STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

NBC

ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATING PETITIONS FOR THE OFFICES OF STATE SENATOR AND REPRESENTATIVE IN THE GENERAL ASSEMBLY OF THE STATE OF ILLINOIS FOR THE MARCH 15, 1994 PRIMARY ELECTIONS.

IN RE: Objection of: Dawn Seskind)
)
To the)
Nominating Petition of: Ellis B. Levin)
)
) NO: 94-EB-REP-08
Candidate for the Office of Representative in)
the General Assembly of the 12th)
Representative District, Democratic Party.)

DECISION

The duly constituted Electoral Board, consisting of MICHAEL J. HAMBLET, ARNETTE R. HUBBARD and CHRIS ROBLING, organized by law in response to a Call issued by MICHAEL J. HAMBLET, Chairman of said Electoral Board, for the purpose of hearing and passing upon Objections to Nominating Petitions for the Office of State Senator and Representative in the General Assembly for the State of Illinois, having convened on December 27th, 1993 at 10:00 a.m. in the City Council Chambers, City Hall, Chicago, Illinois; and having heard and determined the objections to the petition in the above entitled matter find that:

1. The said Electoral Board has been legally constituted according to the laws of the State of Illinois;

2. Objections to the nominating petition of the candidate herein were duly filed;

3. A call to the hearing on said objections was duly issued and was served upon the members of the Electoral Board, the Objector and the Candidate by mail and by personal service as provided by statute;

4. A public hearing was held on these objections commencing on December 27, 1993;

5. The following persons, among others, were present at such hearings: the members of the Electoral Board, the Objector by counsel, and the Candidate by counsel;

6. The Board adopts and incorporates as its own findings the findings, conclusions and recommendations of the Hearing Examiner as set forth in his Recommended Order and Supplemental Recommended Order, copies of which are attached hereto and incorporated herein.

IT IS THEREFORE ORDERED that the objections of Dawn Seskind to the nominating petition of Ellis B. Levin, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 12th Representative District, are hereby overruled and said petition is hereby declared valid and the name of Ellis B. Levin, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly of the 12th Representative District, shall be printed on the ballot for the Primary Election to be held on March 15th, 1994.

Dated: Chicago, Illinois, this 25th day of January, 1994.

MICHAEL J. HAMBLET, CHAIRMAN

ARNETTE R. HUBBARD, COMMISSIONER

DISSENTING:

CHRIS ROBLING, COMMISSIONER

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING AS THE MUNICIPAL OFFICERS ELECTORAL BOARD

Dawn Seskind, Objector, v. Ellis B. Levin, Candidate.	)	No. 94 EB-REP-08

RECOMMENDED ORDER

This matter comes before Richard A. Cowen, Hearing Officer, on the objections filed by Dawn Seskind to the nominating papers of Ellis B. Levin for nomination to the office of Representative in the General Assembly. The Hearing Examiner finds and recommends as follows:

I. JURISDICTION

1. The Municipal Officers Electoral Board, consisting of Michael J. Hamblet, Chairman, Arnette R. Hubbard and Christopher Robling, members, has been legally constituted according to the laws of the State of Illinois.

2. Objections to the nominating petition of the Candidate were duly filed.

3. A call for the hearing on such objections was duly issued and was properly served upon the members of the Electoral Board, the Objector and the Candidate.

4. This matter was assigned to Hearing Officer Richard A. Cowen, and a hearing was commenced on December 27, 1993.

5. Both parties were represented in these proceedings by counsel.

6. No binder check was requested by either of the parties or ordered by the Hearing Officer.

II. CHALLENGES TO THE LEGAL STATUS OF THE PARTIES

7. The Objector claimed, among other things, that multiple petition sheets were invalid because they were circulated by the Candidate at a time when he was no longer a registered voter, based upon the certification from the Board of Election Commissioners that on August 4, 1993 Ellis B. Levin was placed in the Board's "inactive file because of returned mail and a door-to-door canvass by the Investigation Department".

8. The Candidate challenged the standing of Objector Seskind to file any challenges based on a certification from the Board of Election Commissioners that on December 3, 1992 her registration was made "inactive and placed in a suspended file".

The Hearing Officer initially ruled that these cross-objections raised questions of fact which would require a hearing as to the actions taken by the Board of Election personnel, and whether either the Objector or the Candidate were properly placed in an inactive file and thereby became ineligible to circulate petitions or file objections.

