NBCON-WC

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

Objections of: ELLEN T. MCCARTHY	)	
	)	
To the Nomination	)	
Papers of: CLARK PELLETT	)	
	)	No. 04-EB-WC-04
Candidate for the office of Ward Committeeman for	)	
the 2nd Ward of the City of Chicago, Republican	)	
Party	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election 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 ELLEN T. MCCARTHY ("Objector") to the nomination papers ("Nomination Papers") of CLARK PELLETT, candidate for election to the office of Ward Committeeman for the 2nd Ward of the City of Chicago, Republican Party ("Candidate"), having convened on January 5, 2004, at 2:00 p.m., in the City Council Chambers, 121 North LaSalle Street, 2nd Floor, 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 timely filed.

2. The said Electoral Board convened 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 January 5, 2004 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner ROBERT S. ANDREW for further hearings and proceedings. On January 15, 2004, this matter was re-assigned to Hearing Examiner BARBARA GOODMAN due to Mr. Andrew's illness and inability to continue.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, ELLEN T. MCCARTHY, by her attorney Craig Simmons; and the Candidate, CLARK PELLETT, by his attorney Mathias Delort.

7. The Candidate filed a motion to strike and dismiss the Objector's petition alleging that the petition presented what are referred to as "shotgun" objections.

8. The Electoral Board finds that a review of the Appendix-Recapitulation attached to the Objector's petition contains 66 sheets, one for every one of the Candidate's nominating petition sheets. The Objector's Appendix-Recapitulation sheets object to each and every signature on the Candidate's nominating petition sheets. Each signature on the Candidate's petition is objected to for the same three reasons: (1) "Signer's Signature Not Genuine"; (2) "Signer Not Registered At Address Shown"; and (3) "Signer Resides Outside District." The Objector's Appendix-Recapitulation appears to contain only one original sheet -- Sheet 5. All of the other 65 sheets of the Objector's Appendix-Recapitulation appear to be merely photocopies of Sheet 5, except that the "Sheet Number" appearing in the upper right-hand corner of each sheet appears to be written in original handwriting. On many of the Candidate's petition sheets there are blank lines; nevertheless, the Objector's Appendix-Recapitulation objects to the blank lines on the same three grounds enumerated above.

9. After the Candidate filed his motion to strike and dismiss the Objector's petition, the Objector filed on January 8, 2004 a pleading titled, "Answer to Motion to Strike and Dismiss." In this pleading, the Objector argued that she filed her petition upon a good-faith reliance on the due diligence and research conducted by individuals who spent considerable time researching the computerized registration records of the Chicago Board of Election Commissioners and comparing these results with signatures on the Candidate's nomination papers. The Objector attached the affidavits of two individuals who recited their efforts, and the time spent, reviewing the records of the Chicago Board of Election Commissioners. The Objector claims to have completed a thorough review of every signature submitted by the Candidate in his nomination papers. The Objector further alleges that, "Knowing that the research team concluded that the Candidate lacked 186 valid signatures and thus should not be a candidate on the Primary ballot, Ms. McCarthy filed (through her agent) the Objector's petition in its present form." (Answer, ¶4)

10. Attached to the Objector's Answer to Motion to Strike and Dismiss was a document titled, "Appendix Recapitulation: Reflecting Withdrawn Objections." The Objector claims that this document withdraws certain objections made in the Objector's original Appendix-Recapitulation. As explained by the Objector, "the Objector has not amended her Petition to add challenges not present in the

original documents. Rather, the Objector has merely withdrawn certain objections to clarify the issues for a records search, to save time in these court proceedings and to provide a fairer record for the Candidate's efforts in these proceedings." (Answer, ¶6)

11. The Hearing Examiner concluded that the Objector, by the filing of a new Appendix-Recapitulation, implicitly admitted that the original Objector's petition was not consistent with the research and examination purportedly conducted by the Objector or her representatives. The Hearing Examiner further observed that, "if the candidate had not filed a motion to strike and dismiss, the Candidate and the clerks of the board of elections would have been forced to participate in a records examination containing allegations the objector knew or should have known were not true."

