NBCOFF-ALD

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

Objections of: Raymond T. Nice	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-203
Papers of: Judy Ollry	)	
	)	
Candidate for the office of	)	
Alderman of the 13th 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 Raymond T. Nice ("Objector") to the nomination papers ("Nomination Papers") of Judy Ollry, candidate for the office of Alderman of the 13th 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 William P. Jones 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, Raymond T. Nice, by attorney, Michael J. Kasper; and the Candidate, Judy Ollry, pro se.

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's 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.

IT IS THEREFORE ORDERED that the Objections of Raymond T. Nice to the Nomination Papers of Judy Ollry, candidate for election to the office of Alderman of the 13th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Judy Ollry, candidate for election to the office of Alderman of the 13th 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.

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BEFORE THE CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Officer's Report

RAYMOND T. NICE, Objector,	)	
	)	No. 11-EB-ALD-203
vs.	)	
JUDY OLLRY, Candidate.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 15 P 1:08

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

1. The initial hearing in this matter commenced at approximately 3:20 p.m. on December 6, 2010. The Candidate appeared *pro se*. The Objector appeared through legal counsel, Michael Kasper.

2. Board Group Exhibit A, Nomination Papers, reveals that Candidate's Petition Sheets contain a total of 289 signatures. The minimum valid number of signatures required is 217 signatures.

3. Board Group Exhibit B, Objector's Petition, among other things contain 148 Affidavits stating that the Affiants had signed petitions for Candidate Olivo before signing petitions for Candidate Ollry (Appendix B to Objector's Petition). Additionally, Board Group Exhibit B contains 28 Revocation Affidavits, all of which were signed before the due date for filing of the Candidate's papers.

4. At the time of the initial hearing, the Candidate requested to file a Motion to Dismiss. A Rule 5 briefing schedule was ordered and the matter was continued to 9:30 a.m. on December 13, 2010. Thus, on December 13, 2010, the case was set for hearing on

Candidate's Motion to Dismiss and for evidentiary hearing upon Objector's Petition. As such, no Record Examination was directed.

5. This case was called for hearing on December 13, 2010. The Objector noted that he did not file a written response but would orally respond to Candidate's Motion to Dismiss.

6. The Candidate's Motion to Dismiss essentially raises three points:

(a) 50 signers of the 148 Affidavits had been objected to by Objector as not genuine signatures (Column B) and therefore should not be counted against the Candidate's signatures;

(b) That the Affidavit of Thomas Siwiec was crossed out and re-signed and should be considered invalid; and

(c) That a certain number of signatures upon the petitions for Candidate Olivo should be found to be invalid because the petitions were circulated later than the dates asserted.

The Candidate withdrew her third point, Paragraph 6(c) above.

7. The Objector responded that the Candidate's Motion raised issues that were evidentiary and were not addressed to the legal sufficiency of the Objector's Petition.

8. The hearing officer denied Candidate's Motion to Dismiss essentially adopting Objector's argument.

9. The hearing proceeded to the taking of evidence in support of Objector's Petition. The Objector had filed a witness list which included the Olivo circulator of Sheet 1. Objector also filed a Request to Produce, which among other requests, asked the

Board to produce the sheets of Candidate Olivo pursuant to the Board's Rule of Procedures. The hearing officer noted that the Board Rule of Procedures only required that requested records be available for inspection and certification and not requiring that the records be produced at the time of hearing. However, during the hearing, Candidate Olivo's petition sheets were voluntarily provided by the Board in the interest of justice and judicial economy.

10. At the time of hearing, the Objector proffered as Objector's Group Exhibit 1, 148 Affidavits, each stating that the Affiant had signed Candidate Olivo's petitions before signing Candidate Ollry's petitions. Candidate did not object to admission and, therefore, pursuant to the Rules of Procedures, Objector's Group Exhibit 1 was admitted, with a reservation relative to the 50 signatures listed by Candidate.

11. Objector proffered as Objector's Group Exhibit 2, 28 Affidavits of revocation, all of which were signed prior to the due date for filing the Candidate's Nomination Papers. Candidate did not object and, therefore, pursuant to the Rules of Procedures, Objector's Group Exhibit 2 was admitted.

12. Additionally, Objector called Paul Rybski as a witness. Mr. Rybski testified that he was the circulator of Sheet 1 of Candidate Olivo's petition. Mr. Rybski testified that Candidate Ollry signed Candidate Olivo's Sheet 1, Line 1.

13. The Objector called Candidate Ollry as a witness. Showing Candidate Ollry her Statement of Candidacy in Board Group Exhibit A, the Candidate acknowledged her signature. Additionally, when the Olivo Sheets were voluntarily proffered, Objector asked Candidate Ollry whether having been shown Sheet 1, Line 1 of Olivo's Sheets whether that refreshed her recollection of whether her signature appeared

on Sheet 1, Line 1. The Candidate stated that it did not refresh her recollection of her signing the Olivo petition but that the signature "looks like her signature". The Objector argued that the Candidate's signing of the Olivo petition contradicts her Statement of Candidacy and based upon *Watkins vs. Burke*, ___ Ill.App.3d ____, 461 N.E.2d 625 (1st Dist. 1984), this contradiction would invalidate the entirety of Candidate's Nomination Papers.

14. The Objector argued that the law provides that the earlier signature is valid and the later signature on petition is invalid. Therefore, if one subtracts the 148 Affidavits of "previously signed" together with the 28 Revocation Affidavits or a total of 176 subtractions, there remains 113 valid signatures and thus falling below the 217 minimum valid signatures required. Objector also acknowledged that if the Objector's 176 Affidavits establish a number of signatures below the minimum amount, that the Statement of Candidacy / Olivo Sheet 1, Line 1 issue would be mooted.

15. The Candidate limited her response to the point of the 50 signatures contained in her Motion to Dismiss.

16. The hearing officer finds that even assuming arguendo that the 50 Affidavits listed in Candidate's Motion were struck, that would result in the admission of 98 Affidavits (rather than 148). But when the 98 Affidavits were added to the 28 Revocations, a total of 126 Affidavits are subtracted from the 289 signatures resulting in a total of 163 valid signatures, which total falls below the minimum of 217.

17. The hearing officer finds that the 28 Revocation Affidavits comply with Section 10-4 of the Election Code, 10 ILCS 5/10-4 (West 2008).

18. The hearing officer finds that at least 98 Affidavits establish that the Affiant had previously signed Olivo's petitions and, therefore, their signatures on Candidate Ollry's petitions are invalid.

19. The hearing officer therefore finds that there exist at least 126 signatures on the Candidate Ollry petitions that are invalid.

20. The hearing officer therefore finds that at most the Candidate's sheets have 163 valid signatures and fall below the minimum amount of 217 signatures.

21. As the result of these findings, the hearing officer declares as moot the Statement of Candidacy / Olivo Sheet 1, Line 1 issue. See Paragraph 17 of Objector's Petition.

22. For all the foregoing reasons, the hearing officer recommends that the name of Judy A. Ollry not appear on the ballot for the office of Alderman of the 13th Ward of Chicago, Illinois.

Date: December 15, 2010

Hearing Officer
William P. Jones