DEFAULT-ALD

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

Objections of: MARTHA J. BRUMMIT	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-060**
Papers of: DAVID LINCOLN	)	
	)	
Candidate for the office of	)	
Alderman of the 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 MARTHA J. BRUMMIT ("Objector") to the nomination papers ("Nomination Papers") of DAVID LINCOLN, candidate for the office of Alderman of the 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 Ernesto Borges, Jr. 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, MARTHA J. BRUMMIT, by counsel, Roderick T. Sawyer.

7. The Candidate, DAVID LINCOLN, 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 Electoral Board finds that December 28, 2006, at approximately 9:40 p.m., the Cook County Sheriff personally served the Candidate at the address listed on his Nomination Papers, 6906 S. Paxton Avenue, Chicago, Illinois, 60649, with a copy of the Objector's Petition and with a copy of the Call to the January 2, 2007. A copy of the Sheriff's return is in the Electoral Board file.

9. The Candidate was also sent a copy of the Call to the January 2, 2007 hearing by certified mail, return receipt requested. A certified mail receipt acknowledging receipt of the certified mail item was signed on December 28, 2006 and returned by the Postal Service. A copy of the signed certified mail receipt is in the Electoral Board file.

10. The Electoral Board finds that the Candidate, DAVID LINCOLN, did not appear at any of the duly called meetings and hearings conducted in this matter after having served the Candidate with a copy of the Call by the means of service specified in the statute.

11. 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.

12. Therefore, the Electoral Board finds that the Candidate, DAVID LINCOLN, 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 MARTHA J. BRUMMIT to the Nomination Papers of DAVID LINCOLN, candidate for election to the office Alderman of the Fifth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of DAVID LINCOLN, candidate for election to the office of Alderman of the 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 23rd 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.

SERVICE ATTACHED

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

Martha J. Brummit,

Petitioner-Objector,

vs.

David Lincoln,

Respondent-Candidate.

Case No. 07-EB-ALD-060

2007 JAN 16 A 10:40

Hearing Examiner: Ernesto D. Borges, Jr.

Hearing Examiner's Report and Recommended Decision

This matter came before the hearing examiner on January 2, 2007. The case was called at or about 12:30 p.m. The Objector appeared through his attorney, Roderick Sawyer. The Candidate was a no show at said time. The case was called a second time at on or about more than fifteen minutes after the first call at which time the Candidate still had not yet appeared. The case was called a third time at more than fifteen minutes after the second call at which time the Candidate neither appeared in person nor by counsel at any call. It was noted that the Candidate was personally served by Sheriff's Deputy on December 28, 2006 at 9:40 p.m. at his place of residence. Pursuant to Rule 1 of the Rules of Procedure for the Board of Elections Commissioners of the City of Chicago the Candidate was defaulted by this hearing examiner.

I. Objections Presented.

A. The Objector presented objections regarding the validity of the signatures on the nomination papers;
B. Objections to Circulator's affidavit;

II. Findings of Fact.

That after calling the case three times at more than fifteen minute intervals the Candidate failed to appear or answer in person or by counsel.

That the Objector's Petition contained a sufficient number of objections if unopposed and held as true is sufficient to invalidate the nomination petitions of the Candidate.

III. Findings of Law and Legal Analysis.

Rule 1 of the Board of Election Commissioners of the City of Chicago holds that "failure of a party to appear at the initial or subsequent hearing of the Electoral Board without good cause shown shall be sufficient grounds to default such party provided the party was served with notice of hearing".

IV. Recommendations.

Taking into consideration the above mentioned factual finding and matter of law, it is the recommendation of the hearing examiner that the Board adopt the findings, decisions and recommendations herein and default the Candidate David Lincoln, thereby invalidating his nomination papers for the office of Alderman of the 5th Ward of the City of Chicago, State of Illinois. Be it further recommended that the name of Candidate David Lincoln not be placed on the ballot for the upcoming Municipal General Election set for February 27, 2007.

Ernesto D. Borges, Jr.
Hearing Examiner

Ernesto D. Borges, Jr.
Hearing Examiner
105 W. Madison, 23rd Floor
Chicago IL 60602
Telephone (312) 853-0200
efax (312) 853-3130

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*** TX REPORT ***
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TRANSMISSION OK

TX/RX NO	3132
CONNECTION TEL	17736350011
CONNECTION ID	
ST. TIME	01/16 11:25
USAGE T	01'08
PGS. SENT	3
RESULT	OK

CAND DAVID LINCOLN Served By US mail Did not Appear

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

Martha J. Brummit
Objector(s)

vs.

David Lincoln
Candidate

Case No. 07-EB-ALD-60

APPEARANCE

The undersigned hereby makes his/her appearance (either *pro se* or by attorney [*circle one*]) for Martha J. Brummit (*print name of Objector or Candidate here*) and designates the following address and telephone number(s)for Service or Notice of Filing pursuant to Rules 2 and 15 of the Electoral Board's Rules of Procedure:

Name: Roderick T. Sawyer
(*print your name here*)

Address: 609 E. 75th St.
(*print your street address, suite, room, unit or apartment number here*)

Chicago, IL Zip 60619
(*print your city, village or town and State here*) (*print your Zip Code here*)

Telephone Number(s)** (773)846-0011 (*office*) (312)802-0099 (*home*)

I agree to accept service by facsimile at the following fax number: (773)635-0011

Date: 1/2/07

Check here if you are a licensed attorney: ☒