NBCON-ALD

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

Objections of: Tom Courtney and John Courtney	)	
To the Nomination Papers of: Walter Burnett, Jr.	)	No.: 11-EB-ALD-168
Candidate for the office of Alderman of the 27th 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 Tom Courtney and John Courtney ("Objector") to the nomination papers ("Nomination Papers") of Walter Burnett, Jr., candidate for the office of Alderman of the 27th 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 Edna Turkington for further hearings and proceedings. Pursuant to motion of the Objectors for substitution of Hearing Officer, this matter was re-assigned to Hearing Officer Barbara Goodman.

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, Tom Courtney and John Courtney, by counsel, James P. Nally; the Candidate, Walter Burnett, Jr., by attorneys Michael Kasper and Paul Isaac.

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 Tom Courtney and John Courtney to the Nomination Papers of Walter Burnett, Jr., candidate for election to the office of Alderman of the 27th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Walter Burnett, Jr., candidate for election to the office of Alderman of the 27th 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 3, 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 AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION IN THE CITY OF CHICAGO

TOM COURTNEY and JOHN COURTNEY Objectors -v- WALTER BURNETT, JR Candidate	)	11 EB ALD 168

2010 DEC 29 P 10:11

HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

This matter was first assigned to Hearing Officer Edna Turkington. Upon motion of the Objector, the matter was reassigned to this Hearing Examiner by order of the Board's General Counsel, James Scanlon. The matter was first heard on December 6, 2010. The Objector appeared through counsel James Nally. The candidate appeared through counsel Michael Kasper and counsel Paul Isaac. The parties were given the opportunity to file preliminary motions. The matter was rescheduled for further hearing on December 9, 2010. Neither party submitted preliminary motions. The matter was further reassigned and an evidentiary hearing was conducted on December 20, 2010. Matthew S. Ryan entered his appearance as additional counsel for the candidate. Post hearing briefs were submitted on

December 22, 2010 by both parties and a final verbal recommendation was given to the parties on the record on December 23, 2010.

The sole issue presented in the Objector's Petition was whether the candidate is ineligible for office pursuant to Section 5/3.1-10-5 of the Illinois Municipal Code because of alleged indebtedness due to the City of Chicago. Said statute provides as follows:

> *"A person is not eligible for elective office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality as set forth herein and is disqualified from appearing on the ballot as a candidate for municipal office." 65 ILCS 5/3.1-10-5*

The Objector alleged that the candidate had three instances of indebtedness -The first alleged instance arose out of an unpaid ticket relating to property located at 2902 Fulton and the second and third alleged instances arose out of an unpaid ticket relating to property located at 2711 Maypole.

THE 2902 FULTON ALLEGATION

Objector offered a copy of the Warranty Deed for 2902 Fulton, Chicago, Illinois. (Objector's Exhibit 5). The Deed as well as the testimony of the candidate established that he and his wife are the owners of the property and have been since February 28, 2001. Objector further offered as Objector's Exhibit 4, a letter addressed to John W. Courtney and signed by Christine Haynes, Assistant FOIA Officer which contained screen captures of outstanding tickets which purportedly related to property owned by the candidate. The screen capture regarding 2902

on the lines for property address "*2709 – 2925 Mapypole., Chicago, IL.*" Objector's Exhibit 3 was offered to establish that Chicago Trust Company was the owner of record for 2711 Maypole under Trust 1110667. Objector's Exhibits 1 & 2 were offered to establish that the candidate was the beneficiary under Chicago Trust 1110667.

Objector then offered a number of documents to establish that there was an outstanding indebtedness owed by Chicago Trust 111066. A certified copy of a municipal record for case number 04 M1 606826 was offered as Objector's Exhibit 6 and a certified copy of the Court file in case number 04 M1 606826 was offered as Objector's Exhibit 7. Also offered were Objector's Exhibit 8, which was a certified copy of City Ordinances including 13-4-10, 13-12-010, and 13-12-020 and Objector's Exhibit 9 was a certified copy of Chicago ordinances 1-1-9-010, 1-19-020 and 1-19-030.

