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-341
Papers of: Frank M. Bass	)	
	)	
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 Frank M. Bass, 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, Frank M. Bass, by attorney, Anthony B. Bass.

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 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.

10. 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 734.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 560.

D. The remaining number of signatures deemed valid as a result of the records examination total 174.

11. 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.

12. The Hearing Officer conducted further proceedings.

13. 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 174 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.

14. 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 hereto and incorporated herein as a part of the Electoral Board's decision.

15. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Frank M. Bass are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Chauncey L. Stroud to the Nomination Papers of Frank M. Bass, 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 FRANK M. BASS, 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 3, 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: FRANK M. BASS 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	)	No. 11-EB-ALD-341

BOARD OF ELECTION
POLLING PLACE DEPT
2010 DEC 22 P 6:34

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 FRANK M. BASS ("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 that 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 and only one signature may be counted for each; (¶9) they contained sheets with signatures of persons that were not signed but printed and were not genuine; (¶10) they contained sheets with other violations described in Column G; (¶11) they contained fewer than the minimum number of valid signatures required; (¶12) they contained specific violations listed in the Appendix incorporated as part of the Objection Petition; (¶13) the Candidate was in arrears in paying an indebtedness due the City of Chicago; and (¶14) 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 on the Objections was begun December 6, 2010 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 did not appear personally but appeared by his brother, Anthony B. Bass, 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. (At a 12/20/10 hearing, the attorney added that this service of the Candidate had been by a deputy Sheriff.) 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. Board staff said no open period was available at that moment for the next day but one would be found for another day. The Objector requested a subpoena for Chris Haynes of the City of Chicago's Department of Revenue requesting verification of the Candidate's indebtedness "as of 12/22/10 (sic)" because his request to the Department, pursuant to the Freedom of Information Act ("FOIA"), had not yet been responded to. This request was signed by the hearing officer.
7. The Candidate's attorney stated his intent to file a motion contesting the Objection. The hearing officer set a briefing schedule which established deadlines of 5 pm on 12/8/10 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 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 Strike and Dismiss the Objector's Petition with the Board which was time stamped at 4:23 pm, 12/8/10, thus making it timely filed. The Candidate's Motion to Strike and Dismiss alleged that 1) the Objector stated during the 12/6/10 hearing that he did not know whether the Candidate owed the City a debt and that had he had filed an FOIA request with the City; 2) the Objector requested a Board subpoena to obtain the answer; 3) the Objector verified his Objections pursuant to §1-109 of the Illinois Code of Civil Procedure which carries a penalty for swearing under oath when the party has knowledge that the verified statements are not true; 4) the penalty for this alleged false swearing should be to dismiss the Objector's Petition; and 5) the Candidate owed no debt to the City as evidenced by a signed statement from the Chicago Department of Revenue dated 11/22/10 which was attached to the Candidate's Motion.
9. The Objector filed a Notice of Motion with the Board which was time stamped at 3:51 pm, 12/10/10, after the deadline. The Board's file did not include pleadings connected with that Notice of Motion.
10. In addition, the Candidate's attorney filed a Rule 19 Subpoena Request for the Objector and for the City of Chicago to show proof of the Objector's having filed an FOIA request.
11. At the 12/11/10 hearing, the Objector appeared in person and *pro se*. The Candidate was not present in person but appeared by his attorney. In addition to the above documents, 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 and that the Objector and Candidate had been contacted on 12/9/10. The Board's clerk at the 12/11/10 hearing indicated that the records examination had started but had not been completed.
12. At the 12/11/10 hearing, the Candidate's attorney objected to the records examination stating that his name, not that of the Candidate, was on the appearance as the party to contact and that the Board's Rule 3 states that a party may be represented by an attorney licensed to practice law in the State of Illinois. He further objected that he had

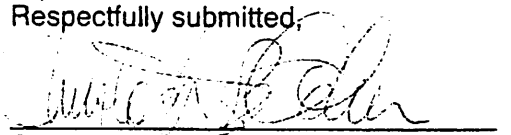
filed an appearance at the initial 12/6/10 hearing but had not been contacted about the start date of the records check. He alleged that the Candidate had not been contacted either. The attorney stated his position that, assuming *arguendo*, the Candidate had been contacted, the Board still failed to contact the attorney and thus the record exam should be started over so the attorney could provide watchers and could have the opportunity to decide which rulings of Board staff to appeal regarding the validity of signatures. The hearing officer did not rule on the attorney's objection but took the issue under advisement.

