NBCOFF-ALD

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS A DULY CONSTITUTED ELECTORAL BOARD**

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| Objections of: ANDREW V. HOLMES JR. | ) | |
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| To the Nomination | ) | |
| Papers of: LARRY D. HAYES | ) | No.: 03-EB-ALD-039 |
| | ) | |
| Candidate for the office of | ) | |
| Alderman of the Seventeenth 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, Theresa M. Petrone, and Richard A. Cowen, 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 ("Objections") of ANDREW V. HOLMES JR. ("Objector") to the nomination papers ("Nomination Papers") of LARRY D. HAYES, candidate for the office of Alderman of the Seventeenth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 25, 2003, having convened on December 30, 2002, at 10:00 a.m., in Room 800, 69 West Washington Street, 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 and the Candidate, by registered or certified mail and by Sheriff's service, as provided by statute.

4. A public hearing held on these Objections commenced on December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner JOSEPH A. MORRIS for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Trial Call. The following persons, among others, were present at such hearing; the

Objector, ANDREW V. HOLMES JR., by counsel; and the Candidate, LARRY D. HAYES, pro se.

7. The Objections allege in part that the Candidate's Nomination Papers are false and invalid in their entirety since the Candidate was not and is not a qualified voter at 441 W. 79th Street, Chicago, Illinois either at the time said papers were circulated or filed or currently, and that the petition sheets 1-54 inclusive and the Statement of Candidacy are invalid.

8. The Hearing Examiner conducted extensive hearings in this matter and has submitted a very detailed report in which he recommends the following findings of fact:

   A. The address set forth on the Candidate's Statement of Candidacy, to which he has subscribed and sworn, and on all of his petitions and nomination papers is 441 West 79th Street, Chicago, Illinois.
   B. The Candidate has not maintained, and does not maintain, a significant physical presence at 441 West 79th Street, Chicago, Illinois.
   C. At the time of filing his Nomination Papers the Candidate did not, and the Candidate does not now, have a present intention of making 441 West 79th Street in Chicago, Illinois his permanent home.

9. The Hearing Examiner has recommended that the Electoral Board enter the following conclusions of law:

   A. The address set forth on the Candidate's Statement of Candidacy, to which he has subscribed and sworn, and on all of his petitions and nomination papers, if false.
   B. The Objector's Petition is well founded, and the relief sought therein should be granted.
   C. The Candidate's Nomination Papers are insufficient in law and fact.

10. The Electoral Board hereby adopts the Hearing Examiner's recommended findings and conclusions of law and attaches and incorporates herein the Hearing Examiner's report (exclusive of exhibits and attachments). The Electoral Board finds therefore that the Objections are sustained and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ANDREW V. HOLMES JR. to the Nomination Papers of LARRY D. HAYES, candidate for election to the office of Alderman of the Seventeenth Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of LARRY D. HAYES, candidate for election to the office of Alderman of the Seventeenth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 25, 2003.

Dated: Chicago, Illinois, this Seventh day of February, 2003.

Langdon D. Neal, Chairman

Theresa M. Petrone, Commissioner

Richard A. Cowen, 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.**

BEFORE
THE 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 2003 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

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|---|---|---|
| ANDREW V. HOLMES, JR., *Objector*, | ) | No. 03-EB-ALD-039 |
| vs. | ) | Hearing Examiner Morris |
| LARRY D. HAYES, *Candidate.* | ) | |

2003 JAN 30 P 2:32
BOARD OF ELECTION

**REPORT OF THE HEARING EXAMINER**

To the Board of Election Commissioners of the City of Chicago:

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on January 2, 2003. The Objector was present by counsel and in his proper person. The Candidate was present *pro se*. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 17th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, and by the United States Postal Service were admitted into the record as Group Exhibit C; and the parties' written appearances were admitted into the record as Group Exhibit D.

3. Each party stated that he was in possession of the Rules of the Electoral Board. The Candidate stated that he did not intend to file any preliminary written motions.

4. The parties agreed that there are three issues in the case: (a) Whether or not the Candidate's nomination papers are supported by a numerically sufficient number of valid signatures of qualified registered voters. (b) Whether or not the Candidate resides at the address set forth in the nomination papers. (c) Whether or not the Candidate has resided in the 17th Ward (or, in view of the recent redistricting, in qualifying parts of other, or antecedent, wards, as provided in 65 ILCS § 20/21-14).

5. The parties further agreed that the first issue, as to whether or not the Candidate's nomination papers are supported by a numerically sufficient number of valid signatures, should be determined by a Records Examination. A Records Examination was directed.

6. The parties further agreed that the second and third issues, as to the place and duration of the Candidate's residence, should be resolved at an evidentiary hearing. The parties were thereupon directed to file requests, if any, for subpoenas on or before January 6, 2003, at 5:00 p.m., and a status hearing was scheduled for January 9, 2003.

