

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 8, 2014 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Yolanda Sayre 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, CHESTER WILSON, JR., by his attorney Thomas A. Jaconetty; the Candidate, HENRY MOSES, by his attorney, Peter Cleary.

7. The sole issue raised by the Objections is whether the Candidate resides at the address listed on his Statement of Candidacy in the 34th Ward.

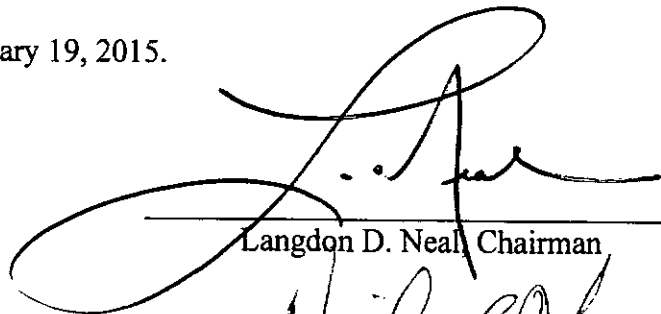
8. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

9. 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.

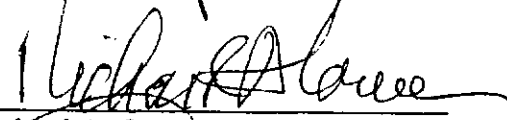
10. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of CHESTER WILSON, JR. to the Nomination Papers of HENRY MOSES, candidate for election to the office of Alderman of the 34th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of HENRY MOSES, candidate for election to the office of Alderman of the 34th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

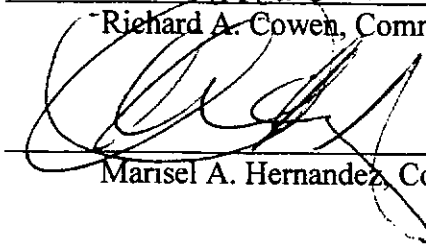
Dated: Chicago, Illinois, on January 19, 2015.



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.

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

CHESTER WILSON, JR.)	
Objector)	
)	
)	
-v-)	15-EB-ALD-012
)	
HENRY MOSES)	Yolanda H. Sayre
Candidate)	Hearing Officer

HEARING OFFICER'S REPORT AND RECOMMENDED FINDINGS

This matter having come before the duly constituted Chicago Board of Election Commissioners ("the Board"), and before the undersigned Hearing Officer on December 9, 2014; the Hearing Officer hereby makes the following report and recommended findings:

1. The Candidate filed Nomination Papers for Alderman of the 34th Ward in the City of Chicago. Such Nomination Papers consisted of: a) a Statement of Candidacy; b) a Receipt for Statement of Economic Interests; c) a Loyalty Oath; and d) Nominating Petition Sheets numbered 1 through 160. Without objection, the Candidate's Nomination Papers were admitted into evidence and marked as Group Exhibit A.
2. The Verified Objector's Petition was timely filed on December 3, 2014. Such Petition was admitted into evidence and marked as Group Exhibit B.
3. A Call to the hearing on said objections was duly issued by the Chairman of the Board and served upon all parties. The Call, the proof of service, and / or any waivers thereof, were admitted into evidence and marked Group Exhibit C.

4. The matter was initially called on December 9, 2014. At that time, the Objector, MR. CHESTER WILSON, JR. appeared through his attorney, Mr. Thomas A. Jaconetty (collectively referred to as "the Objector"). The Candidate, MR. HENRY MOSES appeared through his attorney, Mr. Peter Cleary (collectively referred to as "the Candidate"). Both parties filed appearances and indicated they were present and ready to proceed. The Appearance forms of both parties, as well as Nondisclosure Agreements executed by each, were admitted into evidence as part of Group Exhibit D.
5. Each party acknowledged they were in possession of, read, and understood the Rules of Procedure, as adopted by the Board on December 8, 2014. The parties then stipulated on the record that the sole issue was whether the Candidate in fact lived at the following address in the 34th Ward: **152 W. 107th Street, Apt. 2, Chicago, Illinois 60628** ("152 W. 107th Street").
6. The Objector indicated he would file a request for a subpoena and was given a deadline of 5:00 p.m. on December 14, 2014. He timely filed one Subpoena Request for the production of the Candidate and various residency related documents, which the Hearing Officer recommended the Board approve. The Candidate failed to file a response or objection to the issuance of said Subpoena.
7. The matter was recalled December 19, 2014 for a Status Hearing to coincide with the Board meeting and the approval of the subpoena request.
8. An Evidentiary Hearing was held on January 2, 2015, wherein the Candidate introduced eleven (11) exhibits and the Objector introduced twenty-two (22). Such exhibits were examined by the Hearing Officer and are described in detail below.

9. In addition, the following six (6) witnesses testified:

Mr. Henry Moses – The Candidate

Mr. Adnan Nassan - The Candidate's Landlord

Mr. Jon Stewart (aka "Oreo") – The Maintenance man and resident in the building in question.