The evidence introduced by the parties was inconclusive and contradictory. With respect to the Candidate, there was no evidence that any door-to-door canvass had been made, and with respect to the Objector placing her registration in an "inactive" status and in a "suspended file" appears to have been the result of administrative oversight. Therefore, it is the Hearing Officer's

recommendation that the cross-challenges by the parties to each other's legal status based on actions of the Board of Election Commissioners be denied.

III. THE CANDIDATE'S RESIDENCY

The main issue in this case was whether the Candidate was a bona fide resident of the 12th District and thereby eligible to seek the office of Representative in the General Assembly and to circulate petitions. As stated in Delk v. Board of Election Commissioners, 112 Ill.App.3d 735, 445 N.E.2d 1232, 68 Ill. Dec. 379 (1st Dist. 1983), and Miller v. Police Board, 38 Ill.App.3d 894, 349 N.E.2d 544 (1st Dist. 1976), two elements are necessary to create residency: physical presence and the intent to remain there as a permanent home. Of necessity, this becomes a fact intensive inquiry, and a detailed review of the testimony and documentary evidence offered by the parties is necessary.

For a number of years, the Candidate and his family lived at 5307 North Magnolia, in Chicago ("Magnolia"). As a result of the legislative redistricting which became final in January of 1993, the Candidate was no longer a resident in the major portion of the geographical area that he had previously represented. The Candidate and his wife began a search for a new residence in the 12th District, but for a number of reasons this search was unavailing. Because of their personal financial situation, they were not able to afford the kind of residence that they needed and desired for their family unless the property on Magnolia was sold.

On April 22, 1993 the Levins entered into a contract to

purchase Unit 1105 at 3100 North Lake Shore Drive, Chicago, Illinois (the "Unit"). This is a one-bedroom condominium, within the 12th District, but admittedly too small and otherwise unsuitable for the Levin family's occupancy. The Levins testified they made the decision that Ellis Levin would move into this unit and live there, even though this meant that, although happily married, they would be living separate and apart until the Magnolia property could be sold and another property purchased. There is no doubt that Ellis Levin moved into the Unit on May 3, 1993, although there is dispute as to the nature and extent of the belongings that were moved in at that time. The testimony indicates that what was moved in at this time was meager at best, but there is no dispute that the unit was habitable. Testimony also established that additional furnishings and personal belongings were moved in as time went on.

The Levins closed the purchase of this Unit on August 12, 1993. In order to complete this purchase they were required to sell an investment property which they owned in Mount Prospect. The testimony establishes that the reason for the delay in closing was related to the delays in the Levins' buyer for the Mount Prospect property obtaining necessary financing.

The Levins testified that except for the time when the Candidate was in Springfield, or travelling out of the state, his pattern was to spend the vast majority of weekday nights at the Unit, but spend his weekends with his wife and family at 5307 North Magnolia. From September 1st onward, the Candidate kept a written

record as to the nights that he was at the Unit and this record was introduced into evidence. This record would tend to establish the pattern that the Candidate and his wife testified to.

On the other hand, there was substantial testimony and evidence introduced to establish that Mr. Levin's use of the Unit was minimal. With the exception of mailings related to his mortgage on the unit, telephone bills and utility bills for the unit, and a change in Mr. Levin's address on his driver's license, all other mail of any kind was sent to Magnolia. This included credit card billings, personal and professional mail, bank statements and cancelled checks, and even Mr. Levin's paychecks or other records relating to compensation received in his capacity as a State Representative. The Levins applied for extensions of time to file their 1992 federal and state income tax returns, and these extensions and other tax documents signed in August, 1993 and again in October, 1993 continued to show the taxpayers residence at Magnolia.

Commonwealth Edison billings reflected that utility useage at the Unit was significantly lower than most other comparable units, although it was not always the absolute lowest when compared with other similar units. The telephone records indicate that at least until October or November of 1993 the number of calls made from the Unit were minimal, and the length of calls were of very short duration. A high percentage of these calls were to the Magnolia address.

The telephone records also establish that in the period from

May through October, 1993 only one call was made from the Candidate's legislative service office to the Unit, while more than 80 calls were made from the legislative service office to Magnolia. The Objector argues that this tends to establish that when the Candidate's legislative office needed to find him, they would call Magnolia, not the Unit.