7. On January 9, 2003, Assistant Executive Director Robert J. Sawicki responded to the direction for a Records Examination with a report which stated as follows:

> An examination of the objector's petition indicates no sheet / line objections to:
>
> Pages: 13, 14, 15, 19, 20, 21, 22, 23, 24, 25, and others. Each of these sheets contains 25 signatures, thus this candidate has at least 250 signatures <u>not</u> objected to. There is no need to conduct a sheet / line record exam.

A copy of the report of Assistant Executive Director Sawicki is attached hereto as Annex 1.

8. Also on January 9, 2003, a status hearing was held. The report of Assistant Executive Director Sawicki was received and reviewed. The Hearing Examiner, *sua sponte*, thereupon examined the Candidates' nomination papers (Group Exhibit A) and the Objector's Petition and attachments (Group Exhibit B). An examination of the face of the Candidate's nomination papers shows that, even if every objection set forth in the Objector's Petition were sustained, the nomination papers would still be supported by no fewer than 250 signatures to which no objection was made. The Hearing Examiner stated, and the parties agreed, that the first issue had been resolved: The Candidate's nomination papers are supported by a numerically sufficient number of valid signatures of qualified registered voters.

9. The Candidate thereupon sought leave to file a Motion to Strike and Dismiss the Objector's Petition. Rule 5 of the Rules of the Electoral Board provides, in pertinent part, as follows:

> Preliminary motions and objections to an objector's petition in the nature of a motion to strike the objections will be heard first. Such motions must be made in writing and filed with the Electoral Board and served upon other parties in the case by 5:00 p.m. on the first business day following the 1st day set in the Call for the Electoral Board to meet to consider the objection.

Rule 5 thus required that, to be timely, a Motion to Strike and Dismiss the Objector's Petition should have been filed at or before 5:00 p.m. on January 3, 2003. The filing of such a motion was now barred by operation of time, and the leave sought by the Candidate was denied.

10. A timely request for subpoenas had been filed by the Objector. Upon consideration of that request, it appeared that the subpoenas sought were narrowly tailored to address the issues present in the case, and were not unduly burdensome or intrusive. The request for subpoenas was approved and the issuance of the subpoenas requested by the Objector was directed. The Candidate

stated that he did not request the issuance of any subpoenas. The Hearing Examiner stated that, in the event that the Candidate changed his mind, the time for filing requests for subpoenas would be enlarged to January 10, 2003, at 5:00 p.m. In addition, if the parties intended to serve notices on each other to produce evidence at the evidentiary hearing, including notices of a kind comparable to those permitted by Rule 237 of the Rules of the Supreme Court of Illinois, such notices to produce should also be filed and served at or before 5:00 p.m. on January 10, 2003.

11. With the agreement of the parties, an evidentiary hearing was thereupon scheduled to be held on January 21, 2003, commencing at 6:00 p.m.

12. An evidentiary hearing was convened on January 21, 2003. The Objector was present by counsel. The Candidate appeared *pro se*. Various witnesses for the parties were present in the hearing room and, on motion of the Objector, all witnesses were excluded.

13. It was noted that the Candidate's nomination papers state that the Candidate resides at 441 West 79th Street in Chicago, Illinois, and the Candidate stated that he indeed resides at 441 West 79th Street in Chicago, Illinois.

14. The Objector was then invited to open his case in chief. The Objector called the Candidate as an adverse witness, and the Candidate was duly sworn. The Candidate testified that he lives at 441 West 79th Street in Chicago, in a building which he described as an apartment building consisting of 16-20 units. (Tr. 20.) The Candidate said that he lives in Unit 1 in the basement of the building, and has lived there for four months, having moved into the building in September 2002. (Tr. 21.) The Candidate stated that he lives in the apartment with his brother, James Hayes, who moved into the apartment in June 2002. (Tr. 21-22.) The Candidate testified that the apartment consists of a kitchen, a bathroom, a living room, and one bedroom; that he normally

sleeps in the bedroom, which contains two beds; and that his brother sometimes sleeps in the bedroom and sometimes does not. (Tr. 22-23.) The Candidate stated that, prior to September 2002, he lived at 420 West 66th Street in Chicago, a two-flat building where he lived for about 18 months, and where he lived alone. (Tr. 23-24.) He later said that he moved into 420 West 66th Street in July 2000 and moved out in July 2002. (Tr. 24.) The Candidate stated that he did not have any rent receipts for the property at 441 West 79th Street in Chicago because his brother is the tenant; the Candidate gives his brother cash, and his brother does not write him rent receipts; and, the Candidate stated, "It's not like I'm paying him rent, rent. He was a relative." (Tr. 27-28.) The Candidate admitted that, with respect to the apartment at 441 West 79th Street, he did not have any electric bills, gas bills, water bills, or telephone bills in his name. (Tr. 28-29.) The Candidate produced a bill for a cellular telephone, which was addressed to Post Office Box 1384, Chicago, Illinois, 60690. (Tr. 29.) On cross-examination[1] the Candidate testified as follows regarding his use of a post office box:

> In reference to the mail, most of my mail, because I have been moving around, has been earmarked towards my P.O. Box. I send everything there the reason being is because sometimes I don't always get my mail. Sometimes it's lost. And because I've changed residences a few times, I made sure this way I would not lose this mail by having it directed to a particular location.

