BCCON-ALD

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 23, 1999 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER AND ALDERMAN
IN THE CITY OF CHICAGO**

Objections of: SUSANA R. MENDOZA	)	
	)	
To the Nomination	)	
Papers of: ALAN R. MERCADO	)	No.: 99-EB-ALD-068
	)	
Candidate for the office of	)	
Alderman of the 12th Ward,	)	
City of Chicago		

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Theresa M. Petrone, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objection") of SUSANA R. MENDOZA to the nomination papers ("Nomination Papers") of ALAN R. MERCADO, candidate for the office of Alderman of the 12th Ward for the City of Chicago ("Candidate"), having convened on December 28, 1998, at 9:00 a.m., in the City Council Chambers, City Hall, Chicago, Illinois; and having heard and determined the Objections to the Nomination Papers in the above-entitled matter finds that:

1. Objections to the Nomination Papers of the Candidate herein were duly and timely filed.

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

3. A Call to the hearing on said Objections was duly issued by the Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector(s) and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing was held on these Objections commencing on December 28, 1998 and was continued from time to time.

5. The following persons, among others, were present at such hearing: the members of the Electoral Board, the Objector, SUSANA R. MENDOZA, by counsel; and the Candidate ALAN R. MERCADO, by counsel.

6. The Electoral Board assigned this matter to Hearing Examiner TERENCE FLYNN for further hearings and proceedings.

7. The Electoral Board ordered that an examination of the registration records be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Electoral Board directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate or his duly authorized representative was present during the examination of the registration records at all times.

10. The Objector or her duly authorized representatives was present during the examination of the registration records at all times.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Board's file in this case and is available upon request of a party.

12. The Board has considered all evidence and arguments tendered by the parties.

13. The Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 240;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 641;

    c. The number of signatures deemed invalid because of objections sustained total 177;

    d. The remaining number of signatures deemed valid total 464.

14. The Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago.

15. Following the records examination conducted in this matter, the Hearing Examiner conducted further hearings regarding allegations by the Objector in paragraph 8 of the Objector's Petition that the purported circulators of several of the Candidate's nominating petition sheets, Delores and Alan Mercado, did not, in fact, circulate said sheets and that the circulator's affidavit on each sheet is false and perjurious.

16. The Hearing Examiner found that petition sheets 5, 8-9, 13, 15-17, and 19 were invalid because they were signed by Delores Mercado, the Candidate's mother, as the circulator of the sheets when, in fact, there was evidence that they were not circulated by her. As a result, the Hearing Examiner concluded that her circulator's affidavit at the bottom of each sheet and her testimony stating that she was present when these sheets were signed by petitioners were false. Mrs. Mercado testified that for every sheet for which she signed as the circulator, she was at the doorway, up on the landing or porch, and either handed the sheet to the voter or was directly present when someone else, Ms. Sinomek, handed the sheet to the person and was present when the signer signed the petition sheet. The Hearing Examiner's finding was based on (1) the testimony of four witnesses who testified credibly that that Mrs. Mercado was not present when they signed the Candidate's petition; (2) the testimony of Chicago Police Officer Koconis, who had conducted a preliminary investigation on behalf of the Internal Affairs Department of the Chicago Police Department into allegations of malfeasance by the Candidate, also a police officer, and who testified credibly that he spoke to four purported signers of the Candidate's petition and they each denied that either Delores or Alan Mercado circulated the sheets they signed; (3) six notarized affidavits (also containing a picture of Delores Mercado) of signers of the Candidate's petition denying that .Mrs. Mercado was present at the time the affiants signed the petition; and (4) at least 30 statements (not under oath) of persons who signed the petition denying that Mrs. Mercado was present or in proximity to the signatories of the petition at the time they signed the petition. The Hearing Examiner found that the combination of affidavits and testimony proferred by the Objector established a "pattern of fraud" and would recommend that every petition sheet circulated by Delores Mercado, and each signature thereon, be invalidated. This would result in the additional loss of 125 signatures, leaving the Candidate with a total of 339 valid signatures.

17. The Hearing Examiner recommended that sheet 21 of the Candidate's nominating petition be declared invalid. The Candidate, Alan Mercado, signed as the circulator of this sheet and testified at the hearing that he did, in fact, circulate this sheet. However, two people who signed petition sheet 21 testified that it is was not Alan Mercado who circulated the sheet. This testimony was corroborated by an affidavit and several statements (not under oath) indicating the Alan Mercado was not the person who circulated sheet 21. One person who signed sheet 21, Ms. Peketuris, testified that Alan Mercado did circulate sheet 21, but she later admitted under oath that she had signed a statement for Chicago Police Officer Koconis, who was making an official police investigation, indicating that it was not Alan Mercado who circulated sheet 21. The only evidence supporting Alan Mercado's claim that he did circulate sheet 21 was his own

testimony. The Hearing Examiner concluded that the weight of the evidence invalidated sheet 21 on the ground that this sheet was not circulated by Alan Mercado and that his circulator's affidavit and his testimony were not credible and were false. The invalidation of sheet 21 would result in the additional loss of 22 signatures, leaving the Candidate with a total of 317 valid signatures.

18. The Hearing Examiner concluded that the Objector failed to show that the remaining petition sheets signed by Alan Mercado as the circulator were not, in fact, circulated by him. The Objector produced only one additional witness as to the remaining sheets and her testimony was successfully impeached by the Candidate. The Hearing Examiner concluded that the Objector failed her burden to prove that the remaining sheets signed by Alan Mercado as the circulator were not, in fact, circulated by him and the Hearing Examiner recommends that those objections be overruled.

19. Following the completion of the records examination and the invalidation of petition sheets 5, 8-9, 13, 15-17, 19 and 21, the Candidate still would have a total of 317 valid signatures, more than the minimum 240 signatures required by law to qualify for the ballot of Alderman of the 12th Ward of the City of Chicago.

20. The Electoral Board hereby adopts the recommended findings and conclusion of the Hearing Examiner and finds, therefore, that Objector's Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination and the Hearing Examiner's finding noted above.

21. For the reasons stated above, the Board finds that the Nomination Papers of ALAN R. MERCADO are valid.

IT IS THEREFORE ORDERED that the Objections of SUSANA R. MENDOZA to the Nomination Papers of ALAN R. MERCADO, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of ALAN R. MERCADO, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election for Mayor, City Clerk, City Treasurer and Alderman to be held on February 23, 1999.

Dated: Chicago, Illinois, this Twenty-Eighth day of January, 1999.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Theresa M. Petrone, Commissioner

NOTICE: Pursuant to Section 10-10.1 of the Election Code (10 ILCS 5/10-10.1) a party aggrieved of this decision and seeking judicial review of this decision must file a petition for judicial review with the Clerk of the Circuit Court of Cook County within 10 days after the decision of the Electoral Board.