NBCON-ALD

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

Objections of: Avis Miller	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-278
Papers of: Gevonna Fassett	)	
	)	Related Case: 11-EB-ALD-172
Candidate for the office of	)	
Alderman of the 27th 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 Avis Miller ("Objector") to the nomination papers ("Nomination Papers") of Gevonna Fassett, candidate for the office of Alderman of the 27th 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 Edna Turkington 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, Avis Miller, by attorney, Michael J. Kasper; the Candidate, Gevonna Fassett, 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 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 the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer 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 overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid. The

Electoral Board finds that objections in related case 11-EB-ALD-172 were overruled earlier. There are no other pending objections.

IT IS THEREFORE ORDERED that the Objections of Avis Miller to the Nomination Papers of Gevonna Fassett, candidate for election to the office of Alderman of the 27th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Gevonna Fassett, candidate for election to the office of Alderman of the 27th 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.

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION
FOR MAYOR, CLERK, TREASURER, AND ALDERMAN
IN THE CITY OF CHICAGO

2010 DEC 31 A 8:24
BOARD OF ELECTION
POLLING PLACE

AVIS MILLER)
)
Objector,)
)
-VS-) **Case No. 11-EB-ALD-278**
)
GEVONNA FASSETT)
)
Candidate.)

Hearing Officer's Report and Recommended Decision

This matter first came before the hearing officer on December 6, 2010. The Objector, AVIS MILLER, was represented in these proceedings by Attorney John Keigher from the law offices of Michael J. Kasper. The Candidate, GEVONNA FASSETT appeared pro-se. The parties identified matters that were to be resolved by a records examination. The objection was that the Nomination Papers for the Office of 27th Ward Alderman to be voted for at the Election did not contain the signatures of 111 qualified, registered and legal voters of the 27th Ward of the

City of Chicago, State of Illinois. If true, the nomination Papers were insufficient in law and fact thus prohibiting the name of Gevonna Fassett from being printed on the ballot for election to the office of Alderman of the 27th Ward of the City of Chicago, State of Illinois, to be voted on at the Municipal General Election to be held February 22, 1011..

The hearing examiner ordered a records examination. The parties were to be notified by the Board of Elections as to the date and time of the examination. The hearing officer then turned to other objections stated in the Objector's Petition and inquired if either party had any additional motions to present. The candidate indicated she would be filing a Motion to Strike and Dismiss Objector's Petition. A briefing schedule was set and the Candidate's Motion to Strike and results of the records examination were set for status on December 17, 2010 at 12:00 P.M.

Objections Presented.

The Objector argues in his verified petition that the Nomination Papers are insufficient in fact and law for the following reasons:

(1) That the nomination papers for the Office of Alderman of the 27th Ward for the City of Chicago, State of Illinois, contains fewer than the required 111 duly qualified, registered and legal voters of the 27th Ward collected in a manner prescribed by law.

(2) That the Nomination Papers contain petition sheets with the names of persons who are not registered voters, or who are not registered voters at the address

specified in the petition. as set forth specifically in the Appendix-Recapitulation attached to the Objector's Petition.

(3) That the Nomination Papers contain petition sheets with the names of persons who did not sign the papers in their own proper persons, and such signatures are not genuine and are forgeries, as set forth specifically in the Appendix-Recapitulation attached to the Objector's Petition.

(4) That the Nomination Papers contain petition sheets with names of persons whom the addresses state are not in the 27th Ward of the City of Chicago. State of Illinois, and such persons are not registered voters in the 27th Ward of the City of Chicago, State of Illinois, as set forth specifically in the Appendix-Recapitulation attached to the Objector's Petition.

(5) That the Nomination Papers contain petition sheets with the names of persons for whom the addresses given are either missing entirely or are incomplete, as set forth specifically in the Appendix-Recapitulation attached to the Objector's Petition.

(6) That the Nomination Papers contain petition sheets with the names of persons who have signed the Nomination Papers more than one time, as set forth specifically in the Appendix-Recapitulation attached to the Objector's Petition.