Mr. Chester Wilson – The Objector and Chief of Staff for the 34th Ward Alderman, Ms. Carrie M. Austin ("the 34th Ward Alderman")

Mr. Joe Anderson – A Field Investigator for the 34th Ward Alderman

Mr. Irvin Thompson – A Field Investigator for the 34th Ward Alderman

10. On January 7, 2015, the parties convened and made their closing arguments. There having been no other matters at issue, the Hearing Officer concluded the case and informed the parties she would issue a report and recommendation.

11. After having considered all of the testimony, the exhibits, and the arguments put forth, the Hearing Officer finds that the Objector has failed to prove that the Candidate does not live at the address listed on his Statement of Candidacy. The Hearing Officer therefore recommends that the Board overrule the Objector's Petition for the reasons set forth below.

The Objector's Petition

12. The Objector alleges in essence that the Candidate has filed a false Statement of Candidacy and has made a false statement on each and every Petition Sheet he submitted by stating that he resides at 152 W. 107th Street.¹ The Objector also alleges that the Candidate has not resided at this address or any address located in the 34th Ward, the political subdivision in

¹ The address 152 W. 107th Street, Apt. 2 is in a building on the corner of 107th Street and Wentworth Ave. in Chicago, Illinois. It consists of storefronts and apartments with addresses ranging from 10657 - 10659 S. Wentworth Ave. and 148 – 152 W. 107th Street, with each storefront and each apartment having a different street number address.

which he seeks election, for one year prior to the election as required by law. The Objector's Petition states that "such false statements are in violation of ILL.CONST. (1970) art. IV, Section 1 and 2(a); 10 ILCS 5/8-3, 8-11, and 8-12, 5 ILCS 420/1-108, and 65 ILCS 20/21-14(a), making the Candidate disqualified from, and ineligible to seek and serve in the office for which the nomination papers were filed." *See Objector's Petition, Paragraph 3 (a).*

13. The Objector further alleges that the Candidate has a false voter registration in the 34th ward and is not a qualified elector because he does not in fact live at the address from which he is registered to vote and "legally cannot be registered to vote from the virtually uninhabitable, and vacant building at that address." *See Objector's Petition, Paragraph 4 (b) and (d).*

14. Section 20/21-14 (a) of the Illinois Municipal Code provides in pertinent part:

"No member may be elected or appointed to the city council after the effective date of this amendatory Act of the 93rd General Assembly unless he or she has **resided in** the ward he or she seeks to represent at least **one year next preceding** the date of the election or appointment
....."

65 ILCS 20/21-14(a) (Source: P.A. 93-847, eff. 7-30-04.) (Emphasis added.)

15. The Objector's Petition sets forth the following regarding the definition of the word "residence" and the requirements to meet that definition:

A residence is a "permanent abode, a person's principal dwelling place." A person must actually reside at a location from which he is registered to vote. Delk v. Board of Election Commissioners, 112 Ill. App. 3d 735, 445 N.E.2d 1232 (1st Dist. 1983); 10 ILCS 5/3-1 and 3-2. It is "a real and not imaginary abode"; "a definite place of abode"; "a permanent place of abode"; Clark v. Quick, 377 Ill. 424, 36 N.E.2d 563, 565, 568, 567 (1941; Park v. Hood, 374 Ill. 36, 27 N.E.2d 838 (1940). A residence is the place where one continues, abides and dwells." Pope v. Board of Election Commissioners, 370 Ill. 196, 200, 18 N.E. 2d 214 (1938). It has been characterized as a "settled and fixed abode" (Romaine v. Black, 304 Ill. App. 1, 11, 25 N.E.2d 404 (1939)) or one's "home in a particular place" (Miller v. Police Board of the City of Chicago, 28 Ill.App.3d 894, 897, 349 N.E.2d 544 (1st Dist. 1976)), and denotes a permanency of some measure." Stein v. County Board of School Trustees of DuPage County, 85

Ill.App.2d 251, 256, 229 N.E.2d 165 (1967), aff'd, 40 Ill.2d 477, 240 N.E.2d 668 (1967) and cited in Greene v. Board of Election Commissioners, 112 Ill.App.3rd 862, 870, 445 N.E.2d 1337 (1st Dist. 1983). *Objector's Petition, Paragraph 3 (e)*.

16. The Objector's Petition fails to mention the case in which the Illinois Supreme Court clarified the standard to be applied in cases where the issue is whether a candidate has fulfilled the residency requirements—Maksym v. Board of Election Commissioners of City of Chicago, 242 Ill.2d 303, 950 N.E.2d 1051 (Ill. 2011). In Maksym, the court held that the two required elements for making residency determinations are 1) a physical presence, and 2) an intent to remain in that place as a permanent home. Id., at 1064. The Court went further to explain that “[o]nce residency is established, the test is no longer physical presence but rather abandonment, the presumption is that residency continues, and the burden of proof is on the contesting party to show that residency has been abandoned.” Id.
17. Putting aside, the comprehensiveness of the legal support the Objector cites regarding how “residency” is defined, the intent of the individual remains a central inquiry in determining whether a municipal candidate has complied with the residency requirement. Thus, the Objector must either prove that the Candidate failed to establish such residency or the later abandonment thereof. Id.

