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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-332
Papers of: Larry G. Nelson	)	
	)	
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 Larry G. Nelson, 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, Larry G. Nelson, 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 Larry G. Nelson, 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 Larry G. Nelson, 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

Objections of CHAUNCEY L. STROUD	)	
To the Nomination Papers of: LARRY NELSON	)	No. 11-EB-ALD-332
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	)	

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 28 A 8:09

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners ("CBOE" or "Board") on the verified Objector's Petition of CHAUNCEY L. STROUD ("Objector") to the nomination papers of LARRY NELSON ("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.

3. The Board's official file contained original nomination papers of the Candidate and original Objections of the Objector. The Objections alleged that the Candidate's nomination papers were insufficient in fact and law for the following reasons: (¶4) they contained names of persons who did not sign in their own proper person and signatures were not genuine; (¶5) they contained sheets with names of persons who were not validly registered voters at the time of signing; (¶6) they contained sheets with names of persons for whom addresses stated were not in the 24th Ward; (¶7) they contained sheets with names of persons for whom addresses given were incomplete and were therefore not the addresses where the individuals were registered to vote and the signatures were invalid; (¶8) they contained names of persons who signed more than once in a situation where only one signature can be counted for each; (¶9) they contained sheets with signatures that were not signed but printed and were therefore not genuine; (¶10) they contained sheets with other violations described in Column G; (¶11) they contained circulators' affidavits that violated Illinois election law for specific reasons listed at the bottom of Appendix pages; (¶12) they contained fewer than the minimum number of valid signatures required; (¶13) Objections stated in the Appendix are incorporated into the Objection Petition; (¶14) the Candidate failed to file a Statement of Financial Interests with the Board of Ethics as required by the Municipal Code of the City of Chicago and

Cinkus v. Village of Stickney Municipal Officers Electoral Board, 228 Ill.2d 200, 886 N.E.2d 1011 (2008): (¶15) the Candidate was in arrears in paying an indebtedness due the City of Chicago; and (¶16) the Candidate falsely swore in his Statement of Candidacy that he was qualified for the office sought at the time the Statement was executed.

4. A case management conference/hearing concerning the Objections was begun 12/6/10 at 69 W. Washington, Chicago, IL. The Candidate and Objector each appeared in person and *pro se*. The Candidate stated on the record that he was served with the Board's Call by mail. He waived further service on the record. The Objector stated on the record that he was served with the Board's Call at home when he was not present. He waived further service on the record. Each party 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 Objector requested a records examination.

7. The Candidate stated his intent to file a motion contesting the Objection. 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 to file any responsive pleadings 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.

8. The Candidate filed a Motion to Dismiss which was time stamped by the Board at 4:11 pm, 12/7/10, thus making it timely filed. The Candidate's Motion to Strike alleged that 1) Illinois is a fact-pleading jurisdiction and petitioner cannot rely on mere conclusion of law or fact unsupported by specific factual allegations but must allege facts sufficient to bring their claims within the scope of the causes of action asserted. It cited *Hayes Mechanical, Inc. v First Industrial, L.P.*, 351 Ill.App.3d 1 (2004) (citing *Hirsch v. Feuer*, 299 Ill.App.3d 1076 (1998)). The Candidate s Motion stated that 2) in the *Hayes case*, the Objector s petitions failed to put forth specific factual allegations to bring his claims within the scope of the cause of action asserted. The Motion averred that 3) 735 ILCS 5/2-615 provides that a court may dismiss a cause of action or strike parties or sections of a complaint when it is substantially insufficient in law. It stated that 4) the issue is whether sufficient facts have been pled in the complaint which, if proved, would entitle plaintiff to relief and cited *Thornton v. Shah*, 333 Ill.App.3d 1011, 77 N.E. 2d 396, 267 Ill. Dec. 593 (2002). The Motion cited *Grund v. Donnegan*, 298 Ill.App.3d 1034, 700 N.E.2d 157 (1998) and *Hough v. Kalousuk*, 279 Ill.App3d 855, 665 N.E.2d 433 (1996) for the proposition that 5) a cause of action is subject to dismissal under 2-615 of the Code of Civil Procedure if it does not contain factual allegations in support of each element of the claim. The Motion challenged the Objection of being in arrears for an indebtedness to the City in that 6) by making broad and general allegations without knowledge, specific facts or factual allegations in support of his Objection and each element of it, the Objection is insufficient in law and must be dismissed. The Motion challenged the Objection of false swearing in that 7) it makes allegations without citing specific facts or pleading facts which are legally cognizable. It cited *Casualty Insurance Co. v Hill Mechanical Group*, 323 Ill.App.3d, 753 N.E.2d 370, 257 Ill. Dec. 175 (2001).

