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

Objections of: Timothy J. Raddatz and Gerald J. Holst, Jr.	)	
To the Nomination Papers of: Jose "Joe" L. Rivera	)	No.: 11-EB-ALD-035
Candidate for the office of Alderman of the 45th Ward, City of Chicago	)	Related Case: 11-EB-ALD-144

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 Timothy J. Raddatz and Gerald J. Holst, Jr. ("Objector") to the nomination papers ("Nomination Papers") of Jose "Joe" L. Rivera, candidate for the office of Alderman of the 45th Ward 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 Lynne R. Ostfeld 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.

7. The Hearing Officer has tendered to the Electoral Board her 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.

8. 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.

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 Timothy J. Raddatz and Gerald J. Holst, Jr. to the Nomination Papers of Jose "Joe" L. Rivera, candidate for election to the office of

Alderman of the 45th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Jose "Joe" L. Rivera, candidate for election to the office of Alderman of the 45th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 7, 2011.

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.

Objections of: **TIMOTHY J. RADDATZ and, GERALD J. HOLST, JR.** Petitioner-Objector,	)	
To the Nomination Papers of: **JOSE 'JOE' L. RIVERA,**	)	No. **11-EB-ALD-035**
Candidate for the Office of **Alderman of the 45th Ward** in the City of Chicago	)	Lynne R. Ostfeld Hearing Officer

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 22 A 11: 37

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on objections of Timothy J. Raddatz and Gerald J. Holst ("Objectors") to the nomination papers of Jose 'Joe' L. Rivera ("Candidate"), and the Candidate having filed a Motion to Strike and requesting an examination of the records, Lynne R. Ostfeld, Esq., Hearing Officer, finds and recommends as follows:

Background

1. The hearing was begun on December 6, 2010. In attendance at the hearing were the Objectors, through their attorney Thomas J. Jaconetty, and the Candidate, originally *pro se* then through his attorney, Andrew Finko

2. The Objector requested that Jose 'Joe' L. Rivera's name not be printed on the ballot for election to the office of Alderman of the 45th Ward, City of Chicago, based on the following objections:

A. the nomination papers were not numbered consecutively and were not numbered at all, contrary to the requirements of 10 ILCS 5/7-10, 10-3.1, 10-4;

B. the sworn Statement of Candidacy fails to meet the requirements of 10 ILCS 5/7-10, 10-3, 10-3.1 and 10-4 inasmuch as he fails to designate in which Ward in the City of Chicago he wishes to be elected Alderman;

C. the nomination papers contained the names of people who did not sign the papers in their own proper persons, whose signatures were not genuine;

D. the nomination papers contained petition sheets where signers signed twice;

E. the nomination papers contained petition sheets with numerous other defects such as improper or incomplete addresses, names stricken or crossed out, missing information, etc.

3. The Objector claimed that the Nomination Papers contained less than 263 validly collected signatures of qualified and duly registered legal voters of the 36th Ward.

4. A records examination was ordered and was conducted on December 20, 2010. Notice of the date for the examination was given to both the Objector and to the Candidate and they were represented at the examination.

5. A briefing schedule was also set for the Candidate's Motion to Strike. He filed two.

6. One motion to strike dealt with the Hearing Officer having defaulted the Objectors for failure to appear on December 6, 2010, and then vacating that default when they appeared later that day. The Objectors responded that their counsel had filed his appearance and signed waiver of Notice of the Call prior to the commencement of the December 6, 2010 call. They further argued that they had not received any notice of a default and would have requested the opportunity to be heard. The Candidate also complained, at the subsequent hearing, that it was not an attorney representing the

Objectors on December 6, 2010, but a clerk for the attorney.

7. The second motion to strike was based on the Candidate's answers to some of the Objectors' allegations, to wit: (1) the petition sheets were bound and securely fashioned when submitted so that, although they were not paginated, they only contained 22 sheets so the lack of page numbers was not burdensome or confusing to a reviewer; (2) the Candidate filed his Statement of Financial Interests separately with the CBOE and all of his papers should be read together, in which case it is quite clear which office he is seeking. The Objectors responded that the Candidate did not attack the legal sufficiency of the pleadings so that the allegations stand as having been properly pled.

8. At the continued hearing on December 15, 2010, the Hearing Officer orally denied the Motion to Strike the Objectors' objections which was based on the Objectors' having been defaulted. The Hearing Officer stated that the delay between the default and her vacating the default was not sufficient to have caused harm to the Candidate, and that the reason for the absence at the call of the Objectors' counsel was understandable, due to the number of cases being called for case management, on December 6, 2010. She took under advisement the other issues complained of.

