NBCON-ALD

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

Objections of: Kathleen Tompkins	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-167
Papers of: Mahmoud Bambouyani	)	
	)	
Candidate for the office of	)	
Alderman of the 38th 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 Kathleen Tompkins ("Objector") to the nomination papers ("Nomination Papers") of Mahmoud Bambouyani, candidate for the office of Alderman of the 38th 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 Linda R. Crane 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, Kathleen Tompkins, by attorney, James P. Nally; the Candidate, Mahmoud Bambouyani, by attorney, Russ Stewart.

7. The Candidate filed a Motion Strike and Dismiss the Objector's Petition wherein the Candidate alleged that the Objector did not reside at the address stated in the Objector's Petition and, therefore, the Objector did not have standing to bring the objection. The Objector responded by arguing that the Objector's correct residence address is 5327 W. Warner and that although the Objector's Petition contains the address 5927 W. Warner, the inclusion of one wrong number in the address constitutes a scrivener's error and an insufficient basis to strike the Objector's Petition.

8. The Hearing Officer concluded that the Motion to Strike and Dismiss should be denied.

9. The Electoral Board finds that the inclusion of one incorrect digit in the Objector's address is not a sufficient basis to strike the Objector's Petition and that the Hearing Officer

correctly denied the Candidate's Motion to Strike and Dismiss. Morton v State Officers Electoral Board, 311 Ill. App. 982, 726 N.E. 2d 201 (4th Dist. 2000) Ryan v Landek, 159 Ill. App. 3d (1987).

10. The Objector alleges that the Candidate is not eligible to run for municipal office because of an indebtedness owed by the Candidate to the City of Chicago.

11. 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.

12. In the instant case, the Objector presented evidence to establish that the Candidate had a water bill for November, 2010 and that the water was billed on a monthly basis. The

Hearing Officer concluded that the Objector failed to establish that the Candidate was in arrears in the payment of said water bill at the time the Candidate's Nomination Papers were filed.

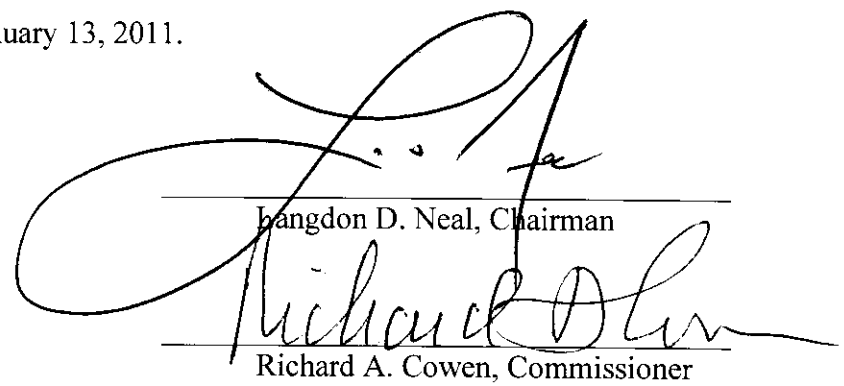
12. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

13. 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.

14. 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 Kathleen Tompkins to the Nomination Papers of Mahmoud Bambouyani, candidate for election to the office of Alderman of the 38th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Mahmoud Bambouyani, candidate for election to the office of Alderman of the 38th 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 13, 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 BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO

KATHLEEN TOMPKINS	)	
	)	
Petitioner-Objector	)	
	)	
	)	
	)	**No. 11 - EB - ALD-167**
Vs.	)	**Linda R. Crane**
	)	**Hearing Officer**
	)	
MAHMOUD BAMBOUYANI	)	
	)	
Respondent-Candidate	)	

BOARD OF ELECTIONS
2011 JAN -6 A 8:58

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on verified objections of **KATHLEEN TOMPKINS** ("objector") to the nomination papers of **MAHMOUD BAMBOUYANI** ("Candidate"), Linda R. Crane, Hearing Officer, finds and recommends as follows:

1. The candidate, **MAHMOUD BAMBOUYANI,** has filed Nomination Papers in support of his nomination to the office of Alderman of the 38th Ward in the City of Chicago to be voted upon during the upcoming election on February 22, 2011 (election).
2. The objector, **KATHLEEN TOMPKINS,** has filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for the reason stated in Paragraphs 1 and 2 of her Petition.
3. Paragraphs 1 and 2 of the Objector's Petition allege that the Candidate *"is not qualified to appear on the ballot for the office the candidate is seeking due to*

debts in arrears to the City of Chicago including but not limited to the past due amount of $26.39 and is in arrears on debt owed to the City of Chicago at the time of the statement of candidacy was signed, in violation of the Illinois Election Code and Illinois Municipal Code, and Cinkus vs. Village of Stickney Officers Electoral Board...and therefore the Nomination Papers are invalid in their entirety."

4. The initial hearing on this matter was held on December 6, 2010. In attendance were: the candidate, **MAHMOUD BAMBOUYANI**, in person and through his attorney, Russ Stewart; and the objector through her attorney, James P. Nally. At that hearing, the objector requested that the candidate's name not be printed on the ballot for the election to the office of Alderman, 38th Ward, City of Chicago, for the above-referenced reason.
5. A second hearing was scheduled for and was held on December 15, 2010 to allow the candidate an opportunity to file a Rule 5 Motion to Strike the Objector's petition in whole or in part.
6. On December 8, 2010, the candidate filed a Rule 5 Motion to Strike and Dismiss the Objector's Petition containing two Counts. In Count I of the candidate's Motion to Strike, the candidate asks that the Objector's Petition be stricken due to the objector's lack of standing. The motion states that the objector lacks standing because the objector does not reside at the address contained in the Petition and, therefore, fails to fulfill the requirement of Illinois state law, which requires *"the objector's petition (to) give the objector's name and residence address..."* (Citing 10 ILCS 5/10-8).

7. In Count II of the Respondent's Motion to Strike, the candidate asks that the petition be stricken because, under *Cinkus v Stickney*, the candidate's unpaid water bill is not a bar to his candidacy even though it may be a bar to his ability to hold office.

8. On December 9, 2010, the objector filed a Response to Motion to Strike Objector's Petition that began by citing the legal standard that applies to reviews of motions to dismiss, arguing that *" 'all pleadings are construed in the light most favorable to the non-moving party, and all well plead facts in the Complaint, as well as reasonable inferences drawn there from, are taken as true.' "* *Weiss v. Waterhouse Securities*, 335 Ill. App. 3d 875 at 882 (1st Dist. 2002). The objector acknowledged that the Illinois State election law requires the Verified Objector's Petition to include the name and address of the objector; and admitted that the address included in the Petition was not the objector's address. The objector raised an affirmative defense that the Petition was valid because the Petition contained an address but that the address was incorrect due to a minor typographical "scrivener's" error that resulted in the misstatement of the objector's address as 5927 W. Warner instead of the correct address which is 5327 W. Warner, Chicago, Illinois. The objector argued that Illinois Appellate Court case law supports her position that she meets the statutory requirements as an objector despite the fact that the numerical portion of her address that was included in her Petition mistakenly contained a "9" instead of a "3" because she is, in fact, a duly registered voter who resides within the 38th Ward in Chicago, Illinois at 5327 W. Warner. Citing *Morton v. State Officers Electoral Board*, 311

Ill.App.3d 982 (2000) and *Ryan v. Landek*, 159 Ill. App. 3d 10 (1987), the objector argued that the standard for determining whether an error in the statement of the objector's address in the objector's petition will result in invalidation is "substantial compliance." Specifically, the objector argued that *Morton* and *Landek* stand for the proposition that a one digit deviation away from the correct address is de minimis and that a disqualification based solely on it would be unduly harsh and inconsistent with the purpose of the address requirement in the Code.

