NBCON-ALD

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

Objections of: Keith Harris	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-267
Papers of: Ronald Mitchell	)	
	)	Related Cases:11-EB-ALD-041,
	)	11-EB-ALD-045
Candidate for the office of	)	
Alderman of the 16th 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 Keith Harris ("Objector") to the nomination papers ("Nomination Papers") of Ronald Mitchell, candidate for the office of Alderman of the 16th 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 Yolanda Sayre 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, Keith Harris, pro se, the Candidate, Ronald Mitchell, pro se.

7. The Hearing Officer has tendered to the Electoral Board her 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.

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 with the Hearing Officer's recommended findings except as to the issue of voter confusion arising out of certain petition sheets containing a reference to voters in the 6th rather than the 16th Ward and hereby adopts the Hearing Officer's 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. With respect to the issue of voter confusion as a result of approximately 13 petition sheets containing reference to voters within the 6th Ward where the Candidate is seeking election in the 16th Ward, the Electoral Board declines to adopt the Hearing Officer's finding that it is not likely that there could be voter confusion. The Electoral Board finds, however, that the Objector failed to raise any issue regarding the petition sheets themselves, and, further failed to present any evidence of actual voter confusion.

10. 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.

11. The Electoral Board further finds that objections to the Candidate's Nomination Papers were filed in Related Cases 11-EB-ALD-041 and 11-EB-ALD-045 and that the Candidate's Nomination Papers were also found to be valid in said cases.

IT IS THEREFORE ORDERED that the Objections of Keith Harris to the Nomination Papers of Ronald Mitchell, candidate for election to the office of Alderman of the 16th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Ronald Mitchell, candidate for election to the office of Alderman of the 16th 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.

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

KEITH HARRIS	)	
Objector	)	
	)	
-v-	)	**11-EB-ALD-267**
	)	
RONALD MITCHELL	)	**Yolanda H. Sayre**
Candidate	)	**Hearing Examiner**

BOARD OF ELECTION
POLLING PLACE DEPT.
2010 DEC 24 P 1:50

RECOMMENDED FINDINGS AND CONCLUSIONS OF LAW

This matter having come before the duly constituted Chicago Board of Election Commissioners ("CBEC" or "the Board"), and before the undersigned Hearing Officer on December 6, 2010; the Hearing Officer hereby makes the following report and recommended findings:

1. The Candidate filed Nomination Papers for the Alderman of the 16th Ward in the City of Chicago. Such Nomination Papers consisted of: a) a Statement of Candidacy; b) a Receipt for Statement of Economic Interests (The Receipt was a sheet of paper cut in half, containing only the top portion of the document exhibiting the stamp of the Cook County Clerk.); and c) Nominating Petition Sheets numbered 1 through 73. Without objection, the Candidate's Nomination Papers were admitted into evidence and marked as Group Exhibit A.
2. The Verified Objector's Petition was timely filed on November 30, 2010. Such Petition was admitted into evidence and marked as Group Exhibit B.
3. A Call to the hearing on said objections was duly issued by the Chairman of the CBEC and served upon all parties. The Call and proof of service thereof were admitted into evidence and marked Group Exhibit C.
4. The initial hearing on these Objections was called on December 6, 2010, at which time the Objector and the Candidate filed appearances *pro se*. The Candidate indicated that on this matter he wished to appear *pro se*, despite requesting time to obtain counsel on two

related matters. Such appearances were admitted into evidence and marked Group Exhibit D.

