

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Investigation of Complaints
Pursuant to Section 44, subdivisions 1 and 2,
of the Judiciary Law in Relation to

SCOTT B. UGELL,

STIPULATION

a Justice of the Clarkstown Town Court,
Rockland County.

THE FOLLOWING IS HEREBY STIPULATED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission on Judicial Conduct (“the Commission”), and the Honorable Scott B. Ugell and his attorney, Deborah A. Scalise, of Scalise & Hamilton, P.C.

1. Judge Ugell was admitted to the practice of law in New York in 1986. He has been a Justice of the Clarkstown Town Court, Rockland County, since 1991. His current term expires on December 31, 2025.

2. Judge Ugell was apprised by the Commission in March 2023 that it was investigating a complaint alleging that, in connection with a landlord/tenant case over which he presided, he *inter alia* failed to disclose that an attorney in the case had personally represented him in an unrelated civil matter, and that he did not afford the opposing party an opportunity to be heard according to law.

3. Judge Ugell was apprised by the Commission in April 2023 that it was investigating a second complaint, alleging that he became a candidate for election to the office of Clarkstown Town Supervisor, without resigning from his position as Clarkstown Town Justice.

4. Judge Ugell was apprised by the Commission in May 2023 that it was investigating a third complaint, based on a decision in *King and Sweet v Ugell and Garvey and the Rockland County Board of Elections* (Sup Ct, Rockland County, April 28, 2023, Marx, J., Index No. 031728/2023), alleging that he was improperly a candidate for election to the office of Clarkstown Town Supervisor (the same position as alleged in paragraph 3. above). The complaint alleged that Judge Ugell testified falsely under oath at a hearing in the matter and thereafter testified falsely under oath in the ensuing litigation.¹

5. The Commission has not rendered any substantive determinations as to the foregoing complaints.

6. Judge Ugell has been in public service for almost 35 years. He tendered his resignation, effective June 30, 2023. His resignation letter is annexed as Exhibit 1. Judge Ugell affirms that he will vacate judicial office on or before June 30, 2023.

¹ On May 11, 2023, the Appellate Division, Second Department, dismissed the proceeding. See *King v Ugell*, 2023 NY Slip Op 0261, attached.

7. Pursuant to Section 47 of the Judiciary Law, the Commission has 120 days from a judge's resignation to complete proceedings and, if it so determines, render and file a determination that the judge should be removed from office.

Pursuant to Article VI, section 22(h) of the Constitution, a judge who is removed from office "shall be ineligible to hold other judicial office."

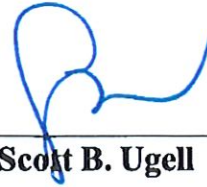
8. Judge Ugell affirms that, having vacated his judicial office, he will neither seek nor accept judicial office at any time in the future.

9. Judge Ugell understands that, should he abrogate the terms of this Stipulation and hold any judicial position at any time in the future, the Commission's investigation of the complaints would be revived, he would be served with a Formal Written Complaint on authorization of the Commission, and the matter would proceed to a hearing before a referee.

10. Upon execution of this Stipulation by the signatories below, this Stipulation will be presented to the Commission with the joint recommendation that the matter be concluded, by the terms of this Stipulation, without further proceedings.

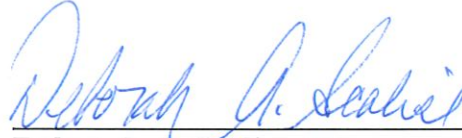
11. Judge Ugell waives confidentiality as provided by Section 45 of the Judiciary Law, to the extent that (1) this Stipulation will become public upon being signed by the signatories below, and (2) the Commission's Decision and Order regarding this Stipulation will become public.

Dated: 5/26/23



Honorable Scott B. Ugell

Dated: 5/26/23



Deborah A. Scalise, Esq.
Scalise & Hamilton, P.C.
Attorney for Honorable Scott B. Ugell

Dated: May 26, 2023



Robert H. Tembeckjian
Administrator & Counsel to the Commission
(**Mark Levine, Jennifer L. Lowry,**
Of Counsel)



--- N.Y.S.3d ----, 2023 WL 3363254
(N.Y.A.D. 2 Dept.), 2023 N.Y. Slip Op. 02601

**This opinion is uncorrected and subject to revision
before publication in the printed Official Reports.**

*1 In the Matter of Emily King,
et al., petitioners- respondents,
v.