9. At a continued hearing on December 20, 2010, she repeated her holding regarding the motion to strike based on the default. As to the Objectors being represented at the initial hearing by a clerk for their attorney, she held that he had not provided any legal services but only obtained the briefing schedule on the motions. That aspect of their motion to strike was also denied.

10. The record examination was completed on December 20, 2010, minutes before the continued hearing in this case.

Findings of Fact and Conclusions of Law

11. The Hearing Officer received the report of the Record Examination Results, prepared by staff of the Chicago Board of Election Commissioners, and found the following:

Number of signatures on petitions	411
Number of objections	158
Number of objections overruled	18
Number of objections sustained	140
Number of valid signatures	271
Minimum signature requirement	263

The Candidate had 8 signatures more than the required minimum

12. The default of the Objectors was vacated when the clerk for their attorney appeared at the Hearing Officer's table with the attorney's appearance. The Hearing Officer considered it only fair to vacate the default inasmuch as the number of hearings taking place, and the fact that they were in three different rooms, on several floors, kept many parties from promptly attending hearings as they were scheduled and called. Although the delay in the Objectors appearing was not insignificant, the Hearing Officer determined that it was not of such length to prejudice the Candidate.

13. As to the Objectors being represented at the hearing on December 6, 2010 by a non-attorney, the Hearing Officer overruled this objection because the clerk's work was merely to submit the attorney's appearance and obtain a briefing schedule. Although he did not advise the Hearing Officer that he was not an attorney, which he should have done, he did not assume the role of an attorney by advocating for his clients or making any legal arguments.

14. One of the issues raised by the Objectors was the fact that 22 petition sheets were not paginated, in violation of 10 ILCS 5/10-4. The Hearing Officer sustained this objection. She held that it was not a minimal defect. The Candidate had not substantially complied because he had not complied

at all. In accord with prior decisions of this Commission, most particularly decisions recommended by the instant Hearing Officer, this failure to paginate any of the petition sheets voids the nomination papers. *Crumpton v. Hendricks*, 99-EB-ALD-021; *Ransom and Simpson v. Hendricks*, 99-EB-ALD-101, *citing, Wollan v. Jacoby*, 74 Ill. App. 3d 388, 653 N.E.2d 1303 (1st Dist. 1995) (*see, also, Brummit v. Brewer*, 07-EB-ALD-062 *where the candidate was kept off the ballot because all of his 22 petition sheets were not paginated.*)

The Candidate argued that the petition sheets were firmly bound and that there were only 22 sheets, so that no confusion could arise in reviewing them, and the integrity of the nomination papers could not be violated. However, firmly binding and paginating the petition sheets are two requirements set forth in 10 ILCS 5/10-4, and are not alternative options:

> "Such sheets, before being presented to the electoral board or filed with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively."10 ILCS 5/10-4.

The Hearing Officer had invalidated the nomination papers in *Ransom v. Hendricks* where there were only 14 petition sheets., eight fewer than submitted by the Candidate in the instant case.

15. The Hearing Officer found no reason to rule on the other objections.

16. The Hearing Officer recommends that this Board find that the Nomination Papers of JOSE 'JOE' L. RIVERA be declared to be INVALID for the reasons stated above.

17. The Hearing Officer recommends that this Board order that the name of JOSE 'JOE' L. RIVERA NOT be printed on the ballot for the Aldermanic Election, 45th Ward, City of Chicago, to be held on February 22, 2011, for the reasons stated above.

Dated: Chicago, Illinois, this 22nd day of December, 2010.

Lynne R. Ostfeld, Hearing Officer

Timothy J. Raddatz
Gerald J. Holst Jr.
Objector(s)
vs.
Jose 'Joe' L. Rivera
Candidate

) Case No. 11-EB-AUD-035
) Hearing Officer: Ostfeld

PROOF OF SERVICE

I, Steven Cieslicki, certify that on 12/22/10 I served a copy of the H.O. Recommended Decision (a copy of which is attached) on the Objector(s) and Candidate(s) listed on the attached document and/or their attorney(s) of record ("Party" or "Parties") either by (a) personally handing a copy of the document to such Party, (b) faxing or emailing the document to the fax number or email address listed on the Appearances on file with the Electoral Board, (c) by placing a telephone call to or leaving a message on the telephone number listed on the Appearance on file for any Party who did not list a fax number or email address, or (d) where no fax number, email address or telephone number is listed on the Party's Appearance or where no Appearance was filed, by depositing a copy of the document in the United States mail, first class postage prepaid, addressed to the Party at the address on record on the Party's Appearance or on the Party's nomination papers or objector's petition if no Appearance is on file.

Dated: 12/22/10

