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

Objections of: ALICIA DURR	)
	)
To the Nomination	)
Papers of: GERALD FRAZIER, SR.	)
	) No. 04-EB-WC-18
Candidate for the office of	)
Ward Committeeman for the 15th Ward of the City	)
of Chicago, Democratic 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 ALICIA DURR ("Objector") to the nomination papers ("Nomination Papers") of GERALD FRAZIER, SR., candidate for election to the office of Ward Committeeman for the 15th Ward of the City of Chicago, Democratic 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 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 January 5, 2004 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner CHRISTOPHER AGRELLA for further hearings and proceedings.

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, ALICIA DURR, by her attorney; and the Candidate, GERALD FRAZIER, SR., pro se.

7. The Candidate filed a motion to strike and dismiss the Objector's petition in part and in whole. For the reasons explained in his recommended decision, the Hearing Examiner granted in part and denied in part the Candidate's motion to strike and dismiss the Objector's petition.

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

9. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during the records examination.

10. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

11. The Objector or her duly authorized representative(s) was present during the examination of the registration records.

12. 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

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

14. The Electoral Board finds that:

    a. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 491;

    b. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 657;

    c. The number of signatures deemed invalid because of objections sustained total 234;

    d. The remaining number of signatures deemed valid total 423;

15. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination is fewer than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 15th Ward of the City of Chicago, Democratic Party.

16. The Candidate, for reasons explained in the Hearing Examiner's recommended decision, later defaulted.

17. The Electoral Board adopts the Hearing Examiner's recommended decision as to all issues and the Hearing Examiner's recommended decision is attached hereto and is incorporated herein.

18. 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 and in the Hearing Examiner's recommended decision. The Electoral Board further finds that the Candidate has defaulted and that the Candidate's Nomination Papers contain fewer than the number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 15th Ward of the City of Chicago, Democratic Party.

19. For the reasons stated above, the Electoral Board finds that the Nomination Papers of GERALD FRAZIER, SR. are not valid.

IT IS THEREFORE ORDERED that the Objections of ALICIA DURR to the Nomination Papers of GERALD FRAZIER, SR., candidate for election to the office of Ward Committeeman for the 15th Ward of the City of Chicago, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of GERALD FRAZIER, SR., candidate for election to the office of Ward Committeeman for the 15th Ward of the City of Chicago, Democratic Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on March 16, 2004.

Dated: Chicago, Illinois, this 3rd day of February, 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PETITIONS OF CANDIDATES FOR THE MARCH 16, 2004, GENERAL PRIMARY ELECTION IN THE CITY OF CHICAGO

ALICIA DURR,	)	
	)	
Petitioner – Objector,	)	
	)	
v.	)	No. 04 EB WC 18
	)	
GERALD FRAZIER, JR.	)	
	)	
Respondent – Candidate.	)	

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BOARD OF ELECTION

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on January 6, 2004. It was set on the call for 11:00 a.m., and at 11:10 the matter was first called for hearing. The candidate appeared *pro se*, the objector was represented by counsel, Mr. James P. Nally, Esq. Each filed their appearance.

The file contained the original petition papers of the candidate and the objections of the objector, which were marked Exhibit A and Exhibit B, respectively.

The objection was a challenge to the validity of the number and quality of signatures on the candidate's petition, alleging defects in the specific signatories in a line by line method, referencing attached appendix-recapitulation sheets. The objection also alleged that a pattern of fraud existed in the candidate's signature collection effort.

The parties were informed of the briefing schedule for any preliminary motions and the candidate presented a motion to strike at that time. Objector's counsel was informed of the deadline for filing his response, and a timely response was filed. The matter was sent for a record examination, with the motion to strike set down for hearing at the next date set on the matter, which was set by agreement for January 12, 2004.

The candidate's nomination papers were for the Democratic Ward Committeeman

primary for the 15th Ward. The minimum signature requirement for that primary election is 491 valid signatures.

The candidate's motion to strike advanced three arguments. First, the motion asserted that the main body of the objection alleged certain deficiencies in the candidate's nomination papers on a signature by signature basis which were unsupported by anything contained in the recapitulation appendix. The second portion of the motion was directed to objection paragraph 21, a pattern of fraud allegation. To this second area, the candidate alleged that this pattern of fraud allegation was factually insufficient, and was unsupported by the appendix-recapitulation sheets. The third allegation was that the objection generally lacked specifics and was in the nature of a "shotgun" petition.

In response, the objector admitted that, to the extent a claim in the body of the objection was not supported by the appendix-recapitulation sheets, they were not being pursued. To the argument directed to the pattern of fraud, objector's response was that the allegation was sufficiently pled. To the lack of specifics/"shotgun" section of the motion, the objector defended the objection as being in general conformity with the practice and procedures before this board as to factual sufficiency by employing an appendix-recapitulation format.

On January 12, 2004, this matter was recalled for hearing, and both sides appeared. At that time the candidate filed a brief in reply to the response, which he tendered to objector's counsel at that time. This reply, in essence, was a refutation of the objector's response. The reply denied that the pattern of fraud allegation was supported by the appendix-recapitulation sheets, and continued to allege that the objection should be struck because it was bereft of sufficient factual support within the main body of the objection.

At the January 12, 2004, hearing, the hearing examiner partially granted the relief

requested in the candidate's motion to strike. The hearing examiner put on the record the recommended decision that any allegation contained within the body of the objection attacking signatures on a line by line basis which was unsupported by the appendix-recapitulation sheet would be struck and disregarded.