(Tr. 46.) The Candidate stated that he owns a car, but the car is registered to an address other than either 441 West 79th Street or 420 West 66th Street. (Tr. 30.) The Candidate stated that the address which he sets forth on his income tax returns is that of his post office box. (Tr. 31.) The Candidate admitted that he is not registered to vote at 441 West 79th Street (Tr. 33), but is registered to vote

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[1] The Candidate cross-examined himself. Without objection by the Objector, he was permitted to do so by giving a narrative statement rather than in a question-and-answer format.

at 509 West 81st Street in Chicago (Tr. 34). The Candidate's nomination papers, set forth as Group Exhibit A, were then exhibited, and the Candidate admitted that, when his nomination papers, including 54 pages of pre-printed petitions, were originally printed, they set forth his address as 509 West 81st Street. (Tr. 34-36.) That address is the address of the Candidate's mother. (Tr. 42.) On cross-examination the Candidate explained,

> The address was misprinted by the printer. We got them on Saturday. When we picked them up from him on Saturday they were incorrect. We went about the task then of trying to change it. I told the girl — they called me and said, "We got the petitions."
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> And I said, "Well, we can start them and tell the people to come by."
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> She said this is the address. I asked her, "Go through it so I would know the address to make sure everything is straight on there that needs to be because I need to turn this in on Monday." This was on Saturday.

(Tr. 43-44.) On direct examination the Candidate testified that "the girl who was working with me on counting the petitions and going through the list of people in the ward" (Tr. 35-36) whited out that address on every one of the pre-printed petitions sheets and typed in the address of 441 West 79th Street. (*Ibid.*) The Candidate said that these changes were made on the petition sheets before the petition sheets had been signed. (Tr. 36.) When asked, "[W]hy didn't you just change one petition with the 441 West 79th Street address and then duplicate that petition?", the Candidate answered, "[B]ecause it was on a Saturday when we did it. And we didn't have a lot of people to help us.... I didn't have resources to make those changes. It was late Saturday. **** There were no people available. All we had at that time was a typewriter, so she typed it in and we went out on the street with it." (Tr. 37.) When pressed as to why, "instead of photocopying one master blank petition, she whited out 54 separate blank petitions and typed in 54 different times the address of 441 West 79th Street," the Candidate explained, "When I got back to the office, she had already done it.

So rather than going through trying to find someplace to go and get it copied, I just said, 'Fine, let's go,' because I had people that were waiting on me, and I wanted to make sure that we got out there before it got too dark." (Tr. 37-38.) On cross-examination, the Candidate offered the further explanation that "We didn't have accessibility to a copy machine." (Tr. 44.)

15. The Objector then called Kham Beard as a witness, and the witness was duly sworn. Beard testified that, for the last five years, he has been, and is, the landlord of the property at 441 West 79th Street in Chicago; that he manages the property; and that he is responsible for the renting of each apartment in the multi-unit building. (Tr. 47-48.) On examination by the Hearing Officer he testified, further, that he is the owner of the building and that he personally enters into the leases with all of the tenants. (Tr. 65.) He also testified that he, or his janitor, visits every apartment in the building at least once a month, while escorting an exterminator. (Tr. 66.) On direct examination Beard testified that, during those visits with the exterminator, he meets most of the tenants. (Tr. 59.) He also testified that "I'm over to the premises quite often." (Tr. 59-60.) On cross-examination by the Candidate, Beard said that "Any time a new tenant comes in I introduce them to the janitor so that he will know this person will be coming out and in the building." (Tr. 62.) Also on cross-examination, Beard testified that "I know every person who's a tenant who comes in and out of [the] building, yes sir. I know every tenant in the building. I know them by sight." (Tr. 63.) On direct examination the Candidate was pointed out to Beard, and Beard was asked, "Have you ever seen this gentleman before?" Beard replied, "Not to my knowledge" and "To the best of my ability I've never seen him before." (Tr. 48.) Beard testified that he has never rented an apartment to Larry Hayes (*ibid.*); that Larry D. Hayes has never applied to be a tenant at 441 West 79th Street (Tr. 54); that Larry D. Hayes has never paid any rent for the apartment at that location (*ibid.*); and that Larry D.

