DEFAULT-ALD

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

Objections of: ZINA J. MURRAY	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-009**
Papers of: JAMES VILLALPANDO	)	
	)	
Candidate for the office of	)	
Alderman of the Thirty-fifth 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 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 ZINA J. MURRAY ("Objector") to the nomination papers ("Nomination Papers") of JAMES VILLALPANDO, candidate for the office of Alderman of the Thirty-fifth Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, 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 January 2, 2007 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, ZINA J. MURRAY, by counsel, Sara M. Gadola.

7. The Candidate, JAMES VILLALPANDO, did not answer to the call nor did he appear at the hearing. The case was called again at least three times on January 2, 2007 and at no time did the Candidate or any representative of the Candidate appear.

8. The initial hearing was continued to January 5, 2007 to allow the Board an additional opportunity to serve the Candidate with a copy of the Objections and notice of hearing. Again, the Objector appeared but the Candidate did not appear.

9. The case was continued again to January 12, 2007. Once again, the Objector appeared but the Candidate did not appear.

10. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

11. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

12. The Electoral Board finds that the Candidate, JAMES VILLALPANDO, did not appear at any of the duly called meetings and hearings conducted in this matter after numerous attempts to have the Candidate served with a copy of the Call by the means of service specified in the statute.

13. A candidate cannot evade the effects of a duly filed objection to his or her nomination papers by simply being unavailable for service of papers nor should the objections be rendered moot by virtue of the fact that the Candidate cannot be found by the statutory methods of service. If this were permitted, candidates would simply go into "hiding" until the objection process had run its course, thereby frustrating the statutory scheme for testing whether the candidate is eligible to be on the ballot.

14. The Electoral Board further finds that the Objector's petition, on its face, contains sufficient allegations, if accepted as true, to invalidate the Candidate's Nomination Papers.

15. Therefore, the Electoral Board finds that the Candidate, JAMES VILLALPANDO, is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ZINA J. MURRAY to the Nomination Papers of JAMES VILLALPANDO, candidate for election to the office Alderman of the Thirty-fifth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination

Papers are hereby declared INVALID and the name of JAMES VILLALPANDO, candidate for election to the office of Alderman of the Thirty-fifth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 19th day of January, 2007.

Langdon D. Neal, Chairman

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.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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 27, 2007 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

ZINA J. MURRAY,)
)
Objector,)
)
-VS-) Case No. 07-EB-ALD-009
)
JAMES VILLALPANDO,)
)
Candidate.)

2007 JAN 15 A 7:38

Hearing Examiner's Report and Recommended Decision

This matter first came before the hearing examiner on January 2, 2007. The case was called and attorney Sara M. Gadola filed her appearance on behalf of the Objector, ZINA J. MURRAY. It was determined that the Candidate, JAMES VILLALPANDO, was not served with process by the Cook County Sheriff and that it was too early to have the registered mail card back from the post office. The case was continued to January 5, 2007 for status on service. On January 5th, attorney Gadola appeared on behalf of the Objector. Again, it was determined that the Candidate was not served with process by the Sheriff of Cook County and that the registered mail card had not been returned by the post office. The case was continued to January 12, 2007 at 12:30 a.m.

On January 5, 2007, the Board of Elections caused a notice of continued hearing to be mailed to the Candidate at the address indicated in the nomination papers. The notice advised the Candidate

that the hearing was continued to January 12, 2007 at 12:30 p.m. Prior to the January 12, 2007 hearing, the Candidate personally appeared at the office of the Board of Elections and signed a Receipt of Call and Other Electoral Board Documents and Waiver of Statutory Service.

On January 12, 2007, the hearing examiner, the hearing examiner's clerk, the court reporter, and the attorney for the Objector appeared at 12:30 p.m. for the continued hearing. The hearing examiner waited until 12:50 p.m. before calling the case. At 12:50 p.m. the case was called. The attorney for the Objector stated her appearance for the record. The candidate was not was present nor did an attorney appear for the Candidate nor was an attorney appearance on file for the Candidate. It was noted for the record that the Candidate had notice of the case and of the January 12, 2007 hearing date and time. At 12:55 p.m., the case was passed to see if the Candidate would appear. At 1:12 p.m., the case was recalled. The Candidate still had not appeared. The hearing examiner indicated for the record that the Candidate would be held in default.

The hearing examiner finds that the Candidate had actual notice of these proceedings but failed to appear. The Board followed all required statutory measures to apprise the Candidate of these proceedings. In addition to the attempted service by registered mail and by the Sheriff of Cook County, the Board also posted the hearing schedule for all objection cases, including this one, on its website and updated the date, time and location for each case on a daily basis. The Board also posted the hearing schedules daily in the offices of the Board of Elections. It has been widely publicized that the Board of Elections was conducting hearings with respect to the nomination papers of candidates for the February 27, 2007 municipal election. Any candidate remotely serious about his candidacy would have accepted their mail or at a minimum inquired into the status of his own nomination papers.

In this case, the Candidate received actual notice of the proceedings and signed a waiver of service. The January 12, 2007 hearing was already set when the Candidate appeared at the offices of the Board and waived further service. It can only be assumed that the Candidate reviewed the Objector's petition and intentionally chose not to defend his nomination papers against the accusations of the Objector's petition. The Candidate had ample opportunity to participate and defend his nomination papers but failed and/or refused to do so. Given the highly sensitive time constraints involved in properly handling objection cases, the Board cannot succumb to delay tactics and antics.

The hearing examiner has reviewed the Objector's petition and determined that the issues raised therein would require a records examination, as well as, testimony from the Candidate himself. If the objections were sustained, they would be sufficient to invalidate the nomination papers of the Candidate, namely the Candidate would not have a sufficient number of valid signatures (186), as required by law. The Candidate's failure and/or refusal to appear and to participate impedes this important electoral process. Rule 1 of the Board's Rules of Procedure states that "the failure of a party to appear at the initial or a subsequent hearing of the Electoral Board without good cause shown shall be sufficient grounds to default such party provided that the party was served with notice of the hearing." The Candidate, JAMES VILLALPANDO, is in default.

In light of the above factual findings and legal analysis, it is the recommendation of this hearing examiner that the Board adopt the findings, decisions and recommendations herein, and that the objections of the Objector, ZINA J. MURRAY, be SUSTAINED; that the nomination papers of the Candidate, JAMES VILLALPANDO, be declared insufficient as a matter of fact and of law; and

declare that the name of the Candidate, JAMES VILLALPANDO, not appear and not be printed on the ballot for election to the Office of Alderman of the 35th Ward of the City of Chicago to be voted upon at the February 27, 2007 Municipal General Election.

Thaddeus L. Wilson
Hearing Examiner

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