DEFAULT

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

Objections of: JUAN CALDERON CUZA	)	
	)	
	)	
To the Nomination	)	No.: 23-EB-ALD-041
Papers of: ANTHONY N. RIVERA	)	
	)	
Candidate for the office of Alderperson for	)	
the 26th 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 JUAN CALDERON CUZA ("Objector") to the nomination papers ("Nomination Papers") of ANTHONY N. RIVERA, candidate for the office of Alderperson for the 26th 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 Objector 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 Jeanette Samuels for further hearings and proceedings.

5. 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 Hearing Schedule. On such date and time, the Hearing Officer called the case by calling aloud the case number, the name of the Objector and the name of the Candidate. The following persons, among others, answered and were present at such hearing: The Objector, JUAN CALDERON CUZA through his attorney, MICHAEL J KASPER.

6. The Candidate, ANTHONY N. RIVERA, did not answer to the call nor did he appear at the hearing. The case was called again at least two more times at least 15 minutes apart on Monday, December 12, 2022 and at no time did the Candidate or any person purporting to represent the Candidate appear.

7. The Electoral Board finds that the Cook County Sheriff attempted to serve the Candidate with a copy of the Objector's Petition and with a copy of the Call to the Monday, December12, 2022 hearing in this case on December 10, 2022 at 4:50 PM. The return of the Sheriff's office indicated that the reason that the Candidate was not served was "No Contact." The Candidate was also sent a copy of the Call to the Friday, December 12, 2022 meeting by certified mail, but a signed receipt acknowledging receipt of the certified mail item has never been returned by the Postal Service. A true and correct copy of the Board's ledger showing that the certified mail item was delivered to the Postal Service was admitted into evidence.

8. The initial hearing was continued to December 19, 2022 at Noon to allow for additional service upon the Candidate of a copy of the Objections and notice of hearing. The Cook County Sheriff again attempted to serve the Candidate with a notice of continued hearing for the December 19, 2022 hearing on December 15, 2022 at 4:40 PM. The Sheriff's return of service indicated that the reason the Candidate was served on December 15, 2022 by "Personal Service – by leaving a copy of the writ/order with the Defendant/Respondent personally, and informing the Defendant/Respondent of contents." A copy of the notice of continued hearing was also sent to the Candidate by certified mail, return receipt requested, but no receipt was returned to the Board by the Postal Service.

9. The Electoral Board finds that the Candidate, ANTHONY N. RIVERA did not appear at any of the duly called meetings and hearings conducted in this matter after numerous attempts to serve the Candidate with a copy of the Call and the Objector's Petition by the means of service specified in the statute.

10. A candidate cannot evade the effects of a duly filed objection to his or her nomination papers by simply being unavailable for service of papers nor should the objections be rendered moot by virtue of the fact that a candidate cannot be found by the statutory methods of service. If this were permitted, candidates would simply go into "hiding" until the objection process had run its course, thereby frustrating the statutory scheme for testing whether the candidate is eligible to be on the ballot.

11. The Electoral Board further finds that the Objector's petition, on its face, contains sufficient allegations, if accepted as true, to invalidate the Candidate's Nomination Papers.

12. Therefore, the Electoral Board finds that the Candidate, ANTHONY N. RIVERA is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of JUAN CALDERON CUZA to the Nomination Papers of ANTHONY N. RIVERA, candidate for the office of Alderperson for the 26th Ward, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ANTHONY N. RIVERA, candidate the office of Alderperson for the 26th 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.

BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OF OBJECTIONS TO THE NOMINATION PAPERS FOR CANDIDATES FOR THE OFFICE OF ALDERPERSON OF THE 26TH WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS

JUAN CALDERON CUZA,	)	
	)	
Petitioner-Objector,	)	
	)	
v.	)	No. 23-EB-ALD-041
	)	
ANTHONY N. RIVERA,	)	
	)	
Respondent-Candidate.	)	

HEARING EXAMINER'S FINAL REPORT AND RECOMMENDATION

This matter coming before the undersigned Hearing Officer of the duly constituted Chicago Board of Election, the Hearing Officer makes the following Report and Recommendation:

PRELIMINARY FACTS

1. The Candidate timely filed Nomination Papers as a Candidate for Alderman for the 26th Ward for the City of Chicago, County of Cook, State of Illinois.