As to the pattern of fraud allegation (paragraph 21), it was struck because it lacked sufficient factual support. Paragraph 21, in substance, alleged that a pattern of fraud existed for any nomination page referenced by an appendix-recapitulation sheet where the signature challenged contained both an "A" (Signer's Signature Not Genuine) and "G" (Other) checkmark. It was further alleged that all such sheets were circulated in "roundtable" fashion and were otherwise false.

However, an examination of the appendix-recapitulation sheets, and specifically where the objection was in the "G" column, found approximately 20 checkmarks in the "G" column, of which approximately 12 were described as "inactive" voters, and 8 were described as "invalid address". Furthermore, the "invalid address" allegations were not coupled with "A" column objections, but rather, with "B" column objections (Signer Not Registered at Address Shown). The status of a voter's registration has no relevance as to whether the signature on the petition sheet is genuine, and would have no basis for finding any forgery fraud committed by the circulator. Those allegations claiming "invalid address" were not even linked with an "A" column challenge, and so would likewise provide no factual support to the allegation.

The section of the motion regarding the general lack of specifics/"shotgun" nature of the objection was denied. This objection, attaching and referencing appendix-recapitulation sheets, is in general conformity with the accepted practice and procedures held before this board, and provides sufficient notice to the candidate as to what he is being called to defend. *See e.g.*

Robertson and Hurston v. Moseley-Braun, 99 EB ALD 001 (CBEC January 19, 1999); *Fouladi v. Ladien*, 95 EB MUN 5 (CBEC January 17, 1995).

After concluding the proposed ruling on the motion to strike, the remaining objections were sent to a record examination.

On January 15, 2004, the Records Examination was completed. A clerical error regarding the total number of signatures submitted was corrected, effective January 22, 2004. The results, as tabulated, found there were 423 valid signatures on the candidate's petition. The minimum signature requirement is 491.

On January 17, 2004, the candidate filed his Rule 7 master record examination request, seeking review of some 216 signatures at the warehouse.

On January 22, 2004, at 2:30 p.m. this matter was recalled for status. At this time the Record Exam results were marked Exhibit "E" and accepted into evidence. The candidate stated that he had just completed the Rule 7 examination that same afternoon. By agreement the candidate's Rule 8 Motion deadline was set for January 23, 2004, at 5:00 p.m. A hearing on the Rule 8 Motion was set for January 27, 2004, with a deadline for the exchange of exhibits set for January 26, 2004, at 5:00 p.m.

On Monday morning, January 26, 2004, this hearing examiner returned to his office to find, via fax, that the candidate had filed a partial Rule 8 Motion, as well as a motion to extend by one day the time to file a completed Rule 8 Motion. The initial or partial Rule 8 Motion was timely filed on January 23, 2004.

The basis for the requested extension was the number of names needed to be recovered, coupled with the short time frame between the completion of the Rule 7 and deadline for submission of the Rule 8. In addition, the hearing examiner received the candidate's completed

Rule 8 Motion, time stamped a day later, January 24, 2004. The candidate presented sufficient good faith reasons for the extension, the time requested was reasonable, and the hearing examiner granted the request, but required both sides to abide by the January 26, 2004, exhibit exchange date and January 27, 2004, hearing date.

On January 27, 2004, at 1:00 p.m. the matter went to hearing on the candidate's Rule 8 Motion. Objector, through counsel, answered ready to proceed. The candidate did not appear. Instead, board personnel delivered a short statement, faxed by the candidate only minutes before, stating that other family concerns had superceded his ability to attend the hearing, and that the matter should proceed in his absence and he would abide by the ruling.

The hearing examiner requested board personnel to immediately contact the candidate to ascertain whether he was seeking to quit the contest, or merely a continuance, and if so to find out the basis for the continuance. A short time later the board personnel responded with the statement that the contact number(s) had been called, however, Mr. Frazier was not at the number(s) given, and the person reached, identifying herself as his daughter, Rachael, did not know where he was, how to contact him, or the reason for his decision not to appear at the hearing.

The candidate at this stage of the case had the burden to recover a significant number of signatures, yet with notice of the hearing and without good cause shown, the candidate failed to appear. There was also no indication that the candidate intended to proceed further.

There being no other matters at issue, the hearing examiner concluded the case with the statement on the record that it was his recommended finding to the Board that it adopt his recommended findings and decisions, and specifically his recommendation that:

1. the candidate be defaulted;

2. the objection be sustained;

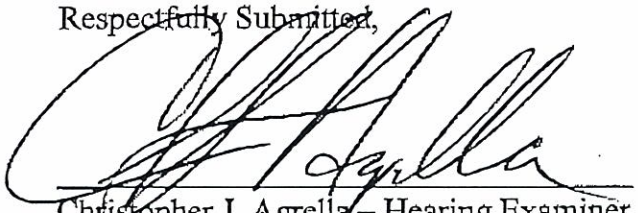
3. the records examination results be accepted as true and correct;

4. the candidate's nomination papers, containing only 423 valid signatures in a contest where the minimum signature requirement is 491, be declared insufficient in law and in fact; and

5. the name of the candidate, Gerald Frazier, Sr., not appear and not be printed on the ballot for the primary election for the office of Democratic Party Ward Committeeman in the 15th Ward, City of Chicago, to be voted upon at the March 16, 2004, General Primary Election in the City of Chicago.

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Respectfully Submitted,



Christopher J. Agrella – Hearing Examiner