NBCOFF-ALD

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

Objections of: August Sallas	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-115
Papers of: Guillermo Saldana	)	
	)	
Candidate for the office of	)	
Alderman of the 22nd 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 August Sallas ("Objector") to the nomination papers ("Nomination Papers") of Guillermo Saldana, candidate for the office of Alderman of the 22nd 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 Travis Richardson 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, August Sallas, by attorney Richard K. Means. The Candidate, Guillermo Saldana, did not appear.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. The Hearing Officer has recommended that the Candidate be defaulted, that the Objections be sustained and that the Candidate's Nomination Papers be declared invalid.

8. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report and recommendations is attached hereto and is incorporated herein as a part of the Electoral Board decision in this matter.

9. For the reasons stated above, the Electoral Board defaults the Candidate, sustains the Objections and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of August Sallas to the Nomination Papers of Guillermo Saldana, candidate for election to the office of Alderman of the 22nd Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Guillermo Saldana, candidate for election to the office of Alderman of the 22nd 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 18, 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

Objections of:
AUGUST SALLAS,

To the Nomination Papers of:
GUILLERMO SALDANA,

Candidate for the Office of Alderman
of the 22nd Ward, City of Chicago
General Primary Election, February 22, 2011

No. 11-EB-ALD-115

Travis Richardson
Hearing Examiner

BOARD OF ELECTIONS
2011 JAN 14 A 11:45

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter came before the Hearing Examiner on December 6, 2010. August Sallas ("Objector") appeared through his attorney, Richard K. Means. Guillermo Saldana ("Candidate"), failed to appear. According to a review of the Board's file for this matter, the Candidate was properly served and received notice of the December 6, 2010 hearing.

I. OBJECTION PRESENTED

The Objector asserts that the Candidate's nomination papers are invalid because they do not contain, nor has the Candidate timely filed with the Board, the original or a copy of a receipt for the filing of a Statement of Economic Interests showing the date on which such Statement was filed with the County Clerk of Cook County as required by the Illinois Election Code.

II. FINDINGS OF FACT

On November 30, 2010, Objector filed with the Board, through his attorney, Richard K. Means, a petition objecting to the nomination papers of the Candidate. The petition was

assigned case number 11-EB-ALD-115 and contained a single objection, as outlined in Section I, above.

The Objector appeared through counsel, Richard K. Means. The Candidate failed to appear and answer present after the case was called three times. Accordingly, the Hearing Examiner reviewed the Objector's petition in order to determine whether it sufficiently stated some ground which, if accepted as true, would invalidate Candidate's nomination papers as a matter of law. The Hearing Examiner also reviewed the Board's file on this matter to determine if it contained the Candidate's original or a copy of a receipt for the filing of a Statement of Economic Interests. Further, the Hearing Examiner consulted with the Board's General Counsel regarding the Objector's petition and the Candidate's failure to appear.

Pursuant to the consultation with the Board's General Counsel and his own review, the Hearing Examiner made a finding on the record that the Objector's petition sufficiently states grounds which, if accepted as true, would invalidate Candidate's nomination papers as a matter of law. The Hearing Examiner also finds that the Candidate's nomination papers indeed were missing the original or a copy of a receipt for the filing of a Statement of Economic Interests showing the date on which such Statement was filed with the County Clerk of Cook County, and that, therefore, the receipt was not filed.

III. LEGAL ANALYSIS

The Candidate in the instant matter was properly served and notified about the December 6, 2010 hearing, but failed to appear. Where a candidate is served with a copy of the Board's call to hearing at the address listed on his nomination papers and does not appear at the initial

hearing, and the objector's petition contains on its face sufficient allegations, if accepted as true, to invalidate the candidate's nomination papers, the candidate is in default and his nomination papers are invalid. *Austin, et al., v. Tatum*, 08-EB-RGA-13, CBEC, November 30, 2007; *Copeland v. McNeal*, 08-EB-SS-03, CBEC, November 30, 2007.

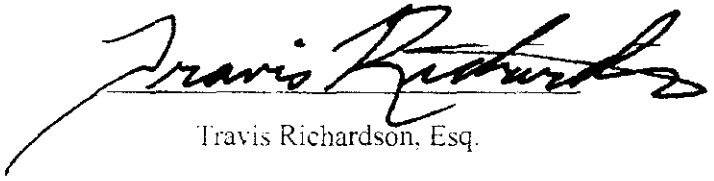
The allegation here is that the Candidate's nomination papers did not include the original or a copy of a receipt for the filing of a Statement of Economic Interests. The Hearing Examiner made a finding that the required receipt was not filed. The failure to file with the election authority with which nomination papers are to be filed a receipt evidencing that the candidate filed a Statement of Economic Interests with the appropriate official invalidates the nomination papers. *Bolger v. Electoral Board of City of McHenry*, 210 Ill.App.3d 958, 569 N.E.2d 628 (Second Dist. 1991); see also *Henning v. Lawrence*, 07-EB-ALD-052, CBEC, January 16, 2007, affirmed, *Lawrence v. Board of Election Commissioners, et al.*, Cir. Ct. Cook County, 2007 COEL 0008, affirmed Illinois Appellate Court, 1-07-0286 (unpublished order). In *Bolger*, the court rejected the plaintiff's argument that the Election Code did not make it mandatory to file the receipt for his statement of economic interests. The court stated that "[i]t is absolutely clear from the language used by the legislature that the plaintiff was required to file the receipt he received from the county with the local election official sometime during the period in which his nomination papers could be filed. *The failure to do so left his nomination papers incomplete....[P]laintiff's failure to comply with this requirement renders his nomination papers invalid.*" *Bolger*, at 960 (emphasis added).

Accordingly, since the Candidate did not appear at the December 6, 2010 hearing, despite being properly served, and because the Objector's petition stated sufficient ground on its face

which, accepted as true, would invalidate Candidate's nomination papers, it is the opinion of the Hearing Officer that the Candidate is in default as a matter of law.

IV. RECOMMENDATION

In light of the above findings of fact and legal analysis, it is the recommendation of the Hearing Examiner that the Chicago Board of Election Commissioners adopt the findings, decisions and recommendations herein, and that the Candidate, Guillermo Saldana, be defaulted and that his name not be printed on the ballot for Alderman from the 22nd Ward, City of Chicago, in the General Primary Election to be held on February 22, 2011.



Travis Richardson, Esq.

Hearing Examiner

Travis Richardson, Esq.
407 S. Dearborn, Ste. 1260
Chicago, Illinois 60605
(312) 922-5206 o / (312) 296-9706 c
(312)922-5216 f
tr06@msn.com