NBCOFF-ALD

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

Objections of: Rudolph W. Haley	)
	)
	)
To the Nomination	) No.: 11-EB-ALD-184
Papers of: Sheneather "Shey" Butler	)
	) Related Cases: 11-EB-ALD-129, 11-EB-ALD-256
Candidate for the office of	)
Alderman of the 29th 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 Rudolph W. Haley ("Objector") to the nomination papers ("Nomination Papers") of Sheneather "Shey" Butler, candidate for the office of Alderman of the 29th 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 Frank A. Tedesso 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, Rudolph W. Haley, by attorney, Michael C. Dorf; and the Candidate, Sheneather "Shey" Butler, by attorney, Chester Slaughter.

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

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 sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid. The Electoral Board made a similar finding in 11-EB-ALD-256.

IT IS THEREFORE ORDERED that the Objections of Rudolph W. Haley to the Nomination Papers of Sheneather "Shey" Butler, candidate for election to the office of Alderman of the 29th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Sheneather "Shey" Butler, candidate for election to the office of Alderman of the 29th 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 December 21, 2010.

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 DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION TO THE OFFICE OF ALDERMAN OF THE TWENTY-NINTH (29TH) WARD OF THE CITY OF CHICAGO

BOARD OF ELECTIONS
2010 DEC 18 P 2:36

RUDOLPH W. HALEY,	)	
	)	
Petitioner – Objector,	)	
	)	
v.	)	**Case No. 11-EB-ALD-184**
	)	
SHENEATHER "SHEY" BUTLER,	)	
	)	
Respondent – Candidate.	)	

HEARING OFFICER'S RECOMMENDED FINDINGS OF FACT AND RECOMMENDED DECISION

1. The Respondent – Candidate, SHENEATHER "SHEY" BUTLER, filed Nomination Papers for nomination to the Office of Alderman of the 29th Ward of the City of Chicago to be voted upon at the February 22, 2011 Municipal General Election.

2. That the Petitioner– Objector, RUDOLPH W. HALEY, filed an Objector's Petition objecting to the Nomination Papers of the Candidate.

3. On December 6, 2010, this matter appeared on the Board's Initial Trial Call. Attorney Micheal C. Dorf and Adducci, Dorf, Lehner, Mitchell and Blankenship, PC. filed their appearance for the Petitioner-Objector, and Chester Slaughter filed his appearance for the Respondent-Candidate. The Hearing Officer entered into evidence the following Board Documents: "Board Group Exhibit A" consisting of the Candidate's Nomination Papers; "Board Group Exhibit B" consisting of the Objector's Petition and attachments; "Board Group Exhibit C" consisting of a copy of the call and proof of service of the call; and "Board Group Exhibit D" consisting of the parties' appearances. The Hearing Officer granted the Candidate leave to file a Motion to Dismiss and granted the Objector leave to file a Response. The Hearing Officer

Response. The Hearing Officer continued the matter for hearing on the Candidate's Motion to Dismiss and hearing on the Objector's Petition on December 13, 2010.

4. The Objector's Petition seeks to invalidate the Candidate's Nomination Papers for the following reasons:

a. The Candidate failed to file a Statement of Economic Interests with the Cook County Clerk as required by Section 10-5 of the Election Code *(Objectors Petition para. 5)*, and

b. The Candidate failed to file a receipt with her Nomination Papers showing the date upon which a Statement of Economic Interests was filed with the County Clerk as required by Section 10-5 of the Election Code. *(Objectors Petition para. 6).*

5. On December 13, 2010, the case appeared on the Hearing Officer's call for hearing on the Candidate's Motion to Strike and Dismiss and for hearing on the Objector's Petition. The Candidate's Motion to Dismiss alleged that the Objector's Petition failed to adequately apprise the Candidate of the Objections and that the petition was not timely filed. The Motion to Dismiss is denied due to the Hearing Officers finding that the Objector's Petition was timely filed having been filed on November 30, 2010 at 4:30 p.m. and that it sufficiently states objections to the Candidate's Nominating Papers.

6. On December 13, 2010 and December 17, 2010, a hearing was held on the Objector's Petition. The Hearing Officer reviewed the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers do not include a Receipt of the Filing of a Statement of Economic Interests filed on November 15, 2010 or prior to the last date to file being November 22, 2010.

On December 13, 2010, the Candidate submitted Candidate's Exhibit A which was a receipt of the filing of a statement of economic interest dated November 15, 2010; however, the document was not filed with the Board of Elections. The Candidate rested and argued that because she did in fact file a Statement of Economic Interest with the Cook County Clerk that her papers were in substantial compliance. The Candidate then rested. The Hearing Officer heard the arguments of the parties respective attorneys and while making a recommended decision on the record, the Candidate objected and alleged she attempted to timely file the Receipt of the Statement of Economic Interest and a Board Employee on the 6th Floor refused to accept the filing. The Candidate argued that she should not be denied ballot access because a Board employee refused to do her job.

