NBCON-ALD

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

Objections of: Jose Guerrero	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-346
Papers of: Jesus "Jesse" Iniguez	)	
	)	
Candidate for the office of	)	
Alderman of the 12th 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 Jose Guerrero ("Objector") to the nomination papers ("Nomination Papers") of Jesus "Jesse" Iniguez, candidate for the office of Alderman of the 12th 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 Casandra B. Watson 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, Jose Guerrero, by attorney, James P. Nally; the Candidate, Jesus "Jesse" Iniguez, by attorney, Adolfo Mondragon.

7. The sole issue presented in the Objector's Petition is whether the Candidate is ineligible to run for municipal office because he was indebted to the City of Chicago at the time he filed his Nomination Papers.

8. Section 3.1-10-5(b) of the Illinois Municipal Code provides that:

> ***(b) A person is not eligible for an elective municipal office if that person is in arrears in the payment of a tax or other indebtedness due to the municipality or has been convicted in any court located in the United States of any infamous crime, bribery, perjury, or other felony.***

The objector bases his argument on the case of Cinkus v the Village of Stickney Municipal Officers Electoral Board, 886 N.E.2d 1011, 228 Ill. 2d 200 (2008).

In Cinkus, a candidate, John Cinkus ("Cinkus") sought to run for village trustee. After Cinkus filed his nominating papers, he received notice by way of an objection that he owed a debt to the village in the amount of $100. The objection alleged that Section 3.1-10-5(b)

precluded Cinkus from running for office because he was in violation of said section. The court determined that the indebtedness resulted in the candidate being ineligible to run for office.

The Cinkus case represents a departure from prior rulings in which it was held that an outstanding debt precluded candidates from *taking* office but did not preclude them from *running* for office. Since the Cinkus case, the current state of the law is that a candidate is precluded from *running* for municipal office if, at the time he files his nominating papers, he owes a debt to the municipality in which he is running.

9. In the instant case, the Objector offered, as proof of Candidate's outstanding debt, a "Hold Notice" which was addressed as follows:

> *"Jesus Iniguez, CON SAFOS CORPORATION, 1012 S. Wester Ave., Floor 1, Apt./Suite 1, Chicago, IL. 60612".*

The Hold Notice further specified as follows:

> *"Our records indicated that the following account is not in good standing with the City of Chicago: Account No. (Redacted) Legal Name: Con Safos Corporation"*

The Hold Notice specified that the account was in a hold status which

> *"means that no new or renewal licenses or permits may be issued...and [i]f the hold is due to unpaid debt owed to the City and you do not submit payment immediately, the City may bring "**further collection actions against your business**." (emphasis ours)."*

10. The Candidate testified that he was the registered agent for Con Safos Corporation which is the reason that the "Hold Notice" was sent to him.

11. Other evidence was submitted by the Objector regarding corporations with which the Candidate had no connection of any kind.

12. On the basis of the Hold Notice, the Hearing Officer found that the Candidate was indebted to the City of Chicago and ineligible to run for office.

13. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be declared invalid.

14. 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 reverses the Hearing Officer's recommended findings and conclusions of law.

15. The Electoral Board finds that the Objector failed to establish that any debts were personally owed by the Candidate to the City of Chicago. Additionally, the Objector failed to establish that a registered agent is in any way responsible for the indebtedness of the corporation for which he serves as registered agent.

16. The Electoral Board further finds that in the instant case, the Candidate's testimony in which he stated that he was the registered agent for the corporation was consistent with the way in which the Hold Notice was addressed, both to the Candidate and the Corporation for which the Candidate is the registered agent.

17. While the Electoral does not conclude that the debt of a corporation can be attributed to an individual for purposes of Section 3.1-10-5(b) of the Illinois Municipal Code as the Objector alleges here, even if that were the case, the Objector had the burden to establish that the Candidate was more than a registered agent to the Corporation. The Objector failed to establish any relationship between the Candidate and Corporation beyond registered agent.

18. 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 Jose Guerrero to the Nomination Papers of Jesus "Jesse" Iniguez, candidate for election to the office of Alderman of the 12th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of Jesus "Jesse" Iniguez, candidate for election to the office of Alderman of the 12th 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.