After moving into the Unit in May, 1993, the Levins stopped their search for other housing in the 12th District. The testimony established that even as of the date of the hearing, they had not looked for other properties. The home on Magnolia was listed for sale in early September, 1993 with an asking price of $425,000 and a restriction that it could only be shown between the hours of noon and 3:00 P.M. on Thursdays. Testimony established that there have been no showings of the home, nor have any offers to purchase been received. The asking price still remains at $425,000 even though Mrs. Levin testified that the highest sale in the neighborhood of which she was aware was $350,000.

Considerable testimony focused on the nature of the furnishings in the Unit, and the actual use of the unit. It is clear from all of the testimony that the unit was initially very sparsely furnished. The Candidate admitted that he slept on mattresses, but could not recall whether the mattresses were simply on the floor or part of a more customary bedstand. He and his wife testified as to the other items in the unit, including Mr. Levin's computer.

Pat Rogers, the Property Manager at 3100 until September of

1993, testified that sometime in June or July of 1993 she had occasion to be in Unit 1105 for purposes related to building maintenance or inspection. While she did not inspect the bedroom, she did testify that all she could see in the living room was a mattress on the floor, and when she opened the freezer all she found were two frozen pizzas. She also opened one of the cabinets in the kitchen and found it was completely empty. She did not inspect anything further in the Unit.

On the other hand, there was testimony from Mrs. Levin and other witnesses that the apartment was gradually furnished, although hardly in any grand style. A couch was brought into the living room, a number of director's or captain's chairs were brought in, and over a period of time other furnishings were added to the apartment. Mrs. Levin also testified that on a few occasions she used the apartment for brunches and a shower, and that on a couple of occasions the Levins entertained clients or friends in the unit.

Five of the doormen employed by the 3100 Darien Condominium Association testified. While there were some differences in their testimony, all of the doormen testified that they saw Mr. Levin at the 3100 Condominium. The frequently ranged from "many times" to "three to four times per week", or was expressed in terms of seeing Mr. Levin "regularly". The doormen all testified they knew that Mr. Levin had purchased a unit in the building, and they viewed him as a resident, allowing him to park in locations that would be reserved for resident use. Mr. Levin never applied for a parking

space in the building, but the testimony of the property managers was that there was a waiting list of approximately a year for a parking space in the building itself. There was also testimony that there was parking available on the street, or a few blocks away in the Belmont Yacht Club parking lot.

With regard to the frequency and duration of Mr. Levin's stays at the Unit, the doormen testified that sometimes it was simply an "in and out" kind of visit, but the doormen working the evening and morning shifts testified that they saw Mr. Levin enter late at night and they did not see him come out, or come out of the building early in the morning, from the elevators.

The Candidate also presented the testimony of three friends and neighbors who lived at 3100. These witnesses all testified they saw Mr. Levin in the building on many occasions, usually riding the elevator either up to the floor on which his Unit was located, or coming down from his apartment and leaving the building in the morning. Campaign workers also testified that they would meet Mr. Levin at 3100 early in the morning and then go to bus stops or el locations to circulate petitions or conduct other political activities.

IV. RECOMMENDED ORDER

1. The objector has the burden of proof by a preponderance of the evidence. Courts in Illinois and elsewhere, including decisions of the United States Supreme Court, have clearly enunciated a rule of law that where doubts exist, such doubts are to be resolved in favor of ballot access.

2. While the Hearing Officer believes that many substantial questions were raised as to whether the Candidate intended to reside at 3100, the preponderance of the evidence, coupled with the preference for ballot access, requires that the objections be overruled. Reaching this Recommended Order, the Hearing Officer especially relies on the following:

A. The Candidate and his wife purchased the unit at 3100 North Lake Shore Drive, rather than merely renting a location in the District. There is no dispute that the Unit is habitable, and that Ellis Levin moved in.

B. In order to purchase this unit, the Levins were required because of family financial circumstances to sell an investment property that they owned in Mount Prospect and which they testified had been acquired to help pay the costs of college expenses for their children.

C. The doormen all testified that they saw Mr. Levin at 3100 on many occasions, and while there were some "in and out" visits, there were many other times when he entered the building late at night and did not leave, or was seen coming out from the elevators and leaving the building early in the morning, all suggesting that he was, in fact, sleeping at the unit.

D. There was also the testimony of three neighbors of Mr. Levin at 3100 who saw him going up the elevator to his Unit at night or coming down from his Unit in the mornings and the leaving the building.

E. The lifestyle that a person chooses to live is not a test of residency. Therefore, while a sparsely furnished apartment could lead to some inference that a person resided elsewhere, this inference is not of great weight when measured against the points identified above.