A review of Objector's Exhibit 7, the certified court record, indicated the following with regard to case 04 M1 606826. The case was filed as a registration of an administrative judgment against Chicago Trust Co. under Trust 1110667 and at all times during the case, Chicago Trust Co. Trust 1110667 was named as the Debtor. In a second Citation to Discover Assets, the candidate and his wife were named as Citation Respondents. A certified mail receipt indicated that the signature of what purports to be the candidate's wife received the citation on 11-2 with the year being obscured. The last document in the record was a Motion for

Conditional Judgment in which counsel for the plaintiff moved for a Conditional Judgment against the candidate and his wife. There is no record of any order or any judgment ever being entered against the candidate or his wife. Additionally, the last entry on Objector's Exhibit 6, the certified copy of the Court file, indicated that the case was stricken from the call without further indication as to the final disposition of the case.

B. The Candidate's Defense

Candidate Walter Burnett, Jr. was called as a witness in which he offered the following testimony: Candidate testified that he was not currently and never has been the owner of 2711 Maypole. He further testified that he was familiar with the property and that the actual owner of the property was named Patricia Johnson. He also testified that the Statements of Financial Interest he filed contained the wrong information as to the address of the property owned by the trust. He indicated that he amended the statement on December 13, 2010 to reflect that the trust owned "2709 & 2715-2725 W. Maypole." In support thereof, candidate offered Defendant's Exhibit 4 which was a revised version of his Statement of Financial Interest. However, as the Objector noted, there was no evidence other than the candidate's testimony to conclude that the revised form was ever filed with the City as it contained the date stamp of March 22, 2010 and no other date stamp.

Candidate also testified that he and his wife were the beneficiaries of Chicago Trust 1110667 (Defendant's Exhibit 1) and that Defendant's Exhibit 2 was

a true and correct copy of the Trust Agreement he signed with Chicago Title Land Trust. Co. He further testified that he had no knowledge of the administrative proceedings with the City of Chicago and had no received notice of and had no knowledge of the circuit court proceeding in case 04 M1 606826. (Transcript of 12/20/10 at p. 44-45).

Candidate additionally testified that he had requested that the City of Chicago Department of Revenue conduct an indebtedness search and that pursuant to his request, he was provided with a response by Christine M. Haynes, the Assistant FOIA officer for the City of Chicago Department of Revenue . A copy of the search results was offered as Defendant's Exhibit 5. Defendant's Exhibit 5 indicated that as of 11/10/20, Walter Burnett, Jr. had *"no outstanding debt...across any of the debt types, Parking, Water, Administrative Hearings, Inspection Fees, Cost Recovery and Tax/Licensing."*

Also offered on Candidate's behalf was Exhibit 10 , a Certification of Record from the City of Chicago Department of Administrative Hearings as well as the testimony of Liam Gallagher, the Managing Director of the City of Chicago's Building Department's administrative hearings. Both Exhibit 10 and Mr. Gallagher's testimony established that the administrative proceeding which gave rise to case 04 M1 606826, arose out of a Stop Work Notice issued to the owner of 2711 W. Maypole for having interior repairs performed without a permit. On the notice, the Permanent Index Number (PIN) for 2711 Maypole was listed as 16-12-418-**064** and, as Chicago Trust 1110667 owns that PIN, the trust was listed as the owner.

Mr. Gallagher further testified that this Stop Work Notice would never be issued for vacant property as it related to interior repairs. (Transcript of 12/20/10 at p. 66) and that the property class on the Stop Work Notice was listed as vacant property. (Transcript of 12/20/10 at p. 67).