2. Objector's Petition to the Nomination Papers of the candidate was timely filed.

3. In the Petition, the Objector argues that the nomination papers are insufficient as a matter of law and fact in that they fail to contain at least 473 signatures as is required by law for the office of alderman.

4. A Call to Hearing on said objections was duly instituted by the Chairman of the Electoral Board and served upon members of the Electoral Board, the Objector and Candidate, by certified mail or by Sheriff's service, as provided by statute.

5. The initial hearing on Objections was called on 12 December 2022.

6. Counsel appeared on behalf of the objector.

7. The candidate did not appear.

8. Board Exhibits were marked as follows: Board Exhibit A. Nomination Papers; Board Exhibit B. Objector's Petition; Board Exhibit C. Proof of Service; and Board Exhibit D. Appearance and Non-Disclosure Forms.

9. The matter was continued until 19 December 2022 to allow additional service on the candidate.

10. On 15 December 2022, the candidate was personally served by the Cook County Sheriff's Office. Exhibit 1, Proof of Service.

11. On 19 December 2022, the candidate did not appear; and the matter was continued until 27 December 2022 to allow for the candidate's appearance.

12. On 27 December 2022, the candidate did not appear.

13. At that time, the Objector made a motion for default against the candidate, and the matter was taken under advisement by the hearing officer.

FINDINGS

14. The candidate has failed to appear at three separate hearings, at least two of which have occurred after being personally served and advised that failure to appear may result in an adverse finding.

15. The Candidate has failed to communicate with the Board whatsoever regarding his absence.

16. The Objector's petition states a claim that, if accepted as true, would invalidate the candidate's nomination papers.

17. In similar circumstances, the party has been defaulted for their failure to appear. *Williams et al., v. Smith*, 08-EB-RGA-15 (Chicago Electoral Board 2007)(holding the candidate will be found in default and his nomination papers declared invalid inasmuch as the objector's petition stated sufficient grounds on its face, if accepted as true, to invalidate the candidate's nomination papers); *see McCullough v. Hunter*, 08-EB-SS-04 (Chicago Electoral Board 2007) (objector defaulted and objections dismiss where the objector was served by substituted service by the Sheriff at the address listed on her objection petition and failed to appear at initial hearing).

18. Here, the candidate has failed to appear or defend his nomination papers despite having actual notice.

RECOMMENDATION

Based upon the foregoing, the hearing examiner recommends the following:

a. Objector's motion for default be GRANTED;

b. Candidate's Nomination Papers be found NOT VALID; and

c. the name of the Candidate ANTHONY N. RIVERA not appear on the ballot for the office of Alderman the 26th Ward of the City of Chicago, State of Illinois.

Dated: 28 December 2022

Hearing Officer Jeanette Samuels

EXHIBIT 1

SHERIFF'S OFFICE OF COOK COUNTY, ILLINOIS
AFFIDAVIT OF SERVICE

A 0 3 7 0 2 6 0 1 *

11

CASE NUMBER: 23EBALD041 MULT.SER. 1 DOC TYPE: ELECTION OBJECTION (NO FEE)

DUE DATE: 12/10/2022 RECEIVED DATE: 12/04/2022 12:00:00 PM FILED DATE: 12/13/2022 DIST: 647 SK

DEFENDANT
RIVERA, ANTHONY N
1955 N ST LOUIS AVE
CHICAGO, IL 60647

PLAINTIFF
CITY OF CHICAGO
ATTORNEY
BOARD OF ELECTION

ATTACHED FEE AMOUNT:

SERVICE INFORMATION:

I CERTIFY THAT I SERVED THE DEFENDANT/RESPONDENT AS FOLLOWS:

X **(1) PERSONAL SERVICE:**
BY LEAVING A COPY OF THE WRIT/ORDER WITH THE DEFENDANT/RESPONDENT PERSONALLY, AND INFORMING DEFENDANT/RESPONDENT OF CONTENTS.