13. At the 12/11/10 hearing, the Objector moved to withdraw ¶13 regarding the Candidate's alleged indebtedness and ¶14 regarding the Candidate's alleged false swearing. The hearing officer granted this motion to withdraw and recommends that it be granted by the Board.
14. At the 12/11/10 hearing, the parties then argued the Candidate's Motion to Strike other paragraphs on grounds that striking them is an appropriate sanction for the Objector's alleged violation of the Verification by Certification pursuant to §1-109 of the Illinois Code of Civil Procedure at the end of the Objection Petition. The hearing officer denied and recommends this portion of the Motion be denied by the Board.
15. Because the records examination had not been completed at the time of the 12/11/10 hearing, it was continued to 12/15/10 for good cause shown. Each of the two parties present received oral notice on the record of that upcoming hearing.
16. At the 12/15/10 hearing, the Objector appeared in person and *pro se*. The Candidate was not present in person but appeared by his attorney who was present. On the record, each party acknowledged receipt of results of the record exam prior to the hearing. The Board's clerk read into the record results of the records examination completed at 7:42 pm, 12/13/10. The Board's official file contained the Petition Summary Report indicating that 174 signatures were found to be valid. This number exceeds the minimum required of 169.
17. At the 12/15/10 hearing, the parties were notified that the Board's official file contained an email from Board employee Steve Cieslicki stating that on 12/9/10 at 4:01 pm Mr. Cieslicki notified Candidate Frank Bass that a record exam would take place on 12/10/10 at 10:15 am. The email also indicated that on 12/11/10, the Candidate alleged he was told by Mr. Cieslicki that 12/10/10 at 10:15 am was the time for the Candidate's next hearing, not the time for the records examination. The Candidate's attorney filed an oral motion asking Board staff to re-perform the records exam so the attorney could be present at the examination and/or have watchers present to contest staff rulings, where appropriate.
18. At the 12/15/10 hearing, the Objector requested the opportunity to file a motion under Rule 7 to inspect the original paper voter registration applications or registration forms on file with the Board for a list of individuals who would be named in his pleadings.
19. The hearing officer heard arguments from each party regarding the two issues of reviewing the Board's paper files and whether the Candidate or his attorney was provided appropriate advance notice of the records examination. During the 12/15/10 hearing, the hearing officer took the issues under advisement. He set a briefing schedule which established deadlines of 5 pm on 12/16/10 for the Candidate to file his Motion in writing, 5 pm on 12/17/10 for the Objector to file his pleadings and 5 pm on 12/18/10 for the Candidate to file any reply. A hearing was scheduled for 12/20/10. Each of the two parties present received oral notice on the record of that upcoming hearing.
20. Prior to the first filing deadline, the Objector filed a Motion under Rule 7 to inspect the original paper voter registration applications or registrations forms. It was time stamped by the Board at 3:05 pm, 12/15/10.

21. The Candidate filed a Motion for Record Examination which was time stamped at 3:04 pm, 12/15/10, thus making it timely filed. The Objector filed his Response to Motion for Record Examination, which was time stamped at 4:33 pm, 12/17/10, making it timely filed. No further pleadings were filed.
22. At the 12/20/10 hearing, the Objector appeared in person and *pro se*. The Candidate was not present in person but appeared by his attorney. The parties agreed on the record that if the Objector withdrew his recent pleadings and stipulated that the results of the record examination would stand, the Candidate's new pleadings would be moot. The Objector withdrew his pleadings on the record. The Candidate declined to raise the issues in his Motion. The parties agreed that the results of the record exam – showing the Candidate had 174 valid signatures, five more than the minimum – would stand. With no other issues to be decided, the proceedings were concluded without objection.

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 overruled, that the Candidate's nomination papers be deemed valid in law and in fact and that the name of Candidate FRANK M. BASS 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 22, 2010