(7) The candidate was not eligible for the office because she has not been a resident of the 27th Ward for at least one year preceding the date of the election or appointment as required by Section 20/21-14(a) of the Illinois Municipal Code, 65

ILCS 21-14(a).

II. Findings of Facts.

On December 17, 2010 a hearing was held on the Candidate's Motion to Strike and Dismiss Objector's Petition. The motion was denied. The ruling was based on the sufficiency if the objector's petition and objector's standing to bring the objection.

On December 20, 2010 the haring officer read into the record the results of the records examination that was completed on December 9, 2010. Findings and rulings were made at the records examination. Both sides made objections and properly preserved certain of the rulings for further consideration pursuant to Board written, printed and widely available rules. The records examination results showed :the Candidate had 197 signatures on her petition, 75 objections were overruled, 34 objections were sustained. There were 163 valid signatures. For the 27th Ward, the minimum number of valid signatures necessary for the candidate's name to appear on the ballot for the office of Alderman is 111.

Without more, the candidate would have 163 valid signatures which is 52 signatures greater than the required minimum. Neither side filed Rule 8 motions.

A briefing schedule was set and a hearing date of December 20, 2010 was given for an evidentiary hearing on the objector's petition. A full evidentiary hearing was conducted on December 20, 2010 and concluded on December 23, 2010 on the sole issue of whether the Candidate was a resident of the 27th Ward for at least one year preceding the date of the election as required by Section 21-14(a) of the Illinois Municipal Code, 65 ILCS 20/21-14(a).

The objector called only the candidate as a witness, however he introduced into evidence

multiple exhibits in support of his objection. The evidence showed that the candidate was a registered voter for Dallas, Texas. The registration date was October 23, 2000 and remains active. The objector also produced a certified copy of the original registration card for the candidate from the Chicago Board of Elections showing that the candidate is a registered voter at the address 3710 West Ferdinand Street, Chicago, Illinois 60624. Her registration number is 20166FR.

The candidate had a Austin, Texas driver's license that was issued July 13, 2010 and renewed July 13, 2010. The Texas driver's license is still active. At the time the nomination papers were filed, the candidate had no Illinois driver's license.

The candidate has at least one vehicle registered in her name in the state of Texas. The registration expiration date is March 31, 2011. At the time the nomination papers were filed, the candidate had no vehicles registered in the State of Illinois.

The candidate has at least one business entity registered in Texas. She also has a non-resident insurance agent license that is active in the State of Texas. She has an expired insurance producer license issued by the Illinois Department of Insurance. The expiration date was November 14, 2009.

The candidate is a property owner of real estate in Texas. The Cook County Recorder of Deeds shows that the candidate's residence address of 33710 West Ferdinand Street, Chicago, Illinois, is owned by Willie M. Jackson and Olivia S. Jackson. These are the candidate's parents. There is no record of any property being owned by the candidate in Cook County.

The candidate has a Twitter account using a biography that she prepared stating that she is located in Dallas, Texas.

The candidate testified that she is a former resident of Texas. She testified that she has not returned to Texas since December 2009. She owns rental property in Texas, but has never lived in that rental property. She still has a Texas driver's license and has a voter's registration card for both Texas and the City of Chicago. She testified that she never thought to cancel her Texas registration. She last voted in Texas in March 2004. She is registered with the Chicago Board of Elections with a registration address of 3710 West Ferdinand. She registered October 2010.

The candidate further testified that she returned to her parents' home at 3710 West Ferdinand in September 2009 because her father was ill. Her parents own and resided at that address. Her brother, Victor Jackson lives in a different apartment at the same address. This address is a 2 flat. The brother lives on the 2nd floor and their parents lived on the 1st floor. At the end of October 2009, the candidate was informed by her father's physician that the father, Willie Matthew Jackson, had only 2 to 4 weeks to live. She also discovered that her mother had Alzheimer's disease an was demonstrating a progressive loss of mental capacity, and would not be able to care for herself. The candidate's father died on December 1, 2009. In that date, the candidate made the decision to remain and reside in Chicago at 3710 West Ferdinand. She made that decision because her mother needed her as a caregiver.