5. At the initial hearing the Candidate tendered a Motion to Dismiss the Objector's Petition. Leave was granted to the Objector to file a reply. The Objector opted not to file a reply.
6. The matter was recalled December 10, 2010 for a hearing on the Candidate's Motion to Dismiss the Objector's Petition. It was during this hearing that the Hearing Officer denied the Candidate's Motion to Dismiss and decided to treat it as a Motion for Evidentiary Hearing due to the factual nature of the Candidate's Motion.
7. The Hearing Officer scheduled an Evidentiary Hearing to be held on December 15, 2010, during which both parties could present evidence in support of their positions.
8. In order to facilitate the orderly function of the scheduled Evidentiary Hearing, the Hearing Officer issued an order requiring each party to apprise the other of the witnesses to be called and the evidence sought to be introduced.
9. The Objector requested on the record that CBEC employee Mr. Charles Holiday ("Mr. Holiday") be called as a witness. The Candidate submitted a list of witnesses who he wished to testify.
10. The Evidentiary Hearing was held on December 15, 2010, wherein the parties had the opportunity to put forth evidence pertaining to all objections and defenses thereto. After hearing all argument and evidence put forth by the parties, and there having been no other matters at issue, the Hearing Officer concluded the case.
11. The Hearing Officer made the following findings as they relate to the three (3) objections contained in the Objector's Petition:

> **THE FIRST OBJECTION:**
> Candidate was not a qualified elector in the City of Chicago at the time of his signing or submitting his Statement of Candidacy, and his nomination papers are therefore invalid.
>
> **HEARING OFFICER'S RECOMMENDED FINDING:**
> **This Objection should be overruled.** The Candidate was a qualified elector at the time of his signing and submitting his Statement of Candidacy.
>
> **HEARING OFFICER'S ANALYSIS:**

12. The Objector cites *Hicks v. Maldonado*, 03-EB-ALD-060, CBEC, February 7, 2003 and *Sanders v. Riles*, 92-EB-WC-12, CBEC, January 22, 1992 in support of his objection. It

is true that failing to be a registered voter would in fact invalidate the Candidate's Nomination Papers; however the Objector was basing his objection on the mistaken premise that being an "Inactive" voter was the equivalent of being an "unregistered" voter.

13. During the Evidentiary Hearing, the Objector produced documents indicating that the Candidate's voter registration status was listed as "Inactive" at the time the Nomination Papers were filed and that there were some apparent discrepancies with the Candidate's addresses and prior voter registrations. However, the Objector's witness, Mr. Holiday testified that the Candidate was in fact a "qualified elector" at the time he submitted his Nomination Papers.
14. Mr. Holiday testified that although the Candidate had been listed as Inactive, the Inactive status was the result of a Canvas Challenge. The Candidate had been challenged as a result of the Board not having received or processed an address confirmation form sent to the Candidate. Once the Candidate was Canvas challenged, his status was changed to Inactive. The result of such Inactive status is not to disqualify an elector, but rather to require presentation of two forms of identification when voting. The documents the Objector requested that Mr. Holiday analyze (Voter History) indicated that the Candidate had in fact early voted in October, prior to the submission of his Nomination Papers; and that the act of voting actually changed his status back to Active. This was true despite such status not being reflected as Active on the Poll Sheets or Walking Lists offered as evidence by the Objector.
15. Irrespective of whether the Candidate's status reverted back to Active or whether the Candidate actually voted, an Inactive status would not render an elector unqualified. State Board of Election Rules define an "inactive voter" as " . . . [one] whose authority to vote has not yet been canceled." 26 Illinois Administrative Code §216.20. The same rules have been applied to those who sign petitions as well as those who circulate petitions. See *Drish v. Walls,* 03-EB-MUN-02, CBEC (February 12, 2003), affirmed *Walls v. Board of Election Commissioners of the City of Chicago*, 03 CO EL 032 (Cir. Ct. Cook County, February 24, 2003)(Applied this rule to petition signers.) See also, *Barnett v. Miller,* 99-EB-ALD-189, CBEC, February 2, 1999, aff'd. *Rhodes v. Board of Election Commissioners,* 99 CO 38, (Cir. Ct. Cook County), aff'd. *Rhodes v. Board of Election*

Commissioners for the City of Chicago, No. 99-0529 (Rule 23 Order) (1st Dist. March 16, 1999).

