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

Objections of: MARVIN BURNETT	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-074**
Papers of: VICTOR ROWANS	)	
	)	
Candidate for the office of	)	
Alderman of the Twenty-seventh 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 MARVIN BURNETT ("Objector") to the nomination papers ("Nomination Papers") of VICTOR ROWANS, candidate for the office of Alderman of the Twenty-seventh Ward in 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 William Jones 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, MARVIN BURNETT, by counsel, Michael Kasper; and the Candidate, VICTOR ROWANS, pro se.

7. The Hearing Examiner has tendered to the Electoral Board his original report and recommended decision, dated January 12, 2007, as well as his supplemental report (Hearing Examiner's Report II) dated January 25, 2007. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

8. 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. Copies of both the Hearing Examiner's Report and Report II are attached hereto and incorporated herein as part of the decision of the Electoral Board.

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

IT IS THEREFORE ORDERED that the Objections of MARVIN BURNETT to the Nomination Papers of VICTOR ROWANS, candidate for election to the office of Alderman of the Twenty-seventh Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of VICTOR ROWANS, candidate for election to the office of Alderman of the Twenty-seventh 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 28th 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 CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Examiner's Report II

Marvin Burnett,	)	
	)	
Objector,	)	
	)	No. 07-EB-ALD-074
vs.	)	
	)	
Victor Rowans,	)	
	)	
Candidate.	)	

24. The earlier proceedings together with findings and conclusions are contained in Paragraphs 1 through 23 of the Hearing Examiner's Report filed on January 12, 2007. This Report hereby incorporates the contents of the January 12, 2007 Hearing Examiner's Report hereto and attaches the January 12, 2007 Hearing Examiner's Report as Exhibit.

25. On January 17, 2007 the Board pursuant to Rule 20 issued an order directing the completion of the Records Examination and, further, remanding this case to the Hearing Examiner for further proceedings.

26. The Records Examination was completed on January 21, 2007.

27. This matter was scheduled for status hearing on January 22, 2007. The parties appeared on January 22, 2007. The completed Records Examination was marked and admitted as Board Group Exhibit F. The Objector was granted leave to file his Rule 8 Statement *instanter*. The Candidate was directed to file his Rule 8 Statement by 5:00 p.m., January 23, 2007 and the Objector was directed to file any supplemental Rule 8 Statement by 5:00 p.m. on January 23, 2007. This matter was continued for final hearing at 9:00 a.m. on January 25, 2007.

28. On January 23, 2007, the Candidate filed a Rule 8 Statement and the Objector filed Objector's Supplemental Rule 8 Statement.

29. At the outset it must be noted that the Board's Form 148 Summary of Findings contains clerical errors relative to the figures for Sheets 68, 96 and 98. Sheet 68 lists a total of 68 signatures when in fact it should read 15 signatures. Similarly, the total amount of valid signatures is listed as 53 whereas the correct total should be 0. Sheet 96 should be corrected to 4 valid signatures based upon the number of objections sustained. Also, Sheet 98 should be corrected to 3 valid signatures based upon the number of sustained objections. After these clerical errors are corrected, the Hearing Examiner finds a total of 1524 signatures of which 487 are noted to have been found valid.

30. Further hearing on this matter continued on January 25, 2007. The Objector called Diane Marsh, a certified forensic document examiner, as a witness. Among other things, Ms. Marsh testified that she has qualified and testified as an expert witness on approximately 140 occasions. Further, Ms. Marsh testified that she has testified before the Chicago Board of Elections Commissioners as an expert witness on approximately 15 occasions. Based upon the foundation testimony of Ms. Marsh the Hearing Examiner finds that she qualifies as an expert witness.

31. As an expert Ms. Marsh testified that a single signer signed all of the signatures on each of Sheets, 28, 29, 30, 34, 38, 39, 40,41, 42, 44, 45, 71, 82, 83, 84, and 93. Additionally, Ms. Marsh testified that on Sheet 33 lines 3 through 15 were signed by the same person. Ms. Marsh further testified that it was "highly probable" that with respect to the above-named sheets, that one person signed all of the signatures on the above-named sheets. All of these particular sheets were circulated by Mr. Terry Fulcher.

32. Ms. Marsh also testified that it was her expert opinion that a single signer signed all the signatures on each of the sheets 58, 81, 91 and 95. Additionally, Ms. Marsh testified that it was "highly probable" that one person signed all of the signatures on the above-described sheets. These sheets were circulated by Mr. Terry Fulcher. Ms. Marsh testified that this particular signer was different from the signers of the sheets described in Paragraph 31 above.

