NBCON-ALD

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

Objections of: KATHY J. KARBAN	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-039**
Papers of: JESUS G. SALAZAR	)	
	)	
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 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 KATHY J. KARBAN ("Objector") to the nomination papers ("Nomination Papers") of JESUS G. SALAZAR, 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 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 Richard Zulkey 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, KATHY J. KARBAN, by counsel, James P. Nally; the Candidate, JESUS G. SALAZAR, by counsel, Richard Means.

7. The Objector's Petition objected to individual petition signatures. However, the Hearing Examiner determined that even if all of those objections were sustained, the kid candidate would still have enough valid signatures to meet the minimum signature requirement of 95 valid signatures.

8. The only other objection election a Objector wish to precedent was on the issue of the Candidate's residency. Specifically, the Objector alleged that, pursuant to Illinois law, a candidate must reside and be a valid registered voter at the address shown on his nomination papers and that the Candidate in this case did not reside at the address listed on his Nomination Papers and that such papers are, therefore, false and his Nomination Papers are invalid in their entirety.

9. Section 21-14 of the Revised Cities and Villages Act (65 ILCS plane/21-14) provides, "No member may be elected or appointed to the City Council … unless he or she has resided in the Ward he or she seeks to represent at least one year makes preceeding the date of the election or appointment …."

10. The Hearing Examiner conducted a hearing at which the Objector and the Candidate both presented evidence. Based upon the evidence presented by the parties, the Hearing Examiner concluded that the Objector had failed to sustain his burden of proof to show that the Candidate did not, in fact, reside at the address listed on his Nomination Papers.

11. Accordingly, the Hearing Examiner has recommended that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

12. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision.

13. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law.

14. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of KATHY J. KARBAN to the Nomination Papers of JESUS G. SALAZAR, 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 JESUS G. SALAZAR, 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 27, 2007.

Dated: Chicago, Illinois, this 25th 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.

BEFORE THE BOARD OF ELECTION COMMISSION OF THE CITY OF CHICAGO AS THE DULY CERTIFIED ELECTORAL BOARD

KATHY J. KARBAN	)	
Objector	)	
v.	)	**07-EB-ALD-039**
	)	
JESUS G. SLAZAR	)	
Candidate	)	

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RECOMMENDATION OF HEARING EXAMINER

Objector Kathy J. Karban was represented by James Nally. The Candidate was represented by Richard Means.

Background

The objections contained allegations concerning the impropriety of petition signatures, circulators, notaries and residency.

A motion to dismiss the objections was filed. Upon a review of the signatures and the number of objections with the lack of any specificity or detail relating to the circulators and notaries, it was agreed that the only issue that would be heard was the residency question presented in Paragraph 24 of the Objection. Hence, all issues raised in the Objection but for residency raised in Paragraph **24** were deemed to be stricken. It must be noted that upon an informal count taken by counsel and the Hearing Examiner, there were about 1,233 signatures filed with 808 objections. If all of the objections were sustained, the Candidate would still be left with enough valid signatures. The minimum signatures required to appear on the ballot are 95.

Parties were given time to determine who would be called as witnesses, issue subpoenas and prepare for a hearing which was held on January 16, 2007 at noon.

Issue

The issue is residency which is articulated in Paragraph 24 of the objection, and it states as follows:

> 24. Pursuant to Illinois law the candidate must reside and be a valid registered voter at the address shown on his nomination papers. The candidate's nomination papers purport the candidate is a valid registered voter at 3747 South Maplewood Avenue, Chicago, Illinois. The Candidate in fact does not reside at that address and is not a valid registered voter at that address, and his nomination papers, including the statement of candidacy, petition sheets signed by the voters and receipt for economic interest statement are false, and his nomination papers are invalid in their entirety.

Applicable Statutes

Section 65 ILCS 20/21-14 provides:

> (9) No member may be elected or appointed to the City Council ..... unless he or she has resided in the ward he or she seeks to represent at least one year next proceeding the date of the election or appointment....

Sections 10 ILCS 5/7-10, 10 ILCS 5/10-4 and 10 ILCS 5/10-5 all state in part that the Candidate's nomination papers shall contain the "place of residence" of the candidate.

