NBCON

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

Objections of: HECTOR VILLAFUERTE	)	
	)	
	)	
To the Nomination	)	No.: 23-EB-ALD-070
Papers of: JESSICA "JESSIE" FUENTES	)	
	)	
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 HECTOR VILLAFUERTE ("Objector") to the nomination papers ("Nomination Papers") of JESSICA "JESSIE" FUENTES, 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 Terence Flynn for further hearings and proceedings.

5. 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, HECTOR VILLAFUERTE, through his attorneys ANDREW FINKO and FRANK AVILA; the Candidate, JESSICA "JESSIE" FUENTES, and/or her attorneys JENNIFER GROSSMAN and ED MULLEN.

6. 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.

7. The Hearing Officer found that the Candidate met the residency requirement to run for the office of Alderman.

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 HECTOR VILLAFUERTE to the Nomination Papers of JESSICA "JESSIE" FUENTES candidate for the office of Alderperson for the 26th Ward, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JESSICA "JESSIE" FUENTES, candidate for the office of Alderperson for the 26th Ward, SHALL 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 BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE 26TH WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS TO BE VOTED UPON AT THE FEBRUARY 28, 2023 MUNICIPAL GENERAL ELECTION

HECTOR VILLAFUERTE,	)	
	)	
Petitioner-Objector	)	
	)	No. **23-EB-ALD-070**
vs.	)	
	)	
JESSICA "Jessie" FUENTES,	)	
	)	
Respondent-Candidate	)	

REPORT AND RECOMMENDATION

Summary of Recommendation:

The Objection should be overruled, and the Candidate's name should be included on the ballot for 26th Ward Alderman in the February 28, 2023, Municipal General Election.

Procedural Background:

This matter was initially heard on December 12, 2022. Andrew Finko appeared for the Objector and Ed Mullen and Jennifer Grossman appeared for the Candidate. Subpoenas were timely requested, recommended, approved and issued. No issue arises from that process. An evidentiary hearing was held on January 4, 2023 and post-hearing briefs were filed the next day. The sole issue on the Objection and therefore of the evidentiary hearing involves the residency of the Candidate.

The Issue:

Did the Candidate "reside" for purposes of 65 ILCS 20/21-14 within the boundaries of the 26th Ward for at least one year prior to the election scheduled for February 28, 2023? Put another way: Did the Candidate reside in the 26th ward as of February, 2022 and continuously thereafter? For the reasons stated below, this Report and Recommendation answers that question "yes".

The Addresses in Question:

In March of 2020, Candidate, with her partner, purchased a two-flat at 735 N. Springfield in Chicago, which all parties agree is not in the 26th Ward (nor any part of the redistricted ward that would allow eligibility). (Obj. Ex. 5) In October, 2021, Candidate signed a one-year lease for an apartment at 2619 W. Division St. 2nd Fl., which all parties agree is within the 26th Ward. (Candidate's Ex. D2) In October, 2022, Candidate signed a second one-year lease for the same apartment. (Cand. Ex. D1)

The Candidate (and her partner, later spouse) did not sell the property at 735 N. Springfield, still own it today and Objector claims that the Candidate never "abandoned" residency at that property, relying on *Maksym v. Board of Election Commissioners,* 242 Ill. 2d 303 (2011), the Rahm Emmanuel case.

The Evidence on "Abandonment":

a) Summary of Testimony

An initial point, not discussed by the parties, is whether the two-part test of *Maksym* was satisfied at the 735 N. Springfield address in the first instance. The Candidate bought it, and lived there continuously until at least October of 2021. However, she and her spouse testified that they "always" intended the North Springfield property to be an investment property, never a "permanent" home precisely because the Candidate always wanted to live in the 26th Ward, had looked for 26th Ward properties to purchase in at least two time-periods but was unsuccessful. This testimony was corroborated by their real estate broker.

So the first prong of the *Maksym* test – physical presence -- is certainly satisfied but the second prong – intent to permanently live there – may not be. I touch on this point not to rely upon it for decisional purposes in this Recommendation, but rather to point out the limits (and possible irony) of the second prong – "permanent" abode intent. When someone purchases a "starter home", almost by definition, there is a lack of "permanency". Also, this concept informs the situation here, where there is a rental. There can be no "mechanical" application of the "permanent" intent test, lest absurd results occur. As approvingly cited and quoted in *Maksym, supra, Walsh v. County Officers Electoral Board,* 267 Ill.App.3d 972, 976 (1994), cautions that "whether candidate abandoned old residence in favor of new residence presents a question of intent, which is measured by the 'surrounding circumstances' and the candidate's declarations thereof ..." Therefore, for our purposes, we presume that residency was established at 735 N. Springfield and analyze the intent, as measured by the "surrounding circumstances" and declarations thereof regarding her move to 2619 W. Division, 2nd Floor.

