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

Objections of: Dwayne Burgess	)
	)
	)
To the Nomination	) No.: 11-EB-ALD-040
Papers of: Denise Brown	)
	) Related Cases: 11-EB-ALD-044,
	) 11-EB-ALD-266
Candidate for the office of	)
Alderman of the 16th 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, 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 Dwayne Burgess ("Objector") to the nomination papers ("Nomination Papers") of Denise Brown, candidate for the office of Alderman of the 16th 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 Mary Celeste Meehan 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, Dwayne Burgess, pro se; the Candidate, Denise Brown, by attorney, Nicholas C. Kefalos.

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 overruled and that the Nomination Papers be declared valid.

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 declines to adopt the Hearing Officer's recommended findings and conclusions of law. The Electoral Board finds that the totality of the evidence does not establish that the Candidate established residency at the May Street address.

9. For the reasons stated above and on the record, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination

Papers are invalid. The Electoral Board made a similar finding in 11-EB-ALD-044 and 11-EB-ALD-266.

IT IS THEREFORE ORDERED that the Objections of Dwayne Burgess to the Nomination Papers of Denise Brown, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Denise Brown, candidate for election to the office of Alderman of the 16th 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, 2011.

Dated: Chicago, Illinois, on January 11, 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.

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

YVETTE MAJOR	)	**11-EB-ALD 40**
OBJECTOR	)	
	)	
DWAYNE BURGESS	)	**11-EB-ALD 44**
OBJECTOR	)	
	)	
KEITH HARRIS	)	**11-EB-ALD-266**
OBJECTOR	)	
	)	
-v-	)	
	)	
DENISE BROWN	)	**MARY C. MEEHAN**
CANDIDATE	)	**Hearing Examiner**

BOARD OF ELECTION
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RECOMMENDED FINDINGS AND CONCLUSIONS OF LAW

This consolidated matter having come before the duly constituted Chicago Board of Election Commissioners ("CBEC" or "the Board"), and before the undersigned Hearing Officer on December 22nd and 23rd, 2010 for Evidentiary Hearing. The Hearing Officer hereby makes the following report and recommended findings:

1. The Candidate's Nomination Papers for the Alderman of the 16th Ward in the City of Chicago herein were duly and timely. Said Nomination Papers listed Candidates residence at 5932 S. Loomis St. Chicago, IL 60636, which is within the 16th ward.

2. The above named Verified Objector's Petitions herein were duly and timely filed. The above three cases were consolidated without objection by any party as each verified objector's petitions made the same sole objection: that the Candidate does not meet the one (1) year residency requirement as put forth in amended Section 21-14(a) of the

Revised Cities and Villages Act (65 ILCS 20/21-14(a), which states: *a) No member may be elected or appointed to the city council after the effective date of this amendatory Act of the 93rd General Assembly unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment. In the election following redistricting, a candidate for alderman may be elected from any ward containing a part of the ward in which he or she resided for at least one year next preceding the election that follows the redistricting, and if elected, that person may be reelected from the new ward he or she represents if he or she resides in that ward for at least one year next preceding the reelection.*

3. Before proceeding to Evidentiary Hearing, this hearing officer conducted case management conferences for the purpose of simplifying the scope of the issue, obtaining stipulations of fact, defining the number of witnesses and the scope of their testimony, and creating a proposed plan for production of discovery.

4. All parties stipulated that Candidate Denise Brown was living at 5932 S. Loomis in Chicago Illinois, as listed on her Nomination Papers from on or about July 1, 2010 until present. All parties agreed that the sole issue for Evidentiary Hearing was the residence of Denise Brown from February 23rd, 2010 until June 30th, 2010. All parties stipulated that the period in question is from on or about February 23rd, 2010 through on or about June 30th 2010.

5. Ms. Brown stipulated that she was living at 6219 S. May in Chicago, Illinois which is within the 16th Ward from on or about January 1, 2010 until on or about June 30, 2010. That she moved from 6219. S May on or about July 1, 2010 to 5932 S. Loomis, Chicago, IL which is her current address.

