

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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In the Matter of the Application of RACHEL  
SADY and MARIO M. CASTRACAN,

Index No.  
12471/91

Petitioners,

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

-against-

**ANSWER AND  
OBJECTIONS IN  
POINT OF LAW**

Hon. J. EMMETT MURPHY, Administrative Judge of  
the City Court of the City of Yonkers, State of  
New York, ANTHONY J. COLAVITA, Esq., Individually  
and as Chairman WESTCHESTER REPUBLICAN COUNTY  
COMMITTEE, DENNIS MEHIEL, Individually and as  
Chairman, WESTCHESTER DEMOCRATIC COUNTY  
COMMITTEE, RICHARD L. WEINGARTEN, Esq.,  
Individually and as former Chairman WESTCHESTER  
DEMOCRATIC COUNTY COMMITTEE, VINCENT NATRELLA,  
Individually and as Chairman WESTCHESTER  
CONSERVATIVE COUNTY COMMITTEE, LLOYD KING, JR.  
and HON. CAROLEE SUNDERLAND, Commissioners  
Constituting the WESTCHESTER COUNTY BOARD  
OF ELECTIONS of the State of New York,

Respondents,

for an Order (1) declaring invalid the three  
Petitions purporting Respondent Hon. J. EMMETT  
MURPHY as candidate for nomination by the  
Democratic Party, Republican Party and  
Conservative Party for the public office of  
Judge of the County Court of the County of  
Westchester, State of New York, in the Primary  
Elections to be held on September 12, 1991 and  
as the nominee for such office of said three  
political parties, in the general election to  
be held on November 5, 1991, and (2) striking  
his name from the respective ballots to be used  
in the Primary Election and in the general  
election to be held on said respective dates.

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RESPONDENTS HON. J. EMMETT MURPHY, DENNIS MEHIEL, and

RICHARD L. WEINGARTEN, ESQ., by their attorney, ALAN D. SCHEINKMAN, ESQ, as and for their answer to the Petition herein, respectfully state as follows:

IN ANSWER TO THE PETITION

1. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 1 and 2 of the Petition.
2. Admit the allegations set forth in Paragraphs 3, 4, 5, 6, 7, 8, 9, 10, and 11 of the Petition.
3. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 12 and 13 of the Petition.
4. Admit the allegations set forth in Paragraphs 14 and 15 of the Petition.
5. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 16 and 17 of the Petition.
6. Admit the allegations set forth in Paragraphs 18 and 19 of the Petition.

7. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 20 and 21 of the Petition.

8. Decline to respond to the allegations set forth in Paragraph 22 and 23 in that such allegations improperly allege matters of law, which must be referred for decision by the Court.

9. Deny each and every allegation set forth in Paragraphs 24, 25, 26, 27, and 28 of the Petition.

10. Respondents are unable to respond to the allegations purportedly set forth in Paragraphs 29, 30, 31, and 32 of the Petition upon the ground that said Paragraphs are either incomplete or unintelligible on the copies served by Petitioners.

11. Deny each and every allegation set forth in Paragraph 33 of the Petition.

12. Respondents are unable to respond to the allegations purportedly set forth in Paragraphs 34, 35, 36, 37, and 38 of the Petition upon the ground that said Paragraphs are either incomplete or unintelligible on the copies served by Petitioners.

13. Deny each and every allegation set forth in Paragraphs 39 and 40 of the Petition.

14. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 41 of the Petition.

15. Deny each and every allegation set forth in Paragraphs 42, 43, 44, and 45 of the Petition.

16. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 46 of the Petition.

17. Admit the allegations of Paragraphs 47 and 48 of the Petition.

18. Deny each and every allegation set forth in Paragraphs 49 and 50 of the Petition.

19. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 51 and 52 of the Petition.

20. Admit the allegations set forth in Paragraph 53 of the Petition.

21. Deny each and every allegation set forth in Paragraphs 54 and 55 of the Petition.

22. Deny having knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraphs 56 and 57 of the Petition.

23. Deny each and every allegation set forth in Paragraph 58 of the Petition.

**AS AND FOR A FIRST AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

24. The Court lacks jurisdiction over Respondents DENNIS MEHIEL and RICHARD L. WEINGARTEN.

**AS AND FOR A SECOND AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

25. The proceeding is fatally defective in that Petitioners failed to name and serve all necessary parties.

**AS AND FOR A THIRD AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

26. This proceeding was not timely commenced and is time-barred.

**AS AND FOR A FOURTH AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

27. This proceeding is barred by laches on the part of Petitioners.

**AS AND FOR A FIFTH AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

28. Petitioners lack standing to initiate a proceeding pursuant to Sections 16-104 and 16-106 of the Election Law.

**AS AND FOR A SIXTH AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

29. Petitioners have failed to exhaust their administrative remedies.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

30. By virtue of the prior commencement by Petitioner MARIO M. CASTRACAN of an identical proceeding, alleging the same purported cause of action and claim, in the Supreme Court, Albany County, Index No. 6056/90, which proceeding was terminated by order of the Supreme Court, Albany County, entered October 17, 1990,

which order was affirmed by the Appellate Division, Third Department, Petitioners are barred from asserting the allegations contained in their Petition by the doctrine of res judicata.

