NBCON-ALD

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

Objections of: Sergio Bocanegra	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-196
Papers of: George Cardenas	)	
	)	Related Cases: 11-EB-ALD-230,
	)	11-EB-ALD-325
Candidate for the office of	)	
Alderman of the 12th 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 Sergio Bocanegra ("Objector") to the nomination papers ("Nomination Papers") of George Cardenas, candidate for the office of Alderman of the 12th 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 Ernesto D. Borges, Jr. 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, Sergio Bocanegra, by attorney, Andrew Finko; and the Candidate, George Cardenas, by attorneys, James Nally and James Bizzieri.

7. Objector alleges that the Candidate is ineligible to be a candidate because of an outstanding debt owed to the City of Chicago.

8. 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 bases 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.

9. The Objector presented evidence of a debt owed by an individual by the name of Jose Cardenaz and not the Candidate George Cardenas. The Objector presented further evidence of a purported debt owed by a company, Taylor Excavating, in a case which was ultimately nonsuited resulting in no fine or debt to the City of Chicago.

10. The Hearing Officer found that the Objector failed to establish that any debt was owed by the Candidate and, therefore, Objector failed to establish that the Candidate was ineligible for office pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code.

11. 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.

12. 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.

13. 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.

14. The Electoral Board further finds that additional objections were filed against the Candidate's Nomination Papers in Related Cases 11-EB-ALD-325 and 11-EB-ALD-230 and the Candidate's Nomination Papers were also found to be valid in said cases.

IT IS THEREFORE ORDERED that the Objections of Sergio Bocanegra to the Nomination Papers of George Cardenas, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of George Cardenas, candidate for election to the office of Alderman of the 12th 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 18, 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 DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATING PETTITIONS OF CANDIDATES FOR THE FEBRUARY 22, 2011, MUNICIPAL GENERAL ELECTION FOR MAYOR, CLERK, TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

SERGIO BOCANEGRA, Objector		
v.	11 EB-ALD-196	
GEORGE CARDENAS Candidate	Related to:	11 EB-ALD-230 11 EB-ALD-225

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HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION

I. Procedural History

This matter first came before the Hearing Officer on December 6, 2010, set on the call for 2:10 p.m., at which time it came on for hearing, with both Objector and Candidate appearing through counsel, each filing their appropriate appearances. Attorney Andrew Finko appeared on behalf of the Objector. Attorneys James P. Nally and James Bizzieri appeared on behalf of the Candidate.

The Candidate filed Nomination Papers for Alderman of the 12th Ward of the City of Chicago on November 15, 2010. The papers consisted of: 1) a statement of candidacy; 2) a loyalty oath; 3) nominating petitions number 1 through 190; and 4) a statement of economic interest. The candidate's nomination papers were marked as Group Exhibit A.

A Verified Objectors Petition was entered by the Objectors as Group Exhibit B. The petition alleged that the Candidate had an outstanding debt owed to the City of Chicago Department of Revenue for unpaid water bills, thus rendering the Candidate ineligible to be listed on the ballot for alderman pursuant to Section 3.1-10-5(b) of the Illinois Municipal Code.

It further contended that the Illinois Supreme Court in *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 886 N.E.2d 1011, 1023 (2008) requires the Candidate to not be in arrears to the City of Chicago as of the date of the filing of the Nomination Papers.

The Objector requested the issuance of subpoenas to the City of Chicago Department of Revenue and the City of Chicago Department of Water seeking documents related to any debts owed by the Candidate to the City of Chicago for the all of 2009 and January through November 2010. The Hearing Officer issued the subpoenas. The Objectors sought the subpoenas only after making a Freedom of Information Act request for similar documentation to the Department of Revenue which yielded an apparently unsatisfactory response.

The Hearing Officer permitted the Candidate to file a motion to dismiss by the following day, in accordance with Rule 6. A response and reply were also allowed, each given one additional day to respond. A hearing was set for December 14, 2010.

The matter was called for hearing on December 14, 2010 but was continued until December 20, 2010 due to a scheduling conflict of Objector's attorney.

The matter was again called for hearing on December 20, 2010. The Objector requested the issuance of a subpoena to the Candidate, which was approved and issued by the Hearing Officer. The Objector then requested a continuance. A status hearing was set for December 22, 2010.

The City of Chicago filed an objection to portions of the subpoena, attached as Exhibit A, (served on the Department of Revenue on December 20, 2010) with the Board of Elections on December 21, 2010. The objection claimed that the subpoena was vague, over-broad and unduly burdensome when it requested "letters" and "correspondence" between with Department of

Revenue and 4 legal entities and 9 addresses without limitation to the question of direct indebtedness of the Candidate.

The City of Chicago supplied all other documents not objected to, as demanded by the subpoena, on December 20, 2010. Those documents revealed no indebtedness of the Candidate to the City of Chicago as of November 15, 2010.

The matter was called on December 22, 2010 at which time the objections of the City of Chicago were argued. The Hearing Officer overruled objections as to two addresses listed in the subpoena: 2325 S. Sawyer and 2327 S. Sawyer, both in Chicago, Illinois. All other objections by the City of Chicago were sustained. The Department of Revenue submitted the required documents to the parties of record on December 22, 2010.

The supplemental records show only that a debt is owed on a water bill by a Jose Cardenaz at the 2325 S. Sawyer address. A charge against Taylor Excavating, also at the 2325 S. Sawyer address, was nonsuited in 2006, resulting in no fine or debt to the City of Chicago.

The records examination of the signatures contained in the Nomination Papers confirmed that that statutory requirement of 88 valid signatures had been met. It was then read into the record.

II. Findings of Fact and Law

The Candidate was not indebted to the City of Chicago as of November 15, 2010, the data Nomination Papers were filed. The evidence submitted by the Objectors fails to point to any direct debts of the Candidate owed to the City of Chicago. The only debt uncovered by the Department of Revenue was that of a Jose Cardenaz, not the Candidate George Cardenas.

The decision in *Cinkus* is not on point as there was no debt owed at the date of filing Nomination Papers. That decision likely would control in this instance had any evidence proved the Candidate owed a debt to the City of Chicago.

III. Recommendations of the Hearing Officer

After review of all facts, arguments, and documents presented the Hearing Officer recommends that the Candidate, George Cardenas, be placed on the ballot for Alderman of the 12th Ward of the City of Chicago, Illinois for the February 22, 2010 election, at least insofar as 11 EB-ALD-196 is concerned.

Respectfully Submitted,



Ernesto Borges, Jr.
Hearing Officer