12. As this Electoral Board observed in *Derengowski v. Lamm,* 96-EB-RGA-1, CBEC, January 17, 1996, affirmed *Derengowski v. Electoral Board of City of Chicago*, 96 CO 16 (Cir. Ct. Cook Co., Judge Henry, February 9, 1996), an electoral board should not be required to expend its valuable time and resources, nor the time and resources of a candidate, in engaging is a "fishing expedition" for an objector who has not spent the requisite time and resources to make a reasonable inquiry of the facts. Entertaining such objections may invite future parties to interpose similar objections for improper purposes, such as to harass candidates, cause unnecessary delay in the preparation of the ballots or in the conduct of candidate campaigns, or needlessly increase the cost of conducting elections. Objections which have no basis in law or in fact and which are in the nature of what are commonly known as "shot-gun" objections will be dismissed in that they do not fully state the nature of the objections in violation of Section 10-8 of the Election Code.

13. Here, Objector claims in her Answer to the Candidate's motion to strike that her agents did spend considerable time and resources to make a reasonable inquiry of the facts in preparation for filing her Objector's petition. Unfortunately, it appears that in a race to meet the deadline for filing objections against the Candidate's Nomination Papers, the Objector decided to file a petition containing an Appendix-Recapitulation that objected to each and every signature on the Candidate's nominating petitions on multiple grounds knowing that not all of these objections were true or were supported by the research conducted by her agents.

14. The Objector now seeks to amend her Objections to comport with the results of the research that she now claims was conducted. While not adding any new objections (which is impossible given that she originally objected to every signature on the Candidate's petition), Objector now seeks to "withdraw" some of the original objections that are not purportedly supported by her research.

15. The Election Code does not authorize amendments to the objection, and an electoral board's action in allowing amendments is void. *Reyes v. Bloomingdale Township Electoral Board*, 265 Ill.App.3d 69, 638 N.E.2d 782 (Ill.App. 2 Dist. 1994). A motion to amend an objector's petition made after the deadline for filing objection petitions is untimely and the refusal of electoral board to permit objector to amend his petition is not an abuse of the electoral board's discretion. *Stein v. Cook County Officers Electoral Board*, 264 Ill.App.3d 447, 636 N.E.2d 1060 (First Dist. 1994). Therefore, the Objector here cannot *amend* her Objections.

16 While it is not uncommon for objectors to withdraw some or all of their objections after they have been filed, what is unusual here is that the original Objector's petition was clearly defective when filed. See, e.g., *Reed v. Norman*, 90 COEB-2, August 29, 1990, *rev'd on other grounds sub.nom, Norman v. Kusper*, 90 CO 238, Cir.Ct.Cook Co., Sept.20, 1990, *rev'd on other grounds sub nom, Reed v. Norman*, ____ Ill.2d ___ (1990), *aff'd in part on other grounds remanded sub nom, Norman v. Reed*, 112 S.Ct. 698, 502 U.S. 279, *aff'd on other grounds on remand sub nom. Reed v. Kusper*, 154 Ill.2d 77, 607 N.E.2d 1198 (1992), where the appendix-recapitulation sheets were photocopies from a "master sheet" and where objections were filed to all 44,000 signatures on the candidates' petitions on the basis that the signatures were not signed in the voter's own proper persons and that the signers were not duly registered voters.

17. Objectors now attempt to cure their defective petition by withdrawing some of their admittedly unsupported objections. But as the Hearing Examiner concludes, "this practice cannot be countenanced by the electoral board, lest the process becomes abusive to candidates. It would allow Objectors who cannot meet the filing deadline to filed objector's petitions containing any type or number of objections by the filing deadline and then file the correct pleading only if and when 'caught' by a Motion to Strike and Dismiss."

18. The Electoral Board finds that, under the circumstances presented here, the Objections as originally filed did not comply with Section 10-8 of the Election Code. The Objector should not be allowed to cure a defective petition after the deadline for filing objections as that would only encourage objectors in future to file wholly defective objections simply to beat the statutory deadline for filing objections. Accordingly, the Electoral Board grants the Candidate's motion to strike and dismiss the Objector's petition and said petition is stricken and dismissed.

IT IS THEREFORE ORDERED that the Objections of ELLEN T. MCCARTHY to the Nomination Papers of CLARK PELLETT, candidate for election to the office of Ward Committeeman for the 2nd Ward of the City of Chicago, Republican Party, are hereby STRICKEN AND DISMISSED and said Nomination Papers are hereby declared VALID and the name of CLARK PELLETT, candidate for election to the office of Ward Committeeman for the 2nd Ward of the City of Chicago, Republican Party, SHALL be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 30th day of January, 2004.

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.