9. The Objector's Response to the Motion to Dismiss also addresses the issue of whether *Cinkus* changed the law regarding whether a municipal debt owed by a candidate affects the candidate's eligibility to run for office as well as the ability to hold the office, stating *'"Thus when a candidate submits his or her nomination papers to run for office, the candidate swears that he or she is- not will be – qualified for the office sought. In other words the candidate is eligible to run for the office and not merely hold the office."* 282 Ill.2d 200 (2008)
10. On December 15, 2010, the parties all appeared, again through their legal counsel. A hearing was held on the following issues:
    a. Whether the objector met the statutory standing requirement; and
    b. Whether the candidate was in arrears on a debt to the City of Chicago at the time he filed his nomination papers that would prevent him from running for office in the municipal election.
11. The objector argued the points raised in his Response to the Motion to Strike (see Paragraphs 8 and 9 herein) and added that the Morton case found that the statute

that requires the objector to include her address requires on substantial compliance, not strict compliance, with the rule; and, moreover, *"does not include a penalty provision for an Objector's lack of strict compliance with this requirement"* [12-15-2010 transcript page 26] because the purpose of the requirement is that the objector give notice that she is a registered voter who resides in the Ward.

12. The candidate admitted that under *Morton*, an objector's name *"could be rehabilitated because even though it was mandatory to state a name, which he did, citing a name that could be discerned from other extreme extrinsic evidence was not going to be sufficient to remove someone form the ballot, that it could be rehabilitated"*, [12-15-2010 transcript at 31] but could not provide a persuasive reason why, in this case, *Morton* could not also be used to rehabilitate the objector's address – as argued by the objector.
13. A third hearing was scheduled for December 22, 2010 to review the Water Department records before determining whether the candidate was in arrears on a debt to the city at the time he filed his nomination papers.
14. On December 22, 2010 the parties all appeared , again through their legal counsel. A hearing was held on the sole issue of whether the candidate was in arrears on a debt to the City of Chicago at the time he filed his nomination papers that would prevent him from running for office in the municipal election.
15. The candidate again argued that the *Cinkus* case only prevents an apparently successful candidate from occupying an elected office for which he would not have been prevented from being a candidate. The objector again contradicted this

interpretation of *Cinkus* and argued that the case makes someone who is in arrears on a debt to the city ineligible to run for the office as well as to hold the office.

16. The candidate also argued that not every amount owed to the city is fatal under *Cinkus*; but only those that are in "arrearage."

17. Section 2-152-150 of the Municipal Code of the City of Chicago is entitled: ***Applicants for employment – disclosure of indebtedness to city.*** This provision is instructive on the issue of what the City of Chicago considers to be a "debt" to the City, and reads as follows:

> *"(a) Whenever used in this section, the following words and phrases shall have the following meanings:*
>
> *'Debt' means a specified sum of money owed to the city* ***for which the period granted for payment has expired."*** [emphasis added]

18. The parties provided evidence that, on November 15, 2010, the date that the candidate filed his nomination papers, the candidate owed the city $26.39 for an outstanding water bill and that the bill was paid in full on December 13, 2010. [see, Candidate Exhibit #1, Objector Exhibit A, and Objector Exhibit B]

19. The candidate argued that this case is distinguishable from other cases where water bills may go unpaid for several months because a residence has a metered account. Rather, in this case the candidate's water bill is billed each month for his property that consists of "a commercial business with a residence on the second floor." The argument, which was persuasive is that because the candidate "received a bill every month, and apparently the November payment had not as yet been satisfied during the month of November at the time that he filed his

nomination petitions," that the $26.39 that the candidate was billed for the month of November was not a "debt" owed to the city because the period granted for payment had not yet expired. [12-22-2010 transcript at pages 5-6]

20. That it is arguable that the candidate's November, 2010 water bill was in arrearage when he paid it on December 13, 2010. It does not follow, however, that the amount of the candidate's water bill that was billed for the month of November, 2010 was in arrearage on or before November 15, 2010 – the relevant date for the purposes of the determination of whether the candidate owed a debt at the time that he filed his nomination papers.

21. For the reasons stated above, the Hearing Officer recommends the following to the Chicago Board of Election Commissioners:

    a. That the Candidate's Motion to Strike and Dismiss based on the error in the objector's address as it appeared in the Objector's Petition should be denied;

    b. That the Objector's objection to this candidacy based on the allegation that the candidate was in arrearage on a debt owed to the city on November 15, 2010 should be overruled; and

    c. That the Candidate's name should be included on the ballot during the upcoming election.

Respectfully submitted,

Date: January 5, 2011 By: _____
LINDA R. CRANE, Hearing Officer