Candidate also offered the testimony of Patricia Johnson who testified that she was the owner of 2711. Mapypole and had owned the property since 1996 and that the correct PIN for her property was 16-12-418-**084.** A certified copy of a deed for 2711 Maypole was offered as Defendant's Exhibit 6. The Deed was recorded on November 7, 1996 and showed Patricia Johnson as the grantee. Defendant's Exhibit 7 was a mortgage Ms. Johnson obtained for the property and showed that PIN 16-12-418-**084** was the correct PIN for the property. Additional documents were offered to establish that Ms. Johnson was the owner of 2711 Maypole, including Defendant's Exhibit 8 which was a second mortgage taken out by Ms. Johnson and Defendant's Exhibit 9, a property tax bill for 2711 Maypole, all of which also indicated that the PIN for the property was 16-12-418-**084.** Candidate further offered Defendant's Exhibit 12 which was an affidavit from a title agent which confirmed that title to 2711 Maypole was vested in Patricia Johnson.

ARGUMENTS

A. Objector's Arguments

Objector argues that it is irrelevant who actually owns 2711 Maypole because all of the evidence regarding ownership is a collateral attack on the underlying

judgment against the trust and the electoral board has no jurisdiction in regard to the validity of the judgment. The objector contends that regardless of the actual ownership of 2711, a judgment was entered against Chicago Trust 1110667 and it is undisputed that the candidate is one of the beneficiaries of the trust. Therefore, the debt of the Trust is the debt of the candidate. Inasmuch as there is no evidence that the debt was ever paid, candidate is illegible to run for office pursuant to Section 5/3.1-10-5 of the Illinois Municipal Code.

B. Candidate's Arguments

Candidate argues that the administrative judgment underlying case 04 M1 606826, was based upon the incorrect PIN being listed on the Stop Work Notice. The Stop Work Notice clearly relates to property located at 2711 Maypole which is not owned by the candidate but rather is owned by Patricia Johnson as her testimony and the exhibits established. The PIN on the Stop Work Notice was clearly incorrect as it related to vacant property and if the property was actually vacant, it could not have received the Stop Work Notice. Additionally, the record is devoid of any judgment being entered against the candidate in the case. Also, the City of Chicago's indebtedness search conclusively indicated that the candidate has no indebtedness due the City of Chicago.

DISCUSSION

As to the allegation regarding indebtedness owed by the Candidate in relation to his ownership of 2902 Fulton, no evidence of the candidate's

indebtedness was presented. As to the allegation regarding indebtedness owed by the Candidate in relation to 2711 Maypole, there was ample evidence to establish that Chicago Trust 1110667 of which the candidate is a beneficiary does not own 2711 Maypole. There was also ample evidence to establish that 04 M1 606826 arose out of an administrative judgment mistakenly entered against the trust. However, the Objector correctly pointed out that the electoral board is without jurisdiction to address defects in the underlying administrative or circuit court cases.

The sole issue was whether the Objector was able to establish that the candidate had any indebtedness due the City of Chicago. There was no evidence presented that the candidate had notice of the administrative proceeding below and no evidence presented that he had notice of the proceeding in the circuit court other than whatever notice his wife may have received regarding a citation to discover assets and no evidence that any judgment was ever entered against him personally. Moreover, there was no evidence presented to establish that the trust which was at all times the defendant in the administrative proceeding and the defendant in the circuit court proceeding, ever gave the candidate notice of any of the proceedings. Finally, the City's own record of indebtedness clearly and conclusively established that according to the City, there was no indebtedness due the City of Chicago by the candidate.

CONCLUSION

The Objector had the burden of establishing the existence of an indebtedness

due the City of Chicago by the candidate which would result in the candidate being ineligible for office pursuant to Section 5/3.1-10-5 of the Illinois Municipal Code. The Objector failed to establish any such indebtedness. Accordingly, it is my recommendation that the objections be overruled, that the candidate's nominating papers be deemed valid and that the name of the candidate Walter Burnett, Jr. as a candidate for the office of Alderman of the 27th Ward of the City of Chicago be printed on the ballot at the February 22, 2011 Municipal General Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman, Hearing Examiner
12/29/10