The Hearing Officer deferred ruling on the Objector's Petition and continued the matter for further hearing based the Candidate's serious allegations against a Board employee. The Hearing Officer advised that the Objector had proven a prima facie case and that the burden has shifted to the Candidate to prove her allegations and to prove what remedy is appropriate.

7. On December 17, 2010, the Hearing Officer heard evidence offered by the Candidate in support of her allegations.

The Candidate called Paulina Mysliwiec who testified that she is employed as a receptionist with the Chicago Board of Elections. She has worked for the Board for the past two years and received training. She is assigned to the 6th Floor Reception Desk and was so assigned on November 22, 2010. The Office on the 6th Floor was open on November 22, 2010 and she worked until 8:00 p.m. Miss Mysliwiec did not refuse to accept filings from the Candidate, did not encounter the Candidate on November 22, 2010, and she never told anyone they were to late to file any documents. Miss Mysliwiec further testified that if a person appeared at the 6th Floor

to file documents that she would refer that person to a manager in that her job description does not include filing of documents presented by candidates or objectors.

The Candidate called her father, Jessie Butler, who testified that he and his daughter arrived at the Office of the Board of Elections located on the 6th Floor of the building located at 69 W. Washington, Chicago, Illinois at around 4:30 p.m. The Candidate was with him and she had a conversation with a young lady seated at the receptionist desk. Mr. Butler identified Ms. Mysliwiec as the person the Candidate spoke. Mr. Butler further testified when asked if he wants his daughter to appear on the ballot that he wants all candidates to appear on the ballot so the people can decide.

The Candidate also testified that she and her father went to the 6th Floor offices of the Board of Elections on November 22, 2010 at approximately 4:40 p.m. Ms. Butler testified that she spoke to a young lady with dark hair regarding the filing of her Receipt of Statement of Economic Interest and that Ms. Mysliwiec who was not involved in the conversation commented that it was too late. The Candidate testified that she then left the Board of Elections without filing the document. The Candidate testified that at the time she was not represented by an attorney and when she had questions regarding the process she would call the Board of Elections and rely upon advice given by the Board staff. Ms. Butler testified that she never gave the document she desired to file to the any Board employee and that she left the office without asking to speak to a manager or other supervisor. Ms. Butler testified that on November 15, 2010, she filed her Nomination Papers in the Lower Level after she was directed by Board staff on the 6th floor that the filings were being accepted in the Lower Level.

The Hearing Officer finds the testimony of Paulina Mysliwiec to be credible and finds the testimony of the Candidate and her father not credible. The Hearing Officer finds that the

Candidate had prior knowledge that filings were being accepted in the Lower Level. The Hearing Officer further finds that the testimony of the Candidate that she was told it was too late and that she simply left the office without first asking to speak with a manager or someone in a supervisory capacity at the Chicago Board of Elections is incredible.

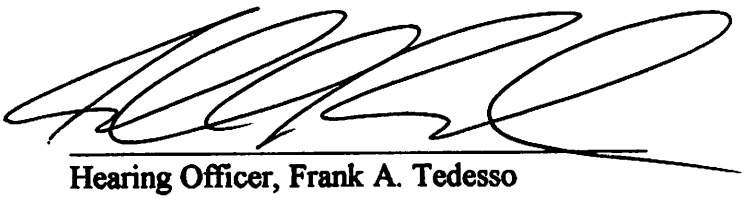
8. Section 10-5 of the Election Code provides in pertinent part as follows:

> "Nomination papers filed under this Section are not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in relation to his candidacy with the appropriate officer by the end of the period for the filing of nomination papers unless he has filed a statement of economic interests in relation to the same governmental unit with that officer during the same calendar year as the year in which such nomination papers were filed. If the nomination papers of any candidate and the statement of economic interest of that candidate are not required to be filed with the same officer, the candidate must file with the officer with whom the nomination papers are filed a receipt from the officer with whom the statement of economic interests is filed showing the date on which such statement was filed. Such receipt shall be so filed not later than the last day on which nomination papers may be filed." *10 ILCS 5/10-5.*

9. The failure to file with the election authority with which nomination papers are to be filed a receipt evidencing that the candidate filed a Statement of Economic Interests with the appropriate official invalidates the nomination papers. *Henning v. Lawrence*, 07-EB-ALD-052, CBEC, January 16, 2007, affirmed, *Lawrence v. Board of Election Commissioners, et al.*, Circuit Court of Cook County, 2007 COEL 0008, affirmed Illinois Appellate Court, No. 1-07-0286 (unpublished order).

10. The Candidate did not file a Receipt of the Filing of her Statement of Economic Interest with the Chicago Board of Elections as required; therefore, the Hearing Officer recommends the Chicago Board of Elections Commissioners sustain the Objector's Petition and find the Candidate's Nomination Papers to be invalid and that her name not appear as a

Candidate for Alderman of the 29th Ward of the City of Chicago at the February 22, 2011 Municipal General Election.



Hearing Officer, Frank A. Tedesso