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

Objections of: Chauncey L. Stroud	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-326
Papers of: Martavius "Mark" Carter	)	
	)	
Candidate for the office of	)	
Alderman of the 24th 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 Chauncey L. Stroud ("Objector") to the nomination papers ("Nomination Papers") of Martavius "Mark" Carter, candidate for the office of Alderman of the 24th 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 Christopher B. Cohen 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, Chauncey L. Stroud, pro se; the Candidate, Martavius "Mark" Carter, pro se.

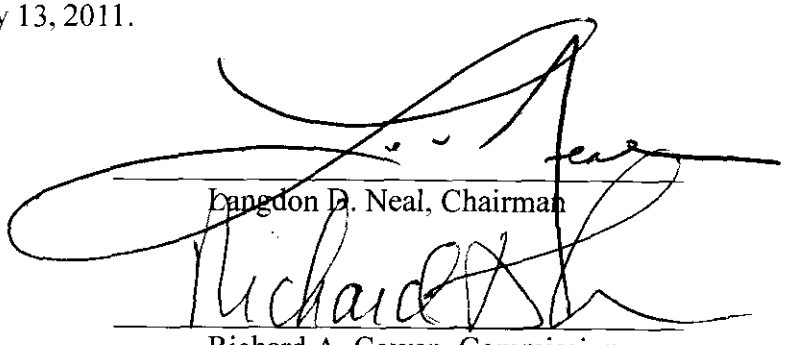
7. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

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.

IT IS THEREFORE ORDERED that the Objections of Chauncey L. Stroud to the Nomination Papers of Martavius "Mark" Carter, candidate for election to the office of Alderman of the 24th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Martavius "Mark" Carter, candidate for election to the office of Alderman of the 24th 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

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BOARD OF ELECTION
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Objections of CHAUNCEY L. STROUD	)	
To the Nomination Papers of: MARTAVIUS "MARK" CARTER	)	No. 11-EB-ALD-326
Candidate for the office of Alderman for the Twenty-Fourth Ward, City of Chicago, County of Cook, State of Illinois, to be voted upon at the February 22, 2011 Municipal General Election	)	

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners ("CBEC" or "Board") on the verified Objector's Petition of CHAUNCEY L. STROUD ("Objector") to the nomination papers of MARTAVIUS "MARK" CARTER ("Candidate"). The Board appointed Christopher B. Cohen as hearing officer for this case. The hearing officer finds and recommends as follows:

1. The Candidate timely filed nomination papers with the Board for the office of Alderman of the Twenty-Fourth Ward.

2. Objections to the Candidate's nomination papers were timely filed by the Objector on 11/30/10. They contained the following allegations: that (¶4) the Candidate failed to file a Statement of Financial Interests with the Board of Ethics as required by the City of Chicago's Municipal Code; and (¶5) the Candidate was in arrears in paying an indebtedness due the City of Chicago; and (¶6) the Candidate falsely swore in his Statement of Candidacy that he was qualified for the office sought.

3. The Board's official file contained the original nomination papers of the Candidate and the original Objections of the Objector.

4. A case management conference/hearing on the Objection Petition was begun December 6, 2010 at 69 W. Washington, Chicago, IL. The Objector and the Candidate each appeared in person and *pro se*. The Objector stated on the record that he was served with the Board's Call at home when he was not present. The Candidate stated on the record that he received service of the Board's Call by picking it up on floor 6 of 69 W. Washington, Chicago. Each party waived further service on the record and each filed a formal written appearance.

5. The hearing officer provided each party a hard copy of the Board's Rules as well as the Index of Electoral Board Decisions dated October 2010 and indicated these could be found on the Board's website at www.chicagoelections.com.

6. At the 12/6/10 hearing, the Candidate challenged all three issues raised in the Objector's Petition and orally moved to file a Motion to Strike the Objection before the next hearing.

7. No records examination was requested.

8. The hearing officer set a briefing schedule which established deadlines of 5 pm on 12/7/10 for the Candidate to file his Motion; 5 pm on 12/8/10 for the Objector file to file any responsive pleadings to the Motion and 5 pm on 12/9/10 for the Candidate to file any reply. A hearing was scheduled for 12/11/10. Each of the two parties present received oral notice on the record of that upcoming hearing.

9. The Candidate filed a Motion to Strike and Dismiss which was time stamped by the Board at 4:34 pm, 12/7/10. It alleged 1) that ¶4 of the Objection Petition should be stricken because it was insufficient in law and fact. It argued 2) that the Objector merely claimed the Candidate failed to file a Statement of Financial Interests with the City's Board of Ethics and did not take the time to discover that the Candidate filed his Statement on 11/30/10, ahead of the deadline for filing that Statement. The Motion alleged 3) that the Board of Ethics was giving candidates a filing deadline of 12/15/10. The Motion asked 4) that ¶5 of the Objection be stricken because it did not specify the debt allegedly owed to the City of Chicago. 5) This violated §10-8 of the Election Code which requires the Objector's Petition to state fully the nature of the Objections. The Candidate cited *Elysee v Patterson*, 04-EB-RGA-14, January 20, 2004 for the proposition that the Illinois Election Code states that the Objection Petition must adequately and sufficiently apprise the Candidate of the specificity of each Objection, thus making evaluation possible. The Motion also stated that Objections which fail to fully state the nature of the objection shall be overruled and cited *Cleveland v. Sohn*, 88 EB-SMAY-11, *Cleveland V. Holowinski*, 88-EB-SMAY-15 and *Cleveland v. Hurst*, 88 EB-SMAY-18. The Motion asked 6) that ¶6 of the Objection be stricken because it was not specific and did not identify or specify where in the Candidate's Statement of Candidacy the "false swearing" occurred in violation of Section 10-8 of the Election Code. It again quoted that statute and cited the *Cleveland* cases referred to above. The Motion averred 7) that the Candidate could not defend himself against the unknown. No further pleadings were filed by either party.
10. At the 12/10/10 hearing as an offer of proof, the Objector presented a letter written to the Objector dated 11/30/10 and signed by Christine Haynes, Assistant Freedom of Information Act ("FOIA") Officer, Department of Revenue. It was on blank stationary without letterhead. Attached was a copy of one sheet with redactions purporting to show that a person named Martavius S. Carter owed the following amount:

