BCCON-ALD

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

Objections of: GEORGE A. KWAK	)	
	)	
To the Nomination	)	
Papers of: GEORGE A. CARDENAS	)	No.: 03-EB-ALD-085
	)	
Candidate for the office of	)	
Alderman of the Twelfth 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 GEORGE A. KWAK ("Objector") to the nomination papers ("Nomination Papers") of GEORGE A. CARDENAS, candidate for the office of Alderman of the Twelfth 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 was held on these Objections commencing on December 30, 2002 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner BARBARA GOODMAN 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

Call. The following persons, among others, were present at such hearing; the Objector, GEORGE A. KWAK, by counsel; and the Candidate, GEORGE A. CARDENAS, by counsel.

7. The Hearing Examiner 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 Hearing Examiner 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 his duly authorized representative 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 Electoral Board has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The results of the records examination indicates 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 979;

    c. The number of signatures deemed invalid because of objections sustained total 593;

    d. The remaining number of signatures deemed valid total 386.

14. The Electoral 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 Twelfth Ward of the City of Chicago.

15. The Electoral Board finds, therefore, that the Objector's Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. In addition to Objections as to individual signatures on the Candidate's nominating petition sheets, the Objections also allege that (a) the Candidate is not eligible to hold the office of Alderman because he was not a registered voter in the 12th Ward for at least two years prior to the election; (b) that certain signers of the Candidate's nominating petitions previously signed the nominating petitions of another candidate for the same office and any such signatures on the Candidate's nominating petitions are therefore invalid; and (c) there was a pattern of fraud or false swearing in the circulation of the Candidate's nominating petition sheets.

17. As to the remaining Objections, the Hearing Examiner conducted further proceedings and considered testimony and received evidence which is described in her report of recommended findings and conclusions of law. In her report, she recommends that the Objections as to the Candidate's voter registration be overruled; that any signatures of persons who previously signed a nominating petition for another candidate for the same office be stricken; and that there is insufficient evidence to sustain a finding of a pattern of fraud or false swearing and that such objections be overruled.

18. The Electoral Board hereby adopts the Hearing Examiner's recommended findings and conclusions of law and incorporates herein her report. The Electoral Board finds therefore that the Objections are overruled and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of GEORGE A. KWAK to the Nomination Papers of GEORGE A. CARDENAS, candidate for election to the office of Alderman of the Twelfth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of GEORGE A. CARDENAS, candidate for election to the office of Alderman of the Twelfth Ward of the City of Chicago, SHALL 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.

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 25, 2003 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER AND ALDERMAN
IN THE CITY OF CHICAGO

2003 FEB -5 P 3:52
BOARD OF ELECTION

2003 FEB -5 P 3:52
BOARD OF ELECTION

GEORGE A. KWAK	)	
Objector	)	
	)	
-v-	)	**03-EB-ALD-085**
	)	
GEORGE A. CARDENAS	)	
Candidate	)	

HEARING EXAMINER'S REPORT

This cause came to be heard before James Scanlon on January 2, 2003 for a case management conference. At that time, the parties were given an opportunity to file preliminary motions and responses. The Candidate filed a Motion to Strike and Dismiss on December 6, 2003. The Objector filed a Response on January 12, 2003. Further hearings in the matter were held on January 13, 2003, and from time to time thereafter through January 26, 2003.

The Motion to Dismiss addressed paragraph 10 of the Objector's Petition which specified as follows:

> "The Candidate has filed his nominating petitions representing to the public, swearing under oath, and certifying in his Statement of Candidacy that he is "legally qualified to hold such office, when in fact, he does not fulfill the aforesaid residency requirement and was not a "qualified voter" for the requisite period of time in the 12th Ward."

The Candidate argued that there is no requirement that the candidate

be a registered voter in addition to a resident within the ward for two years prior to the election. Section 65 ILCS 20/21-17 requires only that the candidate be a resident of the ward for two years prior to the election. *

The Motion to Dismiss was granted as to paragraph 10 in that there is no requirement that the candidate be a registered voter within the ward for two years prior to the election. See, ***Henderson v Miller***, 228 Ill. App. 3d 260, 592 N.E.2d 570 (1st Dist. 1992).

A records examination was conducted, the results of which were as follows:

Number of Signatures on Petition:	979
Number of Objections Overruled:	83
Number of Objections Sustained:	593
Number of Signatures Invalid Because Of Circulator:	0
Valid Signatures:	**386**
Minimum Signature Requirement:	240

Rule 8 Motions were filed by both parties. Additionally, the parties entered into a stipulation in which they agreed that certain signers of the Cardenas petition previously signed the petition of another candidate for the same office, Ray Frias. The stipulation did not include the candidate's agreement that the subsequently signed Cardenas signatures were invalid and Candidate specifically requested an opportunity to present evidence and argument on that point.

In addition to the stipulations made relative to the issue of the order of signing, James Hayes, Forensic Document Examiner, testified as to whether

certain signatures on the Frias petition and Cardenas petition were signed by the same person.

After all stipulations and rulings on the issue of the order of signing, and assuming, for purposes of this decision, that the subsequently signed Cardenas petition signatures were invalid and including rulings on allegations regarding duplicate signatures on the Cardenas petition, the candidate had 305 valid signatures remaining.

