NBCOFF-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-062**
Papers of: PATRICIA BREWER	)	
	)	
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 PATRICIA BREWER, 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'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, MARTHA J. BRUMMIT, by counsel, Roderick T. Sawyer; and the Candidate, PATRICIA BREWER, *pro se*.

7. The Objector alleges that the Candidate failed to consecutively number the nominating petition sheets and failed to bind the nominating petitions.

8. The Hearing Examiner found that, in fact, the Candidate failed to number any of the petition sheets submitted with his Nomination Papers and failed to bind the nominating petitions at the time of filing. The Candidate submitted 22 petition sheets.

9. Section 10-4 of The Election Code (10 ILCS 5/10-4) requires that petition sheets, before being presented to the electoral board or filed with the proper officer shall be neatly fastened together in book form and the sheets shall then be numbered consecutively.

10. The Board finds that none of the petition sheets filed by the Candidate as part of his Nomination Papers are numbered and they are not numbered consecutively as required by Section 10-4 of The Election Code.

11. The Electoral Board finds that the Candidate's failure to number any of the pages of his nominating petition invalidates his Nomination Papers. *Wollan v. Jacoby*, 274 Ill.App.3d 388, 653 N.E.2d 1303 (First Dist. 1995). While substantial compliance with a mandatory requirement may sometimes be enough (see *King v. The Justice Party*, 284 Ill.App.3d 886, 672 N.E.2d. 900, (First Dist 1996), here there was no compliance at all.

12. Section 10-4 provides that petition sheets shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. Section 10-4 further provides that noncompliance with its provisions "shall" invalidate the signatures on a nominating petition. Specifically, the Code states: "No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Based upon that language which imposes sanctions in the event the provisions of the Code are not complied with, coupled with the use of the word "shall," the requirements of section 10-4 are mandatory rather than directory. *Bendell v. Education Officers Electoral Board for School Dist. 148*, 338 Ill.App.3d 458, 463, 788 N.E.2d 173 (1st Dist. 2003). "Inasmuch as section 10-4 is mandatory, compliance with its provisions must be strict rather than substantial." (*Id.*)

13. In *Girot v. Keith*, 341 Ill.App.3d 902, 904, 793 N.E.2d 935, 937 (3rd Dist. 2003), reversed on other grounds, 212 Ill.2d 372, 818 N.E.2d 1232 (2004), the Third District concluded, "The purpose of requiring candidates to securely bind and number the petitions is to prevent tampering, thereby preserving not only the integrity of the petitions submitted, but also the election process in general," citing *Jones v. Dodendorf*, 190 Ill.App.3d 557, 562, 546 N.E.2d 92

(1989). The court found that these provisions are mandatory, and that failing to comply with even one of them will result in the petitions' invalidation.

14. In *Jakstas v. Koske*, 352 Ill.App.3d 861, 817 N.E.2d 200 (2nd Dist. 2004), the Second District held that the Election Code provision, regarding signature sheets for public question referendum petitions being bound securely and numbered consecutively, is mandatory; provision imposes requirements by using "shall" and contains an express statement voiding the petition if the requirements are not fulfilled.

15. For the reasons stated above, the Electoral Board sustains the Objections and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of MARTHA J. BRUMMIT to the Nomination Papers of PATRICIA BREWER, candidate for election to the office of 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 PATRICIA BREWER, 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,	)	
	)	Case No. 07-EB-ALD-062
vs.	)	
	)	
Patricia Brewer,	)	
	)	
Respondent-Candidate.	)	

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 2:00 p.m. The Objector appeared through her attorney, Roderick Sawyer. The Candidate was present pro se. The case was continued for Objector's Motion for Summary Judgment for Candidate's failure to number and bind nominating petitions. Objector struck all other objections. The case was continued to January 10, 2007 at 1:00 p.m. The hearing was held on January 10, 2007 at which time Objector's Motion for Summary Judgment was granted thereby invalidating the nominating petitions of the Candidate.

I. Objections Presented.

A. The Objector objected to Candidate's failure to consecutively number nominating petitions;
B. Candidate failed to bind the nominating petitions;
C. Candidate struck all other objections.

II. Findings of Fact.

A. Candidate failed to number any pages of the nominating;
B. Candidate failed to bind the nominating petitions at time of filing.

III. Findings of Law and Legal Analysis.

As to the allegation regarding Candidate's failure to number petitions, it has been held as good law that failure to number and/or bind the petitions is a fatal flaw which shall result in invalidating all petitions. See WOLLAN v. JACOBY, 274 Ill. App.3d 388 (1995), 653 N.E.2d 1303 (failure to number petition sheets); JAKSTAS v. KOSKE, 252 Ill. App.3d 861 (2004), 817 N.W.2d 200 (failure to number or bind petition sheets).

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 validate the nomination papers of Candidate Patricia Brewer 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 Patricia Brewer be placed on the ballot for the upcoming Municipal General Election set for February 27, 2007.



Ernesto D. Borges, Jr.
Hearing Examiner

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