___ **(2) SUBSTITUTE SERVICE:**
BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT AT THE DEFENDANT'S USUAL PLACE OF ABODE WITH A FAMILY MEMBER OR PERSON RESIDING THERE, 13 YEARS OR OLDER, AND INFORMING THAT PERSON OF THE CONTENTS OF THE SUMMONS. ALSO, A COPY OF THE SUMMONS WAS MAILED TO THE DEFENDANT AT HIS OR HER USUAL PLACE OF ABODE ON THE _____ DAY OF _____ 20____

___ **(3) UNKNOWN OCCUPANTS:**
BY LEAVING A COPY OF THE SUMMONS AND COMPLAINT NAMING "UNKNOWN OCCUPANTS" WITH A PERSON OF THE AGE OF 13 OR UPWARDS OCCUPYING SAID PREMISE.

(4) CORP/CO/BUS/PART:
BY LEAVING THE APPROPRIATE NUMBER OF COPIES OF THE SUMMONS, COMPLAINTS, INTERROGATORIES, JUDGMENTS, CERTIFICATIONS AND NOTICES WITH THE REGISTERED AGENT, AUTHORIZED PERSON OR PARTNER OF THE DEFENDANT CORPORATION ____ COMPANY ____ BUSINESS ____ PARTNERSHIP ____

___ **(5) PROPERTY RECOVERED:**
NO ONE PRESENT TO RECEIVE ORDER OF COURT ORDER POSTED IN PLAIN VIEW

___ **(6) S.O.S./D.O.I.:**
BY LEAVING THE SUMMONS AND COMPLAINT WITH THE SECRETARY OF THE STATE/DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS, AN AGENT OF SAID DEFENDANT LISTED ABOVE. ANY AGENT OF SAID CORPORATION NOT FOUND IN THE COUNTY OF COOK.

___ **(7) CERTIFIED MAIL**

******* COMPLETE THIS SECTION IF WRIT IS A THIRD PARTY CITATION/GARNISHMENT *******

___ **(8)** AND BY MAILING ON THE ____ DAY OF _____ 20_____ A COPY OF THE THIRD PARTY GARNISHMENT/CITATION SUMMONS AND NOTICE TO THE JUDGMENT DEBTOR'S LAST KNOWN ADDRESS AS INDICATED IN THE NOTICE WITHIN (2) BUSINESS DAYS OF SERVICE UPON GARNISHEE/THIRD PARTY DEFENDANT

THE NAMED DEFENDANT WAS NOT SERVED FOR THE GIVEN REASON BELOW:

_____ (01) NO CONTACT	_____ (05) WRONG ADDRESS	_____ (09) DECEASED
_____ (02) MOVED	_____ (06) NO SUCH ADDRESSS	_____ (10) NO REGISTERED AGENT
_____ (03) EMPTY LOT	_____ (07) EMPLOYER REFUSAL	_____ (11) OUT OF COOK COUNTY
_____ (04) NOT LISTED	_____ (08) CANCELLED BY PLAINTIFF ATTY	_____ (12) OTHER REASON (EXPLAIN)

EXPLANATION: _____

WRIT SERVED ON: A. Rivera

SEX: (M) F RACE: W AGE: 71

THIS 15 DAY OF Dec., 2022

Thomas J. Dart

SHERIFF, BY: _____ DEPUTY

ATTEMPTED SERVICES

DATE	TIME (AM/PM)	STAR #
12/15	9:40	10016
	:	
	:	
	:	

YPIAXIS