	Slyvia L Prywuski
95 Lillie Ln	87 Brentwood	45 Lewan Dr
Cheektowaga NY 14227	Cheektowaga NY 14227	Cheektowaga NY 14227

Petition Being Objected To: Member of County Committee Cheektowaga 49

Party: Democratic

Board Employees Assigned to Review: RP/TG

Number of Signatures Required: 14

Petition No.: 25-0777

Date General Objection Filed/Postmarked: 7/14

Date Specifications Filed/Postmarked: 7/14

UPON EXAMINATION WE REPORT THE FOLLOWING:

Signatures - Invalidated on a Line-by-Line Basis:

1A.	without proper date of signing	1A	
2A.	dated prior to first day for signing	2A	
3A.	dated prior to preceding date(s) listed on petition	3A.	
4A.	dated after date set forth in affidavit of subscribing witness	4A.	
5A.	of persons whose signatures are not identifiable	5A.	
6A.	of persons with unidentifiable or missing given name	6A.	
7A.	of persons with initials not identifiable with register	7A.	
8A.	of persons whose names are hand printed	8A.	
9A.	of persons with incomplete or no residence address set forth	9A.	
10A.	of persons not registered at address set forth in petition	10A.	
11A.	of persons with mailing address rather than residence address set forth	11A.	
12A.	of persons who do not reside in political unit	12A.	
13A.	of persons with no town or city set forth	13A.	
14A.	of persons not registered in town or city as set forth	14A.	
15A.	of persons who witnessed own signature	15A.	
16A.	of persons who signed petition for office on same or earlier date	16A.	
17A.	of persons who are not enrolled in political party making designation	17A.	
18A.	of persons written in lead pencil	18A.	
19A.	of persons who fail to initial modifications of the date or signature	19A.	
20A.		20A.	
21A.		21A.	
99A.	lines invalidated on the basis of multiple "A" type objections (Board use only)	99A.	

Subscribing Witness - Signatures Voided by Invalidity of Witness Statement:

1B.	who is not a registered voter	1B.	
2B.	who is not enrolled in political party making designation	2B	
3B.	who is not otherwise qualified to circulate the petition	3B.	
4B.	who fails to set forth correct residence address	4B	
5B.	who fails to set forth correct number of signatures subscribed to	5B.	
6B.	who fails to set forth a proper date of signing	6B.	
7B.	who is not identified by correct city or town, or county	7B	25
8B.	of notary public or commissioner of deeds who fails to set forth official title	8B	
9B.	who fails to initial modifications	9B.	
10B.		10B.	
11B.		11B.	

Recapitulation:

Total Actual Signatures on Petition	25
Less Total Invalid Signatures	25
Total Remaining Valid Signatures	0

Findings of Other Objections Raised:

No Town or City Stated in Subscribing witness statement

DETERMINATION

_____ Petition is Qualified

✓ Petition is Rejected

Commissioner Dennis E. Ward votes to: reject petition

Commissioner Ralph M. Mohr votes to: reject petition

Date: July 22 2014

11 B 11

Revised May 16, 2007