Hayes has never approached him seeking to be added as a legal tenant of the apartment (*ibid.*). Beard testified that he has rented the basement apartment, however, to James Hayes, who moved in on or about September 1, 2002 (Tr. 50-51). Beard testified as to the written lease, dated August 15, 2002, into which he entered with James Hayes (Tr. 50-54), and the first page of which was eventually received into evidence as Objector's Exhibit 1.[2] The written lease states that the tenant is James Hayes (Obj. Ex. 4, Group Annex 2), and contains, *inter alia*, the following text set forth under the heading of "Additional Agreements and Covenants":

> *** Applicant only to occupy the apartment. No one is to stay in the apartment when tenant is not at home.

(*Ibid.*) In addition, Section 8 of the lease provides, in pertinent part, as follows:

> The Apartment shall be occupied solely for residential purposes by Tenant, those other persons specifically listed in the application for this Lease, any children which may be born to or legally adopted by Tenant during the Term hereof. Unless otherwise agreed in writing, guests of Tenant may occupy the Apartment in reasonable numbers for no more than three weeks each during each year of the Term hereof.

(*Ibid.*) On cross-examination by the Candidate, Beard testified at length that "James Hayes ... has moved a woman in" (Tr. 55); that the woman said she is staying at the apartment and was observed by Beard in possession of a key to it (Tr. 61); that the woman told Beard that she was the wife of James Beard and had moved in to the apartment, which was now hers (Tr. 61-62). On examination

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[2] Copies of two of the Objector's exhibits received into evidence (Obj. Exs. 2 and 4) are set forth, sequentially, as Group Annex 2. A copy of Obj. Ex. 3 (correspondence from the office of the Secretary of State of Illinois purporting to show (a) the lack of a record of vehicle registration by Larry D. Hayes from 2001 to the present and (b) issuance on December 31, 2002, of a driver's license to Larry D. Hayes at the address of 441 West 79th Street in Chicago) is not found in the Hearing Examiner's file, but the Hearing Examiner did not rely upon Obj. Ex. 2 is preparing his recommended decision. With respect to both the Objector's Exhibits and the Candidate's Exhibits, only those exhibits upon which the Hearing Examiner relied in reaching his recommendation are referred to in the body of this Report.

by the Hearing Examiner Beard said that he first encountered the woman in August, September, or October of 2002, when he observed her on the premises, going in and out of the apartment. (Tr. 66-67.) The woman told Beard in October 2002 that she was the wife of James Hayes, and Beard observed her at that time to be in possession of keys to the apartment. (Tr. 72.) Beard further testified that, represented by an attorney, he has brought suit under the lease to enforce its prohibitions against occupancy by persons other than James Beard, and that action is currently pending in the Circuit Court of Cook County. (Tr. 73-75.)

16. The Objector rested.

17. The Candidate was invited to open his case. The Candidate called James Hayes as a witness, and the witness was duly sworn. James Hayes testified that he lives at 441 West 79th Street in Chicago (Tr. 89), and that the Candidate has "been in there with" him since September (Tr. 90). The following colloquy thereupon took place:

Q. [By the Candidate] Do I pay you any money to stay there?

A. Yes.

Q. And about how much would I be paying?

A. One hundred dollars.

Q. When I moved in, did I tell you that this would be a temporary residence for me?

A. Yes, you did.

Q. And that I needed to stay there until I worked out some other issues?

A. Yes, sir.

Q. Is there anyone else staying in the apartment there?

A. My girlfriend.

(*Ibid.*). James Beard responded to further questions by the Candidate as follows:

Q. [By the Candidate] How many times would you say in the course of a month that Mr. Beard visits the complex — I mean the apartment building?

A. Approximately four or five times a month.

Q. Four or five times. And when he comes, about what time of day is it when he comes?

A. You never know. He done come in the morning, he done come in the morning I done seen him. I got up with headaches to go get aspirin at 2:00 or 3:00 in the morning, I see him walking around the building. But you never know when.

Q. So it could be —

A. No certain time.

Q. There's no certain time?

A. There's no certain time that you might see him in the building.

Q. He might be there in the morning, he might be there in the night, but you know you see him around there?

A. Correct.

(Tr. 97.)

18. The Candidate called Arquilla Lawrence as a witness, and the witness was duly sworn. Lawrence testified that she has known the Candidate for about a year in the course of a business relationship. (Tr. 107.) The last address at which she has known the Candidate to live is 441 West 79th Street, to which address she has been on two or three occasions. (*Ibid.*) On cross-examination she made clear, however, that "Actually I didn't visit with him [the Candidate]. I just rode in the car with Miss Galloway..." in January 2003. [Tr. 109-110.] On examination by the

Hearing Examiner, Lawrence testified that she has never been inside the residence at 441 West 79th Street. [Tr. 110.]

