BCCON-ALD

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

Objections of: Michael Petry	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-227
Papers of: Maria E. "Chula" Ortiz	)	
	)	Related Cases: 11-EB-ALD-136,
	)	11-EB-ALD-200, 11-EB-ALD-334
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 Michael Petry ("Objector") to the nomination papers ("Nomination Papers") of Maria E. "Chula" Ortiz, 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 was held on these Objections commencing on December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Casandra B. Watson for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Michael Petry, by attorney, Andrew Finko; and the Candidate, Maria E. "Chula" Ortiz, pro se.

7. The Candidate filed a Motion to Strike and Dismiss in which she alleged that the Objector's Petition was not timely filed because it was filed on November 30, 2010.

8. The 2011 Election Information Pamphlet and Calendar published by the Chicago Board of Election Commissioners states that the last day to file objections to nomination papers submitted for the February 22, 2011 Municipal General Election was Tuesday, November 30, 2010. Section 10–8 of the Election Code states that nomination papers shall be deemed valid unless objection thereto is duly made in writing "within five business days after the last day for filing" such nomination papers. The last day to file such nomination papers was Monday, November 22, 2010. With Thursday, November 25, 2010 being observed as a holiday for Thanksgiving, and the intervening Saturday and Sunday being excluded from the calculation of dates on which to file objections, the fifth business day after November 22 was, in fact, November 30, 2010. The Candidate's motion to strike the Objector's Petition alleges that under

the case of *Mierswa v. Kusper*, 121 Ill.App.3d 430, 459 N.E.2d 1110 (First Dist. 1984), the last day for filing objections should have been November 29, 2010, arguing that Saturday, November 27 should have been included in the calculation of 5 business days. However, Section 1–6 was added to the Election code subsequent to the *Mierswa* case to provide that Saturdays, Sundays and holidays are not to be counted in calculating "business days" for purposes of the Election Code. Therefore, the Hearing Officer denied the motion to strike the Objections on those grounds.

9. The Candidate's Motion to Strike and Dismiss alleged that the Objector failed to sign the Objector's Petition, failed to notarize the Objector's petition, failed to sign the verification, failed to state the correct name in the prayer for relief and failed, at the first hearing, to be fully aware of the all of the objections. On these bases, the Candidate alleged that the Objector's Petition should be stricken and dismissed.

10. The Hearing Officer determined that the foregoing alleged defects were not sufficient bases to strike the Objector's Petition and denied the Motion to Strike and Dismiss. Additionally, with respect to the allegation regarding the wrong name in the prayer for relief, the Hearing Officer found that a request not to print a name on the ballot is beyond the authority of the electoral board, and should, therefore, be regarded as surplusage. Kozel v State Board of Elections, 126 Ill.2d 58, 533 N.E.2d 796 (1988).

11. The Objector alleges that the Nomination Papers are invalid because they were not properly bound. A review of the Nomination Papers as well as a review of the Board's intake sheet for the Nomination Papers establishes that the Nomination Papers were bound in a black binder with a "metal Acco type clasp."

12. The Electoral Board finds that the Hearing Officer correctly concluded that the Objection regarding purported improper binding should be overruled in that the Nomination Papers meet the binding requirements set forth in Section 10-4 of the Election Code. 10 ILCS 5/10-4.

13. The Objector further alleges that certain signatures in the Candidate's Nomination Papers are not valid and the Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

14. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

15. The Candidate and/or her duly authorized representative was present during the examination of the registration records.

16. The Objector and/or his duly authorized representative were present during the examination of the registration records.

17. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

18. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 88.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 363.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 189.

D. The remaining number of signatures deemed valid as a result of the records examination total 174.

19. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago.

20. No motions were filed pursuant to Rule 8 of the Board's Rules of Procedure.

21. 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's Nomination Papers contained valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

22. 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.

23. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Maria E. "Chula" Ortiz are, therefore, valid.

24. The Electoral Board further finds that there are other objections filed against the Candidate's Nomination Papers in Related Cases: 11-EB-ALD-136, 11-EB-ALD-200, 11-EB-ALD-334 and the Electoral Board found the Nomination Papers to be valid in said cases.

IT IS THEREFORE ORDERED that the Objections of Michael Petry to the Nomination Papers of Maria E. "Chula" Ortiz, 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 MARIA E. "CHULA" ORTIZ, 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 13, 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.