

SUPREME COURT STATE OF NEW YORK  
APPELLATE DIVISION: THIRD DEPARTMENT

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

Petitioners-Appellants,

NOTICE OF CROSS  
MOTION

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

Index No. 6056/90

Appeal No. 62134

-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-Respondents.

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SIRS:

PLEASE TAKE NOTICE that upon the affirmation of John Ciampoli  
sworn to on this 1st day of August 1991 and upon the motion papers  
of petitioner/appellants herein that Respondent New York State  
Board of Elections and the commissioners thereof will move this  
court on the return date of petitioner/appellants' motion (August  
19, 1991) for an order of this court pursuant to §2221, 5520, 5522  
and 5601 et. seq. C.P.L.R. and Parts 37.1 and 130-1.1 et. seq. of  
Title 22 of the Official Compilation of Codes, Rules and  
Regulations of the State of New York:

1. Dismissing the motion of Petitioner/Appellants
  2. Denying Petitioner/Appellants leave to renew and/or reargue the appeal herein
  3. Denying Petitioner/Appellants leave to appeal to the Court of Appeals of the State of New York
  4. Imposing sanctions for frivolous conduct upon Petitioner/Appellants together with attorneys' fees and costs of respondents as this court may deem appropriate
  5. Imposing sanctions for frivolous conduct against Eli Vigliano, counsel for Petitioner/Appellants together with attorneys' fees and costs of all respondents as this court may deem appropriate
  6. Imposing sanctions for frivolous conduct upon Doris Sassower, who, despite an order of the Appellate Division suspending her from the practice of law, has persisted in her frivolous conduct in connection with this case together with attorneys' fees and costs of all respondents this court may deem appropriate
- and for any other and further relief that this court may deem just and proper.

Dated: August 2, 1991  
Albany, New York

John Ciampoli, Esq.  
State Board of Elections  
P.O. Box 4  
One Commerce Plaza  
Albany, NY 12260  
Tel. 518-474-6367

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COMMITTEE, RICHARD L. WEINGARTEN, Esq.,  
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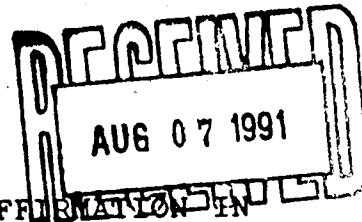
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State of New York)  
County of Albany ) s. ss:

John Ciampoli, an attorney duly admitted to the practise of  
law before the courts of the State of New York, does hereby affirm  
under the penalties of perjury that:

1. Your affirmant is deputy counsel to Respondent New York  
State Board of Elections and represents said Board and the  
Commissioners thereof in the above-captioned proceeding.

2. Your affirmant has reviewed the affidavit of Doris Sassower  
submitted to this court in support of the instant motion which has  
before this court. (Exhibit C).

3. The aforesaid affidavit attempts to place this Appellate



AFFIRMATION IN  
OPPOSITION TO  
MOTION AND IN  
SUPPORT OF  
CROSS MOTION

Court in the position of receiving testimony not introduced at trial term and which is further inaccurate, misleading, or irrelevant to the case at bar. Such conduct is clearly frivolous and should be treated as such by this court.

4. With respect to the arguments presented by Ms. Sassower, which sound to your affirmant to be those of an advocate practicing law in spite of an order of suspension of the Appellate Division, Second Department, Respondent Board and Commissioners respond as follows:

a. All procedural issues were presented to Mr. Justice Kahn at trial term either in oral argument made on the record (which Ms. Sassower has failed to produce at any stage of this appeal) or in papers filed with the court.

b. This court's decision in no way was based upon a failure to serve the Attorney General or the New York State Board of Elections but was founded upon Ms. Sassower's failure to serve all of the candidates for the judicial offices in question, all of the party committees within the judicial district and the county boards of elections in each county within the judicial district.

c. This court was entirely within its rights to rule on this matter in the manner in which it did. Any motions for recusal would have been properly made prior to the argument of the appeal.

d. Any and all questions regarding Petitioner/Appellants' application to this court for a preference are now moot as this court has heard and decided the case.  
(Exhibit E).

e. Respondent New York State Board of Elections and the Commissioners thereof are unable to discern any "new evidence" which is required pursuant to §2221:9 for a motion to renew.

f. There is absolutely no merit whatsoever to any of the allegations contained within the affidavit of Doris Sassower offered in support of the motion before the court.

g. Respondent is unaware of and not involved in any conspiracy to prevent Ms. Sassower from prosecuting this matter as spoken of in paragraph 2 of her affidavit. This does not, however, carry with it the implication that the New York State Board of Elections will not participate in and defend itself in court proceedings on this matter.