Created	Last Notice	Amount Due	Viewed On
12/31/02	12/24/09	$7,632.80	12/19/09

In some instances, the individual's address and driver's license were redacted. For identification purposes, there was no visible address, date of birth or Social Security Number. In addition, the Objector presented a photocopy of a Certification signed by the same Christine Haynes dated 12/9/10 stating that the attached copies were true and correct copies of documents in the custody of the City of Chicago Department of Revenue. Neither the 11/30/10 letter nor the photocopy which included the above data was attached to the Certification. The hearing officer took notice that the name Martavius S. Carter was a slight variation from MARTAVIUS "MARK" CARTER.

11. The hearing officer took judicial notice that §2-152-150(a) of the Municipal Code of the City of Chicago read in part as follows:

> "Debt" means a specified sum of money owed to the city for which the period granted for payment has expired.

12. As to ¶4 in the Objector's Petition, the Hearing Officer called the parties' attention to prior rulings of this Board regarding the Chicago Ethics Ordinance. The rulings held that this Electoral Board did not have authority to grant what the Objector was seeking in ¶4 of his Petition – invalidation of nomination papers for failure to comply with the City of Chicago's Ethics Ordinance. Bocanegra v. Sanchez, 07-EB-ALD-107, CBEC, January 9, 2007; Jones v. Monroe, 07-EB-ALD-143, CBEC, January 16, 2007; Smith v. Sherman, 95-EB-ALD-20, CBEC, January 23, 1995; Smith v. Tines, 95-EB-ALD-24, CBEC, January 28, 1995; Whitehead v. Massie, 91-EB-ALD-43, CBEC, February 4, 1991; Whitehead v. Gholar, 91-EB-ALD-45, CBEC, February 4, 1991; Bednarz v. Doherty, 91-EB-ALD-53, CBEC, January 16, 1991. Each party provided its oral evaluation of the above cases and their application to issues in this case. Based on the Board's prior rulings, the hearing officer's recommended conclusion is that allegations in ¶4 be stricken as insufficient at law.

13. As to ¶5 of the Objection Petition alleging that the Candidate was in arrears in paying an indebtedness due the City of Chicago, the hearing officer noted that in *Cinkus v. Village of Stickney*, 228 Ill.2d 200, 886 N.E.2d 1011 (2008) the Illinois Supreme Court held that §3.1-10-5(b) of the Illinois Municipal Code precludes an individual from being eligible for elective public office if s/he is in "arrears in the payment of a tax or other indebtedness due to the municipality." The hearing officer pointed out, however, that the Objector in *Cinkus* specifically alleged that Candidate Cinkus was "in arrears in the payment of indebtedness in the amount of $100.00 to the Village of Stickney as evidenced by the attached 'Notice of Judgment Entered.'" The hearing officer recommends that the Board find in the instant case that, unlike in *Cinkus*, the Objector's Petition did not give notice with adequate specificity of the alleged deficiency or violation of law so that the Candidate could defend or prepare a reply as to whether the facts alleged by the Objector were accurate or not. The hearing officer called the parties' attention to 10 ILCS 5/10-8 which states that

> The objector's petition shall state fully the nature of the objections to the nomination papers or petitions in question.

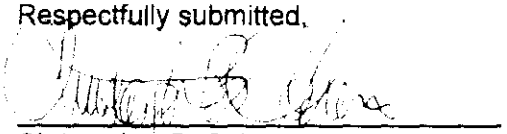
This above portion of the Election Code requires specificity in pleading. The General Assembly made the determination that grounds for an election contest be factually pled with specificity. Allegations should not be conclusory in nature but should be set out using adequate and clear facts. The parties' attention was called to prior rulings in the Electoral Board's Index of Decisions under the heading entitled "Failure to Fully State Nature of the Objections." These rulings held that an Objection is required to fully state the nature of the Objections and what relief is being sought to comply with the Election Code. Kopec v. Sims, 07-EB-MUN-002, CBEC, January 19, 2007; Crosby v. Beavers, 95 EB-ALD-202, CBEC, January 24, 1995. The Index cites Elysee v. Patterson, 04-EB-RGA-14, January 20, 2004 for the proposition that an Objection Petition must adequately and sufficiently apprise the Candidate of the specificity of each Objection, thus making evaluation possible. Each party provided its oral evaluation of the above cases and their application

to issues in this case. Based on the Board's prior rulings, the hearing officer's recommended conclusion is that the allegations in ¶5 be stricken as insufficient at law.

14. After listening to presentations from each of the parties and considering all credible and competent evidence presented, the hearing officer's recommendation is that with ¶¶4 and 5 stricken, the allegations in ¶6 regarding false swearing as to issues of Ethics and indebtedness in the Statement of Candidacy also be stricken as insufficient in law. There being no other surviving Objections and no records examination, the hearing was concluded.

In light of the above, it is this hearing officer's recommendation that the Objector's Petition be stricken and dismissed, that the Candidate's nomination papers be deemed valid and sufficient in law and in fact and that the name of Candidate MARTAVIUS "MARK" CARTER appear on the ballot for the office of Alderman of the Twenty-Fourth Ward at the February 22, 2011 Municipal General Election.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
December 24, 2010