6. The Objectors stipulated amongst each other that they intended to prove Ms. Brown was not residing within the 16th Ward and in particular that Ms. Brown was not residing at 6219 S. May, Chicago, IL during the period in question (from February 23rd, 2010 through on or about June 30th, 2010) and was in fact living outside the 16th ward at her condo and former residence located at 2941 S Michigan Ave. Unit #106, Chicago, IL in the 2nd ward at the South Commons Property Development.

7. During case management conferences, numerous subpoenas were granted to the Objectors, including: document subpoenas for records from People's Gas, Com Ed, IRS, Dept. of Revenue, Secretary of State, S. Commons residential information, and the City of Chicago Board of Election Voters Registration in addition to testimony subpoenas for witnesses from S. Commons.

8. During the case management conferences the Candidate was requested and ordered to produce information pertaining to her residency, including: lease information for 6219. S. May, proof of payment of rent for said property, redacted tax returns or proof thereof which contain her address, pay roll and or employer information which provide address information for the period in question.

9. Objectors Major and Burgess presented a witness list with two witnesses: Gayle Hill of 6239 S. May, 2nd Floor, Chicago, IL 60621 and George Jones of 6330 S. Elizabeth, Chicago, IL 60621. Objectors reserved the right to call an employee or building manager from the S. Commons Property Development located at 2941 S Michigan Ave. Chicago, IL. The Candidate reserved the right to call, Denise Browns' son David Brown and possibly Denise Brown's Pastor.

10. The Evidentiary Hearing was conducted over two days, December 22nd and 23rd, 2010. The following persons were present at said hearing on both days, Denise Brown, Nicholas Kefalos attorney for Ms. Brown, David Brown, pro se Objector Keith Harris, Objectors Yvette Major and Dwayne Burgess and their attorney Dan Johnson-Weinberger. Also present for the hearing on December 22nd were Mr. Maloney an employee of South Commons Property Development, Ms. Gayle Hill, and Mr. George Jones. All three witnesses for the Objectors.

11. At the close of said hearing on December 23, 2010, wherein the parties had the opportunity to put forth evidence pertaining to the objection and defenses thereto. Each party was granted leave to file a brief in support of their argument by 5 p.m. December 27th, 2010. Each parties brief in support of their argument at hearing was duly and timely filed. After reading said briefs, hearing all argument and evidence put forth by the parties, there having been no other matter at issue, and the Hearing Officer having concluded the hearing and informed parties she will take the matter under advisement and issue a recommended decision.

STATEMENT OF FACTS

12. Objectors Major and Burgess by their attorney called Denise Brown as their witness. Objector Keith Harris also questioned Ms. Brown. Ms. Brown was also questioned by her attorney and cross examined by the objectors. The following is a summary of Ms. Brown's testimony in its entirety.

13. Ms. Brown testified that she was the owner 2941 S. Michigan Ave. unit 106, and lived there prior to moving to 6219 S. May Chicago, IL on or about January 1, 2010. Ms. Brown stated she moved into the S. May Street address for the purpose of gaining residency in the 16th ward. She stated her adult son resides in her condo on S. Michigan Ave. and that during the period in question she visited the unit about half of a dozen times.

14. Brown further testified that she left the utilities at the S. Michigan Ave. unit in her name. She testified that while living on S. May St. she continued to have her mail delivered to the S. Michigan Ave. address, left her Illinois drivers' license with the S. Michigan address, and left her voter registration address with the 2941 S. Michigan Ave. (2nd ward) She further stated that it wasn't until she moved to her Loomis address in the end of June or beginning of July 2010 that she made the appropriate changes. Ms. Brown also testified that she in fact voted in the 2nd ward on February 2, 2010. When asked why she didn't change her address to the S. May St. address, Ms. Brown explained that utilities were included in the rent at the S. May apartment so there was not need to put them in her name and because the S. May address was only "temporary". Later in the hearing Brown

clarified that she wanted to live in a house not an apartment in the 16th ward and knew she'd be leaving the S. May St. address because it wasn't a house. Brown stated 5932 S. Loomis was a single family house.

