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

Objections of: MELVIN DELK AND ALVIN DELK	)
	)
To the Nomination	)
Papers of: MARGAREE JACKSON	)
	) No. 04-EB-WC-50
Candidate for the office of Ward Committeeman for	)
the 28th 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 MELVIN DELK AND ALVIN DELK ("Objector(s)") to the nomination papers ("Nomination Papers") of MARGAREE JACKSON, candidate for election to the office of Ward Committeeman for the 28th 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 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 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 LYNNE R. OSTFELD for further hearings and proceedings.

6. The Objector(s) 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 members of the Electoral Board, the Objector, Melvin Delk, appearing *pro se,* and the Hearing Examiner, Lynne R. Ostfeld.

7. The Candidate, Margaree Jackson, did not appear at the initial call. The Hearing Examiner had the case called three times and waited for the Candidate's appearance in excess of 20 minutes. The Hearing Examiner checked the records and determined that the Candidate had not been personally served but that she had received service by mail, inasmuch as the signed return receipt ("green card") was in the Board of Election Commissioner's file. The Hearing Examiner defaulted the Candidate.

8. The Hearing Examiner subsequently defaulted Alvin Delk, one of the Objectors, *nunc pro tunc* January 5, 2004, for having failed to appear at the initial hearing, either in person or through counsel.

9. On January 9, 2004, the Candidate submitted to the Electoral Board, through her attorney, James P. Nally, a Motion to Vacate Default. She stated, by affidavit, that she had not received notice of the objections to her candidacy and did not know that there were proceedings scheduled regarding these objections. She stated that her first knowledge of these objections was when a friend notified her that she might be defaulted for having failed to appear.

10. On January 13, 2004, the Electoral Board entered an Order vacating the previous order of default.

11. The Hearing Examiner found that numerous objections were filed to the Candidate's nominating papers alleging that there were signatures which were not genuine, that persons signing were not properly registered as voters at the addresses stated, that certain addresses were not within the geographical boundaries of the 28th Ward, that addresses were missing or incomplete, and that there were an insufficient number of signatures for the Candidate to be placed on the ballot for the March 16, 2004, primary election. The Hearing Examiner ordered a records examination of the Candidate's petitions.

12. A records examination was conducted by staff of the Board of Election Commissioners on the objections on January 20, 2004, with the staff reporting that there were: 64 signatures on the petition; 27 objections overruled; 15 objections sustained; 49 valid signatures; 53 valid signatures required to be placed on the ballot.

13. The Hearing Examiner ordered either party wishing to make Rule 8 objections to do so by 3:00 p.m. January 22, 2004, before the next scheduled status hearing of the case. The Candidate duly submitted her Rule 8 Motion, specifying

approximately 14 sustained objections which she would attempt to rehabilitate. The Objector submitted his response on January 23, 2004. Hearing was set for January 27, 2004, at 4:00 p.m., for the parties to submit evidence.

14. On January 27, 2004, at 4:00 p.m., the hearing was reconvened. The Candidate was there through her attorney but the Objector was not present. After waiting in excess of 20 minutes, the Hearing Examiner began the hearing on the Objections and the results of the records examination. The Candidate, through her attorney, presented three affidavits, attesting to the validity of the voter's signatures, and two voter registration receipts, showing that the persons who had signed the petitions were registered at their addresses. The Hearing Examiner determined that the evidence was sufficient to rehabilitate five signatures, which had been deemed invalid. The Hearing Examiner determined that the Candidate, therefor, had 54 valid signatures and denied the Objector's Petition that Margaree Jackson's name not be placed on the ballot.

15. Concurrently, but after waiting approximately 40 minutes for the Objector to appear, the Hearing Examiner requested both a Electoral Board staff member, as well as an acquaintance of the Objector to call him to learn of his whereabouts. Pursuant to telephone calls made to the Objector, it was eventually learned that he had left his residence at approximately 4:30 p.m. and, then, had automobile problems which had kept him from attending the hearing.

16. The Hearing Examiner determined not to reopen the hearing, inasmuch as the Objector would not have arrived in time for the hearing even without the automobile problems.

17. On January 28, 2004, the Objector filed his Rule 20 Motion requesting that the Electoral Board order a rehearing. The basis for the request was that the Objector could not attend the hearing because of his car problems. He submitted a copy of a tow report. He did not submit anything indicating that he had evidence to rebut the allegations in the Candidate's Rule 8 Motion, that he would present evidence attacking the Candidate's attempt to rehabilitate certain sustained objections, that he would be successful in his objections, or that he was in any manner prepared to present evidence contrary to the Candidate's intended attempts to rehabilitate sustained objections. The Rule 20 Motion was submitted to the Hearing Examiner for her ruling.

18. The Hearing Examiner, *ex parte*, denied the Rule 20 Motion on the basis that the Objector did not make any argument that he was prepared to go forward to counter the Candidate's attempt to rehabilitate the signatures of at least five sustained objections. In addition, the Hearing Examiner noted that the Candidate had survived a challenge to her petitions in Case No. 04 EB WC 51 and that, in that case, she had been found to have 54 valid signatures, or one more than the 53 necessary. Although there was an issue, in that case, as to whether the Candidate's motion to vacate a default against her was properly heard by the

Electoral Board, the Hearing Examiner believed that there was little likelihood that the Objector would be successful in keeping the Candidate off the ballot. Reopening the hearing in the instant case would be a disservice to the parties and to the Electoral Board's need to print the candidates' names on the ballot.

19. The Hearing Examiner reaffirms her decision to deny the Objector's petition that the Candidate's petition be declared insufficient and that the Candidate's name not be printed upon the official ballot for the General Primary Election to be conducted March 16, 2004.

20. The Electoral Board adopts the Hearing Examiner's recommended findings and conclusions of law and 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 official ballot as a candidate for election to the office of Ward Committeeman for the 28th Ward of the City of Chicago, Republican Party.

21. 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 subsequent evidentiary hearing.

22. For the reasons stated above, the Electoral Board finds that the Nomination Papers of MARGAREE JACKSON are valid.

IT IS THEREFORE ORDERED that the Objections of MELVIN DELK AND ALVIN DELK to the Nomination Papers of MARGAREE JACKSON, candidate for election to the office of Ward Committeeman for the 28th Ward of the City of Chicago, Republican Party, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MARGAREE JACKSON, candidate for election to the office of Ward Committeeman for the 28th 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 6th 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.