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

Objections of: Auhzha Wright	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-102
Papers of: Che "Rhymefest" Smith	)	
	)	
Candidate for the office of	)	
Alderman of the 20th 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 Auhzha Wright ("Objector") to the nomination papers ("Nomination Papers") of Che "Rhymefest" Smith, candidate for the office of Alderman of the 20th 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 Casandra B. Watson 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, Auhzha Wright, by attorney, Andrew Finko; the Candidate, Che "Rhymefest" Smith, by attorney John P. Sullivan.

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 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 overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Auhzha Wright to the Nomination Papers of Che "Rhymefest" Smith, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Che "Rhymefest" Smith, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, SHALL 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO
NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 22, 2011
MUNICIPAL GENERAL ELECTION IN THE CITY OF CHICAGO

Objections of:	)	
AUHZHA WRIGHT,	)	
	)	
To the Nomination Papers of:	)	
CHE "RHYMEFEST" SMITH	)	NO: **11-EB-ALD-102**
	)	
Candidate for the Office of Alderman	)	**Casandra B. Watson**
in the 20th Ward, City of Chicago	)	**Hearing Examiner**
Municipal General Election, February 22, 2011	)	

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BOARD OF ELECTIONS

HEARING EXAMINER'S FINDINGS AND RECOMMENDATIONS

This matter having come before the Chicago Board of Election Commissioners ("CBEC") on the verified objections of Auhzha Wright ("objector") to the Nomination Papers of Che "Rhymefest" Smith ("candidate"), Casandra B. Watson, Esq., Hearing Examiner.

1. The objector requested that the name of Che "Rhymefest" Smith, not be printed on the ballot for the Municipal General Election, to be held on February 22, 2011, because the candidate had failed to reside within the 20th Ward for one year prior to the date of the election, and for failure to file a Statement of Financial Interests with the Chicago Board of Ethics.

2. This matter initially coming on to be heard on December 6, 2010, the candidate appearing through Attorney John Sullivan, and the objector appearing through Attorney Navdeep Jhat, on behalf of Attorney Andrew Finko; the candidate stating that he intended to file preliminary motions to strike and dismiss the objector's petition; the objector indicating that he would require the issuance of subpoenas in this matter, this hearing examiner entering an order requiring that the objector submit a list of requested subpoenas, and the reason therefore by 5:00 p.m., today; this matter was then continued to December 10, 2010.

3. Thereafter, the following motions were filed:

Candidate's Motion to Strike or Dismiss Paragraphs 9 and 14 Through 19 of the Of Verified Objector's Petition
Objector's Response To Motion To Strike
Candidate's Reply To Response To Motion To Strike
Candidate's Request for Subpoenas
Objector's Request for Subpoenas-Witnesses

4. On December 10, 2010, the candidate appearing through Attorney John Sullivan, and the objector appearing through Attorney Andrew Finko; a case management conference regarding requests for subpoenas and scheduling on the preliminary motions was held. Thereafter this matter was continued to December 14, 2010.

5. On December 13, 2010, the candidate filed:
Candidate's Objections to Request For Subpoenae Submitted By Objector Auzha Wright

6. On December 14, 2010, the candidate appeared through Attorney John Sullivan, and the objector appeared through Attorney Andrew Finko; the objector having failed to file his request for subpoenas and the reasons therefore in a timely manner; the candidate having filed his objections to objector's request for subpoenas; the hearing examiner verifying that Attorney Finko was not present at the initial hearing in which this order was entered; Attorney Finko stating that he was unable to read the notes of Attorney Jhat, who was present on his behalf on December 6, 2010; Attorney Sullivan confirming that Attorney Finko was not present. Thereafter a hearing was held on each individual request for subpoenas by the objector, and the reasons therefore; restrictions and limitations were ordered with respect to subpoenaed materials. Attorney Sullivan agreed to produce the candidate without necessity of subpoena; after a brief recess, the parties eventually resolved all remaining issues with respect to the request for subpoenas by objector, and both parties were advised by this hearing examiner that Mr. James Scanlon, General Counsel for the Chicago Board of Elections, would be the addressee for all subpoenaed material regarding the candidate's children from the Chicago Board of Education. One subpoena was issued to the candidate, and nine subpoenas were issued to the objector. Thereafter the parties proceeded to hearing on the Candidate's Motion To Strike and Dismiss.