The Candidate's Testimony²

18. The Objector called the Candidate as an adverse witness, and the Candidate was duly sworn. The Candidate testified that he has lived at 152 W. 107th Street, Apt. 2, for approximately five (5) years. (*Tr.* 183) He testified that he had a lease for the first year beginning in 2010

² The Candidate was subpoenaed by the Objector and called as an adverse witness. He was questioned on direct, cross, redirect, and recross examination by both parties. His testimony was also interrupted to accommodate other witnesses, and then he was questioned again. As a result, his testimony is summarized primarily without reference to whom his responses were directed.

- and then continued his tenancy on a month-to-month basis. *(Tr. 158)* Initially, he said his rent was \$450.00 per month, but then corrected it to \$500.00. *(Tr. 59, 65)* He rents one apartment and two storefront units with separate leases from his landlord. *(Tr. 63)* His apartment is one of four (4) residential spaces on the second floor of the building. *(Tr. 184)* The apartment has running water and electric service; but there is no gas service to the residential units. *(Tr. 185)* His landlord pays all of the utilities for the residential units upstairs despite the lease stating that utilities are the responsibility of the lessee. *(Tr. 58-59)*
19. He has been registered to vote at that address for the past five years and has voted in every election since. *(Tr. 185)* He also testified he has lived in that neighborhood most of his life. *(Tr. 197-198)* He has many personal articles in his apartment, some of which include his clothing, a CD collection, an extensive collection of over one thousand (1000) books, and furniture. *(Tr. 184-185)* He testified he has a driver's license and it lists 152 W. 107th Street as his address. *(Tr. 177)*
20. He is legally married but estranged from his wife since 2007 *(Tr. 48)*; and she lives in Kenosha Wisconsin. He testified he never stays there and rarely goes there. *(Tr. 54-55, 187)* He further testified that he has never resided or even slept there. *(Tr. 84, 173)* He has no home phone and instead uses a pre-paid "Boost Mobile" cell phone. *(Tr. 50)* He also has no cable or Internet service at his apartment. *(Tr. 51)* He has no magazine or newspaper subscriptions. *(Tr. 53)* He has been renting a car consistently for the past year. He owns a 1996 Mazda that he drove on and off in prior years. He does not have it insured, and "it just sits". *(Tr. 52-53)* At one point, he did own two Nissans, but they belonged to his wife and are no longer registered to him. *(Tr. 48)*

21. The Candidate also testified he has owned and operated a bar in Niles, Illinois called A's Bar since 2012. (*Tr. 198*) He testified there are no living quarters there (*Tr. 50*); and he does not live there, although he does have some of his mail delivered there because they steal mail in his neighborhood (*Tr. 185*). In response to the Objector's questioning regarding why it has been so difficult for process servers to locate him, he testified he works eighteen (18) hour days. (*Tr. 81*) In addition, he testified he didn't produce some of the documents because he was unable to find them. (*Tr. 54*) He does not save a lot of receipts and had difficulty locating his rent receipts specifically. (*Tr. 57, 63*)
22. Ultimately, the most relevant of the Candidate's testimony was that 152 W. 107th Street is his home, he has a physical presence there most of the time, and that he intends for it to be his permanent home or residence because "the rent is cheap, [he'll] be there for a while." (*Tr. 185*)

The Candidate's Exhibits

23. The Candidate presented the following eleven (11) marked exhibits and one unmarked group of documents in response to a Subpoena and pursuant to the Rule 237 (b) Notice issued by the Objector to support his claim that he does in fact reside at 152 W. 107th Street.

Candidate's Exhibit 1 - Residential Lease – The lease indicates a term from February 1, 2010 to January 1, 2011, signed by the Candidate as lessee and by Mr. Adnan Nassan as lessor for \$550.00 per month, with a receipt attached for \$350.00 apparently as the balance after \$200.00 had already been paid.

Candidate's Exhibit 2 – Photograph of the Candidate's Living Room – There is a television on a stand with what appears to be a trophy on one of the shelves. There is an antenna on the floor, a clock on the wall and what appears to be the top of a champagne bottle and accompanying gift bag. Part of a chair or stool can be seen as well. There are some other items in the bottom right corner that the Hearing Officer is unable to identify.

Candidate's Exhibit 3 – Photograph of the Candidate's Bedroom – The picture shows the Candidate's dresser drawers and mirror. On the dresser are various toiletries, a DVD jacket or case, and what appears to be some mail on the right side of the dresser. On the left side of the dresser, at the edge of the photograph, there appears to be a book, some used tissue, and an alarm clock.

Candidate's Exhibit 4 – Photograph of the Candidate's Living Room – This photograph is of a different area of the living room. There is a sofa, a lamp on an end table, two decorative vases, a previously burned pillar candle, and blinds on the windows. In the far left of the photograph there appears to be mail and other papers.

Candidate's Exhibit 5 – Photograph of the Candidate's Kitchen – The picture shows dishes and a large pot in the sink, dish soap, hand soap, a dish towel, a dish rack with a cutting board inside, a dish brush, a Styrofoam container of the type meat from the grocery store would be in, a blue serving bowl, a bottle of "Tarnex Polish", and a green bag of tortilla chips. On the left edge of the picture, on the kitchen counter, there is what appears to be a speaker.

