BCCON-ALD

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-333
Papers of: Donielle C. Lawson	)	
	)	
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 Donielle C. Lawson, 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 was held on these Objections commencing 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 to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Chauncey L. Stroud, pro se; and the Candidate, Donielle C. Lawson, by attorney Andrew Finko.

7. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or her duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative were present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 169.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 462.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 268.

D. The remaining number of signatures deemed valid as a result of the records examination total 194.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 24thWard of the City of Chicago.

14. No Rule 8 motions were filed.

15. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 194 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 24thWard of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

16. 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. A copy of the Hearing Officer's report and recommendations is attached and is incorporated herein as a part of the Electoral Board's decision.

17. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on her nominating petitions and that the Nomination Papers of Donielle C. Lawson are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Chauncey L. Stroud to the Nomination Papers of Donielle C. Lawson, 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 DONIELLE C. LAWSON, 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

BOARD OF ELECTION
POLLING PLACE DEPT
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Objections of CHAUNCEY L. STROUD	)	
To the Nomination Papers of: DONIELLE C. LAWSON	)	No. 11-EB-ALD-333
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 DONIELLE C. LAWSON ("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 the Candidate original nomination papers and the Objector's original Objection Petition. 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 were incorporated into the Objection Petition: (¶14) the Candidate failed to file a Statement of Financial Interests with the City's 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 the Statement of Candidacy that she 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 Objector appeared in person and *pro se*. He 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. The Candidate appeared personally and appeared by Andrew Finko, who stated he was an attorney licensed to practice law in Illinois. The attorney stated on the record that the Candidate was served with the Board's Call and waived further service. 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. No subpoenas were requested by either party.

7. The Candidate stated his intent to file a motion contesting the Objections. The hearing officer set a briefing schedule which established deadlines of 5 pm on 12/8/10 for the Candidate to file his Motion, 5 pm on 12/9/10 for the Objector to file any responsive pleadings and 5 pm on 12/10/10 for the Candidate to file any reply. A hearing was scheduled for Sunday, 12/12/10 at 2:30 pm. Each of the parties present received oral notice on the record of that upcoming hearing.

8. The Candidate's attorney filed a Motion to Strike which was time stamped as filed with the Board at 5:58 pm 12/8/10 with the notation "Waiting in Line to File at 5:00 pm" thus making it timely filed. The Motion alleged in ¶1 that the Candidate submitted in excess of the minimum number of signatures (169) required and the Objector used a boilerplate Objection with insufficient factual detail to fully apprise the Candidate of the concerns. In ¶2, the Motion stated that 10 ILCS 5/10-8 required the Objector to state fully the nature of the Objections. It alleged in ¶3, that the Objection Petition was brought in bad faith and was a "shotgun" Objection in that the vast majority of Appendix-Recapitulation sheets serially listed both Columns A and B – signer not registered and/or signature not genuine. In support of the Candidate's proposition that Objections which had no basis in law or in fact and which were in the nature of "shot-gun" objections should be dismissed, ¶4 of the Motion cited *Barton v. Coleman*, 95-EB-ALD-144, CBEC, January 28, 1995, *Arafat v. Shaw*, 91-EB-ALD-81, CBEC, January, 1991. In ¶5, the Motion requested that the Objection Petition be dismissed in its entirety. In ¶6, the Motion alleged that the Objection "Signature printed and not written, not genuine" should be stricken based on *Lyles v. McGee*, 02-EB-SS-04, CBEC, January 31, 2002, *Saltouris v. Khan*, 92-EB-WC-33, CBEC, affirmed *Khan v. Municipal Officers Electoral Board*, 92 CO 58, Circuit Court of Cook County (J. Heaston), July 14, 1992 and *Just Pants v. Wagner*, 247 Ill.App.3d 166, 173-74, 617 N.E.2d 246 (First Dist. 1993). In ¶¶7 and 8, the Candidate cited *Reid v. Washington*, 03-EB-ALD-172, CBEC, January 31, 2003 and averred that all challenges to printed signatures should be overruled as a matter of law. In ¶9, the Motion argued that the portion of the Objector's Petition should be stricken which lists "other categories of objections" including allegations of round tabling because it does not specifically and fully