CANDIDATE'S POSITIONS ON MOTION TO STRIKE AND DISMISS
In summary the candidate contends: 1) residence is not determined by voter registration; 2) that the Board lacks jurisdiction to inquire into the substance of a Statement Of Economic Interest, and 3) the failure to comply with the City of Chicago's Ethics Ordinance does not provide a basis upon which to deny ballot access.

OBJECTOR'S POSITIONS ON MOTION TO STRIKE AND DISMISS
In summary the objector contends: 1) that the Illinois Election Code does define the necessity for a permanent abode, and the public's ability to look at the

financial relations between the candidate and the unit of government to which the candidate seeks election is hampered and "confused" due to the failure of the candidate's Statement of Economic Interest Receipt to include the city, state or zip code as part of the candidate's address; and 3) the *Cinkus* decision holds that a Statement of Candidacy is defective if the Municipality Act is not complied with.

FINDINGS AND RECOMMENDED DECISION ON MOTION TO STRIKE

I find that although the Objector, as the nonmoving party, "is entitled to have his pleading construed in the light most favorable to him, and all well plead facts, in this case in the Objector's Petition, as well as all reasonable inferences drawn therefrom are taken as true", *Weiss vs. Waterhouse Securities, 335 Ill. App. 3rd, 875 at 882, 1st District, 2002,* the Objector's Petition contains several paragraphs that are insufficient as a matter of law.

As to paragraph 9, the Illinois Municipal Code 65 ILCS 5/3.1-10-5 sets forth the qualifications for elective municipal office, and that section indicates inter alia, that the person is not eligible for office of alderman of a ward unless that person has resided in the ward at least one year next preceding the election or appointment. The provision does not require that a candidate be a voter. It makes no reference to voter registration, original, subsequent or otherwise. Accordingly, paragraph 9 of the Objector's Petition is stricken for being insufficient in law.

As to paragraph 14, the Candidate's Motion to Strike is also granted, in that the Board lacks jurisdiction to inquire into the truth and accuracy of the Statement of Economic Interest filed by the candidate. I have reviewed the candidate's Statement of Economic Interest, the Board's scope of inquiry extends to whether or not the Statement of Economic Interest has been filed, and the Statement of Economic Interest was filed October 19, 2010, and whether the statement was filed in relation to the candidacy; the information contained on the candidate's Statement of Economic Interest, in my opinion indicates that said statement has been filed in relation to the candidacy. I also find that the Candidate's Statement of Economic Interest describes the office sought; paragraph 14 is stricken.

As to paragraph 15 through 19, the Electoral Board does not have the authority to invalidate nomination papers for an alleged failure to comply with the filing of a Statement of Financial Interests with the Chicago Ethics Board. Therefore, paragraphs 15 through 19 are stricken as a matter of law.

7. Thereafter this matter was scheduled for December 23, 2010 for hearing on the remaining residency objections.

8. On December 23, 2010, the candidate appearing through Attorney John Sullivan, and the objector appearing through Attorney Andrew Finko, the parties indicating that they were prepared to proceed to hearing on the remaining residency objection, this hearing examiner requesting that the parties discuss the admission of their exhibits, and come to an agreement, as much as possible, with respect to the admissibility of various exhibits; the parties complied as best as they could, and thereafter, in summary, the following evidence was adduced:

OBJECTOR'S CASE IN CHIEF

The objector's case in chief consisted of one witness, the candidate, Che "Rhymefest" Smith, called as an adverse witness, and the admission of seven (7) exhibits.

The witness-candidate testified, in pertinent part, that he had an Indiana Operator Driver's License, issued August 6, 2008, expiring on July 6, 2013, containing an address of 6026 North College Avenue, Indianapolis, Indiana. (admitted as Objector's Group Exhibit #5). The witness- candidate also testified that he had a State of Illinois Identification card (admitted as Objector's Group Exhibit #5), issued as a duplicate on August 31, 2010, the original having been issued in 2009, expiring on July 6, 2015. The witness testified that he did not have an Illinois Driver's License.

The witness-candidate testified that 6026 North College Avenue was the address listed on the Voter Registration record (admitted as Objector's Group Exhibit #6), and that he lived at 6026 North College Avenue for approximately three (3) years; that he registered to vote on or about August 20, 2008 in the State of Indiana, and that he had voted in the 2008 presidential election.

The witness-candidate testified that he registered to vote, for the 1st time in the State of Illinois, with the Chicago Board of Elections on September 2, 2010, and prior thereto he was registered to vote in the State of Indiana, (Objector's Exhibit #7 admitted)

The witness-candidate testified that he lived at 1606 East Hyde Park Boulevard, for approximately two (2) years with his current wife, in the 5th Ward, prior to moving to 5942 South King Drive. He stated that "they" moved in September of 2009.