Candidate's Exhibit 6 – Photocopy of the Candidate's Driver's License – The license was issued on November 30, 2012 and lists the Candidate's address as 152 W. 107th Street.

Candidate's Exhibit 7 – Candidate's Voter Registration Card Mailing from the Board – This correspondence from the Board was mailed to the Candidate at 152 W. 107th Street. There is no date on this mailing.

Candidate's Exhibit 8 (Group) – Vehicle Registrations for the years 2013, 2014, and 2015- These registration cards are for a 1996 Mazda Convertible and are registered to the Candidate at 152 W. 107th Street.

Candidate's Exhibit 9 – Candidate's Business License / Registration Invoice – This document is from the Village of Niles. The form appears to be generated on September 30, 2013 at 8:34 a.m. according to the print on the very bottom of the page (footer). It is stamped "Paid" and date stamped "October 28, 2013." It is billed to "A's Bar" at its Niles address; but it lists the owner as the Candidate and lists his address as 152 W. 107th Street.

Candidate's Exhibit 10 – Final Orders of Liability and Correspondence regarding fines from the Illinois Tollway- This exhibit consists of nine (9) pages of correspondence from the Illinois Tollway addressed to the Candidate at 152 W. 107th Street, spanning from February 1, 2012 to October 2, 2014.

Candidate's Exhibit 11 – Postmarked Envelope From the Board of Ethics – The postmark date is November 18, 2014 and it is addressed to the Candidate at 152 W. 107th Street.

Unmarked but noted and reviewed on the record (Tr. 162-165)— State of Illinois Tax Returns for the years 2011, 2012, and 2013-- filed jointly with his estranged wife and listing the Candidate's address as 152 W. 107th Street.

The Candidate's Witnesses

Mr. Adnan Nassan, the Landlord and

Mr. Jon Stewart, the Maintenance Man and Neighbor

24. The Candidate's landlord, Mr. Adnan Nassan (the "Landlord") testified that the Candidate had lived in his building since 2010 and also rented two (2) commercial storefront spaces. His testimony corroborated the Candidate's testimony in large part regarding the building and the rental agreement. He was confused by some of the questions, and the Hearing Officer established that English was his second language. (Tr. 98) There was a point in his testimony that seemed inconsistent regarding whether the Chase Bank receipt (Objector's Exhibit 5) was for the apartment or the business. (Tr. 112) There was no designation on the receipt; and when the landlord looked at it, he immediately stated it was for the business. He then seemed to back track and admit it could have been for the apartment.
25. He was also unsure of whether there had been any leases after the first or whether the apartment rental agreement was now month-to-month—at first stating there was a lease and then admitting he needed to check his files. (Tr. 108-109) He appeared to be using the word "lease" synonymously with the word "agreement." There was also an extremely confusing discussion regarding the points of ingress and egress of various addresses in the building. (Tr. 127-135) Even the Hearing Officer was confused. (Tr. 132) The landlord seemed a bit defensive, and was imprecise and confusing; but his testimony didn't appear to be false.

26. Mr. Jon Stewart, the maintenance man on the property and also the Candidate's neighbor, testified that the Candidate lived in the building as well. He testified that he has seen him about 20 to 30 times a month. (*Tr. 139*) He testified to having seen the Candidate's apartment as well as having done work inside. He also described many of the Candidate's possessions. (*Tr. 143-145*) Finally, he corroborated facts to which the Candidate testified such as the amount of the rent, the utilities, and the habitability of the building. The Hearing Officer found his testimony to be clear, consistent and credible.

The Objector's Arguments

27. The Objector's arguments that the Candidate does not live where he claims essentially involve the following five factors: 1) the condition of the building is uninhabitable; 2) various failed attempts to serve the Candidate; 3) the Candidate's failure to produce certain documents; 4) much of the documentary evidence is "self generated" and conflicts with some of the testimony presented; and 5) the Candidate's lifestyle and / or business practices. The Hearing Officer examines each argument below in light of the evidence introduced.

The Objector's Exhibits

The Objector introduced the following twenty-two (22) exhibits:

Objector's Exhibit 1 – Color Photograph of the Corner of the Building 107th and Wentworth– The photograph shows "Store for Rent" signs on a gated corner entrance and various second floor windows open. The left upper corner of the photograph indicates a "Google Maps" time stamp of October 2012.

Objector's Exhibit 2 (Group) – A Group of Photocopies of Photographs of the 107th Street Side of the Building 107th and Wentworth– The first photograph depicts the 148 S. 107th Street storefront which was the storefront that suffered from fire damage. It is gated and appears to have wood or paper on the windows. The Second photograph depicts several of the upstairs windows are open. The third photograph depicts an entranceway that Mr.

Moses testified was the front entranceway giving access to his upstairs apartment with two labeled mailboxes on the side of the door. (*Tr. 176-177*) The fourth photograph shows another storefront, although it is unclear what the address of it is.

Objector's Exhibit 3 – Photograph of the Wentworth side of the Building 107th and Wentworth– The photograph shows the Wentworth side of the building and the empty lot next door where the back entrance to several of the upstairs apartments is located. There are cones and barriers set up on part of the street indicating some work was done; and part of a work truck and worker can be seen in the far left side of the picture.

