NBCON-ALD

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

Objections of: Eileen E. Jackson	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-153
Papers of: Michael A. (Mike) Stinson	)	
	)	Related Case: 11-EB-ALD-111
Candidate for the office of	)	
Alderman of the 28th 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 Eileen E. Jackson ("Objector") to the nomination papers ("Nomination Papers") of Michael A. (Mike) Stinson, candidate for the office of Alderman of the 28th 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 Mario Correa 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, Eileen E. Jackson, by attorney, James Nally; and the Candidate, Michael A. (Mike) Stinson, by attorney, Adam Lasker.

7. One of the issues presented in the Objector's Petition was whether the Candidate was a resident of the ward for at least one year preceding the date of the election. As to this issue, the Hearing Officer concluded that no evidence was presented to establish that the Candidate was not a resident of the ward for the requisite period of time and, accordingly, the Hearing Officer recommends that this Objection be overruled.

8. The other issue presented in the Objector's Petition is whether the Candidate filed a false and perjurious Statement of Candidacy in that at the time he filed his Nomination Papers, the Candidate was not eligible to run for office because he owed a debt to the City of Chicago.

9. Section 3.1-10-5(b) of the Illinois Municipal Code provides that:

> (b) A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.

The objector based his argument on the case of Cinkus v the Village of Stickney Municipal Officers Electoral Board, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

In Cinkus, a candidate, John Cinkus ("Cinkus") sought to run for village trustee. After Cinkus filed his nominating papers, he received notice by way of an objection that he owed a debt to the village in the amount of $100. The objection alleged that Section 3.1-10-5(b) precluded Cinkus from running for office because he was in violation of said section. The court determined that the indebtedness resulted in the candidate being ineligible to run for office.

The Cinkus case represents a departure from prior rulings in which it was held that an outstanding debt precluded candidates from *taking* office but did not preclude them from *running* for office. Since the Cinkus case, the current state of the law is that a candidate is precluded from *running* for municipal office if, at the time he files his nominating papers, he owes a debt to the municipality in which he is running.

Finally, in addressing whether an "indebtedness" exists under Section 3.1-10-5(b) it is useful to ascertain what the City of Chicago considers to be an "indebtedness". Although not binding on this Electoral Board, Section 1-19-010 of the Municipal Code of the City of Chicago provides guidance. Said section defines "debt due and owing" as

> "a specified sum of money owed to the city for fines, penalties, fees, interest, or other types of charges or costs imposed by this code, or administrative or judicial judgments after: (i) the period granted for payment has expired; (ii) the exhaustion of, or the failure to exhaust, judicial review procedures; or
> (iii) in the case of tax debt, an assessment has become final under Section 3-4-330 of this code."

10. The Hearing Officer in the instant case found that the Objector established the existence of a debt that was due and owing at the time the Nomination Papers were filed. Specifically, the Objector produced certified information from the City of Chicago Department of Revenue in response to a request regarding the Candidate. The evidence established that the

Candidate owed a debt of $634.10 to the City of Chicago arising out of unpaid tickets. The Candidate failed to establish that the debt was not his debt.

11. After the close of the hearing, the Candidate moved to reopen proofs in order to offer a denial that the debt was the Candidate's debt. The Hearing Officer denied the Motion.

12. 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 was ineligible to run for office because of an outstanding debt owed to the City of Chicago at the time he filed his nomination papers.

13. 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 declines to adopt the Hearing Officer's recommended findings and conclusions of law.

14. The Electoral Board finds that there is insufficient evidence of notice to the Candidate of an existing debt to the City. For that reason, the Electoral Board overrules the Objections

15. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of Eileen E. Jackson to the Nomination Papers of Michael A. (Mike) Stinson, candidate for election to the office of Alderman of the 28th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Michael A. (Mike) Stinson, candidate for election to the office of Alderman of the 28th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

Dated: Chicago, Illinois, on January 11, 2011.