The witness-candidate testified that he hired Jeffery Leving to handle a child custody case for him; that 1606 East Hyde Park Boulevard was an address listed in the petition filed by Attorney Leving on his behalf (Objector's Exhibit #1 admitted), and signed by the candidate, and that documents attached to the petition state that the candidate lived at 1606 East Hyde Park Boulevard until September, 2010.

The witness-candidate testified that his child goes to school in Hyde Park, and was registered at the 1606 East Hyde Park address before the address was changed when "we" moved to the new apartment in September, 2009. The witness admitted that the school is not in the 20th Ward. The witness-candidate stated that he had not lived at any other addresses, during the relevant period.

Objector's Exhibit #2, which was an Agreed Order Modifying Decree, State of Indiana, County of Hendricks was presented to the witness-candidate. Said order contained the address of 12514 Bearsdale Drive, Indianapolis, Indiana, and was signed by the witness-candidate. The candidate explained that the address was not a residence address, but an address given to the court for purposes of receiving mail from the court during the pending proceeding, while he was on tour. The witness-candidate testified that he had stopped receiving mail at the Bearsdale Drive address approximately 2 ½ years ago.

The witness admitted to receiving traffic tickets issued by the Chicago Police Department on June 12, 2010, and appearing in Court thereafter. The witness testified that notices of violations were sent to 5942 S. King Drive. (Objector's Group Exhibit #4 admitted)

The witness identified Objector's Group Exhibit #3, which was his Statement of Organization Form D-1, filed with the Illinois State Board of Elections, consisting of two (2) pages, signed by the witness-candidate. This exhibit contained a phone number with an area code of 317, which the witness explained was that of his cell phone, and used before he acquired a campaign office and phone number.

CROSS-EXAMINATION

During Mr. Sullican's cross examintion of the witness, the candidate clarified the discrepancy in the addresses on Objector's Exhibit #2, as a typing error. The witness also testified that Objector's Exhibit #8, which was the printing bill from Consolidated, was sent to 5942 South King Drive, addressed to his present wife, Donnie Smith and Friends of Rhymefest.

The witness testified about Objector's Group Exhibit #3, the D1 Form, filed with the State Board of Elections which contained a 317 area code. The witness added that the address listed on the D1 form was 5942 South King Drive, where he currently resides.

The witness-candidate testified that he moved into the apartment at 5942 South Martin Luther King Drive in September of 2009, and had lived there continuously since that time.

The witness-candidate testified that he moved to 1606 East Hyde Park Blvd. in Chicago,

in April, 2009 with Donnie Boyd, his current wife. In June, 2009, he received primary custody of his minor son, and the son came to Chicago, to live with the candidate and his wife, Donnie Smith. The witness testified that the apartment had only one (1) bedroom, and in September, 2009, the family moved to 5942 South King Drive in Chicago, where there were three (3) bedrooms and two (2) bathrooms.

(ADDITIONAL CROSS-EXAMINATION AND REDIRECT EXAMINATION OCCURRED DURING THESE PROCEEDINGS, THAT ARE NOT SUMMARIZED HERE)

(CANDIDATE'S EXHIBIT #1 WAS ADMITTED AND THEN EXCLUDED FOR LACK OF AUTHENTICATION-THEREAFTER-CANDIDATE'S REQUEST TO ADMIT WAS WITHDRAWN)

The objector rested his case, and motioned to reopen for the limited purpose of admission of Objector's Exhibit #3, without objection. Objector rested his case.

After oral motion and argument, the candidate's Motion for Directed Finding was denied.

CANDIDATE'S CASE IN CHIEF

The candidate's case consisted of two (2) witnesses, the candidate, Che "Rhymefest" Smith, and his current wife, Donnie Smith, and the admission of two (2) exhibits.

The candidate testified, in summary, that he lived at 5942 South King Drive from September, 2009 to the present day. The candidate was shown Candidate's Exhibit #2, and identified same as the rental agreement for 5942 South King Drive, No. 3N, which he and his wife signed. The agreement commenced on September 15, 2009 and terminated on September 9, 2010. (Candidate's Exhibit #2 admitted)

The candidate testified that he lived at 5942 South King Drive with his wife, Donnie Smith and his son. He stated that he and his wife share responsibility for bills; that his clothes, furniture and other valuable momentoes are kept there; and further that he was currently re-negotiating the lease.