**AS AND FOR A SEVENTH AFFIRMATIVE  
DEFENSE AND OBJECTION IN POINT  
OF LAW PURSUANT TO CPLR 404 (a)**

31. By virtue of the prior commencement by Petitioner MARIO M. CASTRACAN of an identical proceeding, alleging the same purported cause of action and claim, in the Supreme Court, Albany County, Index No. 6056/90, which proceeding was terminated by order of the Supreme Court, Albany County, entered October 17, 1990, which order was affirmed by the Appellate Division, Third Department, Petitioners are barred from asserting the allegations contained in their Petition by the doctrine of collateral estoppel.

**AS AND FOR A FIRST CROSS-MOTION**

32. The Petition fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND CROSS-MOTION**

33. The allegations set forth in the Petition are frivolous and without merit and, therefore, the commencement of this Proceeding constitutes frivolous conduct for purposes of Part 130

of the Rules of the Chief Administrator of the New York State Courts. This Court is requested to award costs, including reasonable attorneys' fees to Respondents, and to impose appropriate financial sanctions upon Petitioners and their attorneys.

WHEREFORE, Respondents HON. J. EMMETT MURPHY, DENNIS MEHIEL, and RICHARD L. WEINGARTEN, ESQ., respectfully request that this Court, enter judgment herein as follows:

- a) dismissing the Petition and denying Petitioners all of the relief therein requested;
- b) awarding reasonable attorneys' fees and disbursements to Respondents;
- c) imposing sanctions upon Petitioners and their attorneys;
- d) awarding Respondents the costs and disbursements of this action, as well as such other, further and different relief as to the Court may seem just and proper.

Dated: White Plains, New York  
August 9, 1991

Yours, etc.

ALAN D. SCHEINKMAN, ESQ.  
Attorney for Respondents Murphy,  
Mehiel and Weingarten  
3 Barker Avenue  
White Plains, New York 10601  
(914) 686-9310



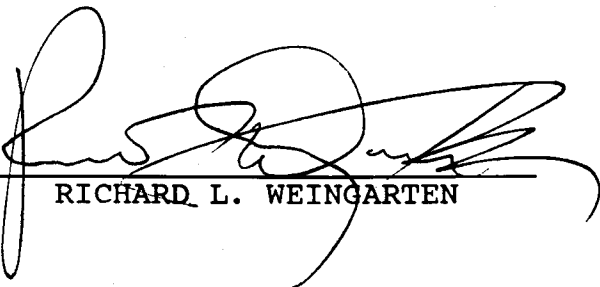
TO: ELI VIGLIANO, ESQ.  
Attorney for Petitioners  
1250 Central Park Avenue  
P.O. Box 310  
Yonkers, New York 10704  
(914) 423-0732

VERIFICATION

STATE OF NEW YORK        )  
                                  SS.:  
COUNTY OF WESTCHESTER )

RICHARD L. WEINGARTEN, being duly sworn, deposes and says:

I am one of the Respondent in the above entitled proceeding; I make this verification on behalf of myself and Respondents Hon. J. Emmett Murphy and Dennis Mehiel, as we are united in interest within the meaning of CPLR 3020; I have read the foregoing Answer and the same is true to my own knowledge, except as to the matters therein stated to be alleged upon information and belief and as to those matters I believe it to be true.

  
RICHARD L. WEINGARTEN

Sworn to before me this  
at \_\_\_\_\_ day of August, 1991

  
\_\_\_\_\_  
Notary Public

**ALAN D. SCHEINKMAN**  
Notary Public, State of New York  
No. 4941526  
Qualified in Westchester County  
Commission Expires August 15, 1992

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

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SADY and MARIO M. CASTRACAN,

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-against-  
HON. J. EMMETT MURPHY, Administrative Judge of  
the City Court of the City of Yonkers, State of  
New York, et al.

ANSWER AND OBJECTIONS IN POINT OF LAW

ALAN D. SCHEINKMAN  
ATTORNEY AT LAW

Attorney for

Petitioners

3 BARKER AVENUE  
WHITE PLAINS, NEW YORK 10601  
(914) 686-9310  
FAX (914) 686-9318

To:

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated: August 11, 1994

9:30 A.M.  
(in Courtroom)

.....#  
.....  
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

NOTICE OF ENTRY that the within is a (certified) true copy of a  
entered in the office of the clerk of the within named Court on

19

NOTICE OF SETTLEMENT that an Order of which the within is a true copy will be presented for settlement to the Hon.  
at one of the judges of the within named Court,  
on 19 , at M.

Dated:

ALAN D. SCHEINKMAN  
ATTORNEY AT LAW

Attorney for

To:

3 BARKER AVENUE  
WHITE PLAINS, NEW YORK 10601

Attorney(s) for