33. Ms. Marsh also testified that it was her expert opinion that a single signer signed all the signatures on each of sheets 2, 3, and 4. Additionally, Ms. Marsh testified that one person signed all of these signatures. These sheets were circulated by Mr. Fulcher. Also, Ms. Marsh testified that the signer of Sheets, 2, 3, and 4 was a different signer than the signers described in Paragraphs 31 and 32, above.

34. Ms. Marsh testified that it was her expert opinion that each of Sheets 6, 16, 17, 18, 19, 20, 21, 31, 32, 43, 80, 96, 99 and 100 were each signed by a single signer. Ms. Marsh also testified that it was "highly probable" that one person signed all the signatures on each of the above-listed sheets. These sheets were circulated by the Candidate, Victor Rowans. Also, Ms. Marsh testified that the signers of these sheets was a different signer, than the signers of the sheets listed in Paragraphs 31, 32 and 33, above. Ms. Marsh opined that 4 different signers were involved with the sheets described above.

35. The Hearing Examiner finds that expert testimony establishes that each of 24 sheets, circulated by Terry Fulcher, were signed by one signer. The Hearing Examiner finds that expert testimony establishes that each of 14 sheets, circulated by Candidate Victor Rowans, were signed by one signer. Additionally, the Hearing Examiner finds that expert testimony establishes that four signers signed all the signatures (except as noted) on a total of 38 sheets. The Hearing Examiner finds that the expert testimony was essentially unrebutted.

36. As part of the Candidate's case, Mr. Rowans called Mr. Fulcher as a witness. On cross-examination Mr. Fulcher admitted under oath that none of his circulator Affidavits was signed before a notary public.

37. The Hearing Examiner concludes that the expert testimony of Ms. Diane Marsh constitutes clear and convincing evidence that the sheets circulated by Terry Fulcher evidenced a pattern of fraud and false swearing and a complete and utter disregard of the requirements of the Election Code. The testimony establishes that Mr. Fulcher filed sheets containing numerous forgeries and that he therefore knowingly submitted false circulator's affidavits. Pursuant to *Fortas v. Dixon,* 122 Ill.App. 3d 697, 462 N.E. 2d 615 (lst Dist. 1984); *Huskey v. Municipal Officers Electoral Bd.*, 156 Ill.App. 3d 201, 509 N.E. 2d 555 (lst Dist. 1987); and *Canter v. Cook County Officers Electoral Bd.,* 170 Ill.App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988), all of the sheets of this circulator should be stricken in their entirety.

38. The Hearing Examiner concludes that the expert testimony of Ms. Diane Marsh constitutes clear and convincing evidence that the sheets circulated by Victor Rowans evidenced a pattern of fraud and false swearing and a complete and utter disregard for the requirements of the Election Code. The testimony establishes that Mr. Rowans filed sheets containing numerous forgeries and that he therefore knowingly submitted false circulator's affidavits. Pursuant to *Fortas v. Dixon*, 122 Ill.App. 3d 697, 462 N.E. 2d 615 (lst Dist. 1984); *Huskey v. Municipal Officers Electoral Bd.*, 156 Ill.App. 3d 201, 509 N.E. 2d 555 (lst Dist. 1987); and *Canter v. Cook County Officers Electoral Bd.,* 170 Ill.App. 3d 364, 523 N.E.2d 1299 (1st Dist. 1988), all of the sheets of this circulator should be stricken in their entirety.

39. Alternatively, with respect to the sheets circulated by Mr. Fulcher, he admitted under oath that his affidavit was not signed before a Notary Public on any of his sheets that he

circulated. The Hearing Examiner concludes that based upon Mr. Fulcher's admission a violation of 10 ILCS 5/10-4 has occurred. The Hearing Examiner concludes that all of Mr. Fulcher's circulated sheets are invalid. *Bowe v. City of Chicago Electoral Board*, 81 Ill. App. 3d 146, 401 N.E. 2d 1270, *rev on other grounds*, 79 Ill.2d 469, 404 N.E. 2d 180 (1980).

40. In summary, the Hearing Examiner concludes that all of the sheets circulated by Mr. Fulcher and Mr. Rowan must be stricken because clear and convincing evidence establishes a pattern of fraud. Additionally, the Hearing Examiner strikes the petition sheets of circulator Fulcher on the basis of a lack of proper notarization.