inform the Candidate of the nature of the Objections. In ¶¶10 and 11, the Candidate cited *Davis v. Hendon*, 02-EB-SS-09, CBEC, January 25, 2002 to support the request that all Objections without factual and specific support should be stricken. In ¶¶12 and 13, the Motion asserts that the Objection claiming the Candidate failed to file a Statement of Financial Interests with the Chicago Department of Ethics is false and unsupported and that she did file such a Statement on 11/23/10. A copy of the Statement with a date stamp of 11/23/10 was attached to the motion. In ¶¶14 and 15, the Motion denies that the Candidate owes an indebtedness to the City and contradicts the Objector's allegations to the contrary.

9. No further pleadings were filed by either party

10. At the 12/12/10 hearing, the Objector appeared in person and *pro se*, the Candidate appeared in person and by her attorney, Andrew Finko. In addition to the above documents, the Board's official file contained a Board Directive dated 12/11/10 indicating that a Record Examination had been set for 1213/10 at 1:45 pm and that the Objector and Candidate had been contacted on 12/12/10.

11. At the 12/12/10 hearing, the Candidate's attorney alleged that the Objector did not obtain copies of or view the nominating papers before filing his Objection Petition. He realleged his claim that it was a shotgun Objection filed in bad faith. In response to the Candidate, the Objector denied that his Objection Petition made any allegations of round tabling. After argument from both sides, the attorney withdrew references to "allegations of roundtabling" in ¶9 of the Candidate's Motion to Strike. The hearing officer's recommendation is that the Board grant the Candidate s Motion to Withdraw references to "allegations of roundtabling" from the Motion to Strike.

12. At the 12/12/10 hearing, the Candidate offered evidence to show she filed a Statement of Financial Interests within five days of filing her nomination papers. After hearing arguments from each party regarding alleged false statements in a Verified Objection, the hearing officer recommended that the Board conclude that it has no authority to enforce the perjury statute regarding verified Objections.

13. 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. Cholar*, 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 the Board strike allegations in ¶14 of the Objection Petition as insufficient at law.

14. 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.

15. 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 an 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 LAWSON could defend or prepare a reply as to whether the facts alleged by Objector STROUD were accurate or not.

16. As to ¶¶14, 15 and 16 of the Objection Petition, the hearing officer called the parties' attention to 10 ILCS 5/10-8 which was raised in the Candidate's Motion to Strike. It states in part 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

17. 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.

18. A hearing was scheduled for 12/16/10 to receive and consider results of the records examination. Each of the parties present received oral notice on the record of that upcoming hearing.

19. At the 12/16/10 hearing, each party acknowledged having previously received results of the records examination. The Board's official file contained a copy of the Petition

Summary Report. The Board's clerk read into the record the results of the records examination which was completed at 5:14 pm, 12/15/10. The Report indicated that of 462 total signatures, objections were sustained to 268 and overruled regarding 101 leaving 194 valid signatures – 25 more than the minimum necessary. Each party stated an intention to rest on the record and not to request an evidentiary hearing regarding signatures. The hearing officer's recommended finding was that ¶¶4-13 from the Objection Petition regarding signatures be overruled. There being no further issues to consider, the hearing was concluded without objection.

In light of the above findings of fact and conclusions of law, it is this hearing officer's recommendation that the Board overrule ¶¶4-13 from the Objection Petition regarding signatures and dismiss ¶¶14, 15 and 16 in the Objector's Petition regarding Ethics filings, Indebtedness and false swearing respectively. The hearing officer further recommends that the Candidate's nomination papers be deemed valid in law and in fact and that the name of Candidate DONIELLE C. LAWSON 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 29, 2010