Objector's Exhibit 4 – Photograph of the 148 Storefront Window on the Furthest Right Side of the Building on the 107th Street Side and the Alley Adjacent to the Building– The Photograph was taken by the Candidate is time stamped 9:14 p.m. and dated January 18, 2014.

Objector's Exhibit 5 – Cashier's Check- from Chase Bank in the Name of Henry Moses Payable to "Al Nassan" for \$900.00 and dated December 7, 2013.

Objector's Exhibit 6 – Photocopy of Rent Receipt– This was the receipt for the first payment made for the residential unit dated February 1, 2010 for a balance of \$350.00 after which \$250.00 was deducted from \$550.00. There is a photocopy of it attached to the Lease as well. (See Candidate's Exhibit 1)

Objector's Exhibit 7 – Commonwealth Edison Disconnection Notice for "150 W. 107th St. STO"– This is a disconnection notice for the electric bill the Candidate pays for one of the storefronts he rents. (*Tr. 67*) The commercial spaces in the building require the lessee to pay the electric bills; whereas for the residential spaces, the electricity bill is paid by the lessor. (*Tr. 67-68*)

Objector's Exhibit 8 – Photocopy of a Photograph of the Candidate's Nightstand– The photograph depicts a campaign sign, a cell phone and charger, a cup, a magazine with the late Mr. Robin Williams on the cover, a thanksgiving card and several other items that aren't clearly identifiable because it is a photocopy.

Objector's Exhibit 9 – Photocopy of a Photograph of the Candidate's Bed– The photograph depicts a bed, a ward map on the wall, and the same nightstand depicted in Objector's Exhibit 8.

Objector's Exhibit 10 – Photocopy of a Photograph of the 148 W. 107th Street Storefront– The photo depicts a Chicago Police vehicle in front of it. The photograph has time stamp of 9:14 p.m. and dated January 18, 2014.

Objector's Exhibit 11 – Postcard Notification from “Arbitration Administrator” addressed to the Candidate at 152 W. 107th St. in Austin v. Moses³– The postcard is postmarked January 13, 2012 and is a notice that the case has been set for arbitration.

Objector's Exhibit 12 –Affidavit of Due Diligence– This is an affidavit of Eduardo Zamora, a process server, regarding the difficulty of serving the Candidate in August of 2011. The notes indicate that a first and second “skip trace and an SOS check” done in May and again in July indicated that the Candidate’s current address was 5528 35th Street Unit #201, Kenosha, Wisconsin 53144. It notes that his Illinois driver’s license lists 152 W. 107th St. as his address; but that he has two Nissans registered at this address in Kenosha.

Objector's Exhibit 13 –Affidavit of Due Diligence– This is an affidavit of Nathan Williams, a Wisconsin process server, regarding the difficulty of serving the Candidate in June of 2011 at the address of his estranged wife in Kenosha Wisconsin. The Notes indicate that his Mazda and his wife’s Nissan were both seen on the property and had not moved on June 1, 8, and 9, 2011.

Objector's Exhibit 14 –Affidavit of Due Diligence- This is an affidavit of Mark Kaplan, a special process server, regarding the difficulty of serving the Candidate in November of 2014 at 152 W. 107th Street. The notes state that the “Apt. building vacant, offices boarded up, and no apparent signs of life or occupancy.”

Objector's Exhibit 15 – Amended State of Illinois Domestic Corporation Annual Report – Filed on October 16, 2013 or “A’s Bar” listing the Candidate’s address as 152 W. 107th Street.

Objector's Exhibit 16 – Illinois State Board of Elections Statement of Organization for “Citizens for Moses,” the Candidate’s Political Committee—It is date stamped November 20, 2014 and lists the address 156 W. 107th Street. In Section 8, on the form, it lists the Candidate as Chairman and his mailing address as the 152 W. 107th Street. This is the address of one of the storefronts the Candidate and landlord testified he rents (*Tr. 88, 155*).

Objector's Exhibit 17 – Printout from the State Board of Elections Detailing the Years in Which the Candidate has Run for Office—The date of the document is unclear (cut off). It indicates he has run or is running for office and the result of those campaigns in the years 2003, 2007, 2011, 2015. The address listed for the Candidate is 152 W. 107th Street; the address listed for “Citizens for Moses” is 156 W. 107th Street.

Objector's Exhibit 18 – Letter from the State Board of Elections – This letter is dated June 13, 2012 and is addressed to the Candidate at 152 W. 107th Street. It sought to terminate “Citizens for Moses” as an active political committee in 2012.

Objector's Exhibit 19 – Letter from the State Board of Elections - This letter is dated June 22, 2012 and is addressed to “Citizens for Moses” at 148 W. 107th Street⁴. It explains

³ This is an unrelated case- *Austin v. Moses*, 2011 M1 300798 (Circuit Court of Cook County)- in which the current 34th Ward Alderman is apparently suing the Candidate.

that the State Board is administratively terminating "Citizens for Moses" as an active political committee. One of the reasons given as their authority to so terminate is the "Campaign Disclosure Division has been unable to locate." The reason for termination cited in the letter is that "the above listed committee has been deemed inactive."