15. On cross exam the Petitioners highlighted the fact that Ms. Brown, in her six month living at the address, did not meet one neighbor yet moved into the home for purposes of residency to qualify her for the aldermanic race. She testified that her son and his friend moved her into the S. May address sometime in the beginning of January 2010. That she didn't bring furniture from the condo because there was bedbug problem at the condo. She brought a microwave, airbed and clothes but no TV. Petitioners also questioned Ms. Brown in regards to her route to work every day. Ms. Brown stated she travelled the same route every day to work. That she would travel north on S. May street and take 59th street over to work and that she returned the same way; she would take 59th street over and travel south down S, May St. Ms. Brown stated that her street, the 6200 block of S. May was a two way street. Ms. Brown stated she did not know the neighbors because she worked nearly every day and had not yet began campaigning.

16. During the course of the hearing, the Petitioners called, Ms. Gayle Hill as a witness. Ms. Hill testified she lived on the 6200 block of S. May for 23 years. Ms. Hill testified that the 6200 block, where 6219 S. May is located, is a one way street going south. Petitioners presented evidence in the form of Google maps which show the 6200 block of S. May to be a one way street going south, see Objector's Group Exhibits 2 and 11. On redirect Ms. Brown changed her testimony, and stated that she in fact goes around to S.

Aberdeen St. to 59th street on her way to work, and comes back going south on S. May St. Ms. Hill testified she is a member of the Block Association and the block club president for the 6200 block of S. May. Ms. Hill stated there are 13 houses on the block and about 50 residents all of whom she claimed to know. She stated she would welcome new residents and that she never came to learn or believe the 2nd floor of 6219 S. May, (which was the unit Ms. Brown claimed to live in) was occupied by anyone during the period in question. She further testified that she frequented the first floor because she knew the tenant there, and that she unsuccessfully attempted to go up to the second floor by knocking on the first floor entry to the 2nd floor stairway. Ms. Hill stated that it appeared as if no one lived in the unit, that she never saw Ms. Brown, and that she believed it would be impossible for someone to have lived in that unit without her knowing.

17. On cross examination Ms. Hill stated she has never been in the apartment on the 2nd floor of 6219 S. May, that she supports the current alderman, and that she is far sighted.

18. The Objectors next witness, Mr. George Jones also testified giving similar statements to that of Ms. Hill. However, this hearing officer did not find Mr. Jones' testimony nearly as credible as Ms. Hill's testimony. Jones stated he would drive down S. May St. ten times a day and believed no one lived on the 2nd floor of 6219 S. May St. On cross exam he too stated he supported the current alderman, has never been in the 2nd floor apartment of 6219 S. May during the period in question and has no personal knowledge whether anyone was living there or not.

19. The Objectors first witness Mr. Maloney was credible yet his testimony was equally ineffective as that of Mr. Jones. Mr. Maloney was called to testify as an employee or building manager of 2941 S. Michigan Ave. He testified to the Resident Information Report, Objector's Group Exhibit 1. He stated the report was a business record kept in the ordinary course of business, kept in a safe computer system and easily retrievable. He has reviewed such reports before and reviewed this one before coming to the hearing. He explained the report said Ms. Brown is the owner of unit 106, and the only listed resident. He also explained that owners were issued FOB cards (key cards). On direct exam when asked to further clarify the report Mr. Maloney stated he was legally blind and did not bring his glasses. On cross exam Mr. Maloney said family members could use the FOB cards, and that he had no personal knowledge of Ms. Brown or of who was living in unit 106.

20. On her behalf Ms. Brown presented evidence in the form of a lease from the landlord of 6219 S. May St., Michael Stern see, Candidate Group Exhibit 1. Said lease is dated 1/1/10. Ms. Brown testified she signed the lease, as did her landlord Michael Stern sometime in the end December 2009. Ms. Brown also presented a document titled Proof of Residency Affidavit from Michael Stern, Candidate Group Exhibit 2. Said affidavit contains the distinct signature of a Michael Stern which matches the signature on lease. The affidavit states among other assertions that Denise Brown had a lease at 6219. S. May, beginning January 1, 2010. Ms. Brown testified she paid rent in cash and had no

receipts. She stated that she paid rent in addition to her mortgage but it was difficult and is currently in foreclosure proceedings on the S. Michigan Ave. condo.