16. Certainly the same standards and rule should be applicable to candidates as well. For the reasons articulated above, the Objector's first objection should be overruled.

THE SECOND OBJECTION:
Candidate failed to designate in his Statement of Candidacy the office he is seeking as required by 10 ILCS 5/10-5 of the Election Code, and his nomination papers are therefore invalid.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The ward number can be ascertained by examining the Petition Sheets submitted with the Statement of Candidacy.

HEARING OFFICER'S ANALYSIS:

17. During the Evidentiary hearing it was determined that the Candidate had written the word "Alderman" in the box designated for the description of office on the Statement of Candidacy. The Candidate did not specify the Ward within which he was seeking to be elected. In the box entitled "City, Village, or Special District," the Candidate wrote "Chicago." Furthermore, the Candidate wrote the word "Alderman" in the affidavit portion of the Statement of Candidacy. Again, the Candidate failed to specify the Sixteenth Ward and instead wrote "Chicago" in the line designated for the "Name of City, Village, or Special District."
18. The Objector cites Lawlor v. Municipal Officers Electoral Board, 28 Ill. App. 3rd 823, 329 N.E.2d 436 (1st Dis. 1975) and Lewis v. Dunne, 63 Ill.2d 48, 344 N.E.2d 443 to support his argument that although the Statement of Candidacy and the Nominating Petitions are considered to be a part of the Nomination Papers, they cannot be read together as to validate a Statement of Candidacy which does not substantially set forth the matter required.
19. However, the Illinois Supreme Court in Lewis v. Dunne, in essence overruled the Lawlor approach, holding that the failure to properly designate the office the Candidate is seeking in the heading of the Statement of Candidacy does not render his Nomination Papers invalid if the office for which the Candidate is filing can be determined or

ascertained by looking at the Nomination Petitions. 63 Ill.2d 48, 344 N.E.2d 443. In almost identical cases, this Board held that the failure of a candidate to include the ward number on a Statement of Candidacy did not invalidate a candidate's Nomination Papers when the ward number was written on the Petition Sheets. *Morgan v. Stowers*, 87-EB-ALD-140, CBEC, January 20, 1987; *Jones v. Dixon*, 07-EB-ALD-146, CBEC, January 16, 2007; *Delay v. Ferral*, 08-EB-WC-03, CBEC, December 7, 2007.

20. In the instant case, the Candidate filed seventy-three (73) pages of Petition Sheets. After examination of these Petition Sheets, the Hearing Officer found that all of the sheets contained the words "Alderman of the Sixteenth (16) Ward City of Chicago State of Illinois" in the box entitled "Office."
21. There were, however, thirteen (13) of the seventy-three (73) Petition Sheets that, despite having the correct language in the box entitled "office," inadvertently referred to the "Sixth (6^{th}) Ward" in the introductory paragraph. This presents a slightly different fact pattern than in the cases cited above. However, the Objector in this matter failed to raise that issue. And even if it had been raised it is unlikely that this type of error would cause confusion on the part of voters.
22. The Hearing Officer examined the documents and determined that any potential confusion was miniscule or should be considered *de minimis* for several reasons. First, it took several examinations of the thirteen (13) Petition Sheets for the Hearing Officer and an Electoral Board employee to notice the mistaken reference to the wrong Ward because the correct Ward is prominently displayed in the boxes at the top of each of the mistaken sheets. Second, the addresses of the individuals who signed the Petition Sheets were all in the Sixteenth (16^{th}) Ward rather than the Sixth (6^{th}) Ward; so it would seem that the voters weren't confused either. Finally, there certainly was no confusion on the part of the Board as evidenced by the Service of Call, marked Group Exhibit C, as well as the categorization of this Candidate as having filed his Nomination Papers for the office of Alderman the Sixteenth (16^{th}) Ward.
23. For the aforementioned reasons, the Hearing Officer finds that the office for which the Candidate filed his Nomination papers can be determined by looking at the Nomination Petitions. Therefore, the second objection should be overruled.

