NBCON-ALD

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

Objections of: Cindi Sanders	)	
	)	
	)	
To the Nomination	)	No.: 11-EB-ALD-359
Papers of: Wallace E. "Mickey" Johnson	)	
	)	
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 Cindi Sanders ("Objector") to the nomination papers ("Nomination Papers") of Wallace E. "Mickey" Johnson, 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 Edwin Reyes 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, Cindi Sanders, pro se; the Candidate, Wallace E. "Mickey" Johnson, by counsel, James P. Nally.

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 Cindi Sanders to the Nomination Papers of Wallace E. "Mickey" Johnson, 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 Wallace E. "Mickey" Johnson, 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.

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BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF TWENTY-FOURTH WARD OF THE CITY OF CHICAGO, STATE OF ILLINOIS

Objections of: Cindi Sanders	)	
Petitioner/Objector,	)	Case No.: 11-EB-ALD-359 Hearing Officer: Edwin Reyes
To the Nomination Papers of: Wallace E. Johnson	)	
Respondent/Candidate	)	
Candidate for the Office of Alderman for the 24th Ward of the City of Chicago Democratic Party	)	

BOARD OF ELECTION
POLLING PLACE DEP
2010 DEC 21 A 11:29

HEARING OFFICER'S RECOMMENDATION

The Objector Cindi Sanders alleges in her objections that:

1. The Objector states that four circulator's of Wallace E. Johnson's nominating petitions swore in the circulator's sections that they lived at an address that has been found to not be their true residence, and;

2. Said circulators did not personally circulate said Petitions as is sworn to in each of their circulator's Affidavits.

An evidentiary Hearing was conducted by the Hearing Officer. The Objector withdrew her first allegation, that four circulators of Wallace E. Johnson's nominating Petitions swore in circulators sections that they lived at address listed on nominating Petitions.

The sole issue to be decided was previously stated that circulators did not personally circulated said Petitions as it sworn to in each of their circulator's Affidavit.

The Candidate Wallace E. Johnson testified under oath that four people circulated his Petitions, they were: 1) Linda Hooper 2) Brenda Kirkland 3) Tierra Kirkland and 4) Anthony Kirkland. Linda Hooper also testified under oath that she circulated the Candidate's Petitions with her signature.

The Objector then presented an Affidavit allegedly signed by Brenda Kirkland, one of Candidate Wallace E. Johnson's circulators. (Hearing Examiner's Exhibit No. 1) The Affidavit read " I Brenda Kirkland do hereby affirm that I reside at 3659 W. Glenshaw and this was my true residence at the time I signed as circulator on a number of Petition Sheets for the 24th Ward Aldermanic Candidate Wallace E. Johnson. However, I did not personally circulate the Petition Sheets that bear my signature. The Notary Linda Johnson Hooper the sister of the Candidate knew I did not circulate the Petitions, she gave me". The Affidavit was signed by Brenda J. Kirkland, but was not notarized. Affidavit's identical to the one signed by Brenda J. Kirkland were presented by the Objector Cindi Sanders for circulator's Anthony Kirkland and Tierra Kirkland, but were not signed by Anthony Kirkland or notarized.

The Objector Cindi Sanders stated on the lower portion of Affidavit: "I Cindi Sanders being first duly sworn, depose and say that I served and witnessed the signatures of the affiant on each Affidavit listed on this sheet, which was executed on December 12, 2010 and notarized by Silvia Jones."

The Objector also presented Affidavits signed by Janet Johnson, Kevin Lewis, Emanuel Ross, Sammy Miller, Angela Smith and Leroy Hemingway all 24th Ward residents stating they did not sign in front of circulator whose name appears on sheet and/or did not sign Petition for Wallace E. Johnson. (see Hearing Examiner's Exhibit 1B)

The Objector Cindi Sanders also presented the Candidate's Petition Sheets numbers 32, 53, 49, 60, 31, 18, 48, 59, 34, 47, 58, 55, 50, 46, 52, 62, 61, 42, 33, 54, 37, 39, 14, 77, 75, 74, 81, 79, 69, 71, 80, 83, 82, 85, 76, 68, 35, 36, 65, 41, 56, and 57 (See Hearing Officer's Exhibits 2, 3 and 4).

The Petition Sheets in question were signed by the Circulator's Wallace E. Johnson, Linda Hooper and Tierra Kirkland. The Objector alleges a "pattern of fraud" and that the Petition Sheets were circulated in a "round table" fashion.

At the initial Hearing on December 06, 2010, the Hearing Officer granted the Objector's Cindi Sanders subpoena's to bring in circulators Brenda Kirkland, Tierra Kirkland and Anthony Kirkland to testify under oath that they were the circulators on the Candidate Wallace E. Johnson's Petition Sheets. The Objector chose to rely on Affidavits to prove her objection.

The Hearing Officer will not consider the Affidavits presented by the Objector because they are hearsay. Hearsay is an out of court statement offered for the truth of the matter asserted. If the Objector is to testify as to what the Circulator said, the circulator must be available to testify as to what they said, even if the Affidavits were notarized not as to what the circulator said, but notarized as to what the Objector heard the circulator say. The Affidavit signed by the voters are also hearsay for the same rationale. Hearsay evidence is generally inadmissible in administrative hearings Goranson v. Department of Registration and Education 92 ILL App 2d 496, 501 ILL. Dec. 936, 415 N.E. 2d 1249 (1980).

A pattern of fraud must be proved by clear and convincing evidence. Durr v. Chicago Board of Election, Commissioners, 03 CO EL 028 (Cir. Ct. Cook Cty. 2003). "Roundtabling" " Connotes a group of people gathered at a table who circulate Petitions

to one another. Each person signs a name obtained from a phone book or voter registration list and then passes the Petition on to the person sitting next to him/her, who does the same." Armentrout, 99ILL.2d at 245.

With respect to the Petition Sheets, the Objector relies on Williams v. Butler 35 ILL App 3d 532, 341N.E2d 394 (Fourth Dist. 1976). The Statutory requirement of Section 10-4 that circulators of Petitions sign statement before officer authorized to administer oath to affect that they circulated Petitions and that signatures were signed in their presence and were genuine is substantial and valid requirement that relates to the integrity of the political process and the failure to comply with such requirement constitutes a valid objection.

According to Rule 8(b) of the Rules of Procedures, Burden of Proof. With regard to the substance of the objections generally the Objector must bear the burden of proving by operation of law and by preponderance of the relevant and admissible evidence (the burden of proof) that the objections are true and that the candidate's Nomination Papers or the Petition to submit a public question is invalid. If fraud is alleged, it must be proved by clear and convincing evidence.

The Objector Cindi Sanders has not proved her case by clear and convincing evidence.

The Hearing Officer recommends that the name of Wallace E. Johnson appear as a Candidate for Alderman of the 24th Ward on February 22 ,2011 Election.

Hearing Officer,

Edwin Reyes