Often in a residency case, there may be testimony regarding cars parked overnight,

persons exiting the affected address in the early morning hours – even videos – showing that "physical presence" was never absent from the first abode. Here there is no such evidence. There is not a scintilla of evidence of overnight stays by the Candidate at 735 N. Springfield in The year preceding February 28, 2023. The testimony is precisely the opposite: A number of witnesses (albeit friends and acquaintances) testified to visits to 2619 W. Division in October of 2021 (Mr. Rodriguez and Pastor Lozano), January 6, 2022 (Ms. Brown), and early February of 2022 (Principal Lewis). (See below, "Annotated List of Witnesses" at ppgs. 6-9) Of course, the Candidate and her spouse testified that they spent every night at the Division Street property once they moved in. (They testified – credibly – that they moved out of 735 N. Springfield during construction of the first-floor unit, and as it was purchased as investment property, never intended to and never did move back in.)

Without objection, the Candidate also offered 8 Affidavits into evidence. They were received. A plumber (Delgado) worked on the repairs at 735 N. Springfield on three occasions – March and November of 2021 and August of 2022 – and affirmed that the first floor unit was not fully furnished in November 2021 or August of 2022 and, because of repairs not "really habitable". Others (Cintron and Colon) saw her walking her dog and coming in and out of 2619 W. Division. The Candidate's sister (Morataya) lived with the Candidate and her spouse at 2619 and now lives at 735 N. Springfield, without the Candidate. All these affidavits add further corroboration to the live witnesses and the Candidate's own testimony.

b) Documents

Against this testimony, Objector marshalled a circumstantial document-centered case, focusing on the Candidate's absent or tardy change of address information that would

publicly show that she no longer lived at 735 N. Springfield. It is stipulated that she never filed a change-of-address card with the U.S. Postal Service. In fact, both the Candidate and her spouse testified that they kept a secure outside mailbox at 735 N. Springfield precisely because it was secure and the Division Street box was not. There are 3 mailboxes shown in photos (Obj. Ex. 7) of that location, one for each of the two units and one for them. Similarly, drivers' licenses, bank records, insurance policies, license plates, City stickers (Obj. Ex. 8) were never or only lately (Obj. Ex. 3) – post filing of nomination papers – changed. Similarly, a homeowner's exemption was claimed for both 2020 and 2021 and was only recently – post filing – disclaimed on the 735 N. Springfield property. (Obj. Exs. 9 &10)

Objector makes two arguments stemming from this document-centered approach:

1) The lack of changes of address on various private and public entity forms shows they did not abandon the property; and
2) That failure would show a lack of permanent intent to stay at the Division Street address.

Of course, taken to its illogical conclusion, anytime a mailing address did not match the address where a person slept every night and otherwise made his/her/their home, a disqualification would occur. There are myriad reasons for not changing a mailing address or it not matching the actual residence: a P.O. Box, for instance; a parent's address; or as here, a perceived lack of security at a new rental address.

A few documentary changes were executed: disclaiming the home owner's exemption, for instance (Obj. Ex. 9 & 10) and voting address (of course). It is my finding that the oral testimony and affidavits overcome any inference that the Candidate continued to reside, live, sleep at the 735 N. Springfield address and that mere laxity in a change of address is not an

automatic disqualifier. The "surrounding circumstances" require that finding.

Annotated List of Witnesses:

The following is a list of witnesses (not necessarily in the order of testimony) with a short summary of the relevant testimony.

1) Natasha Brown – Ms. Brown is an employee of the Puerto Rican Cultural Center (PRCC), the same employer as the Candidate. The Candidate and Ms. Brown are colleagues, and Ms. Brown considers herself a mentor of sorts to the Candidate. However, Ms. Brown is not involved in any way with the campaign and does not live in the 26th Ward.

Ms. Brown visited the Candidate's apartment at 2619 W. Division on 3 or 4 occasions, more as work colleagues than close social friends. The most memorable visit was on January 6, 2022, during a "Three Kings" observance at a near-by facility when a bathroom was needed. (In some churches, this is the feast of the Epiphany.) As she had on other occasions, she observed a typical apartment home, with tables, chairs, sofa, stocked kitchen, photographs and the usual accoutrements of domestic life. A specific memory was the washer/dryer on the landing, which were operating with clothes on the top of one of the machines. In short, in all her visits she saw a typical domestic scene and a used residential apartment. As said, Ms. Brown and the Candidate are colleagues, but I found her very credible in her demeanor when testifying and the type of person who would not violate the testimonial oath, even for a friend. (Also, it is said in criminal law that it's unusual to get an alibi from a stranger; similarly, it's unusual to obtain testimony about your domestic living arrangements from other-than friends' visits.)

