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

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| Objections of: Jose Guerrero | ) | |
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| To the Nomination | ) | No.: 11-EB-ALD-134 |
| Papers of: Alan R. Mercado | ) | |
| | ) | Related Cases: 11-EB-ALD-221, |
| | ) | 11-EB-ALD-328 |
| Candidate for the office of | ) | |
| Alderman of the 12th 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 Jose Guerrero ("Objector") to the nomination papers ("Nomination Papers") of Alan R. Mercado, candidate for the office of Alderman of the 12th Ward in 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 Ernesto D. Borges, Jr. for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board 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, Jose Guerrero, by attorney, James Nally; and the Candidate, Alan R. Mercado, Torrick Ward.

7. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

9. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Electoral Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 88;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 151;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 98;

D. The remaining number of signatures deemed valid as a result of the records examination total 53.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago.

14. The Candidate filed a motion, purportedly pursuant to Rule 8 of the Board's Rules of Procedure, which the Objector moved to strike in that the Motion attempted to rehabilitate rulings not preserved by the Candidate or his watchers in the records examination.

15. The Hearing Officer found that the Candidate failed to timely preserve enough appeals for further evidentiary review that could bring the Candidate's total number of valid signatures above the required minimum.

16. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the

Candidate's Nomination Papers contained only 53 valid signatures, which is less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

17. 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.

18. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Alan R. Mercado are, therefore, invalid.

19. The Electoral Board further finds that additional objections were filed against the Candidate's Nomination Papers in Related Cases: 11-EB-ALD-221 and 11-EB-ALD-328 and Candidate's Nomination Papers were also found to be invalid in said cases.

IT IS THEREFORE ORDERED that the Objections of Jose Guerrero to the Nomination Papers of Alan R. Mercado, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Alan R. Mercado, candidate for election to the office of Alderman of the 12th 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 18, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

Marisel 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**

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| JOSE GUERRERO, Objector | | |
| v. | No. 11 EB-ALD-134 | |
| ALAN R. MERCADDO, Candidate | Related Cases: | 11 EB-ALD-221<br>11 EB-ALD-328 |

BOARD OF ELECTIONS
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**HEARING OFFICER'S REPORT AND RECOMMENDED DECISION**

This matter first came before the Hearing Officer on December 6, 2010, set on the call for 11:00 a.m., at which time it came on for hearing, with both objector and candidate appearing through counsel, each filing their appropriate appearances. Attorney James P. Nally appeared on behalf of the Objector. Attorney Torrick Ward appeared on behalf of the Candidate.

The Candidate filed the appropriate nomination papers to be placed on the ballot as a candidate for the office of alderman of the 12th Ward City of Chicago, Illinois to be held on February 22, 2011.

Objectors timely filed a Verified Objector's Petition on November 30, 2010 with the Board of Election Commissioners ("Board"), alleging that the nomination papers filed by the Candidate did not contain the requisite 88 signatures of duly qualified, registered and legal voters

of the 12th Ward of the City of Chicago, Illinois. In this petition, the Objector included a line-by-line recapitulation sheet of the objections to the signatures collected by the Candidate.

This case was consolidated with two other cases, *Emilia Munoz and Elizabeth Sauceda v. Alan R. Mercado*, No. 11 EB-ALD-328 and *Sergio Bocanegra v. Alan R. Mercado*, No. 11 EB-ALD-221 due o the similarity of the proximity of the facts and allegations.

A record examination consistent with Rule 6 was ordered at a hearing on Dec. 17, 2010. A hearing was scheduled for December 22, 2010 to review the results of the record examination. The Board found that there were 151 total signatures, of which 113 were objected to by the Objectors. 98 objections were sustained while 15 were overruled, leaving the Candidate with 53 total valid signatures. This was 35 fewer than the required 88.

During the hearing the Candidate filed a motion for a Rule 8 evidentiary hearing in order to provide evidence and argument in opposition to adverse rulings made by the Board regarding the validity of the signatures during the records examination. The petition summary report containing the Board's rulings on objections raised by the Objectors in their recapitulation sheet was attached as Exhibit A.

Subsequently, Objectors filed a Motion to Strike Candidate's Rule 8 Motion, arguing that the motion did not describe the sheet and line number of signatures evaluated during the Rule 6 examination that they wished to provide additional evidence and argument towards, in violation of Rule 8(d)(i). While such an issue as procedural compliance is often very important to the resolution of issues across the legal spectrum, it is not the dispositive one in this case and will not be examined beyond mentioning that the language of the rules appears to encourage

specificity rather than a general statement of intent to provide additional evidence in support of the signatures.

Further, Objectors argued that a Rule 8 evidentiary hearing is appropriate only as to those rulings by the Board which were objected to in a timely fashion. Rule 6(h) describes the timeframe for preserving an appeal for a future hearing by saying, "the watcher must immediately inform the record examiner of his or her appeal of the record examiner's finding at the time such finding is made."

The Candidate argued that their Rule 8 Motion complied with the rule because it stated that each of the 98 adverse rulings would receive additional evidence. He contended that the rule's purpose is to provide adequate notice of which signatures would be supported with additional evidence. With such intent, Candidate argued, the rule was complied with by indicating that supporting evidence and argument would be supplied for every sustained objection. Rather than listing individual in order to distinguish between signatures, simply indicating that every one would be dealt with was more efficient.