Scott B. Ugell, et al., appellants, et al., respondent.

OPINION

Supreme Court, Appellate Division,
Second Department, New York
2023-04055, (Index No. 31728/23)
Decided on May 11, 2023

VALERIE BRATHWAITE NELSON, J.P., LARA J.
GENOVESI, DEBORAH A. DOWLING, JANICE A.
TAYLOR, JJ.
DECISION & ORDER

In a proceeding pursuant to Election Law § 16-102, inter alia, to invalidate a petition designating Scott B. Ugell as a candidate in a primary election to be held on June 27, 2023, for the nomination of the Republican Party as its candidate for the public office of Supervisor of the Town of Clarkstown, Scott B. Ugell and Lawrence A. Garvey separately appeal from a final order of the Supreme Court, Rockland County (Paul I. Marx, J.), dated April 28, 2023. The final order, after a hearing, granted the petition, inter alia, to invalidate the designating petition.

ORDERED that the final order is reversed, on the law, without costs or disbursements, the petition, inter alia, to invalidate the designating petition is denied, and the proceeding is dismissed.

The petitioners commenced this proceeding, inter alia, to invalidate a petition designating Scott B. Ugell as a candidate in a primary election to be held on June 27, 2023, for the nomination of the Republican Party as its candidate for the public office of Supervisor of the Town of Clarkstown. After a hearing, the Supreme Court concluded (1) that Ugell was ineligible to be a candidate for the office of Town Supervisor

because he currently holds the position of Town Justice, and (2) that the petitioning process was permeated with fraud. Thereafter, the court granted the petition, inter alia, to invalidate the designating petition. Ugell and Lawrence A. Garvey separately appeal.

The petitioners presented no basis to disqualify Ugell under Election Law § 6-122. The fact that Ugell is subject to the Rules Governing Judicial Conduct (22 NYCRR) part 100 as a Town Justice does not disqualify him from running for the office of Town Supervisor (*see Matter of Clancy v Sloan*, 273 NY 152, 155; *Matter of Li v Meehan*, 52 AD3d 544, 545).

“The proper evidentiary standard for proving fraud in an Election Law proceeding is clear and convincing evidence” (*Matter of McArdle v Weis*, 142 AD3d 567, 569). “[A]s a general rule, a petition for an opportunity to ballot will be invalidated on the ground of fraud only if there is a showing that the entire petition is permeated with fraud” (*Matter of Steinert v Daly*, 118 AD3d 808, 808; *see Matter of Powell v Tandy*, 131 AD3d 645, 646). “The inclusion of a candidate's name on a designating petition, without his or her consent, may constitute fraud” (*Matter of Ariola v Maio*, 195 AD3d 888, 889). Here, in light of the conflicting and, in part, incredible testimony, the Supreme Court erred in determining that the petitioners established, by clear and convincing evidence, fraud so as to warrant invalidating the designating petition (*see Matter of Bishop v Leahey*, 194 AD3d 1250, 1251-1252). Moreover, the petitioners failed to establish, by clear and convincing evidence, *2 “actual deception of the voters or members of the party involved” (*Matter of Mahoney v Moynihan*, 40 NY2d 906, 907; *see Matter of Farbstein v Suchman*, 26 NY2d 564, 567; *Matter of McGraw v Power*, 307 NY 824, 825).

In light of our determination, we need not reach the parties' remaining contentions.

BRATHWAITE NELSON, J.P., GENOVESI, DOWLING
and TAYLOR, JJ., concur.

ENTER:

Maria T. Fasulo

Clerk of the Court

Copr. (C) 2023, Secretary of State, State of New York

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Justice Court
Town of Clarkstown
Rockland County

JUSTICES

SCOTT B. UGELL May 25, 2023
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LESLIE KAHN

COURT ROOM

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Hon. Anne Minihan,

Administrative Judge

111 Dr. Martin Luther King, Jr. Blvd

White Plains, New York 10601


Dear Judge Anne Minihan,

This is to inform you that I have decided to retire from my position as Justice of the Clarkstown Town Court effective June 30, 2023.

It has been a privilege to serve the Court and the citizens of Clarkstown since 1991.

Thank you so much for your consideration of this matter.

Respectfully,


Scott B. Ugell