The candidate stated that since moving into 5942 South King Drive, he had joined Bally's Health Club. Candidate's Exhibit #4 was shown to the candidate, which contained a date of December 8, 2009 and the address of 5942 South King Drive, and was addressed to Che Smith. (Candidate's Exhibit #4 admitted over the objection of the objector)

The candidate testified to the regular correspondence with the landlord in the form of emails, phone calls and conversations.

BY WAY OF STIPULATION THE PARTIES AGREED: that if Vital Houenou were called to testify that he would testify that he is Che Smith's landlord, and that Che Smith signed a lease to live in unit 3N, at 5942 South King Drive, Chicago, Illinois on September 12, 2009. Vital Houenou would further testify that from September 12, 2009 through today's date, that he has interacted with Che Smith in a normal landlord/tenant relationship at least once a month.

The candidate testified that the Comcast bill, the gas bill, the ComEd bill come regularly once a month, and that none of the bills are in his name, and all of the bills are in his wife's name.

CROSS EXAMINATION OF CHE SMITH

On cross-examination, the witness testified that the lease terminated on September 30, 2010. He stated that he and his wife were in the process of negotiating the "re-lease" of the apartment, and were currently on a month to month rental agreement, which was not in writing.

(ADDITIONAL TESTIMONY WAS ADDUCED THAT IS NOT SUMMARIZED HERE)

(A RECESS WAS CALLED AND ATTY. FINKO WAS PROVIDED AN OPPORTUNITY TO INTERVIEW MRS. DONNIE SMITH, WIFE OF THE CANDIDATE-DUE TO THE CANDIDATE'S FAILURE TO DISCLOSE HER NAME AS A WITNESS)

DIRECT EXAMINATION OF DONNIE SMITH

Donnie Smith testified in summary that she was a high school English teacher, at Whitney Young Magnet High School in Chicago, and that Che Smith is her husband. She testified that in April, 2009, Che Smith, moved in with her at 1606 East Hyde Park Boulevard, and the two of them remained there until September, 2009.

Donnie Smith testified that in June of 2009, Che's son came to live with them. She stated that after the candidate's son came to live with them they decided to move, and did move to 5942 South King Drive in September, 2009, where they currently reside. She stated that the candidate sleeps there every night, and that to her knowledge he does not have any other residence or home. She stated further that neither she nor her husband had lived anywhere other than 5942 South King Drive since September 12, 2009 through the date of the hearing.

CROSS EXAMINATION OF DONNIE SMITH

Donnie Smith testified in summary on cross-examination that from the end of 2008 until September, 2009, her driver's license would have shown an address of 1606 East Hyde Park Boulevard. She stated that she changed the address on her license shortly after moving in order to get utilities. She stated that she owned a Saturn automobile, that the vehicle did not have a city sticker during the 1st half of 2010. She stated that the vehicle was registered to 5942 South King Drive. She stated that the insurance for the Saturn started in December, 09 at 5942 South King Drive.

RE-DIRECT EXAMINATION OF DONNIE SMITH

Donnie Smith testified in summary on re-direct examination that the lease at 5942 South King Drive has a termination date of September 30, 2010, that she and her husband are "basically" on a month-to-month lease, and that she and her husband had been trying to talk about the terms of how much "we were going to pay because our landlord wanted to increase the payment...". She stated that she had spoken to the landlord four or five times on the phone, and emails back and forth since September. She stated that she and Che Smith were married on February 24, 2010.

(ADDITIONAL TESTIMONY WAS ADDUCED THAT IS NOT SUMMARIED HERE)

(THE OBJECTOR AND THE CANDIDATE RESTED AND ARGUMENT WAS HEARD FROM BOTH SIDES)

FINDINGS ON THE RESIDENCY OBJECTION

This hearing examiner finds that based upon all of the testimonial evidence, all of the documentary evidence, as well as the stipulation by and between the parties, that the Objector has failed to sustain his burden of proof, and that the objector has not established by a preponderance of the evidence that the candidate failed to reside at 5942 South Martin Luther King Drive, Chicago, Illinois, in the 20th Ward for less than one year prior to the election to be held on February 22, 2011. The objection based upon lack of residency is therefore overruled.

There being no further objections of record, my recommended decision is as follows:

RECOMMENDED DECISION

It is the recommendation of this hearing examiner that the name of Che "Rhymefest" Smith BE PRINTED on the ballot for the February 22, 2011 Municipal General Election for the City of Chicago.

Dated: Chicago, Illinois, this 7th day of January, 2011

Respectfully Submitted By:

Casandra B. Watson, Hearing Examiner