2) Melissa Lewis – Ms. Lewis is the Principal of Dr. Pedro Albizu Campos High School in Chicago, where the Candidate was Dean of Student Affairs at one time. She considers herself a close friend of the Candidate. She also visited the Division Street address on a number of

occasions. One particular memory is in early February 2022, when she thought she was attending a birthday for the Candidate but was asked to M.C. the Candidate's and her partner's bridal shower. Again, the apartment was a typical looking well-lived-in home. Also, the bridal shower was held in the backyard of 735 N. Springfield; however, access to the first floor was limited to the bathroom, the kitchen was not used. (As testified to by Ms. Medina, the Candidate's now-spouse, since they still owned it, "the backyard was a free place to hold a party.") Ms. Lewis quite off-handedly and casually mentioned that the bridal shower was held at the Candidate's sister's backyard – the Candidate's sister was and is a tenant at 735 N. Springfield. Again, with someone who holds her civic position, and her demeanor when testifying, Ms. Lewis was a very credible witness.

3) Pastor Emma Lozano – Longtime immigration and civic activist, she is Pastor of Lincoln United Methodist in Pilsen. She clearly considers the Candidate as a member of her extended family. She testified similarly to Ms. Brown and Ms. Lewis regarding her observations of the apartment at 2619 W. Division. One particular visit occurred when she was asked to "bless" the new apartment at 2619 W. Division – as a Pastor this is not uncommon for her – which she recalls happening in late 2021. She recalled the Candidate's dog was shut in a bedroom because Pastor Lozano has difficulty with canines. Although she has performed Notarial functions for the Fuentes campaign, again, her testimony regarding her visits was credible.

4) Jose Luis Rodriguez – Mr. Rodriguez holds a supervisory position at PRCC involving property owned by PRCC, which owns the Candidate's second floor rental apartment and the bottom floor commercial space (one of many PRCC offices) as well. He testified that he had attempted to assist the Candidate in looking for properties to buy in the 26th Ward both before the purchase of 735 N. Springfield and since that time, but that the combination of high

prices, high interest rates and a "gentrifying" neighborhood made those efforts unsuccessful thus far. He visited the 2619 W. Division on a few occasions and saw nothing inconsistent with a normal living arrangement. On that aspect of his testimony, he appeared credible.

However, there is one aspect that is troublesome to me. Mr. Rodriguez identified Candidate's Exhibit E, a collection of rent receipts as his handwriting as he collected rent on some 9 rental properties owned by PRCC. They have pre-printed stamps that are not sequential, as would occur if someone was collecting monthly rent from a number of properties. He testified, however, that Candidate Fuentes paid by check. The Candidate did not offer checks that would correlate to those receipts, nor in response to subpoena/Rule 237 requests did Objector receive evidence of such checks. There was some suggestion from Objector's counsel's questioning that perhaps the rental was a perquisite of Candidate's employment with PRCC, but that was denied. The lack of corroboration for the rental receipts is troubling. However, the manner in which the apartment is paid-for is irrelevant to the question does the Candidate have a physical presence and live there. On that prong of the residency test (*Maksym, et al.)*, the cumulative effect of the Brown-Lewis;Lozano testimony is determinative, along with that of the Candidate and her spouse, Rebecca Medina.

5 & 6) Candidate Fuentes and her spouse Rebecca Medina – Of course, their testimony is subject to the self-serving test and analysis but the following summarizes *uncontradicted* points from both: They bought 735 N. Springfield as an investment opportunity in March, 2020; they moved into the first floor and immediately rented the second floor unit; they commenced serious construction work (making a duplex of the first floor and basement) in March, 2021 and moved out (at least in part due to Ms. Medina's allergies) in October, 2021; they always intended to live in the 26th Ward; they have kept no personal items at 735 N. Springfield though

there are lawnmowers and other implements for maintenance; they kept the mailbox at 735 N. Springfield for security reasons (and because, after all, they still owned it); they signed 2 one-year leases (Ex. D2 & D1) for 2619 W. Division commencing in October, 2021; they have lived there every day and night since October, 2021; they will live at 2619 W. Division until and unless a better property *in the 26th Ward* presents itself. I credit that testimony, and the "surrounding circumstances" as satisfying the "permanency" prong of the *Maksym – Walsh* test.