41. The Hearing Examiner finds that Mr. Fulcher and Mr. Rowan circulated 98 sheets out of 102 sheets. Circulator Dina Powe circulated sheets 57, 67, 68 and 69. The Record Examination of these sheets found 18 valid signatures. Therefore, the Hearing Examiner finds a total of 18 valid signatures, far below the minimum valid signature requirement of 147. For the above reasons, the Hearing Examiner recommends that the name of Victor Rowans not appear on the ballot as a candidate for Alderman of the 27th Ward.

Date: January 25, 2007

William P. Jones

Hearing Examiner
William P. Jones

BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Examiner's Report

Marvin Burnett,	)	
	)	
Objector,	)	
	)	No. 07-EB-ALD-074
vs.	)	
	)	
Victor Rowans,	)	
	)	
Candidate.	)	

1. This matter was first called for hearing on January 2, 2007 at 11:00 a.m. The Candidate appeared *pro* se. The Objector appeared through legal counsel. Board Group Exhibits A through D were marked and admitted.

2. The Candidate indicated that he would file a Motion To Dismiss. Further a directive to take a Records Examination was approved. This matter was scheduled for further hearing on January 11, 2007 at 10:00 a.m.

3. The Candidate filed a one-page Motion To Dismiss on January 2, 2007. According to the record, the Candidate failed to serve Objector's Counsel with a copy of the Motion To Dismiss and thus no Response was filed.

4. The Records Examination was commenced on January 4, 2007.

5. This matter came to hearing on January 11, 2007 at 10:00 a.m.. Marked and Admitted as Board Group Exhibit E is the January 4, 2007 Holliday/Jones Memorandum together with the summary results and individual sheet results of the January 4, 2007 Record Examination. This Exhibit/Memorandum states:

> After completing sixty (60) pages of Mr. Victor Rowans nominating petition the Candidate has 348 valid signatures, where the minimum signatures required is

Exhibit

147. The Candidate has filed 1615 signatures continuing the Record Examination will only put the Candidate further over the minimum required. So at this time January 4, 2007 I'm stopping the Record Examination.

6. The January 11, 2007 hearing began with a hearing on Candidate's Motion To Dismiss. This one-page motion was reviewed by Objector's counsel and the Candidate presented his argument. Candidate's argument principally related to factual issues such as the affidavits presented by Objector. Objector responded. The Hearing Examiner denied the Motion To Dismiss essentially because the Candidate's Motion does not address legal insufficiencies but rather alleged factual insufficiencies that would be subject to the evidentiary hearing.

7. At this point the hearing proceeded on Objector's Petition. The Objector acknowledged that because of the results of the Records Examination the primary issue was whether a pattern of fraud occurred.

8. Objector's Exhibit A was marked and admitted over Candidate's objection. Exhibit A is a death certificate of Jessie Smith, Sheet 84/Line 14.

9. Objector's Exhibit B was marked and admitted over Candidate's objection. Exhibit B constitutes 40 affidavits stating that their purported petition signatures were forged. Two of these affidavits were withdrawn. Hence, Objector's Exhibit B comprises 38 affidavits.

10. Objector's Exhibit C was marked and admitted over Candidate's objection. Exhibit C constitutes 55 affidavits stating that their purported signatures were forged. One of these affidavits was withdrawn. Hence, Objector's Exhibit C comprises 54 Affidavits.

11. After admission of these Objector's Exhibits the Objector rested. The Candidate rested and the parties presented closing statements. The Objector cited *Mitchell v. McCann*, 99-EB-ALD-199 and *Catherine v. Goodloe*, 99-EB-ALD-105 as authorities for a conclusion of pattern of fraud.

12. At the outset the Hearing Examiner notes that the Memorandum/Board Group Exhibit E states that the Candidate's Petition contain 1615 signatures. The Hearing Examiner finds 102 petition sheets, each having spaces for 15 signatures. However, a number of these sheets do not contain 15 signatures. The Hearing Examiner finds 1518 signatures.

13. One affidavit contained in Objector's Exhibit B did not contain the Notary's stamp, although the notary signed and dated the notarization: Irma Gardner, Sheet 73/line 13. Objector's counsel cited *Shipley v. Stephenson County Electoral Board*, 130 Ill. App. 3d 900, 474 N.E.2d 905 (2nd Dist. 1985) as authority for validity of the affidavit notwithstanding the absence of the notary's stamp. The Hearing Examiner concludes that *Shipley* applies and that the political process was not put into jeopardy and that substantial compliance exists. Therefore, taking into consideration Objector's Exhibits A, B & C, the Hearing Examiner finds that 93 forgeries are contained within 102 sheets, or 1518 signatures.