The Objector further offered the testimony of certain circulators of the Cardenas petition in order to establish that these circulators, specifically, Frank Carporale (sheets 8,14,16, 24,29,37and 41; Frank Aguirre (sheets 3,9,15,21,30,34,42 and 45); Joseph Diaz (Sheets 7,11,20,25 and 35) and Raul Villareal, III (sheets 5,10,27 and 39) engaged in a pattern of fraud or false swearing in the circulation of the Cardenas petition.

While lengthy testimony was offered by circulator Caporale, his most striking testimony involved an explanation as to how he dropped off the petition sheets. Mr. Caporale testified that he brought his petitions to a location where he signed them and placed them in a pile with other petition sheets. He testified that he did not present himself to a notary public and was unaware of whether a notary was in the building or anywhere near the stack of petition sheets.

The testimony of Robert Aguirre indicated that he circulated approximately eight sheets between December 14 and December 15, 2003.

However, all of the sheets he submitted were notarized on December 14, 2003. Circulator Aguirre did not have an explanation of why all of the sheets were dated December 14, 2003. However, no evidence was presented by the Objector to establish that all of the sheets circulated by the circulator were subsequently submitted by the Candidate and that the sheets presented could not have been circulated or notarized on December 14, 2003.

The Objector offered the testimony of James Hayes to further support the allegation that the above referenced circulators engaged in a pattern of fraud or false swearing.

As to circulator Frank Caporale, Mr. Hayes testified that certain of the sheets circulated by Mr. Caporale were signed by less than the number of signers indicated on each sheet. Those sheets containing certain signatures which appeared to be of common authorship with other signatures on the same sheet were sheets 8, 16, 14, 37 and 41. Mr. Hayes further testified that there were some minimal elements of common authorship between sheet 41 circulated by Caporale and Sheet 27, circulated by Raul Villareal.

As to circulator Raul Villareal, Mr. Hayes testified that certain of the sheets circulated by Raul Villareal contained signatures which bore elements of common authorship. Specifically, sheets 9, 30, 34 and 42 contained such signatures.

As to circulator Joseph Diaz, Mr. Hayes testified that sheet 35

contained certain signatures which bore elements of common authorship.

As to circulator Raul Villareal, III, Mr. Hayes testified that sheets 27 and 39 contained signatures which bore elements of common authorship.

During cross-examination, it was established that virtually all of the signatures circulated by Villareal, Diaz and Aguirre which evidenced the possibility of common authorship involved signatures with the same surnames giving rise to the conclusion that the signatures were, in all probability, signed by one or more related persons.

At the end of the Objector's case in chief, candidate moved for a directed finding relative to the allegations contained in paragraphs 9A, 9C and 9D of the Objector's Petition which alleged that circulators Raul Villareal, Roberrt Aguirre and Joseph Diaz engaged in a pattern of fraud or false swearing. The Objector further pointed out that even if all of the remaining signatures of Frank Caporale were stricken (22 remaining signatures) there would still be an insufficient number of allegations remaining to invalidate the nominating papers.

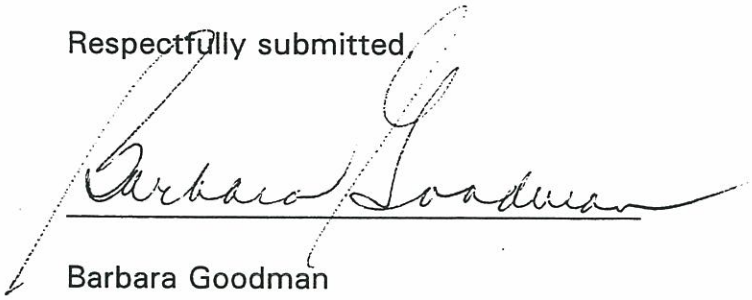
Although the sheets of Raul Villareal, Joseph Diaz and Robert Aguirre contained certain signatures, which appeared to be of common authorship, there was insufficient evidence presented to establish that these circulators engaged in a pattern of fraud or false swearing. While allowing individual signers to sign for other members of their family is not proper, such evidence falls short of the evidence presented in those cases in which a pattern of

fraud was recognized. See, e.g. Fortas v Dixon, 122 Ill. App. 3d 667 (1984) in which it was established that the purported circulators did not circulate and engaged in other improprieties in connection with the circulation process; Huskey v Municipal Offiers Electoral Board, 156 Ill. App. 3d 201 (1987) where the purported circulator did not circulate and that the real circulator allowed signers to sign for other persons; Canter v Cook County Officers Electoral Board, 170 Ill. App. 3d 364 (1988) where the petition sheets contained numerous signatures of common authorship and the purported circulator took the 5th amendment when called to the stand to testify about the signatures and the circulation process.

Here, there was no evidence to establish that the circulators did not circulate the sheets they attested to as circulators and insufficient evidence to establish that the signatures beyond those already invalidated in the records examination should be stricken.

For the foregoing reasons, it is my recommendation that the Motion for Directed Finding as to paragraphs 9A, 9C and 9D of the Objector's Petition be granted. It is my further recommendation that the objections be overruled in conformity with the results of the records examination and the further proceedings held therein, that the nominating papers of candidate George Cardenas be deemed valid and that the candidate's name appear on the ballot at the Municipal General Election to be held on February 25, 2003.

Respectfully submitted,



Barbara Goodman

Hearing Examiner

**** Between the time of the hearing in this matter and the instant Hearing Examiner's Report, the constitutionality of Section 65 ILCS 20/21-17 was the subject of circuit court proceedings and has been appealed. The pending unrelated case is not, however, dispositive in the instant case in that no evidence was presented regarding the Candidate's residency.***