BCCOFF-ALD

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

Objections of: JOHN A. RICE	)	
	)	
To the Nomination	)	**No.: 07-EB-ALD-076**
Papers of: SUSAN DILIBERTO	)	
	)	
Candidate for the office of	)	
Alderman of the Thirty-sixth 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 JOHN A. RICE ("Objector") to the nomination papers ("Nomination Papers") of SUSAN DILIBERTO, candidate for the office of Alderman of the Thirty-sixth 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 John Ashenden 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, JOHN A. RICE, by counsel, Michael Kasper; and the Candidate, SUSAN DILIBERTO, pro se.

7. 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.

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. A copy of the Hearing Examiner's Revised Recommended Decision is attached hereto and is 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 JOHN A. RICE to the Nomination Papers of SUSAN DILIBERTO, candidate for election to the office of Alderman of the Thirty-sixth Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of SUSAN DILIBERTO, candidate for election to the office of Alderman of the Thirty-sixth 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 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 THE OFFICE OF ALDERMAN OF THE THIRTY-SIXTH (36TH) WARD OF THE CITY OF CHICAGO

JOHN A. RICE,	)	
Petitioner-Objector,	)	
v.	)	**07-EB-ALD-076**
	)	
SUSAN DILIBERTO,	)	
Respondent-Candidate.	)	

01 CD 26 PM 2:10 2007

HEARING EXAMINER'S REVISED RECOMMENDED DECISION

The Respondent-Candidate, SUSAN DILIBERTO, filed Nomination Papers for the Office of Alderman of the 36th Ward, City of Chicago, Cook County, Illinois, to be voted upon at the Municipal General Election to be held on February 27, 2007. On December, 26, 2006, the Petitioner-Objector, JOHN A. RICE, filed a petition objecting to the Nomination Papers of the Candidate. The minimum number of required signatures for the office of 36th Ward Alderman is 204. The Candidate's Nominating Papers contain approximately 300 voter signatures.

The Objectors' Petition contains the following objections:

1. The Candidate's Nomination Papers contain petition sheets with names of persons who are not registered voters at the address specified (Objector's Petition, Paragraph 5).

2. The Candidate's Nomination Papers contain petition sheets with signatures that are not genuine (Objector's Petition, Paragraph 6).

3. The Candidate's Nomination Papers contain petition sheets with signatures of persons that reside outside of the 36th Ward (Objector's Petition, Paragraph 7).

4. The Candidate's Nomination Papers contain signatures of persons where the addresses given are missing or incomplete (Objector's Petition, Paragraph 8).

5. The Candidate's Nomination Papers contain signatures of persons who signed the petition sheets more than once (Objector's Petition, Paragraph 9).

6. The Candidate's Nomination Papers contain signatures of persons that had previously signed for another candidate for the same office (Objector's Petition, Paragraph 10).

7. The Candidate's Nomination Papers contain less than the minimum number of signatures required to run for 36th Ward Alderman (Objector's Petition, Paragraph 11).

January 2, 2007 Initial trial Call

On January 2, 2007, this matter appeared on the initial trial call. The Objector was represented by Michael Kasper. The Candidate appeared *pro se*. A record examination was not scheduled. The Candidate filed a Motion to Strike and Dismiss the Objector's Petition on January 3, 2007. The Objector filed a response to the motion on January 4, 2007.

January 6, 2007 Hearing on Motion to Dismiss Objector's Petition

A hearing was scheduled for Saturday January 6, 2007 at 10 AM on the Candidate's Motion to Strike and Dismiss. At that hearing, the hearing examiner heard arguments regarding the Candidate's objection to the Objector's Appendix-Recapitulation sheets. Both the introductory instructions and the Objectors system points to objections to signatures on the candidates nominating papers at sheet and line numbers which do not exist. (Motion to Strike at page 3.) Since a similar issue regarding the standard for determining sufficiency of appendix-recapitulation sheets had been raised in the case of *Rice v. Tirado*, 07-EB-ALD-075, this matter was continued for further review until January 10, 2007.

