NBCOFF-ALD

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

Objections of: Tom CourtneyJohn Courtney	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-170
Papers of: Victor Rowans	)	
	)	Related Case: 11-EB-ALD-276
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 CourtneyJohn Courtney ("Objector") to the nomination papers ("Nomination Papers") of Victor Rowans, 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. Upon motion of the Objector, the matter was reassigned to Hearing Officer Barbara Goodman by order of James Scanlon, the Board's General Counsel.

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 attorney, James Nally; and the Candidate, Victor Rowans, pro se.

7. The sole issue presented in the Objector's Petition was whether, pursuant to Section 3.1-10-5 of the Illinois Municipal Code, the candidate was ineligible to run for the office of Alderman of the City of Chicago because of an indebtedness due the City of Chicago.

8. Based upon the evidence presented, the Hearing Officer found that the candidate was ineligible to run for the office Alderman in the City of Chicago because of an outstanding indebtedness due the City of Chicago. Said indebtedness arose out of a traffic ticket which was fully adjudicated and unpaid at the time the candidate filed his nominating papers.

9. 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 sustained and that the Nomination Papers be found invalid.

10. 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.

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

IT IS THEREFORE ORDERED that the Objections of Tom Courtneyand John Courtney to the Nomination Papers of Victor Rowans, candidate for election to the office of Alderman of the 27th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Victor Rowans, candidate for election to the office of Alderman of the 27th 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 7, 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-

VICTOR ROWANS

Candidate

11 EB ALD 170

BOARD OF ELECTION
POLLING PLACE DEPT
2011 JAN -2 A 11: 26

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 James Scanlon, the Board's General Counsel. The matter was first heard on December 6, 2010. Although Objector's Counsel had previously entered an appearance, he was not present when the case was rescheduled with this Hearing Officer. The candidate appeared pro se. The parties were given the opportunity to file preliminary motions. Candidate filed a Motion to Strike and Dismiss and the Objector filed a response. The matter was rescheduled for further hearing on December 9, 2010. On December 9, 2010, the candidate presented his Motion to Strike and Dismiss in which he argued that the objections should be dismissed

because Objector's counsel was not present when the case was called on the first day of hearings. The Motion to Strike and Dismiss was denied because the first day of hearings presented many scheduling problems and conflicts for parties and their attorneys and there was no indication that the Objector, through his attorney, intended to abandon his case. The matter was continued for an evidentiary hearing on December 14, 2010.

The sole issue presented in the Objector's Petition was whether the candidate was ineligible to run for office as a result of an outstanding indebtedness due to the City of Chicago at the time the candidate's nominating papers were filed.

THE OBJECTOR'S CASE

Objector argued that at the time the candidate filed his nominating papers there existed an outstanding debt by the candidate which arose out of a traffic ticket that had been fully adjudicated and was unpaid. Objector submitted as Objector's Exhibit 1, certain certified records from the City of Chicago Department of Revenue. The records included (a) a handwritten challenge by the candidate to a ticket number 9178770915 issued to a vehicle with the license plate 9538785, (b) a copy of a notice of a traffic violation with a ticket number of 9178770915 addressed to Dina Powe and Victor Rowans issued to a vehicle with the license plate 9538785 along with a picture of the alleged violation, (c) Findings, Decision and Orders addressed to Dina Powe and Victor Rowans regarding Ticket 9178770915 for a vehicle with license plate number 9538785 in which a final

determination was made that the registered owners owed a fine of $60.00 which would double if not paid within 21 days.

Objector also submitted certified records from the Secretary of State submitted in response to a subpoena duces tecum. The records included (a) registration in the names of Dina Powe and Victor Rowans with their signatures contained thereon, (b) a page that established that the physical title was being held by a finance company (c) an odometer statement (d) title that showed that Mazira Chevrolet Buick owned the car and sold it to Dina Powe and Victor Rowans (e) a conveyance of that title to Dina Powe and Victor Rowans (f) a registration renewal showing that the title was renewed in September 2009 and September 2010 in the names of Dina Powe and Victor Rowans and (g) the 2011 vehicle registration record issued on September 25, 2010 in the names of Dina Powe and Victor Rowans.

THE CANDIDATE'S CASE

The candidate argued that the debt arising out of the traffic ticket was not his because he did not own the car that was issued the ticket and, in any event, the ticket was paid. In support thereof, Candidate submitted proof of payment of the ticket which established that the ticket was paid on December 3, 2010. (Candidate's Ex. 1). Candidate also submitted copies of three money orders made payable to a finance company for the car with the remitter being Dina Powe. (Candidate's Ex. 2). Candidate also submitted what purported to be a portion of a contract for the purchase of the car with the candidate's name listed as the co-

signer. (Candidate's Ex. 3). After the case was heard but before the recommended decision was rendered, Candidate also submitted a statement from Dina Powe which indicated that she, not Victor Rowans, was the owner of the vehicle.

DISCUSSION

Although the candidate contended that he was not the owner of the vehicle, the records submitted by the Objector established otherwise. According to both the Secretary of State and the City of Chicago, the vehicle was registered to Dina Powe and the candidate, Victor Rowans. Even if candidate did not use the vehicle or make payments on the vehicle, the evidence established that he was one of the owners of the vehicle. Therefore, any indebtedness regarding the vehicle is attributable to the candidate. Moreover, it is significant to note that the candidate himself submitted a written protest in relation to the ticket giving rise to the indebtedness.

Having proven that the candidate was the one of the owners of the vehicle and that there was an outstanding ticket related to the vehicle, this case clearly falls within the purview of Sec. 3.1-10-5(b) of the Illinois Municipal Code as the Objector alleged. Section 3.1-10-5(b) 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 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."**

In the instant case, the evidence established that the candidate was the co-owner of a vehicle that received a ticket. The ticket was adjudicated and remained unpaid until December 3, 2010, ***after*** the candidate's nominating

papers were filed. The unpaid ticket constituted an indebtedness and falls within the City's definition of a debt due and owing in that it was 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" and "the period granted for payment ha[d] expired.*" Therefore, pursuant to Section 3.1-10-5(b) as interpreted by the Illinois Supreme Court in Cinkus v the Village of Stickney Municipal Officers Electoral Board, the candidate is ineligible to run for office.

RECOMMENDATION

In light of the foregoing, it is my recommendation that the objections be **sustained** and that the candidate's nominating papers be deemed **invalid**. It is my further recommendation that the name of the candidate Victor Rowans for the office of Alderman in the 27th Ward **not** be printed on the ballot at the February 22, 2011 Municipal General Election.

Respectfully submitted,

Barbara Goodman /s/
Barbara Goodman, Hearing Examiner
1/2/11