5. Petitioner/Appellants have already filed two Notices of Appeal to the Court of Appeals in this matter. (Exhibits A and B).

6. Petitioner/Appellants claim therein that their appeal to the Court of Appeals is taken "as of right" pursuant to state and federal constitutional provisions and, presumably, §5601 C.P.L.R.

7. The instant motion is not compatible with the procedures for taking an appeal "as of right" to the Court of Appeals. It appears that this notion includes, at least in part, a motion for leave to appeal pursuant to §5602 C.P.L.R.

8. The first of the two Notices of Appeal was issued over the signature of Doris Sassower after the Appellate Division, Second Department had issued an order suspending Ms. Sassower from the practice of law for failure to obey an order of said court.

(Exhibit D).

9. The second Notice of Appeal was issued over the signature of Eli Vigliano, Esq. after several of the attorneys for the various respondents notified the Court of Appeals of the facts detailed in paragraph "8", hereinabove.

10. Mr. Vigliano appeared at special term before Mr. Justice Kahn as Ms. Sassower's "co-counsel" and had previously filed a criminal complaint with Respondent New York State Board of Elections alleging essentially the same cause of action as criminal violations of the Election Law. Said complaint was summarily disposed of by the Board for failure to allege sufficient facts constituting violations of any statute.

11. As a complainant, co-counsel and substituted counsel for Petitioner/Appellants, Eli Vigliano, Esq., is and at all relevant instances has been intimately acquainted with the facts and circumstances of this case.

12..By filing this motion with the court after filing a Notice of Appeal with the Court of Appeals and allowing Ms. Sassower's sworn statement to be placed before the court despite its patently misleading, inaccurate and frivolous nature, Eli Vigliano, Esq. has aided and abetted Ms. Sassower's flagrant violation of the Appellate Division, Second Department's order suspending her from the practice of law, and further has purposefully and maliciously burdened this court and the respondents to this motion with totally unnecessary motion practice.

WHEREFORE, Respondent New York State Board of Elections and the Commissioners thereof respectfully request an order of this court as follows:

1. Dismissing the motion of Petitioner/Appellants in all respects,

2. Denying Petitioner/Appellants leave to renew and/or reargue the appeal herein,

3. Denying Petitioner/Appellants leave to appeal to the Court of Appeals of the State of New York,

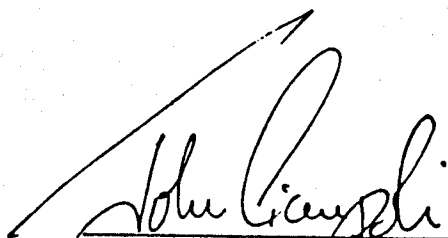
4. Imposing sanctions for frivolous conduct upon Petitioner/Appellants, together with attorneys' fees and costs of all respondents as this court may deem appropriate,

5. Imposing sanctions for frivolous conduct against Eli Vigliano, counsel for Petitioner/Appellants, together with attorneys' fees and costs of all respondents as this court may deem appropriate,

6. Imposing sanctions for frivolous conduct upon Doris Sassower, who, despite an order of the Appellate Division suspending her from the practice of law, has persisted in her frivolous conduct in connection with this case, together with attorneys' fees and costs of all respondents as this court may deem appropriate,

together with such other and further relief as this court may in its judgment deem to be just and proper.

Sworn to this  
2nd day of August 1991



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John Ciampoli  
Attorney for Respondent New York  
State Board of Elections  
P.O. Box 4, One Commerce Plaza  
Albany, NY 12260  
Tel. 518-474-6367

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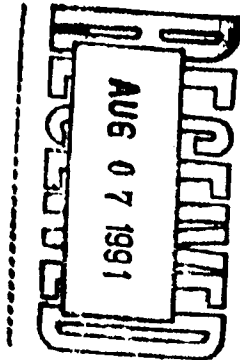
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