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

Objections of: EMMA J ROBINSON and CHARLES ENTER	)	
To the Nomination Papers of: BEVERLY MILES	)	No.: 23-EB-ALD-007
Candidate for the office of Alderperson of the 28th Ward, City of Chicago	)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for the City of Chicago, Commissioners Marisel A. Hernandez, William J. Kresse and June A. Brown, organized by law in response to a Call issued by Marisel A. Hernandez, Chair of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of EMMA J ROBINSON and CHARLES ENTER ("Objectors") to the nomination papers ("Nomination Papers") of BEVERLY MILES, for the office of Alderperson of the 28th Ward ("Candidate") at the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023, having convened on Friday, December 9, 2022 at 4:00 p.m. 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 were duly and timely filed.

2. The Electoral Board was legally constituted under the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair of the Electoral Board and served upon the members of the Electoral Board, the Objectors and the

Candidate, by registered or certified mail and by Sheriff's service, as provided by statute or service was waived.

4. A public hearing held on these Objections commenced on Friday, December 9, 2022 and was continued from time to time. The Electoral Board assigned this matter to Hearing Officer Kevin E. Bry for further hearings and proceedings.

5. The Objectors 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 Hearing Schedule. The following persons, among others, were present at such hearing: The Objectors, EMMA J ROBINSON and CHARLES ENTER, through their attorneys, CLINTON DAVIS and ED MULLEN; and the Candidate, BEVERLY MILES, through his Attorney, PERICLES ABBASI.

6. 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.

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

8. The Candidate and/or his duly authorized representative was present during the examination of the registration records. The Objectors and/or their duly authorized representative was present during the examination of the registration records.

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 Electoral 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 473;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,595;

C. The remaining number of signatures deemed valid as a result of the records examination total 401.

11. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderperson of the 28th Ward.

12. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of his Rule 8 motion objecting to the Board's clerk's findings during the records examination. The Electoral Board finds that the Hearing Officer properly rejected a batch of affidavits proffered by the Candidate at the Rule 8 hearing, because those affidavits were presented in violation of the Hearing Officer's directive that the parties exchange all evidence documents the evening before the hearing – a hearing that was already delayed at the Candidate's request so that the Candidate could obtain more affidavits. The Electoral Board further finds that these affidavits proffered during the Rule 8 hearing all bore notarization dates on or before the date of the evidence-exchange deadline, and therefore no good cause exists to justify the Candidate's failure to comply with the evidence-exchange directive.

13. In this Regard, the Electoral Board agrees with the Hearing Officer's finding that this violation under the Electoral Board's Rules of Procedure is proper grounds for striking the affidavits from the record.

14. The Hearing Officer found, and the Electoral Board agrees, that the Candidate was only able to rehabilitate 45 petition sheet signatures at the Rule 8 hearing, *even when considering the late-disclosed affidavits that should be rejected due to their untimeliness*, leaving the Candidate still 27 valid signatures short of the required 473.

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 an insufficient number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderperson for the 28th Ward, and that the Candidate's Nomination Papers should be found invalid.

16. The Electoral Board, having considered the evidence and arguments tendered by the parties, the Hearing Officer's report of recommended findings and conclusions of law and additional argument by the parties during a Rule 20 hearing, hereby adopts and incorporates the Hearing Officer's recommended findings and conclusions of law.

17. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on his nominating petitions and that the Nomination Papers of BEVERLY MILES are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of EMMA J ROBINSON and CHARLES ENTER to the Nomination Papers of BEVERLY MILES, candidate for election to the office of Alderperson of the 28th Ward, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of BEVERLY MILES, candidate for the office of Alderperson for the 28th Ward, SHALL NOT be printed on the official ballot for the Municipal General and Alderperson Elections to be held on Tuesday, February 28, 2023.

Dated: Chicago, Illinois, on Friday, January 13, 2023.

Marisel A. Hernandez, Chair

William J. Kresse, Commissioner

June A. Brown, 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 ELECION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BAORD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATING PAPERS OF THE CANDIDATES FOR THE FEBRUARY 28, 2023, CONSOLIDATED PRIMARY ELECTION FOR ALDERMAN OF THE 28th WARD IN THE CITY OF CHICAGO

EMMA J. ROBINSON and CHARLES ENTER,	)	
Objectors,	)	
v.	)	No. 23 EB ALD 007
BEVERLY MILES,	)	
Candidate.	)	

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter was initially heard on December 12, 2022. The Objectors appeared through counsel, Clinton P. Davis. After discussion, a records examination pursuant to Rule 6 of the Board's rules was ordered and the matter continued until a date to be decided.

RECORDS EXAMINATION AND FURTHER PROCEEDINGS

A records examination was set for December 22, 2022. The records examination proceeded, and the Board's Final Records Examination Report was filed and communicated to the parties on January 5, 2023. The results of the examination left the Candidate 72 valid signatures short of the minimum number of 473 valid signatures. Both the Candidate and the Objectors timely-filed a Rule 8 Motion seeking to contest numerous of the rulings of the Rule 6 Records Examination.