F. The residency of Mrs. Levin or the other family members is not the issue, and consequently whether or not she acted arbitrarily in controlling and severely limiting the opportunities for the sale of the Magnolia property does not weigh against the fact that Mr. Levin established a separate residency at 3100. It is no longer uncommon for couples to establish separate residencies when this may be required by the nature of their work.

WHEREFORE, for all of the above reasons, the Hearing Officer recommends that the objections to the nominating papers of Ellis B. Levin be denied and that Ellis B. Levin be certified as a candidate for nomination to the office of Representative in the General Assembly for the 12th District in the March 15, 1994 primary.

Richard A. Cowen

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS
SITTING AS THE MUNICIPAL OFFICERS ELECTORAL BOARD

Dawn Seskind,	)	
	)	
Objector,	)	
	)	
v.	)	No. 94 EB-REP-08
	)	
Ellis B. Levin,	)	
	)	
Candidate.	)	

SUPPLEMENTAL RECOMMENDED ORDER

Richard A. Cowen, Hearing Officer, files this Supplemental Recommended Order, amending Section II, Paragraph 8. In all other respects, the Hearing Officer's original Recommended Order stands as filed.

Section II, Paragraph 8 is amended to provide as follows:

8. The Candidate challenged the standing of Objector Seskind to file any challenges based on a certification from the Board of Election Commissioners that on December 3, 1992 her registration was made "inactive and placed in a suspended file".

The Hearing Officer initially ruled that these cross-objections raised questions of fact which would require a hearing as to the actions taken by the Board of Election personnel, and whether either the Objector or the Candidate were properly placed in an inactive file and thereby became ineligible to circulate petitions or file objections.

(a) With respect to Levin, the records of the Chicago Board of Elections were subpoenaed, and two individuals, Maria Flores and a Ms. Pelligrini were identified as the Board's employees who performed the investigation (door-to-door canvass)

referred to in the certification determining Mr. Levin's status as "inactive and placed in a suspended file". Ms. Flores testified that she and Ms. Pelligrini did go to 3100 N. Lake Shore Drive, but it was during the month of September, 1993 and it was to check on a returned jury summons. This testimony would place the supposed door-to-door canvass at least a month after the Board's action in changing the Candidate's status to inactive, and the investigation was not in connection with a returned verification of registration card but pursuant to a returned jury summons.

Furthermore, there was no way that Ms. Flores could identify from her records who it was she checked at 3100, and the Candidate testified that there were two E. Levins listed on the building directory.

(b) With respect to Dawn Seskind, the testimony is undisputed that she lived at 3450 North Lake Shore Drive, Apartment 711, for a number of years. There was a re-registration, as of September 24, 1992. The record as to what occurred thereafter is not at all clear. Apparently, a voter's card was sent to her at the 3450 North Lake Shore Drive address in September, and was returned; another verification card was mailed in October and was not returned, presumably having been received by Ms. Seskind. In November or December yet another third mailing occurred, and while the card apparently was not returned to the Chicago Board of Elections, the records note that on December 3, 1992 Ms. Seskind's registration became "inactive and placed in a suspended file".

Carmen Panico was called as a witness, and when asked, "But we can't really tell for sure what happened with these

records?", he replied, "Exactly". Mr. Panico also testified that in his opinion all during the month of December Ms. Seskind should have been considered a registered voter.

The evidence introduced by the parties was at best inconclusive and in many important aspects contradictory. With respect to the Candidate, there was no evidence that any door-to-door canvass had been made, or if a canvass was conducted, it was with regard to a returned jury summons, made in September of 1993, almost a month after the Board's records were changed to reflect the Candidate's supposed "inactive" status, and the individuals identifying the Board records could not testify with any certainty that the canvass was even directed to the Candidate. With respect to Ms. Seskind, Mr. Panico was unable to explain exactly what had happened with her registration, and testified that in his opinion she should have been considered a registered voter at the very time that the Board records would suggest that she had been deemed "inactive and placed in a suspended file".

Therefore, it is the Hearing Officer's recommendation that the cross challenges by the parties to each other's legal status based on the actions of the Board of Election Commissioners be denied. Nothing in this Recommended Order is to infer any malfeasance or negligence on the part of the Board or its personnel; when administering a jurisdiction the size of the City of Chicago, it is entirely understandable that administrative oversights of this nature will occur.

Richard A. Cowen