NBCOFF-ALD

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

Objections of: Felix Cardona, Jr.	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-238
Papers of: Esteban Burgoa	)	
	)	Related Case: 11-EB-ALD-030
Candidate for the office of	)	
Alderman of the 31st 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 Felix Cardona, Jr. ("Objector") to the nomination papers ("Nomination Papers") of Esteban Burgoa, candidate for the office of Alderman of the 31st 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 Terence E. Flynn 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, Felix Cardona, Jr., by attorney, Bonnie Bumiller; Thomas A. Jaconetty also previously filed his appearance in the matter on behalf of the Objector; and the Candidate, Esteban Burgoa, pro se.

7. The sole issue presented in the Objector's Petition was whether the Candidate filed a false and perjurious Statement of Candidacy because at the time the Candidate filed his Nomination Papers he was in arrears in the payment of a debt to City of Chicago making him ineligible to run for municipal office.

8. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that there was a debt owed by the Candidate to the City of Chicago arising out of outstanding parking tickets at the time he filed his nominating papers and that said debt fell within the meaning of Section 3.1-10-5(b).

9. Section 3.1-10-5(b) 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 based 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 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.

Finally, in addressing whether an "indebtedness" exists under Section 3.1-10-5(b) it is useful to ascertain what the City of Chicago considers to be an "indebtedness". Although not binding on this Electoral Board, Section 1-19-010 of the Municipal Code of the City of Chicago provides guidance. Said section defines "debt due and owing" as

> "a specified sum of money owed to the city for fines, penalties, fees, interest, or other types of charges or costs imposed by this code, or administrative or judicial judgments after: (i) the period granted for payment has expired; (ii) the exhaustion of, or the failure to exhaust, judicial review procedures; or
> (iii) in the case of tax debt, an assessment has become final under Section 3-4-330 of this code."

10. The Electoral Board finds that the Hearing Officer correctly concluded that there was an indebtedness under Section 3.1-10-5(b) of the Illinois Municipal Code.

11. 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.

12. 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 Felix Cardona, Jr. to the Nomination Papers of Esteban Burgoa, candidate for election to the office of Alderman of the 31st Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Esteban Burgoa, candidate for election to the office of Alderman of the 31st 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 January 11, 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.

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 31st WARD, CITY OF CHICAGO TO BE VOTED UPON AT THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION

Felix Cardona, Jr. Petitioner – Objector	)	
	)	11-EB- ALD- 238
Esteban Burgoa, Respondent – Candidate	)	(consolidated with ALD-030)

2010 DEC 29 A 11:11
BOARD OF ELECTION
POLLING PLACE DEPT

Report and Recommendation of Hearing Examiner
Terence E. Flynn

1. This case was initially called for hearing on December 6, 2010. Present were the candidate **pro se** and Attorney Bumiller, associated with Attorney Jaconetty's office, for the objector. The candidate complained that the Hearing Officer had allowed too much time for the appearance of objector's attorney. This Hearing Officer interpreted that complaint as a motion to default. This Hearing Officer denied that motion on the basis that Attorney Jaconetty had filed a "Receipt of Call" listing numerous cases in which he was appearing, and while it was an inconvenience to all, given that he was engaged elsewhere was sufficient. The candidate also complained that the Hearing Officer left the hearing room looking for Attorney Jaconetty. The candidate complained that such conduct did not show "neutrality". The Hearing Officer attempted to explain that he only wished to expedite matters by seeing whether the attorney was in the area and that a "default' of the objector would be useless, given that the attorney had made it plain, of record, that he was otherwise engaged. The candidate continued to object and those objections were overruled. After objector's attorney finally did appear, the matter was set over to December 9, 2010, for further proceedings.

2. This matter involved the sole allegation of arrearage or indebtedness of the

candidate to the City of Chicago, as reflected in Exhibit A to the Verified Objection, involving allegations of past due parking tickets on multiple vehicles over multiple years. (Thus, no Rule 6 exam was appropriate for either of the consolidated cases.)

3. At the December 9th hearing, there was argument on a motion to strike, filed by the candidate, and written response filed by the objector. The motion was based upon the mistaken notion that the second case filed – Ald-238 -- was a prohibited amendment to the first filed case. The motion was denied on the basis that they were separate cases separately filed within the time-frame for filing objections. There was then discussion on subpoenas to be issued. Ultimately two were issued in this matter: one to the City of Chicago's Department of Revenue and the other to the candidate. The first was made returnable on the next hearing date: December 18th.

