NBCOFF-MUN

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

Objections of: Josephine Sykes	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-MUN-026
Papers of: John Hu	)	
	)	
Candidate for the office of	)	
Mayor 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, Richard A. Cowen, and Marisel A. Hernandez, 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 Josephine Sykes ("Objector") to the nomination papers ("Nomination Papers") of John Hu, candidate for the office of Mayor of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer 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 Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Josephine Sykes, by attorney, Burton S. Odelson; and the Candidate, John Hu, pro se.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that even on the face of the 1,042 or so petition sheets submitted by the Candidate (with each sheet containing 10 lines for signatures, there were less 12,500 signatures on the Candidate's Nomination Papers.

8. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

9. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer report and

recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

10. 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 Josephine Sykes to the Nomination Papers of John Hu, candidate for election to the office Mayor of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of John Hu, candidate for election to the office of Mayor of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on December 29, 2010.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel A. Hernandez, 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 5 days after service of 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 22, 2011, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 23 P 2:01

JOSEPHINE SYKES,

Objector

v.

JOHN HU,

Candidate.

No. 11 EB-MUN-026

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter first came before the hearing examiner on December 6, 2010, set on the call for 3:30 p.m., at which time it came on for hearing. Objector appeared through counsel, who filed an appropriate appearance at that time.

A review of the file indicated that no service had been accomplished upon the candidate, and the matter was re-set for service, with the return date set for December 13, 2010, at 10:00 a.m.

On December 13, 2010, at 10:00 a.m., the matter came on for continued hearing. Objector appeared through counsel and the candidate, having been served in the interim, also appeared, filing his written appearance at that time, as well as filing and serving objector's counsel with a motion captioned "Verified Candidate's Petition to Strike and Dismiss the Objector".

The file contained the original petition papers of the candidate, seeking to be placed on the ballot for Mayor of the City of Chicago, 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 appearance of the parties marked as Group Exhibit D. Group Exhibits A through D were accepted into evidence without objection.

At this juncture the hearing examiner inquired of objector's counsel whether he required time to respond to the objection in writing. Objector's counsel asserted his willingness to address the motion immediately in oral argument. The hearing examiner inquired of the candidate whether he was ready to proceed immediately, and the candidate stated that he was also ready to argue the motion.

A hearing was thereupon held on the candidate's motion to strike. The candidate, in his written motion, attacked the objection by asserting that the objector had no knowledge of the objection, was not a resident of Chicago, and was not a registered voter at the address stated in the objection. Orally, the candidate's attack was in the nature of a motive attack, asserting that others, operating behind the objector, were the driving force of the objection. In response objector's counsel asserted that a proper motive and standing were pleaded, that no additional or other motive was relevant, that there was no evidence in support of the other assertions, and that the motion was therefore deficient and should be denied.

The candidate was asked by the hearing examiner whether he had any evidence to present in support of the assertion that the objection was a forgery, or that the objector did not know of the objection or did not actually sign the objection, to which the candidate admitted that he did not have any evidence in support of the assertion.

Asked by the hearing examiner whether the candidate had any evidence to present that the objector was not a registered voter residing in Chicago at the address stated in the

objection, the candidate again admitted that he did not have any evidence in support of the assertion. The candidate reasserted his position that the objection should be dismissed because of other persons or motives were driving the objection, and at this point also sought a continuance to allow him to gather evidence of various facts.

The motion to continue was denied, in that both sides had agreed to proceed at this time.

The candidate's motion to strike was thereupon denied. The candidate presented no evidence in support of his claim that the objector was not a duly registered voter of the City of Chicago. The objector is not required, as part of objector's *prima facie* case, to plead and prove standing as a registered voter to contest the nomination petitions of a political candidate; rather, lack of standing is an affirmative defense which the candidate has the burden, not only to raise, but to prove. *Dunham v. Naperville Township Officers Electoral Board*, 265 Ill.App.3d 719, 640 N.E.2d 314 (2nd Dist. 1994). This the candidate failed to accomplish.

Likewise, the candidate's claim that other motives, and other persons, not of record, were the actual driving force of the objection, has no basis in law for striking the objection. The objector asserted in her objection that her interest in filing the petition was that of a voter and resident desirous to ensure that he laws governing the filing of nomination papers for the office of Mayor of the City of Chicago, Illinois are properly complied with and that only qualified candidates who meet all statutory and legal requirements appear on the ballot for said election.

Objector stated a proper basis and interest for the objector to have filed her objection.

The fact that there may be other motives or reasons for filing the objection are irrelevant. *Wollan v. Jacoby*, 274 Ill.App.3d 388 (1st Dist. 1995).

The motion to dismiss being ruled upon and denied, the hearing examiner next took up the matters raised by the objection.

The objection raised a single issue, that the nomination papers were facially deficient, in that the candidate had failed to file sufficient signatures for placement on the ballot even if all signatures it contained were deemed valid. The objection further noted that the nomination pages, with room for 10 signatures per page, ending with page 1250, were missing pages 86-88, 90-98, 113-120, 139-182, 237-262, 327-361, 555, 679, 920-990, 1006-1024, and 1233, and had duplicate pages numbered 382, 474, 629, 630, 1025, and 1037.

The minimum signature requirement for this office is 12,500 valid signatures.

At this point the hearing examiner conducted a visual review of the nomination papers and confirmed the missing and duplicate pages as asserted by the objector. Similarly, there was a report accompanying the nomination papers, prepared by the board personnel in the record examination department, which also confirmed these missing and duplicate pages.

Strictly reviewing the petition for total signatures filed, and without considering the issue of mis-numbering or gaps in numbering, the hearing examiner determined that the candidate filed, in total, some 1,042 pages, each with a maximum space for 10 petition signers, such that, even if all the signatures were deemed valid, the candidate had failed to file sufficient signatures in support of his nomination.

It was therefore the hearing officer's recommendation, made on the record at the

time, that the objection be sustained, in that the candidate has less than the minimum number of valid signatures required (12,500) in his nomination papers to permit his name to be placed on the ballot, and that the nomination papers of the candidate be declared invalid and the candidate's name not appear on the ballot. 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, John Hu, not appear and not be printed on the ballot for election to the office of Mayor of the City of Chicago, to be voted upon at the February 22, 2011, 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