19. The Candidate called Margaret Diane Galloway as a witness, and the witness was duly sworn. Galloway testified that she has known the Candidate for two or three years, as a friend and business associate. [Tr. 115.] On direct examination she testified that, in the last three or four months, she has gone to the premises at 441 West 79th Street, an address that she knows well because there is a boutique next door, to deliver to the Candidate printed brochures in connection with a business matter. [Tr. 116-117.] She did not recall seeing the Candidate's name "on the bell or on the door or anything." [Tr. 117.] On cross-examination she testified that she has never been inside the apartment at 441 West 79th Street. [Tr. 121.]

20. The Candidate called himself as a witness, and was reminded that he was already under oath. On direct examination[3] the Candidate testified:

> In 2000 and 2001 ... I lived at ... 420 West 66th Street. And when I moved there, I actually moved to my mom's house for a short period of time, which was 509 West 81st Street. And I believe that's why the printer put that address on the petitions because he remembered me from coming in there, and I had used that before on some bills that he had attempting to get from me.
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> I moved there for a short period of time. I moved in with my brother which is 441 West 79th Street. I had put my furniture and all of my belongings in storage during that period of time. I had no phone bill other than my cellular phone bill. No gas bill or light bill or anything of those things because I didn't have no place of residence so there was not need for me to have gas or phone or any of those things. *** I did a lot of work out of my so-called office. I was doing a lot of work from there as well as from time to time when money was tight staying there.
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> But I've been in the [17th] ward all my life. I've never left the ward.

[Tr. 127-128.] On examination by the Hearing Examiner, however, the Candidate testified that he

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[3] Again, without objection, the Candidate was permitted to testify in narrative form.

owned real estate at 621 South Plymouth Court in Chicago; that at various times, including as recently as 2000, he had lived at 621 South Plymouth Court; that he has also resided at 740 South Federal Street; and that at various times he had been registered to vote at 621 South Plymouth Court and at 740 South Federal Street. [Tr. 140-144, 150.]

21. Without objection, various exhibits offered by the Candidate were received into evidence.[4] Among them were Cand. Ex. 5, described by the Candidate as a bill for the storage of his furniture and other belongings [Tr. 139], and Cand. Ex. 6, described by the Candidate as a "receipt from the post office" for a postal money order "that I gave [James Hayes] towards some of the rent at the time when I first moved in." [Tr. 134.] In his closing argument, counsel for the Objector pointed out that there appears on the face of Candidate's Exhibit 6, the receipt for a postal money order, a legend printed by a machine at the post office indicating that the money order in question was issued on December 26, 2001. Thus, even though the money order receipt bears handwritten text stating that the money order was paid to James Hayes of 441 West 79th Street, it could not possibly have been issued for the purpose of paying rent on behalf of the Candidate to James Hayes because the leasehold at 441 West 79th Street did not commence until August 15, 2002, at the earliest. [Tr. 163.] In his closing argument, the Candidate admitted that, as to Cand. Ex. 6, "a mistake was made." [Tr. 175.] The Candidate said that, at the Candidate's request, his brother had written his own name and address on the receipt: "I said to him that I need a receipt because they're going to ask me." [Tr. 176.] He claimed, however, that he meant that his brother should give him

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[4] Copies of the Candidate's exhibits received into evidence (Cand. Exs. 1-7) are set forth as Group Annex 3.

a receipt for money actually paid in connection with expenses at 441 West 79th Street, and that the error was his brother's. [Tr. 177-178.]

22. The Candidate rested.

23. Closing arguments were heard and the evidentiary hearing was closed.

24. The Hearing Examiner evaluates the evidence as follows:

(a) A preponderance of the evidence shows that the Candidate does not, in fact, maintain a significant physical presence at 441 West 79th Street in Chicago, the address set forth on his nomination papers.

(1) The Candidate's attempt to pass a receipt for a postal money order purchased on December 26, 2001, as proof of a rent payment made to his brother in or after September 2002, coupled with the Candidate's general demeanor throughout his testimony, seriously undermined his overall credibility as a witness.

(2) The Candidate clearly has at least three alternative places in which to maintain a physical presence, including his mother's home; his office, where he admits he sometimes sleeps; and the residence he owns at 621 South Plymouth Court.

(3) When first asked who resides at 441 West 79th Street, the Candidate answered that his brother, James Hayes, and he do. Considerable evidence, including the testimony of the landlord and of James Hayes, established that the girlfriend of James Hayes also resides there. The Candidate's omission of any mention of her presence, and his failure to give any explanation of sleeping arrangements that takes her presence into account, are conspicuous lacunae in his case.