Rule 6 does provide an exception for an automatic preservation of objections for either party resulting when the Board's handwriting expert reverses a decision made by the record examiner. The Board's expert handwriting expert reviews any timely objections made by either party during the record examination.

The petition summary shows that the Candidate appealed 38 rulings of the records examiner. Objector acknowledged that Candidate supplied 43 affidavits supporting the validity of the signatures collected. However, of those 43, only 12 correspond to any of the 38 preserved objections. Thus during a Rule 8 evidentiary hearing the Candidate would only try to rehabilitate

12 signatures. Even curing defects in all 12 would not yield enough signatures to push the Candidate above the 88 signature threshold.

The Candidate points out that the petition summary is rife with errors and should not be relied upon to determine whether a timely objection was raised. He cites examples that show the watcher for the party with whom the record examiner sided objecting to the favorable finding. No written evidence other than the report itself was offered to confirm the theory that the report was improperly completed.

Witnesses were called on behalf of the Candidate to support the contention that they preserved their objections in a timely manner. However, they admitted to not knowing how many objections they made or to which individual signatures. They did not take notes.

The Objector pointed out that a review of the objections listed in the petition summary show that the watchers for the Candidate did not begin objecting frequently until later in the process.

During a hearing on December 29th 2010, the Candidate was provided with a copy of the results of a handwriting expert's evaluation of the signatures. A record of the expert's findings should have been received by all parties upon its completion, rather than during a hearing. Rule 6(h)(i) merely requires that a copy of the report shall be made available; it does not mandate the Board to serve the party promptly upon completion. The late receipt of the report is not a fatal flaw in the signature examination process warranting a decision in favor of the Candidate.

As a result of this new information, the Candidate was afforded time to file an additional motion, which he did. Filed December 30, 2010, Candidate requested additional relief at a Rule

8 evidentiary hearing or, in the alternative, to hold a second Rule 6 records examination. The Candidate argued that additional evidence should be admitted for every signature whose ruling by the Board was overturned by the handwriting expert. The rule provides that any reversal by the handwriting expert shall be deemed to be an automatic appeal and no action must be taken to preserve such an objection.

Alternatively, Candidate prayed for a new records examination because the petition summary appeared to contain errors of significant seriousness and numerosity rendering them unreliable. Candidate claimed that the proper solution therefore was to order a second record examination to be used in place of the first.

Objector filed a motion to strike the Candidate's motion for additional relief or a new Rule 6 hearing. The response accurately describes the procedures that the Board uses for evaluating the signatures during the record examination. A forensic handwriting expert is employed to compare signatures between those in the nomination packet and the voter registration cards. Furthermore, the signature expert's report confirms the original findings of the Board's records examiner in every instance. Therefore the issue of automatic preservation of appeals is moot.

Arguments supporting the motions were held on Jan. 4, 2011. Candidate argued that he should be afforded an opportunity to be heard and to present evidence in an attempt to cure the defects found in the signatures. He further argued that the petition summary was so flawed as to be beyond use. Therefore, in the interests of justice, Candidate argued, he should be allowed to present every piece of evidence available and make every argument, regardless that the petition summary does not reflect that he appropriately preserved his objections.

Permitting the Candidate to simply bypass the rules requiring that objections to findings of the record examiner would not align with the interests of justice nor due process. Though the proposed solution is guised in the language of fairness and justice, it would be neither just nor fair. Candidate could not give an exact number signatures in which the objection was preserved, nor could he demonstrate just how many additional valid signatures were needed to meet the requirement of 88. During motion arguments, the attorney for the Candidate goes so far as to admit the likelihood of being unable to meet the requisite number.

Upon review of the facts and arguments presented it is clear that Candidate cannot supply enough evidence to support a finding that enough signatures could be rehabilitated to meet the 88 valid signatures requirement. The affidavits supplied by the Candidate in support of rehabilitating the signatures fail to provide enough support to clear the hurdle of 88 signatures, even when looking at the evidence in a light favorable to the Candidate. While the Candidate claims that the 12 affidavits which relate to objections clearly preserved in the petition summary, no other evidence or arguments support the contention that proof of validity of the signatures exists.

Moreover, as Objector rightly points out, affidavits are not in-and-of-themselves sources by which signatures can be authenticated. Exemplars of the signature contained in the nomination packet would be required for verification, but the genuineness and reliability of the affidavits has not itself been established and cannot, therefore, be solely relied upon.

Granting Candidate an opportunity to be heard to present evidence of the validity of signatures is useful only when the Candidate is able to show that the requisite 88 signatures could potentially exist. In this case, the Candidate argued only that they could get "close" to the

required number, particularly in the consolidated cases herein due to the smaller gap between unchallenged signatures already collected and the 88 required by law.

Thus it is the finding of this Hearing Officer that based on the evidence submitted, witness testimony, arguments given and documents submitted that the nomination paper of the Candidate do not contain, and too few could be rehabilitated to reach, the required 88 valid signatures. Therefore in conformity with the Rules of Procedure for the Board of Election Commissioners, the Hearing Officer recommends that Alan R. Mercado's name not be placed on the ballot for Alderman of the 12th Ward of the City of Chicago.

Respectfully Submitted,

Ernesto Borges, Jr.

Hearing Officer