21. The Candidate called one witness, her son David Brown. Mr. Brown testified that he moved his mother out of the condo on 2941 S. Michigan Ave. to the 6219 S. May in early January of 2010. That there was a bed bug problem in the S. Michigan Ave. unit and that she did not take the furniture with her; that it was being treated. Mr. Brown testified that he lived at the S. Michigan condo and he did not visit his mother at the S. May address accept to move her in and move her out. Brown further testified that he believed his mother to have lived at the S. May street address during the period in question.

22. In closing the Objectors asked to move the following documents into evidence:

    Objectors Group Exhibit 1 Residential Information Report

    Objectors Group Exhibit 2 Google Map

    Objectors Group Exhibit 3 Com Ed Account Activity Statement

    Objectors Group Exhibit 4 People's Gas Documents (both Objectors Group Exhibits 3 and 4 showed that Ms. Brown currently receives service at her Loomis address)

    Objectors Group Exhibit 5 Chicago Board of Election Commissioners Documents (shows Ms. Brown changed voting address to 5932 S. Loomis 06/09/10)

    Objectors Group Exhibit 6 City of Chicago Application for Ballot Certificate of Registered Voter Primary Election Tuesday, February 2, 2010 (shows she voted and was registered to vote at 2941 S. Michigan Ave. at February 2, 2010 election)

Objectors Group Exhibit 7 Deed for 2941 S. Michigan Ave. and tax bill

Objectors Group Exhibit 8 Lis Pendens and Notice of Foreclosure for 2941 S. Michigan Ave.

Objectors Group Exhibit 9 TCC Accounting and Financial SVC (shows Denise Brown send tax return on 2/24/10, Brown testified she listed S. Michigan address on return)

Objectors Group Exhibit 10 Residential Lease between Brown and Brenda Shelton dated July 1, 2010 for 5932 S. Loomis.

Objectors Group Exhibit 11Google Map

Objectors Group Exhibit 12 Voter Registration "Grace Period".

23. The Candidate offered two exhibits into evidence: Candidate Group Exhibit 1 Chicago Apartment Lease and Candidate Group Exhibit 2 Proof of Residency Affidavit, both more fully described in paragraph 15 of this decision.

HEARING OFFICER'S ANALYSIS

24. The Objectors Burgess and Major cite *Walsh v. County Officers Electoral Bd. of Cook County, 642 N.E.2d 843, 267 Ill.App.3d 972 (Ill. App. 1 Dist., 1994)* in support of their objections. The Objectors rely heavily on the Candidate's testimony that her S. May St. address was "temporary" and not "permanent". "It is established that two elements are necessary to create a residence: physical presence and intent to remain there as a permanent home." *Delk v. Board of Election Commissioners (1983), 112 Ill.App.3d 735, 738, 68 Ill.Dec. 379, 445 N.E.2d 1232.* However, the Illinois Appellate Court has made clear that. "concerning the factual determination of intent, this court has held that the

surrounding circumstances shall be accorded more weight than simple declarations of intent. *Miller v. Police County Board (1976), 38 Ill.App.3d 894, 349 N.E.2d 544.*

25. In support of her case the Candidate relies cites *Dillavou v. County Officers Electoral Bd. of Sangamon County, 632 N.E.2d 1127, 260 Ill.App.3d 127 (Ill. App. 4 Dist., 1994).* Ms. Brown's case is similar to that of the Candidate in Dillavou in that she characterized her move into the S. May Street address as "temporary". The court in Dillavou rejected the petitioners' contention that because the Candidates apartment was a "temporary" residence, he could not, as a matter of law, qualify for residence in the district. The Court held "A person can acquire a domicile if he is personally present in a place and elects that as his home even if he never intends to remain in that physical structure on a permanent basis." *Id.* Ms. Brown admitted she considered S. May temporary only because she didn't intend on staying in that particular apartment and wanted a single family home in the district, not because she never intended on abandoning her former address. Her intention to remain in the district is evidence by her eventual move into the Loomis St. single family home.