THE THIRD OBJECTION:

Candidate failed to designate in his Statement of Economic Interests the office he is seeking.

HEARING OFFICER'S RECOMMENDED FINDING:
This Objection should be overruled. The Candidate filed timely a Statement of Economic Interests with the Cook County Clerk and the Receipt, with his Nomination Papers, to the Board. Removal from the ballot would not be a proper remedy for any insufficiency or inaccuracies therein; and any inquiry as to the sufficiency of the contents of such Statement or Receipt is beyond the scope of the Board's authority.

HEARING OFFICER'S ANALYSIS:

24. In the instant case, the Candidate submitted, along with his nomination papers, a Receipt for Statement of Economic Interests. The Receipt was a sheet of paper cut in half, containing only the top portion of the Statement exhibiting the stamp of the Cook County Clerk. There was no office or position of employment listed.
25. The Objector cites Section 10-5 Subsection 8 of the Election Code and *Welch v. Johnson* in support of his position that the Candidate's Nomination Papers should be declared invalid. 10 ILCS 5/10-5; *Welch v. Johnson*, 147 Ill.2d 40, 588 N.E.2d 1119 (1992).
26. It is true that Section 10-5 of the Illinois Election Code provides that the Candidate's Nomination Papers are "not valid if the candidate named therein fails to file a statement of economic interests as required by the Illinois Governmental Ethics Act in **relation to his candidacy . . . .**" 10 ILCS 5/10-5 (emphasis added); see also *Jones v. Municipal Officers Electoral Board*, 112 Ill. App.3rd 926, 446 N. e. 2d 526 (First District, 1983). However, more recent decisions, rendered by both the Electoral Board and the Illinois Courts have held that the failure of a candidate's Statement of Economic Interests and Receipt thereof to indicate the office, for which the candidate is filing, will not invalidate the candidate's Nomination Papers. *Lenzen v. Orozco*, 01-EB-ALD-4, CBEC, January 23, 2001; citing *Requena v. Cook County Officers Electoral Board*, 295 Ill.App.3rd 728, 692 N.E.2d 1217 (1st Dist. 1998).
27. In *Requena*, for example, a candidate for a judicial office failed to properly identify the office she was seeking on her Statement of Economic Interests. Id. The court held that removal from the ballot was not the appropriate sanction for such a failure. Id. The

Requena Court partly relied on the very decision that the Objector incorrectly cites to support his position-- *Welch v. Johnson*, in which the Illinois Supreme Court ruled that "removal from the ballot is not a permissible sanction for the filing of a Statement of Economic Interests which is not true, correct and complete when filed with the appropriate officer merely due to the inadvertence on the part of the person filing the statement." 147 Ill.2d, at 51. These cases support the Candidate's position, because he did in fact file the Statement and Receipt with the appropriate officers, although clearly the Statement itself appears to be incomplete.

28. Finally, the scope of the Board's inquiry is limited to whether or not the Statement and Receipt thereof have been timely filed with the appropriate government agencies. *Greer v. Johnson*, 95-EB-ALD-74, CBEC, January 13,1995; *Greer v. McGowan*, 95-EB-ALD-75, CBEC, January 13,1995. In fact, the Board itself held that it lacks jurisdiction to determine the sufficiency of the responses to a timely filed Statement of Economic Interests. *Mills v. Orbach*, 87-EB-ALD-191, CBEC, January 22,1987.
29. For the forgoing reasons, the third and final objection should be overruled as well. The Hearing Officer finds that Candidate's Statement of Economic Interests and the Receipt thereof were timely filed with the appropriate officers; and the Board's inquiry regarding their content would be contrary to the prevailing law.
30. In light of the recommended findings specified above, the Hearing Officer recommends that the OBJECTIONS of KEITH HARRIS be OVERRULED and that the NOMINATION PAPERS of RONALD MITCHELL be deemed VALID.

Yolanda H. Sayre
Hearing Officer