4. At the December 18th hearing, a witness subpoenaed by the objector -- Christine Haynes, Asst. FOIA Officer for the Department of Revenue of the City of Chicago – testified. Initially she identified Objector's Group Exhibit 2, a packet of documents generated in response to the subpoena duces tecum issued by the objector. That Group Exhibit was comprised of official Department of Revenue summary reports listing multiple unpaid tickets that had been issued to Esteban Burgoa. There were three addresses listed for various notices of non-payment that Group Exhibit 2 reflected were sent to Esteban Burgoa: 4020 N. Francisco; 3831 N. Albany; and 3721 W. Belmont. (At a later hearing, on December 23rd, Mr. Burgoa testified that he had lived at all those addresses at the times of the issuance of tickets and notices – Transcript, 12/23/10, page 34, Lines 1-10, although he flatly, but incredibly, denied ever receiving a notice. Tr. 12/23/10, p.39, L.14 to p.40, L.9 See further discussion below in paragraphs 5, 6 and 7.)

At the request of the Hearing Examiner, Ms. Haynes also went back to her office and obtained further records of the Department of Revenue regarding Mr. Burgoa that were marked as Group Exhibit 4. These documents, again existing records of the City of Chicago's Department of Revenue, further and in more detail reflected the nature of certain of the tickets, whether and where-to notices had been sent and further specified the nature of the indebtedness allegedly owed by Mr. Burgoa. Besides identifying the documents produced pursuant to both subpoena and the Hearing

Examiner's request, Ms. Haynes testified to the levels of notices and dispositions in the customary business practices of the Department of Revenue in collection of arrearages and noted that the Burgoa alleged indebtedness had gone to collection attorneys, as well as one of the automobiles registered to him being booted, impounded and destroyed. The hearing was continued to December 23rd.

5. At the December 23rd hearing, the objector's attorney presented further documentary evidence and further examined the candidate under oath. Included in the documentary evidence were Objector's Exhibits 8 and 9, which for convenience and ready reference are attached to this Report and Recommendation. Those exhibits show that a 1994 Mercury whose registered owner is "Estaben Burgoa" was towed on March 29, 2009 and destroyed on April 28, 2009 (Ex. 8) and a letter on Department of Revenue stationary indicating that at the time of the boot/tow of a Mercury owned by Esteban Burgoa in March, 2009 there was an "outstanding parking debt in the amount of $2,269.20 representing 18 tickets" (Ex. 9). At the December 23rd hearing, in answer to questions put to him by this Hearing Examiner, the candidate stated that the Mercury was his, he had given it to one of his children, he had no bill of sale, he had never transferred title (Tr.12/23/10, p.58, L.9-24) but he still claimed that the booting, towing and destruction were unknown to him.

6. To back-up his claim of lack of notice, the candidate placed in the Record a document showing military service in year 2003 (Candidate's Ex. 1) and a business license issued to him by the City of Chicago (Candidate's Ex. 2). Of course, the tickets range in time back to 1998 through 2009, thus his commendable military service in 2003 does not establish a defense. Further, while the City has instituted programs to attempt to deny business licenses to City-debtors as a recapture method, Ms. Haynes, the Department of Revenue employee, testified credibly that the system is not perfect and that it has tightened-up over time. Thus the mere fact of a business license does not provide a defense to the candidate. Finally, the candidate objected to the admission of the Department of Revenue documents (apparently even those requested by the Hearing Examiner) on the ground that the FOIA request form was not itself placed in evidence and that his privacy rights were violated (Tr.12/23/10, p.51, L.1-21). No such requirement exists for admission of the documents. Also, he

himself testified that from the time he received the Verified Objector's Petition, which included evidence of indebtedness as Exhibit A to that pleading, up to and through the final hearing date, he did not visit the Department of Revenue to determine the validity of the debt documents, or, if an FOIA form had been filled out.

7. Thus the candidate is left with a naked assertion of lack of knowledge due to lack of notice receipt, multiple notices for multiple vehicles over a decade of time. The claim strains credulity, to say the least. However, Exhibits 8 and 9, the boot/tow records for the Mercury registered to him combined with the candidate's admission that he never transferred title on that self-same Mercury, are dispositive. That car was not claimed stolen (as was one other) but rather was in a family member's possession and title always remained with the candidate. The seizure itself was notice enough and the requisite knowledge can be imputed to the owner/father. As a result, a clear arrearage of indebtedness has been conclusively proven; no appropriate contest was made; it is a debt within the meaning of Sec.3.1 – 10 – 5(b) of the Municipal Code. The Illinois Supreme Court's decision in Cinkus v. Village of Stickney Electoral Board, 228 Ill.2d 200 (2008), controls and the indebtedness is a disqualification to the candidacy.

Therefore, it is the Recommendation of this Hearing Examiner that the name Esteban Burgoa not appear on the ballot for Alderman of the 31st Ward in the February 22, 2011 election.

Dated: December 29, 2010

Terence E. Flynn