Langdon D. Neal, Chairman

Richard A. Cowen, Commissioner

DISSENTING:

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 BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO

In Matter of MICHAEL A. (MIKE) STINSON, Candidate, and EILEEN E. JACKSON, Objector.	))))))))))	No. 11-EB-ALD-153

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 16 P 5:15

HEARING OFFICER'S REPORT
AND RECOMMENDED DECISION

I, hearing officer, MARIO CORREA ("Hearing Officer") hereby state and recommend that the Board of Election GRANT the objection of EILEEN E. JACKSON (the "Objector") to the nominating papers of MICHAEL A. (MIKE) STINSON (the "Candidate") for the following reasons and based on the following evidence:

1. On December 6, 2010, the hearing was first called. Both Objector and the Candidate appeared through counsel. Board group exhibits A thru D were entered into the record and consisted of the following: (A) the nomination papers, (B) the Objector's Petition, (C) Proof of Service, and (D) appearances. The Candidate requested a briefing schedule on a Motion to Strike and leave to file an answer.

2. On December 11, 2010, a status date was held and no Motion to Strike nor any Answer was filed. As none are mandated by the Board Rules of Procedure, the case was set for hearing on the issues found in paragraphs 24 and 25 of the Objector's Petition. The Candidate moved to have an immediate hearing on the Objector's Petition and that motion was denied as no hearing was scheduled.

3. On December 15, 2010, a hearing was held on two factual issues raised by Paragraphs 24 and 25 of the Objector's Petition. The first issue was whether the Candidate resided in the 28th ward for at least a year. The Objector questioned the Candidate but was unable to elicit or provide any evidence indicating that the Candidate failed to reside in the 28th ward. In the Candidate's defense, the Candidate produced two leases, Candidate's Exhibit A and B, which corroborated the Candidate's testimony that he resided at the specified addresses for the periods at issue. No evidence was presented that said addresses lied in or outside the 28th ward. Accordingly, the Hearing Officer finds that the Objector failed to meet its burden of proof in establishing that the Candidate resided outside the 28th ward.

4. The second issue presented at the hearing was whether the Candidate owed a debt to the City of Chicago at the time of filing his nominating papers. The Objector entered in evidence Objector's Exhibit 1 which consisted of the following three pages: (i) certificate from assistant FOIA officer, (ii) letter dated November 29, 2010 signed by Christina M. Haynes from the City of Chicago Department of Revenue, and (iii) screen shot of "CANVAS" with print out date on bottom right hand corner of "11/29/2010". These documents were received into evidence without objection and shall herein be referred to as either "Objector's Exhibit 1" or "FOIA response." The 3rd page of the FOIA response was the same screen shot as Exhibit A in the Objector's Petition. The Objector presented no other evidence in support of the debt.

5. In its defense, the Candidate testified that he did not own a car in the last ten years. The Candidate also entered into evidence a print out from the website "peoplesmart" which listed several individuals that went by the name of "Michael Stinson" who were listed as living in Chicago. See Candidate's Exhibit C. The Candidate did not testify at any length about how this was not or could not be his debt.

6. During oral argument, and in fact at different points while presenting the defense' case-in-chief, the Candidate argued that the Objector failed to meet his burden of proof. The Candidate specifically pointed out that (a) the it was unclear what the FOIA response was, (b) the FOIA response at best placed the debt around years 2002 - 2003 but that there was no evidence indicating that the debt was current, and (c) that there was no way to connect the Michael Stinson listed in the FOIA response to the Candidate Michael Stinson.

7. The threshold issue is whether the FOIA response was sufficient to establish a establish a prima facia case that candidate Michael A. Stinson owed a debt of $634.40 to the City of Chicago at the time of filing his nominating papers. The letter in the FOIA response clearly provides that in requesting specific information for Michael A. Stinson, including a license number, an independent agent of the Chicago Department of Revenue provided a screen shot showing a debt owed of $634.40. The Hearing Officer finds that this is enough to establish a prima facia case.