Section 10 ILCS 5/10-8 provides in part that the objector's petition "state fully the nature of the objections."

Pre-Hearing Discussions

In the Candidate's Motion to Dismiss the Objections and in the Candidate's Response to Objector's Subpoena Requests, attention is focused on the language of Paragraph 24 of the objection which argues that the Candidate must reside and be a valid registered voter at the address shown on his nomination papers. No allegation was made challenging the one year residency requirement nor the residency in the ward.

The record discloses that the nomination papers were timely filed on December 18, 2006, and that the Candidate stated his address as being 3747 South Maplewood. Also, all of the nomination papers were dated between September to December, 2006.

Objector's counsel advised that he would keep his arguments within the bounds of the objections.

Hearing

Opening statements were made followed by motions to exclude witnesses. At the hearing, the Objector introduced 6 exhibits, all of which were admitted into evidence with **no** objection. These exhibits were:

OBJX 1 Residential Lease dated June 20, 2006 between Ramiro Aguilar at 3747 S. Maplewood (1st Floor) with utilities except heat to be paid by the Candidate.

OBJX 2 Sprint Cell Phone bill addressed to the Candidate on Mapelwood due on August 22.

OBJX 3 Com-Ed bill addressed to the Candidate at 3747 S. Maplewood issued on August 2, 2006.

OBJX 4 Sprint Application For Transfer of Service with name of candidate at 3747 South Maplewood, Chicago, Illinois dated August 4, 2006. There are sub-exhibits 1 and 2 with 2 having a statement impressed on the copy.

OBJX 5 ATT document addressed to Candidate at 3747 S. Maplewood for a land line.

OBJX 6 Letter from Francisco Sandoval to Objector's counsel dated January 15, 2007, stating that he had not seen the Candidate since August, 2006. The Sandoval letter states that Mr. Salazar lived across the street from Francisco Sandoval and that he would see the Candidate every day after work. Mr. Sandoval was a subpoenaed witness who could not attend the hearing. Sandoval lives at 5128 South Hamlin Ave. outside of the 12th Ward.

The Candidate **Jesus G. Salazar** was called by Objector's counsel as an adverse witness. He was sworn to testify.

The Candidate has been a practicing attorney with offices at 1478 North Milwaukee Ave., Chicago, Illinois. He resides at 3747 South Maplewood, Chicago, Illinois with his wife, Elena. It is a 2-flat and the landlords are Ramiro and Sylvia Aguilar. They are now prior owners. Sylvia Aguilar is the sister of the Candidate's wife.

The Candidate signed the lease (OBJX 1) on June 20, 2006 for $650 a month which includes heat.

At this time, OBJX 2 through 5 were admitted. They were telephone and utility bills addressed to the Candidate at the Maplewood address referring to periods in July and August, 2006.

The Candidate was questioned about 5138 South Hamlin, Chicago, Illinois. He described it as the home of his step-daughter, Angelica Aguilar, the daughter of his wife and niece of the landlord. He helped his step-daughter purchase the property by extending credit and the down payment. His name was on the title until 2 years ago when the property was refinanced. He is close to her. He never resided there, but did reside at 5131 South Hamlin with his wife for 7 or 8 years. This was the 23rd Ward.

In January, 2006, he moved to 3959 S. Archer Avenue, which is in the 12th Ward.

Prior to moving, he worked as a coordinator for a legislative candidate, Mr. Torres, and became familiar with issues and concerns in the 12th Ward. He characterized himself as a person who wished to help people and thought of the aldermanic candidacy as a means to do so.

At first, his wife did not wish to move. There was "no meeting of the minds". However, they reconciled and she joined him in July of 2006 at the 3747 South Maplewood address. The Hamlin property is for sale. He registered to vote at Archer Avenue, and subsequently he registered to vote at 3747 S. Maplewood.

