NBCOFF-MUN

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

Objections of: ALEX D. DUBUCLET	)	
	)	
	)	
To the Nomination	)	**No.: 07-EB-MUN-011**
Papers of: ELIDA M. CRUZ	)	
	)	
Candidate for the office of	)	
Treasurer of the 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 ALEX D. DUBUCLET, , ("Objector") to the nomination papers ("Nomination Papers") of ELIDA M. CRUZ, candidate for the office of Treasurer 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 Christopher Agrella 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, ALEX D. DUBUCLET, by his attorney Adam Lasker; and the Candidate, ELIDA M. CRUZ, by her attorney.

7. The Hearing Examiner has submitted his Report and Recommended Decision setting forth his recommended findings of fact and conclusions of law.

8. Nomination petitions for candidates for the office of Treasurer of the City of Chicago must contain not less than 12,500 signatures of registered voters residing in the City of Chicago. (65 ILCS 20/21-28(b))

9. The Candidate claims that she filed petitions with in excess of 12,500 signatures. However, the Hearing Examiner found that the Candidate's nominating petition contained not more than 5,634 actual signatures, well short of the 12,500 signatures required by law.

10. The Hearing Examiner has recommended that the Objections be sustained and that the Candidate's Nomination Papers be declared invalid.

11. The Electoral Board hereby adopts the recommended findings and conclusions of the Hearing Examiner in this matter and the Hearing Examiner's Report and Recommended Decision is attached hereto and is incorporated and made a part of the Electoral Board's decision in this matter.

12. 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 ALEX D. DUBUCLET to the Nomination Papers of ELIDA M. CRUZ, candidate for election to the office Treasurer of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ELIDA M. CRUZ, candidate for election to the office of Treasurer 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 12th 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 OF OBJECTIONS TO THE NOMINATION PETITIONS OF CANDIDATES FOR THE FEBRUARY 27, 2007, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

ALEX D. DUBUCLET, Petitioner - Objector, v. ELIDA M. CRUZ, Respondent - Candidate.	)	No. 07 EB MUN 011 Treasurer

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on January 2, 2007. It was set on the call for 3:00 p.m., and at 3:10 p.m. the matter was first called for hearing. The objector appeared through counsel, Mr. Adam Lasker, Esq., and the candidate appeared personally and through counsel, Mr. Sydney B. Smith, Esq.

The file contained the original petition papers of the candidate and the objections of the objector, which were marked as Group Exhibit A and Group Exhibit B, respectively. The proof of service of notice of the call was marked as Group Exhibit C, and the appearances on behalf of the objector and candidate were marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection by either side.

The objection raised two issues; first, that the nominating papers of the candidate were not numbered consecutively and had gaps in the numbering, referencing on an exhibit attached to the objection the specific page numbers in the candidate's petition which were not in sequence and were otherwise missing; the second issue alleged was that the petition sheets did not contain sufficient valid signatures at the outset to permit the candidate's name

to appear on the ballot for treasurer, alleging that, at most, only 327 sheets containing a maximum of 6,540 signatures were submitted such that, even if all such signatures were acknowledged as good, the candidate's petition would still be short of the total number required (12,500 required), and therefore the candidate's nominating petition was facially insufficient under the signature requirements for said office to permit the candidate's name to appear on the ballot for treasurer.

After the hearing examiner accepted Exhibits A through D into evidence, he inquired of the parties whether any preliminary motions would be filed, and upon receiving an affirmative answer from the candidate informed the parties of the briefing schedule deadlines as set out in the rules; the hearing examiner further stated that in the interim, he would request an official count of the total number of voter signatures on the candidate's nomination papers to determine whether the matter should be sent out for a records exam or disposed of on its face. At this point the matter was adjourned to January 8, 2007, at 12:00 noon for hearing of any preliminary motions and for entry of the signature count provided by the board.

The objector filed a timely motion captioned "Motion for Judgment", the candidate filed a timely motion captioned "Motion to Dismiss Verified Objector's Complaint and Motion to Dismiss Judgment", and the objector filed a timely response captioned "Objector's Response to Candidate's Motion to Dismiss Objector's Complaint and Motion to Dismiss Judgment [sic]".

The objector's motion for judgment was brief, reiterating the argument contained in the objection that the candidate filed, in total, some 6,540 signatures for an office which

required 12,500, such that judgment was appropriate on the face of the pleadings.

The candidate's response, in the nature of a motion to strike, alleged, first, that the candidate filed 638 petition sheets containing 12,760 signatures of duly qualified voters, and that the nominating petition was therefore legally sufficient; second, that to the extent there were violations regarding consecutive numbering of the petition sheets, this is merely a directory requirement which the candidate had satisfied; and third, that the candidate had inquired at the board of elections whether anyone had sought to review her petition and, receiving a negative reply, believed the objector had engaged in a form of "shotgun" objection, alleging that the objector's petition lacked due diligence, that the objector failed to allege or prove that the objector had even reviewed the candidate's nomination papers, and that the objector couldn't have possibly taken the time needed to make an appropriate review, therefore the allegations were made in bad faith and should be dismissed.

The objector's response to this motion to strike stated, in sum, that the candidate's statement that she filed a sufficient number of petition sheets was insufficient to refute the evidence contained in Group Exhibit A, to-wit, the actual petitions on file; second, that the consecutive page numbering requirement was mandatory, not directory; third, whether one considered page numbering mandatory or directory, the instant case was a far more egregious example of non-consecutive numbering than the excused examples the candidate tendered such that the this candidate's omission was not excusable; and finally, that objector, as evidenced by Exhibit A attached to objector's response, a December 19, 2006, paid receipt for a Freedom of Information Act request for the candidate's nomination papers, purchased a set of the candidate's nomination papers the day after they were filed,

and thereby evidenced actual knowledge of the content of the candidate's nomination papers plus sufficient time to appropriately review the paperwork and file an informed objection.