8. The case then turns to the evidence provided by the Candidate in support of his arguments. The initial argument was that the Hearing Officer had no way of knowing what Objector's Exhibit 1 consisted of. First, the Hearing Officer does know what the screen shot from the Chicago Department of Revenue looks like. These screen shots have been provided in other cases before the Hearing Officer. Second the letter in the FOIA response explains the screen shot is in fact from the Chicago Department of Revenue. Third, the argument of not knowing what a document is, goes to the foundation for admitting the document in the first place. If the Candidate did not know or understand what Objector's Exhibit 1 consisted of, he should have objected to said exhibit. The Hearing Officer found the Candidate to be represented

by skillful counsel, and believes that such an omission was calculated and not merely an oversight or error.

9. The Candidate's second attack on the FOIA response was that the Hearing Officer had no way of knowing that this was a current debt. The Candidate argued that this may represent only a part of the file and can potentially fail to include payments since made. First, the screen shot in the FOIA response (3rd page of Objector's Exhibit 1) in the lower right hand corner has the date of 11/29/2010 therefore indicating it was a print out on that date. Second, letter in the FOIA response (2nd page of Objector's Exhibit 1) indicated that the document was in response to a request for "any and all documents indicating that Michael Stinson... is in arrears in the payment of tax or other indebtedness..." The "is" indicates it was a present tense response, not an old debt since paid as the Candidate argued. Third, payment is an affirmative fact that the Candidate at the very least had the burden of production.

10. The Candidate also argued that the Michael Stinson listed in the FOIA response was not the Candidate. However, once the Objector made their prima facia case, the Candidate needed to come forward with some evidence refuting that the FOIA response pertained to the Candidate. The Candidate produced Candidate's Exhibit C to provide that several people in Chicago go by the name of Michael Stinson. Thus, creating an inference that the FOIA request could be describing someone other than the Candidate. However, a detailed review of the list provided in Candidate's Exhibit C reveals only one "Michael A. Stinson" was listed in the print-out and that individual had a wife by the name of "Linda" – in the Candidate's testimony during the residency issue, the Candidate indicated his wife was Linda. Thus, while several individuals by the name "Michael Stinson" reside in Chicago, there was only one "Michael A. Stinson" listed. The screen shot found in the FOIA response (3rd page of Objector's Exhibit 1), lists a debt

of $634.40 owed by a Michael A. Stinson. Thus, the same middle initial was found in Candidate's Exhibit C as in the FOIA response.

11. Another problem was the failure of the Candidate to deny all debts in the FOIA response existed. In a case were someone is being accused of a debt that is not their own, there is normally an emphatic denial of the debt. No such denial took place here.

12. After the close of argument, the Hearing Officer asked if the Candidate had denied the debt. Counsel for the Candidate moved to re-open proofs to get the testimony of the Candidate that the Candidate was denying the debt. The Hearing Officer denied the motion. However, even if the motion were granted, the fact that the Candidate's denial was not the centerpiece of the Candidate's defense tends to support the proposition that the debt was his.

13. A critical issue that was not addressed by either party was that FOIA request (Objector's Exhibit 1) included a drivers license number that could resolve the issue of whether or not the Candidate was the individual listed in the FOIA request. That being a central issue, the Objector did ask the Candidate for his driver's license, but the Candidate indicated he did not have his driver's license with him. Presumably, if the Candidate's license was different than that on the FOIA request, he would have either (a) provided a copy of same, or (b) asked for leave to provide it. However, neither course of action was taken. As indicated above, the Candidate's actions were not consistent with someone wrongfully accused of a debt.

14. The Hearing Officers finds that the Objector, after all evidence was presented, proved by a preponderance of the evidence that the Candidate had a debt outstanding at the time of filing his nominating papers.

As a result of the foregoing, the Hearing Officers recommends that the Board GRANT the objection of EILEEN E. JACKSON to the nominating papers of MICHAEL A. (MIKE) STINSON.

Respectfully Submitted,

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Mario Correa, Esq.
Hearing Officer