Objector's Exhibit 20 – Letter from the State Board of Elections - This letter also sought to terminate "Citizens for Moses" as an active political committee in 2012. It is dated June 13, 2012 and is addressed to "Citizens for Moses, Viola Moses (the Candidate's Mother)" at 543 W. 119th St., an address that he testified he does not know and his mother never lived. (*Tr. 153-154*)

Objector's Exhibit 21 – Photocopy of a Photograph of the 107th Street Side of the Building– The photo depicts a vehicle in front of it. The photograph has time stamp of 9:14 p.m. and is dated January 18, 2014.

Objector's Exhibit 22 – Printout (2 pages) Entitled "CSR Complaints for 148-148 W. 107th ST— The printout appears to be a list of 25 total complaints for all of the addresses within the building and spans from 2008 to 2014.

The Condition of the Building

28. First, the Objector, in his Petition, offers the facts set forth below on "personal observation, documentary information and on information and belief" pertaining to the condition of the building that contains the address in question as support for his Objection.

I) There is one occupied commercial storefront in the front of the building which faces Wentworth Ave., with "store for rent signs" in the windows, and there are two other vacant store fronts along the 107th Street side with the addresses of 148 and 152. **II)** The second floor residential portion of the building has been closed and remained vacant since approximately November 2012. **III)** Google Earth photographs with a date of October 2012 verify the "stores for rent" signs and the upstairs vacancy is evidenced by open windows. **IV)** There is no gas, electric, light or water service to the residential portion of the building. **V)** Numerous building code violations currently preclude occupancy of the residential portion. **VI)** Attempts to contact ownership through the telephone listed on the "store for rent" signs only lead to a voicemail. **VII)** The Candidate's supposed "campaign office" is the same address which the candidate uses for his residence (in the 34th Ward) on the second floor.

⁴ This was the storefront the Candidate testified he initially rented, but moved to the 156 W. 107th Street storefront, as a result of a fire. (*Tr. 156*)

VIII) In the case of *Austin v. Moses*, 2011 M1 300798 (Circuit Court of Cook County), numerous attempts were made by no less than three process servers / investigators to determine the place of residency of the Candidate. See *Objector's Petition, Paragraph 3 (b) (1)-(8)*.

29. The claims of current building code violations and alleged uninhabitability were not adequately supported. Such evidence, whether photographic or documentary, was never offered. There were no photographs of residential windows being boarded up or broken as the Objector's witnesses claimed. There was no information from the Department of Buildings as to code violations that would render the building uninhabitable. There was no evidence of fines, citations or Nuisance Abatement Proceedings involving the building offered. What was offered (Objector's Exhibit 22) was a printout of complaints (25 records) registered with the current Alderman of the 34th Ward involving all of the addresses in the building from 2008 to 2014. There are seven (7) of those records that identify 152 W. 107th Street as the subject of the complaint and four (4) predate the Candidate's lease. Of the three (3) remaining complaints, it is unclear who called; and none of the complaints would render the apartment completely uninhabitable. There is one (1) record listed as an emergency on the list that identifies the subject address. It says "no heat- apt 2- children and seniors- call before coming out- there are no doorbells- please call."
30. The Objector points to this as evidence that the Candidate doesn't live there. Indeed, the mention of "seniors and children" is suspect. However, without establishing the origin and authorship of this printout or how prone it is to errors, it is difficult to assign it very much weight.
31. The Objector testified that in his capacity as a Field Inspector for the Alderman of the 34th Ward, he personally removed a senior citizen from that unit as a result of this complaint. However, his testimony indicated it was sometime in 2012 between February and August

and did not specify what date such removal took place. (*Tr. 204-205*) See Objector's Exhibit 22. The Objector's testimony was credible; but without more, does not satisfy his burden of proof. The confusion regarding the configuration and system of addresses for this building is evident in this matter; and as a result, there is the great potential for errors in that printout. See Objector's Exhibit 22.

32. The Objector's witnesses, Mr. Joe Anderson and Mr. Irvin Thompson testified that they also had many occasions to pass by and view the building and that in their opinion it was not accessible at the 152 W. 107th Street address. They corroborated the Objector's testimony regarding the condition of the building not being inhabitable. Putting aside the Candidate's argument of the inherent bias of the Objector's witnesses, by virtue of their employment, the Hearing Officer found their testimony credible and consistent. However, it was their vantage point that discounted their testimony. Only the Objector himself claimed to have ever been inside the Candidate's apartment or even inside the building, and he could not describe precisely when. Moreover, none of these witnesses were building inspectors either.
33. The testimony of the Candidate and his witnesses establishes that there is in fact water, gas and electric service to the building. (*Tr. 58, 64, 92, 94, 143*) Moreover, the Objector's own Exhibit 7 is a disconnection notice from Commonwealth Edison for one of the commercial units. The Objector's Petition states that a Google Earth photograph date stamped October of 2012 "verifies the 'stores for rent' signs and the upstairs vacancy is evidenced by open windows." Objector's Exhibit 1. The Hearing Officer rejects the contention that open windows in October somehow indicates that a residence is vacant; as depending on the weather, October may be the most pleasant time to have the windows open.

