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

Objections of: Raymon T. Nice	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-204
Papers of: Héctor M. González	)	
	)	
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 Raymon T. Nice ("Objector") to the nomination papers ("Nomination Papers") of Héctor M. González, 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, Raymon T. Nice, by attorney, Michael J. Kasper; and the Candidate, Héctor M. González, pro se.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate failed to file a Statement of Economic Interest Statement with the Cook County Clerk and failed to file with this Nomination Papers a receipt evidencing the filing of a Statement of Economic Interests with the Cook County Clerk. As a result, the Hearing Officer recommends that the Objections be sustained and that the Candidate's Nomination Papers be declared invalid.

8. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Examiner's Report and Recommended Decision 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 finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of Raymon T. Nice to the Nomination Papers of Héctor M. González, 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 Héctor M. González, 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 17, 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 CHICAGO BOARD OF ELECTION COMMISSIONERS

Hearing Officer's Report

RAYMOND T. NICE, Objector,	)	No. 11-EB-ALD-204
vs.	)	
HECTOR GONZALEZ, Candidate.	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 13 P 1:12

HEARING OFFICER'S FINDINGS AND RECOMMENDATIONS

1. The initial hearing commenced at approximately 2:30 p.m. on December 6, 2010.

2. The Candidate appeared pro se. The Objector appeared through counsel, Michael J. Kasper.

3. The Candidate stated he wished to file a Motion to Dismiss. The hearing officer scheduled a Rule 5 briefing schedule and the hearing on Candidate's Motion to Dismiss was set for 2:30 p.m. on Saturday, December 11, 2010.

4. The Objector's Petition essentially raises one issue, i.e. that the Candidate failed to file his Statement of Economic Interests with the Cook County Clerk. The Petition asserts that said failure violates Section 10-5 of the Election Code, 10 ILCS 5/10-5 and violates Article XIII, Section 2 of the Illinois Constitution, citing *Kellogg vs. Cook County Officers Elec. Bd.*, 347 Ill.App.3d 666, 807 N.E.2d 1161 (1st Dist. 2004). Objector argues that said failure invalidates the nomination papers in their entirety. The Illinois Governmental Ethics Act, 5 ILCS 420/4A - 101, 106, provides that the

Candidate's Statement of Economic Interests must be filed with the Cook County Clerk. Attached to Objector's Petition is a Certification by the Cook County Clerk's Office that there as "no filing of a Statement of Economic Interests for HECTOR GONZALEZ for the year of 2010..."

5. The Candidate filed his Motion to Dismiss on December 8, 2010. The only assertions in the Candidate's Motion that are relevant to the principal issue raised in the Objector's Petition is that the Certification attached to Objector's Petition is "invalid".

6. The Objector chose not to file a written Response to Candidate's Motion to Dismiss.

7. A hearing on the Candidate's Motion to Dismiss together with an evidentiary hearing on Objector's Petition was commenced at approximately 2:30 p.m. on Saturday, December 11, 2010.

8. The Candidate, pro se, presented his argument largely based upon his written motion. Objector responded that "interest" was adequately pleaded, that no Appendix A has or was meant to be attached and Objector acknowledged an incorrect month in the notary on the Objector's Petition for Verification. The Objector noted that his Petition contained evidence that the Candidate did not file his Statement of Economic Interests with the County Clerk and that no receipt of filing with the County Clerk was contained in the Candidate's Nomination Papers.

9. The hearing officer found that the Candidate's assertions lacked substance and were insufficient to strike any paragraphs of the Objector's Petition. For example, the wrong month "December" instead of "November" was a harmless clerical error. The hearing officer found that the prayer for relief was sufficient and that the pleading of

"interest" was sufficient. The Candidate refused to address the issue of the incorrect filing and failure to file. The hearing officer denied the Candidate's Motion to Strike in its entirety.

10. The hearing proceeded with the taking of evidence on the Objector's Petition.

11. Objector's Exhibit #1 was admitted over the objection of the Candidate. Objector's Exhibit #1 is the original Cook County Clerk's "Certificate As Keeper of Records and Files". This exhibit states:

> "I, David Orr, County Clerk of Cook County, in the state aforesaid and keeper of records and files of said Cook County, do hereby certify that after a due and diligent search, our records indicate no filing of a Statement of Economic Interests for HECTOR GONZALEZ for the year of 2010, all of which appears from the records and files of my office."

12. The hearing officer finds as a matter of fact that the Candidate's Nomination Papers do not contain a receipt evidencing a filing of the Statement of Economic Interests with the Cook County Clerk.

13. The hearing officer concludes therefore that as a matter of law the failure to file the Statement of Economic Interests with the Cook County Clerk invalidates the entirety of the Candidate's Nomination papers. Illinois Governmental Ethics Act, 5 ILCS 420/4A – 101(g), 420/4A – 106. *Kellogg vs. Cook County Officers Elec. Bd.*, 347 Ill.App.3d 666, 807 N.E.2d 1161 (1st Dist. 2004). 10 ILCS 5/10-5, Section 10-5 of the Election Code.

14. The hearing officer concludes therefore that as a matter of law the failure to file the proper receipt with the Chicago Board of Elections invalidates the entirety of the Candidate's Nomination Papers. *Kellogg vs. Cook County Officers Elec. Bd.*, 347 Ill.App.3d 666, 807 N.E.2d 1161 (1st Dist. 2004); *Powell vs. East St. Louis Electoral Bd.*, 337 Ill.App.344, 785 N.E.2d 1014 (5th Dist. 2003); *Bolger vs. Electoral Bd.*, 210 Ill.App.3d 958, 569 N.E.2d 628 (2nd Dist. 1991); 10 ILCS 5/10-5, Section 10-5 of the Election Code.

15. For all the foregoing reasons, the hearing officer recommends that the name of Hector M. Gonzalez not appear on the ballot for the office of Alderman of the 13th Ward of Chicago, Illinois.

Date: December 13, 2010

Hearing Officer
William P. Jones