7, 8 & 9) Documentary Foundational Witnesses from ComEd, Secretary of State and City of Chicago – These witnesses presented and identified documents from those entities mentioned above that showed a near-complete absence of making any change of address filings with public entities, as well as with banks, mortgage and insurance private companies, explained by the Candidate as she does everything "paperless" and "on-line". (And also, she did not want to visit the DMV in the pandemic, or ever.) Again, this documentary evidence certainly shows that Objector had a good-faith basis to bring the objection, but the oral testimony cited and discussed above overcomes any result-determinative inferences from those documents.

Paragraph 6 of the Objection:

Paragraph 6 of the Objection specifies the supposed factual predicates for the allegation that the Candidate did not reside at 2619 W. Division for one-year prior to next February 28th. That paragraph states in full: "For more than one year before the February 28, 2023, municipal Election, Candidate has resided at, kept her furniture and personal belongings at, and has maintained a homeowner's exemption for the residence at 735 N. Springfield Ave., Chicago, Il 60624." Each of those allegations have been disproved.

Findings of Fact:

1) Candidate purchased 735 N. Springfield in March 2020, moving in at the same time though always considering that property an investment opportunity.

2) Candidate moved out of 735 N. Springfield in October 2021 and signed the first of 2 one-year leases (Exhibits D1 & D2) at that time for an apartment at 2619 W. Division, 2nd Fl..

3) 735 N. Springfield is outside the boundaries of the 26th Ward.

4) 2619 W. Division, 2nd Floor is within the boundaries of the 26th Ward.

5) Candidate claimed a homeowner's exemption on 735 N. Springfield for property taxes for the years 2020 and 2021, though filed papers after her candidacy to disclaim that exemption for the year 2022.

6) The Objector presented voluminous documentary evidence that the Candidate (and her spouse) did not execute change of address forms, either for public entities or private, if any, after moving from 735 N. Springfield, except a change of voter registration that allowed them to vote in the November, 2022 midterms from the 2619 W. Division address and a driver's license change (Obj. Ex. 3 –11/7/22 change of address). It is stipulated that no change of address form was ever submitted to the U.S. Postal Service and that after the move and through today, an outside mailbox is maintained by Candidate at 735 N. Springfield.

7) The Objector presented no affirmative, competent evidence that the Candidate kept any personalty, furniture, clothes, et cetera at 735 N. Springfield after the move in October, 2021.

8) The Objector presented no affirmative, competent evidence that the Candidate spent even one night at 735 N. Springfield in the period February 27, 2022 to present. The Objector presented no affirmative, competent evidence that Candidate spent even one night, much lived, at any address other than 2619 W. Division in the one-year period prior to the February 28, 2023

election.

9) Candidate presented competent and credible evidence that she has, lived, resided and spent each night at 2619 W. Division in the 26th Ward for the entirety of the one-year prior period – and before. Besides her own (and her spouse's) uncontradicted testimony, independent and credible witnesses, albeit friends and/or co-workers, also testified that they had visited the apartment throughout the one-year prior period and that it was the home and domicile of Candidate and her spouse, with all the accoutrements of domestic living one would expect. (See Transcript of 1/4/23 hearing when available re testimony of Brown, Lewis and Lozano, discussed above.)

10) Though they are renters, the Candidate and her spouse have said that they plan to live in the apartment at 2619 W. Division through the present lease (October 2023) and beyond, unless and until a better 26th Ward property becomes available, e.g., the "foreseeable future". See Conclusion of Law # 2 below re the sufficiency of that for the "permanency" prong of the residency test (*Maksym, supra).*

Conclusions of Law:

1) It was not contradicted that the Candidate has been physically present and living at 2619 W. Division in the 26th Ward for more than the required one-year prior to 2/28/23 election and therefore satisfies the first prong of the residency test (*Maksym et al.).*

2) The meaning of "permanency" and "intent to permanently reside" cannot be mechanistically applied but rather is adapted to the surrounding circumstances *(Maksym, supra* and *Walsh, supra).* Given that direction, it is apparent that a question such as "Do you intend to permanently reside in {your apartment} [your starter home]?" can sound nonsensical. The

surrounding circumstances here clearly and convincingly demonstrate that the permanency prong of the residency test is also satisfied at 2619 W. Division, 2nd Floor.

3) As a result, the residency at 735 N. Springfield, if ever perfected, was "abandoned" within the meaning of Illinois precedent.

4) This Candidate, Jessica "Jessie" Fuentes complies fully with 65 ILCS 5/3.1-10.5 and 65 ILCS 20/21-14 and is eligible under those statutes to be a Candidate for the office of Alderman of the 26th Ward of the City of Chicago.

Recommendation:

It is the recommendation of this Hearing Officer that the name Jessica "Jessie" Fuentes **should appear** on the ballot for the office of 26th Ward Alderman in the February 28, 2023 Municipal General Election.

Dated: 1/9/23 s/ Terence Flynn – Hearing Officer