BCCON-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-078**
Papers of: NICHOLAS S. SPOSATO	)	**(rel. ALD-169)**
	)	
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 NICHOLAS S. SPOSATO, candidate for the office of Alderman of the Thirty-sixth 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 was held on these Objections commencing 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 Call. The following persons, among others, were present at such hearing; the Objector, JOHN A. RICE, pro se Elias Mossos and Michael Kasper; and the Candidate, NICHOLAS S. SPOSATO, by counsel, Russell Stewart.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate or his duly authorized representative was present during the examination of the registration records at all times.

10. The Objector and/or his duly authorized representatives were present during the examination of the registration records at all times.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination

conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Board's file in this case and a copy was made available to the parties.

12. The Electoral Board has reviewed the applicable law and has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The Electoral Board finds that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 204.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,470.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 378.

D. The remaining number of signatures deemed valid as a result of the records examination total 1,092.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the Thirty-sixth Ward of the City of Chicago.

15. The Electoral Board finds, therefore, that the Objectors' Petition is sustained in part and overruled in part as more fully indicated in the results of the records examination.

16. For the reasons stated above, the Electoral Board overrules the Objections and finds that the Nomination Papers of NICHOLAS S. SPOSATO are valid.

17. The Electoral Board finds that there was another objection filed against the Candidate's Nomination Papers in case 07-EB-ALD-169, but those objections were withdrawn.

IT IS THEREFORE ORDERED that the Objections of JOHN A. RICE to the Nomination Papers of NICHOLAS S. SPOSATO, candidate for election to the office of Alderman of the Thirty-sixth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of NICHOLAS S. SPOSATO, candidate for election to the office of Alderman of the Thirty-sixth 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 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-078**
	)	
NICHOLAS S. SPOSATO,	)	
	)	
Respondent-Candidate.	)	
	)	

HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent-Candidate, NICHOLAS S. SPOSATO, 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 1,460 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 petition sheets should be invalidated because they demonstrate a pattern of fraud and disregard of the Election Code (Objector's Petition, Paragraph 11).

8. The Candidate's Nomination Papers contain less than the minimum number of signatures required to run for 36th Ward Alderman (Objector's Petition, Paragraph 12).

January 2, 2007 Initial Trial Call

On January 2, 2007, this matter appeared on the initial trial call. The Objector was represented by Elias Mossos. The Candidate was represented by Russell Stewart. A record examination was tentatively scheduled for January 16 or January 17, 2007. 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 11, 2007 Hearing on Motion to Dismiss Objector's Petition

A hearing was scheduled for January 11, 2007, at 11 A.M. 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. Because the Objector and his counsel did not appear, a ruling was made only on the briefs.

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 caused confusion for the Candidate in determining exactly which signatures were at issue. Hearing Transcript, 5:4-9 (January 11, 2007).

The Hearing Examiner determined that the Appendix-Recapitulation sheets were confusing and did not make a reasonable evaluation of the objections to the Candidate's nominating papers possible. Hearing Transcript, 8:13-16 (January 11, 2007.) The Hearing Examiner recommended that Candidate Nicholas Sposato's Motion to Strike and Dismiss be granted.

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 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 shall be set by the hearing examiner at the earliest possible time after the records exam.

January 24, 2007 Status Hearing

A hearing was scheduled for January 24, 2007, at 1 P.M. for status. Because the Objector and his counsel were not present at the January 11 hearing, that hearing was set for only a finding on the briefs, and no default was entered. Hearing Transcript, 2:15-18 (January 24, 2007). Results of the record exam showed that the Candidate has 1,092 valid signatures, which is 888 signatures over the minimum requirement of 204.

The Objector stated that there were 550 allegations of duplicate signatures on the Candidate's Petition, and that even if the Objector prevailed on each of these signatures, the Candidate would still remain above the statutory minimum. Additionally, the Objector had no evidence to offer demonstrating that the Candidate engaged in a pattern of fraudulent circulation, and therefore the Objector was willing to stand on the results of the record examination.

The Hearing Examiner ruled that the Objector did not meet the burden of proof relative to a pattern of fraud. Accordingly, the Candidate has a sufficient number of votes to meet the minimum signature requirement.

The hearing examiner recommends that the Candidate's Motion to Strike and Dismiss be granted. It is further recommended that Candidate Nicholas Sposato's name be placed on the ballot for the February 27, 2007 election for 36th Ward Alderman.

John R. Ashenden, Hearing Examiner
January 25, 2007