(4) It cannot be doubted that Kham Beard, the landlord, is a very active and attentive manager of his property. The Candidate's direct examination of his brother established that Beard shows up at the apartment building frequently, at all hours of the day and night. The evidence shows that Beard has been particularly concerned about activity occurring in, and connected with, the apartment leased to James Hayes. Beard has been diligent in policing the apartment and in resorting to judicial process to enforce what he perceives to be his legal rights under the lease with respect to the apartment's occupancy and use. The Board may take administrative notice of the fact that, on January 17, 2003, four days prior to the evidentiary hearing held in this matter, Beard did, indeed, commence an action in the Circuit Court of Cook County, Illinois, there known as *Walomakh Management v. James Hayes*,[5] and there numbered as Cause No. 03 M1 701691, seeking relief under the lease against James Hayes. Beard's testimony that he has never seen the Candidate at the apartment building is compelling and highly probative of the proposition that the Candidate does not, in fact, reside in, or frequent, the apartment.

(5) The Candidate was unable to produce a single witness, other than his brother and himself, who could testify that he had ever seen the Candidate inside the apartment. It was conspicuous that the witnesses whom the Candidate did call testified that they never crossed the threshold of the premises at 441 West 79th Street but, rather, than the Candidate always came out and met them on the street when they

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[5] Walomakh Management is the name of the lessor as shown on the lease, Obj. Ex. 4, Group Annex 2.

arrived making business or campaign-related deliveries. Even the witness who pressed a buzzer to summon the Candidate from within the building could not recall that the Candidate's name was on the bell.

(6) The Candidate was unable to produce a single document, bill, invoice, statement, directory, or record of any kind, apart from his nominating papers, a few pieces of campaign-related correspondence, and his driver's license, that connected him in any way with 441 West 79th Street. The campaign-related correspondence was probative of nothing, having been generated subsequent to the public filing of the Candidate's nominating papers. The Candidate's driver's license, which bore what the Candidate said was an erroneous date of birth and which was not offered into evidence, was issued only on December 31, 2002, also subsequent to the Candidate's filing of his nominating papers.

(b) A preponderance of the evidence shows that the Candidate has formed no intent to remain at 441 West 79th Street as his permanent home.

(1) The lease, Obj. Ex. 4, Group Annex 2, and the testimony of the landlord establish that the Candidate has no legal right to make 441 West 79th Street his home, and he has taken no steps of any kind even to attempt to acquire or assert such a right.

(2) It appears that all of the Candidate's furniture and personal belongings are in storage, with no part of them reposing for his use at 441 West 79th Street.

(3) Leaving no ambiguity as to the Candidate's lack of intent to make a permanent home at 441 West 79th Street is the testimony which he himself elicited

from his brother and which, though already quoted *supra* at ¶ 17, merits repetition because of its dispositive weight:

> Q. When I moved in, did I tell you that this would be a temporary residence for me?
>
> A. Yes, you did.
>
> Q. And that I needed to stay there until I worked out some other issues?
>
> A. Yes, sir.

[Tr. 90.] Having himself thus established that his lodging at 441 West 79th Street began as a temporary arrangement, the Candidate offered no evidence whatsoever that his intentions ever changed.

(c) A preponderance of the evidence shows that the Candidate materially altered his candidacy petitions subsequent to their circulation. The Candidate's claim that a printer decided unilaterally (and erroneously) what home address to ascribe to the Candidate when printing the Candidate's petitions is improbable. The Candidate's claim that it was easier, cheaper, and speedier to have a "girl" use a white-out liquid to obliterate the "erroneous" address and then to type-in the "correct" address on 54 or more petition sheets, rather than to correct a single sheet which could then be reproduced in minutes, at a very small cost, by a photocopy machine at a ubiquitous 24-hour copy shop[6] or corner drugstore, is preposterous. It

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[6] The Board may administratively notice that Chicago telephone directories show that many print shops are in business in, or in reasonable proximity to, the 17th Ward, including Kinko's shops advertising 24-hour operations at 1315 East 57th Street and 4710 West 95th Street. SBC Ameritech, *Chicago Consumer Yellow Pages* 1411 (Feb. 2002). Neither of those addresses is more than a 15-minute drive on a Saturday from 441 West 79th Street.

was not lost upon the trier of fact that neither the printer nor the "girl" was ever named, and that their evidence, whether by affidavit or on the witness stand, was never offered. The known facts suggest a much more likely scenario: The Candidate ordered his petitions prepared with his mother's address. He testified to his long-standing connections to his mother's home, which is also the address from which he is registered to vote, and the Board may administratively notice that, in former times, it lay within the boundaries of the 17th Ward. To his horror, however, the Candidate then discovered that, following the most recent redistricting of the Wards of the City of Chicago, his traditional family home is no longer located in the 17th Ward. His petitions had already been printed and circulated. Little or no time remained for reprinting and recirculating them. He thereupon resorted to appropriation of his brother's address — fortuitously situated within the new boundaries of the 17th Ward — and altered his candidacy papers just before filing them.