34. The affiant in Objector's Exhibit 14, special process server Mark Kaplan, also noted "Apt. building vacant, offices boarded up, and no apparent signs of life or occupancy" when describing a failed attempt to serve the Candidate as recently as November 2014. The evidence, specifically the photographs in Objector's Exhibits 1, 2 and 3, established that in October of 2012 and perhaps some other point in time, there were "store for rent" signs posted indicating vacancies in some of the storefronts. The fact that they were gated or even, for the sake of argument, boarded up does not equate to the entire building being vacant. It is not inconceivable that a landlord would put gates on storefronts whether they were occupied or not. Likewise, placing plywood boards up to protect vacant storefront windows is not unheard of either, especially in light of the testimony that there had been a fire in storefront at 148 W. 107th Street. (*Tr. 156*)
35. Even if, for the sake of argument, there was a time in 2012 when the building was in fact uninhabitable and / or vacant as the Objector and his witnesses contend, any interruption in the Candidate's residency for code compliance, repairs, or anything else would not necessarily change his status as a resident there. Even if the Candidate had moved out or resided somewhere else, such an absence would still not be considered abandonment because of the mere fact that he returned. "[A]n absence for months or even years, if all the while intended as a mere temporary absence for some temporary purpose, to be followed by a resumption of a former residence, will not be an abandonment." People ex rel. Madigan v. Baumgartner, 823 N.E.2d 1144, 355 Ill. App. 3d 842, 847, 291 Ill. Dec. 558 (App. Ct. 2005) quoting Stein v. County Board of School Trustees, 40 Ill.2d 477, 240 N.E.2d 668, 669 (1968) (citations omitted).

Various Failed Attempts to Serve the Candidate

36. The Objector has pointed to the impossibility of serving the Candidate in the Austin v. Moses lawsuit as evidence that he does not live there. Objector's Exhibits 12 and 13 show examples of such failed attempts in the year 2011, and Objector's Exhibit 14 is another example of failed service in 2014. The Candidate, on the other hand, argues that evidently the Candidate was served at some point because Objector's Exhibit 11 is a notice that the judge sent the case to arbitration; and that would not have happened if the Candidate had not been served and made an appearance.
37. The Objector also testified that on one occasion he had accompanied a process server on an attempt to serve the Candidate and was unable to do so. (*Tr. 221-222*) At best the failed attempts to serve the Candidate prove that he is difficult to locate or isn't at home very much, not that he does not live there.

The Candidate's Failure to Produce Certain Documents

38. The Candidate testified he had some of his mail delivered to him at his business address in Niles because in his neighborhood mail is often stolen. (*Tr. 185*) The Objector then questioned the Candidate as to why he failed to produce any mail delivered to him at his Niles business address, to which the Candidate responded, "Because I didn't feel it was relevant . . . in terms of my residency in Chicago, things going to my business." (*Tr. 170*) The Objector has implored the Hearing Officer to assign great weight to the lack of documentation provided by the Candidate. While ordinarily lack of cooperation in this respect would warrant an adverse inference, the fact remains that the Objector never asked for it. Neither the Subpoena nor the Notice Pursuant to Rule 237(b) filed by the Objector

asked for anything sent to the business address in Niles. Both documents filed by the Objector requested mail that was sent to the Candidate addressed to 152 W. 107th Street and to the Kenosha, Wisconsin address of his estranged wife, to which he testified there wasn't any. So while the argument could be made that he should have known the request included the Niles address, he didn't think it was relevant. (*Tr. 192-193*) Moreover, the Candidate testified that his lawyer only asked him for documents with the 152 W. 107th Street address. (*Tr. 199*)

39. Many of the other documents that the Objector requested were not applicable to the Candidate. For example, he testified that family members and friends don't communicate with him or send him things through the mail. They either email him or give it to him in person. (*Tr. 161-162*)

Documentary Evidence is "Self Generated" and / or Conflicts with Testimony

40. Despite the overall sense that the witnesses were essentially credible on both sides, there were some areas where the testimony conflicted with the documentary evidence. For example, the Candidate's lease indicates the lessee is responsible for the payment of utilities. However, all of the Candidate's witnesses testified that the actual arrangement is that the landlord pays for all of the utilities in the residential units. (*Tr. 59, 64, 68, 93*) The lease is apparently a standard form lease used by the landlord without regard to, or notations of, variations in the terms thereof.

41. Another example of such a conflict is that initially the Candidate said his rent was \$450.00 per month, but then corrected it to \$500.00. (*Tr. 59, 65*) The lease, however, says the rent is \$550.00. The Candidate and the landlord both testified that the rent was \$550.00 but had later been reduced to \$500.00. In any event, these conflicts were not significant enough to

affect the overall assessment that the witnesses were credible; and though some of the facts were a bit odd, they were true and accurate.