The candidate also filed a document captioned "Affidavit of Ziff Sistrunk", which, while never referenced in the candidate's motion, was referred to in oral argument and in substance supported the candidate's claim that she inquired of board personnel as to any FOIA requests to see her nomination papers, and received a negative response.

On January 8, 2007, this matter re-convened at 12:00 noon, both parties present through counsel and the candidate appearing personally.

At that time the file was examined and found to contain the Chicago Board of Election response to the hearing examiner's request that board personnel conduct a total signature count of the candidate's nomination papers.

Upon the hearing officer's announcement that he intended to read the board's signature count into the record, candidate's counsel objected, asking that the motion to strike be heard first, asserting that no count should be considered if the objection were struck, because the candidate's nomination paperwork would no longer be under attack, and she should therefore be permitted to appear on the ballot no matter the actual state of her nomination papers.

The hearing examiner informed the parties of the Chicago Board of Election's duty, independent of any objections, to ensure that nomination papers were in general conformity with the requirements for the various offices being sought, but acquiesced to the candidate's request that the motion to strike be considered first.

The oral argument of the parties took the same general line of argument set forth in

the written briefs, with the candidate making an offer of proof that if called to testify the candidate would reaffirm that she filed in excess of 12,500 signatures, and that she conducted a diligent search on January 2, 2007, of all the FOIA requests and that no request for her papers was ever found.

Having reviewed the briefs, heard argument, and accepted the proffer of proof from the candidate at face value, the hearing officer denied the candidate's motion to strike and stated that was his the recommendation that the objection be sustained on the allegation in paragraph 5 that the candidate's nomination papers did not contain sufficient valid signatures at the outset to permit the candidate's name to appear on the ballot for treasurer. The additional argument regarding the candidate's failure to consecutively number the nomination pages was not reached, being deemed moot by the clear lack of sufficient signatures.

It is the hearing officer's further recommended finding that the board's independent count of 5,634 total signatures be accepted as fact such that, even if all such signatures were acknowledged as good, the candidate's petition would still be short of the total number required (12,500 required), and therefore the candidate's nominating petition was facially insufficient under the signature requirements for said office to permit the candidate's name to appear on the ballot for treasurer.

The hearing examiner also recommends this board reject the candidate's arguments in her motion to strike. Her claim to have filed a sufficient number of signatures is more in the nature of a denial, but it is nonetheless refuted by several pieces of evidence, not the least being the petitions themselves, which contained standard 20 signature to the page

petition sheets and were visibly insufficient to the naked eye. They were also in the same condition as they were when the board photographed them prior to copying, which the hearing examiner accepted into evidence as Exhibit E. This photograph also evidenced that the candidate's nomination package was approximately half the height it should have been had they contained the appropriate number of signature pages. The hearing examiner's page by page review also confirmed this deficiency, and was in concert with the board's independent signature count, which found only 5,634 actual signatures affixed on the candidate's nomination pages (all sheets not being fully filled out), well short of the 12,500 required.

Furthermore, objector's Exhibit A circumstantially evidenced the same signature deficiency, in that objector, purchasing the entire nominating paperwork of the candidate the day after it was filed, received (and was charged for) only 329 pages. At 20 signatures to the page, at a minimum objector should have received 625 signatures pages, not to mention the Statement of Candidacy and receipt for filing of the candidate's Statement of Economic Interests.

Finally, the hearing examiner finds no merit to the candidate's argument that the objector engaged in a bad faith, 'shotgun' objection. The FOIA receipt attached to the objector's motion response as Exhibit A was not the only evidence the hearing examiner found persuasive on this point. The objection itself contained an exhibit setting forth, page number by page number, each page that was missing in the candidate's nomination paperwork. Such a feat could not be accomplished without a review of the candidate's nomination papers, which evidences several things simultaneously: first, that the objector

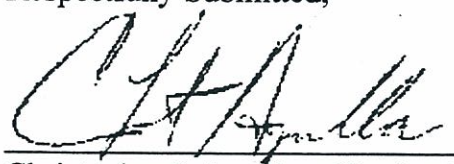
did, in fact, review the candidate's nomination paperwork; second, that the objector's review was detailed enough to provide the factual basis incorporated into the objection's exhibit; and third, that the objection was well founded upon a reasonable inquiry.

There being no other matters at issue, the hearing examiner concluded the case.

This hearing examiner recommends to the Board that it adopt the above findings, decisions and recommendations of the hearing examiner, that the Board further sustain the objection and declare that said nomination papers are insufficient and invalid in law and fact in that the nomination papers lack the minimum number of validly collected signatures of qualified and duly registered voters of the City of Chicago as required by law (12,500) for said office, and that this Board further declare that the name of the candidate, Elida M. Cruz, not appear and not be printed on the ballot for election to the office of Treasurer of the City of Chicago, to be voted upon at the February 27, 2007, Municipal General Election for Mayor, Clerk, Treasurer and Alderman in the City of Chicago..

Christopher J. Agrella
Hearing Examiner
330 East Main Street
Suite 205
Barrington, Illinois 60010
Office: (847) 381-6800
Fax: (847) 381-6866

Respectfully Submitted,



Christopher J. Agrella – Hearing Examiner