25. Section 5/3.1-10-5(a) of the Illinois Municipal Code, 65 ILCS § 5/3.1-10-5, provides as follows:

> A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality for at least one year next preceding the election.

26. Section 20/21-14(a) of the Illinois Municipal Code, 65 ILCS § 20/21-14(a), which, as amended, became effective on July 29, 1999, provides as follows:

> No member [of the city council] may be elected or appointed to the city council after the effective date of this amendatory Act of the 91st General Assembly unless he or she has resided in the ward he or she seeks to represent at least 2 years before the date of the election

or appointment. In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she resided for the 2 years before the election that follows the redistricting and may be reelected from the new ward he or she represents if he or she resides in that ward for 18 months before the reelection.

27. Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, provides, in pertinent part, as follows:

> All petitions for nomination shall, besides containing the names of candidates, specify as to each:
>
> ****
>
> 3. The place of residence of any such candidate or candidates with the street and number thereof, if any. ****
>
> Such certificate of nomination or nomination papers ... must include a statement of candidacy for each of the candidates named therein.... Each such statement shall set out the address of such candidate ... and shall be subscribed and sworn to by such candidate....

28. In order to decide this case, it is not necessary to reach the question of where the Candidate's true address may be and whether or not the Candidate has resided for two years or more in territory which satisfies the requirements of the Illinois Municipal Code as recently revised at 65 ILCS § 20/21-14(a). The sad irony is that, if the Candidate's true address was at his mother's home, the address which he admits was originally printed on his petitions and other nominating papers, it appears that he had gathered a sufficient number of signatures and he might well have satisfied the geographic and durational tests of that statute. Nor is it necessary to determine whether or not the Candidate's petitions were altered after they had been circulated and signed by registered voters. It is enough to decide that, wherever the Candidate's true address may be, it is *not* at 441 West 79th Street. "A permanent abode is necessary to constitute a residence within the meaning of the Election Code. *Walsh v. County Officers Electoral Board of Cook County*, 267 Ill.App.3d 972, 976, 642 N.E.2d 843, 845 (1st Dist. 1994. *See also Anderson v. Pifer*, 315 Ill. 164, 167, 146 N.E.2d 171,

173 (1924) (right of college students to vote in college town depends on evidence, including intent, as to permanent abode); *Stein v. County Board of School Trustees of Du Page County*, 85 Ill.App.3d 251, 255-257, 229 N.E.2d 165, 167-168 (2d Dist. 1967), *affirmed*, 40 Ill.2d 477, 240 N.E.2d 668 (1968) (residence of voter in detachment and annexation election is place of "permanent abode", determined by "physical presence" and "intention of remaining there as a permanent home"). For purposes of election-related questions in Illinois, it is thus well established that "Two elements are necessary to create a residence: physical presence and intent to remain there as a permanent home." *Delk v. Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 735, 738, 445 N.E.2d 1232, 1235 (1st Dist. 1983); *Walsh, supra*, 267 Ill.App.3d at 976, 642 N.E.2d at 845 (quoting *Delk*). Here the Candidate has not maintained a physical presence at 441 West 79th Street; his acts and the circumstances surrounding his connection with 441 West 79th Street are inconsistent with an intent to make his permanent home there; and, what is more, the Candidate has actually declared that it is not his intent to make his permanent home there. Thus, the Candidate's statement, set forth in his declaration of candidacy, that he resides at 441 West 79th Street, is false.

29. The law requires that the Candidate's statement of residence be true. 10 ILCS § 5/10-5. This command is reinforced by the "subscribe and swear" clause of Section 10-5 of the Election Code, which "activates the perjury provisions of the Code and is, for that reason, mandatory." *Serwinski v. Board of Election Commissioners of the City of Chicago*, 156 Ill.App.3d 257, 260, 509 N.E.2d 509, 511 (1st Dist. 1987). *See also Welch v. Johnson*, 147 Ill.2d 40, 52, 588 N.E.2d 1119, 1124 (1992), in which the Supreme Court approvingly cited the Appellate Court's decision in *Serwinski* on the point. The legislature imposed this requirement so that, prior to an election, there would be available to the public at least a minimum of reliable, crucial, information about a

candidate's qualifications, ties to the community, and real or potential conflicts of interest. *See, e.g.*, *Miceli v. Lavelle*, 114 Ill.App.3d 311, 448 N.E.2d 989 (1st Dist. 1983). There the Appellate Court held that the filing of statements of economic interests with nomination papers is mandatory in light of the legislature's intention, in enacting Section 10-5 of the Election Code (where the requirements, among others, of both the statement of a candidate's address and the timely filing of a statement of economic interests are found), to allow "a better informed electorate to choose among the alternative candidates on a more rational basis." *Miceli, supra*, 114 Ill.App.3d at 316, 448 N.E.2d at 993. A false statement of residence renders the Candidate's nomination papers void. *Collier v. Robertson*, 99-EB-ALD-181 (CBEC Feb. 2, 1999), *affirmed sub nom. Robinson v. Board of Election Commissioners*, Cir. Ct., Cook Cty., Ill., No. 99 CO 30 (1999).[7]