9. The Objector filed a Response to Candidate's Motion to Dismiss which was time stamped at 4:22 pm. 12/8/10. thus making it timely filed. It alleged 1) that the Candidate failed to file a Statement of Financial Interests with the Board of Ethics as required by the Municipal Code of the City of Chicago. It argued 2) that the penalty in the ordinance was that "no elected official shall be allowed to take the oath of office...." It cited *Cinkus v. Stickney, supra* in which the Illinois Supreme Court held, "The statement of candidacy and accompanying oath are mandatory requirements." The Objector's Response states 3) that the Candidate's Statement of Candidacy contains false swearing because the Candidate was not qualified when he signed the Statement claiming that he was qualified to hold the office.

10. At the 12/11/10 hearing, the Objector and Candidate each appeared in person and *pro se*.

11. In addition to the above pleadings, the Board's official file contained a Record Examination Directive dated 12/9/10 indicating that a Record Examination had been set for 12/10/10 at 10:15 am. No records exam had been completed at the time of the 12/11/10 hearing, however, at that hearing, the Objector moved to withdraw ¶¶4-13 covering all Objections to the record examination. The hearing officer recommends this Motion to Withdraw be granted by the Board.

12. At the 12/11/10 hearing, 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, Chicago Department of Revenue. It was on blank stationary without letterhead. Attached was a copy of two sheets with redactions purporting to show that a person named Larry G. Nelson of 4327 W. Roosevelt owed or had owed the following amounts:

Created	Last Notice	Amount Due	Updated
11/2/06	6/26/08	$1,627.40	11/27/08
------	3/19/09	$ 366.00	------

13. On the first sheet, the individual's address and driver's license number were redacted. Those data did not appear on the second sheet. On the second sheet, the individual's license plate was redacted. License plate information did not appear on the first sheet. For identification purposes, there was no visible address, date of birth or Social Security Number. The Objector presented no certification or witness testimony stating that the copies were true and correct copies of documents in the custody of the City of Chicago Department of Revenue

14. After hearing arguments from each party, the hearing officer called the parties' attention to prior rulings of this Board holding that this Electoral Board did not have authority to grant what the Objector was seeking in ¶14 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. During the hearing, each party had 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 ¶14 be stricken as insufficient at law.

15. As to ¶15 of the Objection Petition alleging that the Candidate was in arrears in paying an indebtedness due the City of Chicago, 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.

16. The hearing officer noted that in *Cinkus v. Stickney, supra*, 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 the *Cinkus case* 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 that, unlike in *Cinkus*, the Objector's Petition in the instant case did not give notice with adequate specificity of the alleged deficiency or violation of law so that Candidate NELSON could defend or prepare a reply as to whether the facts alleged by Objector STROUD were accurate or not.

17. As to ¶¶14, 15 and 16 of the Objection Petition, 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 quoted portion of the Illinois Election Code requires specificity in pleading. The General Assembly made the policy determination that grounds for an election contest must 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 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 had previously 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 ¶15 be stricken as insufficient at law.

18. 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 ¶14 and ¶15 stricken, the allegations in ¶16 regarding false swearing as to issues of Ethics and indebtedness in the Statement of Candidacy also be stricken as insufficient in law. With all issues regarding the records examination withdrawn, there were no other surviving Objections. The hearing was concluded.

19. The hearing officer notes that subsequent to the final hearing, the Board's Charles Holiday issued a memorandum dated 12/13/10 stating that the case had previously been remanded to him for a records examination. His memo concluded that no exam was necessary because there were no Objections to 172 signatures and the minimum signature requirement was 169. The Petition Summary Report attached to Mr. Holiday's memo was also dated 12/13/10. That Report showed that the Candidate's petitions contained 1048 signatures to which 878 signatures were objected thus leaving 172 not objected to. This was more than the minimum required.

In light of the above findings of fact and conclusions of law, it is this hearing officer's recommendation that the Objector's Petition be dismissed, that the Candidate's nomination papers be deemed valid in law and in fact and that the name of Candidate LARRY NELSON 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 27, 2010