26. The Objectors all rely on Ms. Brown's "untruthfulness" during her testimony when she describes her route to work while living at the S. May St. address. Ms. Brown testified with apparent clarity that her street on S. May was a two way street, and she travelled it north *and* south every day to work for six months, when in fact the 6200 block of S. May is a one way street going south. Although she attempted to correct her testimony on

redirect by stating she in fact went around the block to S. Aberdeen on her way to work. this glaring inconsistency cannot be ignored and lends itself directly to her credibility.

27. Objector Keith Harris relies on the board's decision in *Sheppard v. Neely 07-EB-ALD-124.* In *Neely*, the Board found the Candidate did not meet the one year residency in the 20th ward because he certified that he was a qualified voter in the 8th ward in March of 2006 which was within the time period he was required to be living within the ward. The Board found *Neely* did not meet the residency requirement because he certified he was living in the 8th ward during the period which he claimed to be residing in the 20th ward which was within the time period he was required by statute to be living in the 20th ward.

28. Objector's Group Exhibit 6 is Brown's Application for Ballot Certificate of Registered Voter for the Primary Election Tuesday February 2, 2010. By signing the application, Brown like the candidate in *Neely* certified that she's qualified to vote in the 2nd ward. Unlike *Neely*, the February 2nd 2010 was not within the one year residence requirement Brown had to meet. Browns' testimony was clear that she moved out of the 2nd ward and into the 16th ward on or about January 1, 2010 and that she intended on staying in the 16th ward.

29. Most of the Evidence the Objectors chose to introduce had little in any bearing on whether the candidate actually resided within the ward during the first half of 2010. Instead, the documents from the utility companies, warranty deed, the tax bill information, the lis pendens notice of foreclosure all lend themselves to the undisputed

fact that Ms. Brown was owner of the S. Michigan Ave. condo, not to whether she resided within the 16th ward at the S. May address. The objector's witnesses never testified to where Ms. Brown was living only to the fact that they never saw her and believed they would know if someone was living in the S. May apartment. The Objectors brought in no one from the S. Michigan Ave. building stating they recognized Ms. Brown and she in fact lived there. In addition the witnesses for the objector spoke of the tenant of the first floor of 6219 S.May, but we never heard from that tenant. The objectors offered little evidence to refute Ms. Browns' sons' testimony, her lease and the affidavit titled "Proof of Residency" Candidates Group Exhibits 1 and 2.

30. The strongest pieces of evidence presented by the Objectors were Ms. Browns' own testimony that she traveled both ways on S. May everyday; that it was two way street when it is a one way street and the Application for Ballot for the February 2, 2010 election, see Objector Group Exhibit 6. Although the date of certification on this document does not fall within the statutory period required for Brown to prove residency, by signing the document she certified she was qualified to vote in the 2nd ward which directly contradicts her testimony that she was living in the 16th ward on February 2, 2010. However, I find the certification inadvertent and unintentional. In *Neely* the candidate stated he purposely voted in the 8th ward to conceal his true residency. Ms. Brown stated she didn't change the address because S. May was only temporary. The *Neely* court found the candidates voter registration in another ward to be sufficient evidence to support the conclusion that the candidate was ineligible to run for city alderman for failure to live in the ward he sought to represent for one year prior to the

election. For Brown, the February 2nd Application for Ballot is not within the one year statutory requirement for residency and does not hold near the same weight as in the *Neely* case.

31. Furthermore, pursuant to Section 17-10(b) of the Election Code, Ms. Brown would have been allowed to vote in the Feb. 2nd 2010 in her old precinct (1) if she had moved within 30 days of the election and (2) she had completed the affidavit described in that section. The fact that she did not alert the judges of election of the fact that she had moved and that the judges did not, therefore, require her to complete the affidavit described in Section 17-10 does not negate her intention to live at the May Street address as her residence. Ms. Brown and her son both testified she moved in on or about January 1, 2010.

32. In light of the recommended findings specified above, the Hearing Officer recommends that the OBJECTIONS of YVETTE MAJOR, DWAYNE BURGESS, and KEITH HARRIS be OVERRULED and that DENISE BROWN did meet the residency requirement for the office of Alderman and that the name of DENISE BROWN appear on the ballot for Alderman of the 16th ward for the February 22, 2010 election.

DATED: January 1, 2011

Mary C. Meehan
Hearing Officer