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[7] The decision of the Appellate Court in *Crudup v. Sims*, 292 Ill.App.3d 1075, 686 N.E.2d 714 (1st Dist. 1997) should be noted because the case involved allegations of false submissions of information (the statement of economic interests) which, as is the statement of address, is required of candidates by Section 10-5 of the Election Code, 10 ILCS § 5/10-5. The holding of the court in *Crudup*, however, accords no comfort to the Candidate here. In *Crudup* the court merely held that no private right of action exists under Section 4A-107 of the Illinois Governmental Ethics Act, 5 ILCS § 420 / 4A-107 (1996), or Section 10-5 of the Election Code, for the willful filing of a false statement of economic interests. The decision is limited to a context in which "our supreme court determined ... that the circuit courts, rather than the election boards, have original jurisdiction over challenges to the truthfulness, correctness and completeness of statements of economic interest." *Crudup, supra*, 292 Ill.App.3d at 1078, 686 N.E.2d at 717, citing *Welch v. Johnson, supra*, 147 Ill.2d at 46-47, 588 N.E.2d at 1121-1122. (In *Welch* the Supreme Court grounded its holding "most importantly" on the fact that statements of economic interest, unlike nomination papers and other election-related documents, are not "on file" with election authorities but are "on file", rather, with other governmental officers.) There is no jurisdictional impediment to this Board's cognizance of the question of a candidate's residence or the truthfulness, correctness, or completeness of the statement of residence set forth in his nomination papers and declaration of candidacy.

30. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, of the clerk's report of Record Examination, of all the testimony heard and exhibits received at an evidentiary hearing, and of all other proceedings held herein, the Hearing Examiner recommends that the Electoral Board enter the following findings of fact:

(a) The address set forth on the Candidate's declaration of candidacy, to which he has subscribed and sworn, and on all of his petitions and nomination papers, is 441 West 79th Street in Chicago.

(b) The Candidate has not maintained, and does not maintain, a significant physical presence at 441 West 79th Street in Chicago, Illinois.

(c) At the time of filing his nomination papers the Candidate did not, and the Candidate does not now, have a present intention of making 441 West 79th Street in Chicago his permanent home.

31. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) The address set forth on the Candidate's declaration of candidacy, to which he has subscribed and sworn, and on all of his petitions and nomination papers, is false.

(b) The Objector's Petition is well founded, and the relief sought therein should be granted.

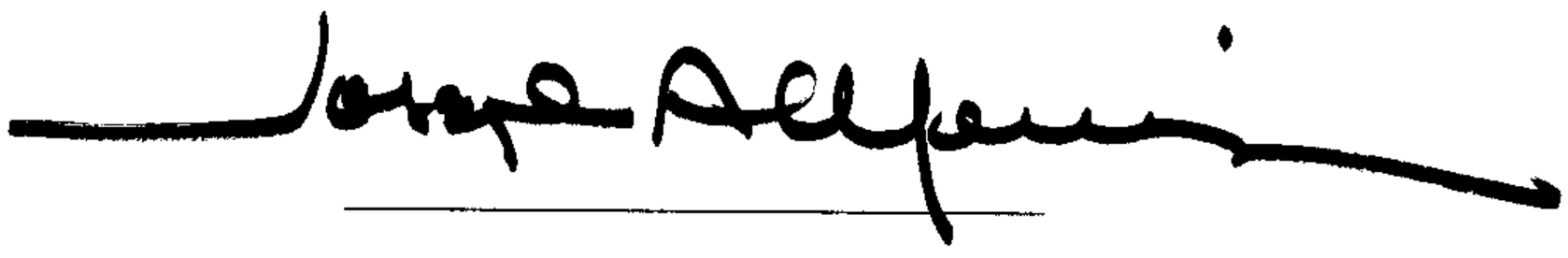
(c) The Candidate's nomination papers are insufficient in law and fact.

32. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Larry D. Hayes shall not appear and shall not be printed on the ballot for election to the office of Alderman of the 17th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 25, 2003.

Dated: January 30, 2003.

Respectfully submitted,



JOSEPH A. MORRIS
Hearing Examiner