14. The minimum amount of valid signatures to qualify as a Candidate for Alderman of the 27th ward is 147. Pattern of fraud must be proved by clear and convincing evidence. *Durr v. Lowe*, 03-EB-ALD-101, CBEC, 2/5/03, *a'ffd*, *Durr v. Chicago Board of Election Commissioners,* 03 CO EL 028 (Cir. Ct. Cook Cty, February 20, 2003).

15. The only evidence Objector presented was the one death certificate and the 92 affidavits.

16. The Hearing Examiner finds as a matter of fact that three circulators circulated Mr. Rowan's petitions. In addition to Mr. Rowans, Mr. Fulcher, one of the Candidate's circulators, attended the January 11, 2007 hearing.

17. The Hearing Examiner also finds as a matter of fact the majority of the 92 Affidavits (60 affidavits) presented by the Objector pertain to the 60 sheets that were subject to the Record Examination.

18. The Hearing Examiner finds as a matter of fact that the Record Examination of the 60 sheets examined a total of 895 signatures, of which 348 were found to be valid, a validity rate of approximately 38%.

19. The Hearing Examiner concludes that the facts in the instant case are distinguishable from the facts contained both in *Catherine v. Goodloe* and *Mitchell v. McCann.*

20. In *Goodloe* all 55 sheets were circulated by the Candidate. Additionally, 84.5% of the signatures were found to be invalid, or a validity rate of only 15.5%. Further, the Candidate in *Goodloe* admitted that many of the signatures appeared to be similar.

21. In *McCann* only 195 valid signatures were found to be valid out of a total of 2061 signatures, a validity rate of approximately 9%. Further, the Objector's case was buttressed by the testimony of a Forensic Document Examiner, an expert witness.

22. Based upon all the foregoing, the Hearing Examiner concludes that the Objector has failed to prove a pattern of fraud by clear and convincing evidence.

23. Therefore, the Hearing Examiner recommends that the name of Victor Rowans appear on the ballot as Candidate for Alderman of the 27th Ward.

Date: January 12, 2007

William P. Jones

Hearing Examiner
William P. Jones

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Victor Dowan

v.

Chicago Board, Elections

No. 2007 COR 000123

ORDER

This matter coming before the Court on Plaintiff's Petition for Order Tolling Time and on the Defendants' motion to dismiss pursuant to 735 ILCS 5/2-619, the Plaintiff appearing pro se and Defendants being represented by counsel, the Court being advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED.

1. This case is dismissed and the Defendants' motion to dismiss granted.
2. The Court finds the Plaintiff failed to file a legally sufficient petition for judicial review within 10 days of the Electoral Board as required by 10 ILCS 5/10-10.1.
3. The Court also finds the the Plaintiff failed to name, join or serve a copy of the Petition for judicial review on the Objector in the electoral board proceeding, Sharon Burnett.
4. The Court finds that as result of these failures to comply with the requirements of 10 ILCS 5/10-10.1 this Court has no jurisdiction to hear this case.
5. This is a final judgment and there is no just cause to delay enforcement or appeal.

Atty. No.: 10313

Name: James Sotos

Atty. for: Defendants

Address: 3 Mid-Am Plaza Ste 1100

City/State/Zip: Chicago IL 60563

Telephone: 312-782-1163

ENTERED
JUDGE NATHANIEL R. HOWSE, JR. - 0772
FEB 16 2007
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER:

Judge

Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ORDER

IIN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

VICTOR ROWANS	
v.	**No. 2007 COEL 000023**
CHICAGO BOARD OF ELECTION	

ORDER

This matter coming before the Court on Plaintiff's "Motion by Victor Rowans for Over Turn Ruling" and on the Defendants' Motion to Dismiss pursuant to 735 ILCS 5/2-619, the Plaintiff appearing pro se and Defendants being represented by counsel, the Court being advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED and DECREED.

1. This case is dismissed and the Defendants' Motion to Dismiss is granted.
2. The Court finds the Plaintiff failed to file a legally sufficient petition for judicial review within 10 days of the decision of the Electoral Board as required to 10 ILCS 5/10-10.1.
3. The Court also finds that the Plaintiff failed to name, join or serve a copy of the Petition for Judicial Review on the Objector in the electoral board proceedings, Marvin Burnett.
4. The Court finds that a result of these failures to comply with the requirements of 10 ILCS 5/10-10.1, the Court has no jurisdiction to hear this case.
5. This is a final judgment and there is not just cause to delay enforcement or appeal.