The Rule 8 Evidentiary Hearing was scheduled for January 11, 2023 at 10:00 a.m., with the parties to share any evidentiary material they intended to use or introduce into evidence with each other and the Hearing Officer by the close of business the evening before, or on January 10, 2023. Both parties shared some evidentiary material, consisting mostly of affidavits, the evening

before the Rule 8 hearing. At the January 11, 2023, hearing, however, the Candidate sought to submit approximately 40 or more affidavits to the approximately 48 affidavits shared on January 10, 2023. Over the Objectors' objections including that the newly offered affidavits had been notarized on or prior to January 10th, 2023 and therefore should have been disclosed before the hearing, the Hearing Officer ruled that he would consider the newly submitted affidavits in evidence provisionally to allow the Candidate to make a full record.

The Rule 8 hearing was conducted, with the parties able to offer arguments as to the validity of each and every one of the signatures which had been objected to at the Rule 6 hearing, included in the Candidates Rule 8 motion, and for which there were affidavits tendered. The hearing officer examined the Candidate's petition sheets' voter signatures, proposed affidavits with voter signatures, and Board registration records with voter signatures.

Admission into Evidence of Tardily Submitted Affidavits

The consideration in evidence of some 40-plus affidavits which were tendered only once the hearing began was provisional only.

The hearing on the Rule 8 motions had been scheduled for January 10, 2023, with the evidence the parties intended to introduce to be shared with each other and the Hearing Officer by the close of business January 9, 2023. However, the Candidate through counsel on January 9, 2023, requested that the hearing be continued until January 11, 2023. On January 9th, the Hearing Officer allowed this request for extension and the Rule 8 Hearing was rescheduled to January 11, 2023. Additionally, at this time the Hearing Officer directed the parties "to provide evidentiary material by the close of business on the 10th of January, 2023," and to include the Hearing Officer on this disclosure.

Yet, although several dozen affidavits were shared in accord with the directive the evening of January 10th, 40-plus affidavits were shared only at the time the hearing commenced on January 11th. As counsel for the Objectors noted in objection to the consideration of the tardily submitted affidavits, all were notarized on January 10, 2023, or in the cases of some, on dates prior to January 10, 2023. The Candidate offered no compelling reason why the newly submitted affidavits could not have been disclosed earlier than the Rule 8 hearing on the morning of the 11th of January. Board Rule of Procedure 14 provides that the failure to follow a Hearing Officer's directive may result in the striking of any papers filed in violation of said directive. The Hearing officer recommends that the affidavits submitted after the January 10 agreed deadline not be considered as evidence given the lack of good cause shown for their nondisclosure prior to the Rule 8 Hearing. Furthermore, the Hearing Officer finds that even if all of these tardy affidavits were to be accepted and were to be ruled upon in the Candidate's favor, it would still not rehabilitate a sufficient number of signatures to qualify the Candidate for the ballot.

The number of signature rulings from the records exam that the Candidate challenged by disclosed affidavits totaled well under the 72 valid signatures the Candidate needed to rehabilitate, and this requires that the Objectors' Petition be sustained and the Candidate not appear on the ballot.

Moreover, even if the Electoral Board were to consider the tardily disclosed affidavits, a thorough examination of all affidavits and available evidentiary material reveals that the Candidate was still short of the required 473 valid signatures. Of the total of 94 signature rulings considered (that is, the timely-disclosed affidavits plus the late-disclosed affidavits) with reference to the petition sheet signature, affidavit and Board registration record, only 45, or less

than half of the total number of affidavits, showed sufficient evidence for rehabilitation to warrant the setting aside of the Board's Rule 6 findings in its Records Examination Final Report. Signatures where rehabilitation was insufficient generally revealed no similarity between the Board record signature and the petition sheet and affidavit signatures, or in some cases no similarity between the petition sheet signature and the affidavit and Board record signature. In multiple instances, the Candidate presented two different affidavits from recent dates with different notaries purporting to be from the same voter, which contained thoroughly dissimilar voter-affiant signatures. The Hearing Officer notes that all of the signature rulings from the Rule 6 records exam were confirmed by a certified forensic document analyst, otherwise known as a "handwriting expert." For an affidavit such as these to rehabilitate a signature ruling that was already confirmed by a certified handwriting expert, the exemplar signatures on the affidavit must be reasonably similar to *both* the corresponding signature on the Candidate's petition sheets *and* the registration signature from the Board's files. Less than half of the total affidavits proffered by the Candidate showed any similarity between all three of those signature categories.

RECOMMENDED DECISION

The Final Records Examination Report revealed that the candidate was 72 valid signatures short of the required 473 valid signatures. The Candidate was only able to rehabilitate 45 petition sheet signatures at the Rule 8 hearing (even when considering the late-disclosed affidavits that should be rejected due to their untimeliness), leaving the Candidate still 27 valid signatures short of the required 473. Based upon the Final Records Exam Report and the entire record, it is therefore my recommendation that, in accord with *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, 28 N.E.3d 170 (2015), the objections of Emma Robinson and Charles Enter to the nominating papers of Beverly Miles be sustained, and

that the nomination papers of Beverly Miles be deemed **invalid** and that the name of Beverly Miles for said office **not be** printed on the ballot at the February 28, 2023, Consolidated Primary Election.

Respectfully Submitted,

s/ *Kevin E. Bry*

Kevin E. Bry, Hearing Officer
January 12, 2023