In this case, the Candidate objected to the Appendix-Recapitulation sheets because they referred to signatures that did not exist on the petition sheets.(Candidate's Motion to Dismiss, Count I.) This problem arose as a result of the numbering system used by the Objector in his Appendix-Recapitulation sheets. Instead of using the line numbers designated on the standard appendix form, the Objector added his own numbering system to indicate the signature lines to which he was objecting. This apparently caused some confusion for the Candidate in determining exactly which signatures were at issue. Hearing Transcript, 19: 17-24 (January 6, 2007). The Objector responded that the forms were not confusing, and that the Candidate's interpretation of the numbering system was not reasonable. Hearing Transcript, 21: 9-13 (January 6, 2007).

January 19, 2007 Order re: Record Exam

On January 19, 2007 the Hearing Examiner issued an Order pursuant to the Board of Elections directive. The hearing examiner was to instruct the Board's Clerks as to the manner in which to conduct the record exam. The Board's Clerks were instructed to conduct the records examination in the following manner: 1) Only the handwritten line numbers in the pre printed Line # column shall be considered as a line objections on the Appendix-Recapitulation sheets attached to the objector's petition. 2) The preprinted line numbers in far left column on the Appendix-Recapitulation sheets shall be ignored. 3) Status is set for Monday January 22, 2007 at 3:30 PM at the usual hearing room of the Board of Elections.

January 20, 2007 Record Examination Results

Pursuant to the, the Candidate had 224 valid signatures. The required minimum for the office of 36th Ward Alderman is 204.

January 22, 2007 Hearing

Conduct hearing with Pro se candidate and attorney for objector. Candidate has 20 signatures over the minimum requirement of 204. Objector has burden going forward. Set Rule 8 evidentiary deadlines given. Due to close question on total signature count Hearing Examiner explained to Pro se Candidate that they should begin that to assemble evidence to rehabilitate signatures. An evidentiary hearing was set for January 24, 2007 at 3:30 PM.

Rule 8 Statement

The objectors Rule 8 Statement was filed on January 23, 2007. It contended that the record exam results contained mathematical and tabulation errors. The objector advised that it would present testimony in the form of affidavits and that witnesses would be called if necessary to establish Candidate signatures were invalid because the signer had previously signed Alderman Bank's papers. Objector's attorneys allegation that the record exam results contained mathematical and tabulation errors was withdrawn at the hearing. The Objector's attorney's Rule 8 document presented 49 affidavits.

January 24, 2007 Evidentiary Hearing

The objectors attorney withdrew his objection as to alleged mathematical or tabulation errors. The Candidate had 224 valid signatures as per the record exam An additional 39 signatures were challenged by the Objector at the Evidentiary Hearing. At the hearing the Objector submitted 39 affidavits alleging that the Candidate's signatures were invalid because the signer had previously signed the nominating petition of William J.P. Banks. Pursuant to Section 10-3 of the Election Code, a voter may only sign one petition for a candidate for a given office. If the same voter's signature appears on the petition sheets of more than one candidate, then the signature executed

first in time is valid and any subsequent signature is stricken. *Sharkey v. Solar*, 99-EB-ALD-072, CBEC, January 28, 1999.

After a complete review of each affidavit, noting the objections made by the Candidate at the hearing, responses made by the Objector's attorney and the testimony of the witnesses the following 29 Objector Affidavits were sustained: 2, 3, 4, 6, 7, 8, 9, 11, 12, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 34, 36, 37. The following 10 Objector Affidavits were overruled. Due to the additional 29 signatures being invalidated the Candidate's total valid signatures is 195. This is less than the required minimum of 204.

Order Dated January 25, 2007

Since the candidates valid signatures were now below the required minimum, the Candidate has the burden to rehabilitate invalid signatures. Candidate was given to 4:00 PM on Thursday, January 25, 2007 to submit any evidentiary materials to rehabilitate signatures. Such materials were to be submitted by 4:00 PM on 1/25/07. Status and the final evidentiary hearing were set for Friday, January 26, 2007 at 10:00 AM at the Board of Elections.

January 26, 2007 Final Evidentiary Hearing

At the 10 AM hearing it was determined that candidate's rule 8 filings were insufficient to rehabilitate any objected to signatures. After commencement of the hearing, Objector's attorney offered into evidence a transcribed voice mail message from the candidate's spouse stating that they would not be pursuing the matter further. As such, the hearing examiner recommends that the objector's petition be granted and the name of Susan Dilberto shall not appear and not be printed on the ballot for the upcoming Municipal General election.

John R. Ashenden, Hearing Examiner
Dated: January 26,2007