The candidate produced bank statements for the period of January 2010 to November 1, 2010. These statements showed her continuous and frequent debit card charges for food, clothing and personal services from businesses in Chicago.

Moreover, the candidate produced a document showing her appointment as an Illinois notary public. The address she is registered to is 3710 West Ferdinand, Chicago, Illinois. She also testified that she is an active member in CAPPS with the Chicago Police Department.

The candidate registered her automobile in Illinois during the pendency of this hearing on December 22, 2010. She obtained an Illinois driver's licence with the address of 3710 W. Ferdinand. This was done on December 21, 2010. Since each of these documents was obtained within days of this hearing and not at least one year preceding the date of the election, this hearing officer did not consider this evidence.

Dr. Pauline Clardy testified on the candidate's behalf. Dr. Clardy is an assistant professor of education at Illinois State University in Normal, Illinois. Dr. Clardy has known the candidate and considers her a good friend since meeting in high school in 1993. She was aware that the candidate moved to Chicago in September 2009 because of the candidate's father's declining health. On cross, the witness testified that she wants the candidate to win the election, although the witness is not a part of the campaign.

Victor Jackson, the candidate's brother, also testified on behalf of the candidate. He testified that the candidate came to Chicago and has lived at the Ferdinand residence since September 2009. She has never lived anywhere else since that date. His sister is active in many social and community activities in her neighborhood. The candidate's presence is essential I helping with their mother's health issues. She is the mother's primary caregiver and lives in the same apartment as her mother.

III. Findings of Law and Legal Analysis.

The candidate has the necessary qualified, registered and legal voters of the 27th Ward for the City of Chicago on her petition papers.

The sole remaining issue is whether the candidate was a resident of the 27th Ward for at least one year preceding the date of the election as required by Section 21-14(a) of the Illinois Municipal Code, 65 ILCS 20/21-14(a). In order to establish residency, two elements are necessary: (1) physical presence in the place, and (2) the intention to remain thereof as a permanent home. *Stein v. County Board of Trustees of DuPage County*, 85 Ill. App. 2d 251 (1968). See also, *Delk v. The Board of ElectionCommissioners of the City of Chicago*, 112 Ill. App. 3d 735 (1st Dist. 1983). The Candidate must live and be duly registered at the address in her nominating papers. The Objector did not present sufficient evidence to suggest that the Candidate did not live at the address stated. It is clear that the candidate abandoned her Texas domicile when her father died and the candidate made a decision to reside in Chicago with her mother. She testified that she has not returned to Texas since December 2009. There is nothing in the record to show otherwise. Although the candidate has a current Texas driver's license and voter's registration, she is also a registered voter in Chicago. She has not voted in Texas since 2004. There was no evidence to the contrary. The fact that the candidate owns no property in Illinois and does own rental property in Texas is not a compelling argument that the candidate does not reside in the 27th Ward. Moreover, the candidate is also involved in community and social activities within the 27th ward.. She testified that she has the intent to reside and remain in Illinois and that intent was formed on December 1, 2009 at the time of her father's death. This hearing officer had the opportunity to listen to the witnesses and judge her credibility. This hearing officer finds the candidate's testimony to be credible and reliable as to her intent and the fact that she was a resident of the 27th Ward for at least one year preceding the date of the election as required by Section 21-14(a) of the Illinois Municipal Code, 65 ILCS 20/21-14(a).

IV. Recommendation.

Based upon the factual and legal findings outlined and discussed above, it is the recommendation of this hearing officer that the objections of the Objector, Avis Miller, be overruled, that the nomination papers of the Candidate, GEVONNA FASSETT, be declared sufficient as a matter of law and of fact, and that the name of the Candidate, GEVONNA FASSETT, appear and be printed on the ballot for election to the Office of Alderman of the 27th Ward of the City of Chicago to be voted upon at the February 27, 2007 Municipal General Election.

Edna Turkington

Hearing Officer