Alberto Bocanegra, Jr. appeared by subpoena and was sworn to testify as a witness. He, too, is a candidate for alderman of the 12th Ward; but, for some time, approximately from April to July 1, 2006, he worked for the campaign of the candidate, Jesus G. Salazar. The witness resides at 4336 South Washtenaw. He had been to the 3747 South Maplewood first floor apartment of the Candidate more than once. The witness refreshed his memory by reference to his "palm pilot". The last time he was at Maplewood was on July 1, 2006 for a meeting. It happened to be his brother's birthday so there was a mini-party for the occasion. At the time, he saw the apartment furnished with a refrigerator, stove, table and folding chairs. The bedrooms were closed, and he never saw into the bedrooms. He was there with his brother and 3 other people. He never heard the candidate refer to 51st and Hamilton as his residence and the witness had never been there. When at the Maplewood apartment, the witness considered it a campaign headquarters as there were campaign maps and folding chairs in it. He saw no shower materials in the bathroom

The Candidate never discussed his residency with the witness.

On cross examination, Mr. Bocanegra described the apartment as a typical neighborhood residence with a kitchen, living room and 2 bedrooms. The bedrooms were closed and he never saw into them. Likewise, he never saw the closets, and there was no coat closet in the living room. He never opened any of the kitchen cabinets. The refrigerator contained soda pop, but he never looked into the freezer and he did not know what it contained.

In the bathroom, he never opened the medicine chest nor the vanity under the sink. Such conduct, he described, as "that would be ignorant". He thought the shower tub had a frosted door that he did not open. Hence, he did not see into the shower. As stated, he had been to meetings a couple of times in the Maplewood apartment and they often met at a neighboring restaurant that is now closed.

After the witness finished his testimony, attorney Nally observed that he did not get the documents or witnesses to appear under subpoena. School demands and illness were reasons. At this point, OBJX6, a letter from Francisco Sandoval was tendered and admitted. Candidate's counsel had in his file many of the documents sought by counsel for the Objector. They were reviewed by both

counsel. Objector's counsel decided not to enforce his subpoena enforcement rights any further.

The Candidate was called on direct and testified that he had a bed and clothes in the Maplewood apartment. He moved them in with his pick-up truck with the dressers.

The parties rested and presented closing arguments.

Discussion

By virtue of the nature of the proceedings, the objector who is making allegation challenging the validity of the candidacy has the duty of going forward with proof of the allegations. Each objection must stand on its own, and, once filed cannot be amended or supplemented. Reyes v. Bloomingdale Township Electoral Board, 265 Ill. App. 3d 69, 638 N.E. 2d 782 (1994).

Under oath, the Candidate testified that he moved to the Archer Avenue address in January, 2006. He did so with the thought of running for office.

This statement is not rebutted. Furthermore, this issue is not even included within the language of the residency objection. Finally, the motivation to run for office does not negate a genuine change of residence. Walsh v. Cook County Offices Electoral Board, 642 N.E. 2d 843, 267 Ill. App. 3d 972, 204 Ill. Dec. 942 (1994).

The testimony shows that the Candidate moved to the Maplewood address in June, 2006. This move, if a genuine change of residence, **precedes** the signing and filing of any nomination papers. Indeed, the petitions began circulation in September, 2006 and the nomination papers were filed in December, 2006.

The Candidate cites Stein v. County Board of School Trustees, 229 N.E. 2d 165, 85 Ill. App. 2d 251 (1967) to show the elements of a change of domicile for election purposes. They are:

i. physical abandonment of the first domicile;

ii. an intent not to return to it;

iii. a physical presence in a new domicile; and

iv. an intent to make that his domicile.

Furthermore, in Stein, 240 N.E. 2d 668, 40 Ill. 2d 477 (1968), the Supreme Court said, "Intent is gathered primarily from the acts of a person. "In the instant case, the Candidate moved his furniture and clothing. All the documents presented show Maplewood as his address. No evidence was presented to contradict this. From the conduct of the Candidate as taken from the evidence his Maplewood residence was established before the signing and filing of his nomination papers. Delk v. Board Election Commissioners of the City of Chicago, 445 N.E. 2d 1232, 112 Ill. App. 3d 735, 68 Ill. Dec. 379 (1983).

Recommendation

Because there are more than 95 valid signatures and because the Candidate resided at the address stated before he signed and filed the nomination papers, the Candidate's name should remain on the ballot.

Respectfully submitted,

By: Richard E. Zulkey
Hearing Examiner

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