42. The Objector argues that the documents provided by the Candidate are all either "self generated" or "were produced as a result of another document." For example, the Objector argues that the Mazda vehicle registration (Candidate's Exhibit 8) generates the Illinois Tollway Authority Notices (Candidate's Exhibit 10). Additionally, filing Nomination Papers generated the notice from the Board of Ethics (Candidate's Exhibit 11). The examples of mail that was "self generated" given by the Objector were the Candidate's Corporate Annual Report and his Campaign's Statement of Organization filed with the Illinois State Board of Elections. (Objector's Exhibits 15 an 16)
43. This is a very interesting argument; the Hearing Officer would argue that most mail is either self generated or produced as a result of another document. How much mail is generated as a result of donating money or making a catalog or online purchase? How many millions of pieces of solicitous mail are generated as a result of consumers filling out a credit application? Isn't the purpose of vehicle registration to ensure that entities like the Illinois Tollway Authority can find the owner of a particular vehicle? Doesn't the mere fact that you give someone your address make all mail self generated?
44. Irrespective of whether the Candidates documents were "self generated" or "produced as a result of another document" or not, the fact remains he was there to receive them when they were mailed to him.

The Candidate's Lifestyle and Business Practices

45. There is no doubt that the Candidate described some very peculiar tendencies. From allowing his wife from whom he has been estranged for seven (7) years to do his taxes to

renting a car everyday for a year; these facts are difficult to relate to or reconcile. Moreover, enduring a daily commute from the far south side of Chicago to Niles every day when you work eighteen (18) hour days, to not having cable or Internet service is something most people cannot fathom in this day and age. However, none of these things disprove his claim of residency.

46. It also did not escape notice that a businessman who runs two businesses and at times a campaign isn't more organized and can't keep, file, and subsequently locate more than a few receipts for his residence and other personal matters. However, while these things might seem peculiar to most, none of these things served to seriously undermine his credibility. The laws requiring residency don't specify how the Candidate must live, but rather where the Candidate must live.

Conclusion and Recommended Findings

47. The question then becomes do any of these factors, considered in part or as a whole, overcome the evidence proffered by the Candidate that he not only has a physical presence at the address on his Nomination Papers, but that he intends to remain there permanently? The Hearing Officer would answer that in the negative. While the Candidate may not have provided all or even most of the documents the Objector viewed as customary, those he did provide were compelling and highly probative. Indeed, the Board has deemed valid the nomination papers of candidates whose residency was challenged by objectors who had arguably more evidence to support their objections than do the Objectors here. *Delk v. Patterson*, 07-EB-ALD-089, CBEC January 25, 2007, affirmed, *Delk v. Patterson*, 2007 COEL 015, Circuit Court of Cook County (Hon. Mark Ballard); *Fuller v. Soliz*, 07-EB-ALD-094, CBEC January 28, 2007; . *Daniels v. Lewis*, 07-EB-ALD-114, CBEC, January

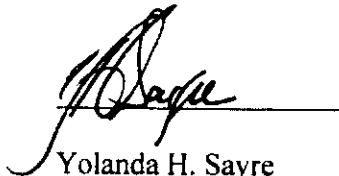
28, 2007, affirmed Lewis v. Board of Election Commissioners for the City of Chicago, 2007 COEL 017, Circuit Court of Cook County (Hon. Mark Ballard).

48. The unchallenged testimony of the Candidate that he has been registered and actually voted from the 152 W. 107th Street address for the past five years is significant. (Tr. 185) He also introduced his voter registration card without objection. Candidate's Exhibit 7. One court upheld the Board's decision that despite a great deal of credible evidence that a candidate lived in the particular Ward in which he was running for Alderman, the fact that the candidate was registered and voted in a different ward was an affirmative declaration of his residency in the other ward. Neely v. Board of Election Commissioners, 863 N.E.2d 795, 309 Ill. Dec. 163, 371 Ill. App. 3d 694 (App. Ct. 2007). It would then logically follow that if the Candidate here is registered to vote at an address at which he claims to reside and actually exercises that right, it is an affirmative declaration of his residence at that address. Other courts have also considered factors like voter registration and drivers licenses determinative of the intent to reside somewhere permanently. People ex rel. Madigan v. Baumgartner, 823 N.E.2d 1144, 1152, 355 Ill. App. 3d 842, 291 Ill. Dec. 558 (App. Ct. 2005). (The court weighed heavily the fact that a candidate's voter registration and driver's license were in one County, even though the candidate spent most of his time in another County); see also Walsh v. Cook County Officers Electoral Board, 642 N.E.2d 843, 267 Ill. App. 3d 972, 204 Ill. Dec. 942 (App. Ct. 1994). Thus, the Hearing Officer accorded great weight to the Candidate's voting record and driver's license.
49. After having considered all of the testimony, the exhibits, and the arguments put forth, the Hearing Officer finds that the Objector has failed to meet their burden of proof that the

Candidate does not live at the address listed on his Statement of Candidacy. The Hearing Officer therefore recommends that the Board enter the following findings of fact:

- a. The address set forth on the Candidate's Nomination Papers, to which he has subscribed and sworn, is 152 W. 107th Street, Chicago, Illinois.
- b. The Candidate has maintained and does maintain a physical presence at said address and that he had and currently has an intention of making it his permanent home.

50. For the forgoing reasons, the Hearing Officer recommends that the OBJECTIONS of CHESTER WILSON, JR. be OVERRULED and that the NOMINATION PAPERS of MR. HENRY MOSES be deemed VALID.

A handwritten signature in black ink, appearing to read "Y. Sayre", is written over a horizontal line.

Yolanda H. Sayre

Hearing Officer