

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 Lynne R. Ostfeld 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, CALVIN A. LANE, JR., by his attorney, Eric M. White; the Candidate, HOWARD B. BROOKINS, JR., by his attorney, Michael J. Kasper.

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

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law, with the exception of the paragraph 34 of the Hearing Officer's report in regard to Section 2-603 of the Code of Civil Procedure and its applicability to pleading in objections under Article 10 of the Election Code and the suggestion that objections are to be liberally construed. Section 10-8 of the Election Code (10 ILCS 5/10-8) requires that objections to candidates' nomination papers "state fully the nature of the objections

to the certificate of nomination or nomination papers or petitions in question.” Furthermore, Section 1(b) of the Electoral Board’s Rules of Procedures requires that “[O]bjections to individual signers and/or circulators must consist of a specific objection or objections to that particular signer or circulator.” While Rule 10 of the Electoral Board’s Rules of Procedure provides that “[F]or matters not covered herein, the Electoral Board will generally follow rules of evidence and practice which prevail in the Circuit Court of Cook County, Illinois, including the Code of Civil Procedure and the Rules of the Illinois Supreme Court, but because of the nature of these proceedings, the Electoral Board shall not be bound by such rules in all particulars,” this Electoral Board has not adopted a liberal construction of pleadings and the rules and past decisions of this Electoral Board have demanded specificity in objection pleadings, especially with regard to allegations of fraud. 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 dismisses the Objections to the Candidate’s Nomination Papers and finds that the Candidate’s Nomination Papers are valid.

10. The Electoral Board further finds that there were other objections filed against the Candidate’s Nomination Papers in related case ALD-132 but those objections were overruled. There are no other objections pending against the Candidate’s Nomination Papers.

IT IS THEREFORE ORDERED that the Objections of CALVIN A. LANE, JR. to the Nomination Papers of HOWARD B. BROOKINS, JR., candidate for election to the office of Alderman of the 21st Ward of the City of Chicago, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and the name of HOWARD B. BROOKINS, JR., candidate for election to the office of Alderman of the 21st 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 5, 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.

Objections of:)
CALVIN A. LANE, JR.)
)
To the Nomination)
Papers of:) No. 15-EB-ALD-025
HOWARD B. BROOKINS, JR.)
) Lynne R. Ostfeld,
Candidate for the Office of) Hearing Officer
Alderman of the 21st Ward)
in the City of Chicago)

RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on objections of Calvin A. Lane, Jr. ("objector") to the nomination papers of Howard B. Brookins, Jr. ("candidate"), Lynne R. Ostfeld, Esq., Hearing Officer, finds and recommends as follows:

Background

1. The hearing was begun on December 9, 2014. In attendance at the hearing were the objector, through his attorney Eric M. White, and the candidate, through his attorney, Michael J. Kasper.
2. The objector requested that the name of Calvin A. Lane, Jr. not be printed on the ballot for election to the office of Alderman of the 21st Ward, City of Chicago.
3. In paragraphs 3-8, he alleged the following:
 - A. the nomination papers contained the names of persons who were not registered voters at the addresses shown;
 - B. the nomination papers contained the names of people who did not sign the papers in their own proper persons, whose signatures were not genuine;
 - C. the nomination papers contained sheets with the names of people whose addresses were not in the 21st ward;
 - D. the nomination papers contained petition sheets with addresses either missing or incomplete;
 - E. the nomination papers contained petition sheets where signers signed more than once;
 - F. the nomination papers contained petition sheets with signatures legally defective for a variety of reasons as more fully set forth in the Appendix-Recapitulation.
4. In paragraph 9, the objector alleged that the circulator, Derrick Butler, lied when he signed the circulated petitions when he stated to reside at 9050 S. Normal although he was registered to vote from 1013 E. 93rd St.

5. In paragraph 10, the objector alleged that eight sheets were signed by a circulator and that the signature was not genuine.

6. In paragraph 11, the objector alleged that two sheets (49 and 52) are not signed by the circulator.

7. In paragraph 12, the objector alleged that certain petitions were not dated. He withdrew this objection.

8. In paragraph 13, the objector alleges a pattern of fraud and false swearing which pervade the nominating petitions. He states that the allegations are more fully set forth in the attached Appendix-Pattern of Fraud, Appendix-Circulator Recapitulation and Appendix-Recapitulation.

9. The objector requested the CBOE to void the entire nominating petition as being illegal and void in its entirety.

10. Pursuant to an agreed briefing schedule, the candidate submitted a motion to strike and dismiss the objector's petition.

11. Regarding paragraphs 3-8 and the general allegations of invalidity, the candidate states that, even if true, the objections do not reduce the candidate's signatures to below the 473 threshold. He still has 744 valid signatures, or more than 233 signatures more than the statutory minimum.

12. Regarding paragraph 9 and the problems with Derrick Butler's address, the candidate responded that nothing in the Election Code requires a circulator to be a registered voter, or at any particular address. The candidate did not address the allegation of dishonesty in the circulator's affidavit.

13. Regarding paragraph 10 and the circulator's signature, the candidate stated that only petition sheets 105, 124 and 137 were in fact challenged on the Appendix-Recapitulation. If the allegation is true, only two additional signatures would be eliminated. Petition sheets 134 and 137 were also challenged but because signatures had already been challenged on other grounds, only 13 additional signatures were challenged. Upholding the allegations in paragraph 10 would only reduce the count by 15.

14. Regarding paragraph 11, and the complaint that two sheets (49 and 52) were not signed by the circulator, the candidate responded that this would only remove 12 additional signatures. the candidate would still have 244 unchallenged signatures more than the statutory minimum.

15. In response to the allegations in objector's paragraph 13, the Candidate argued that the objector provided no specificity and that the objection should be stricken because specificity is required.

16. The objector submitted a reply. He responded with essentially a repeat of his earlier allegations, although he included an additional allegation regarding Delma Butler's sheets and referencing Mae E. Amos. These are new allegations which are not to be considered because amendments are not allowed. Rule 9 (b), CBOE Rules of Procedure.

17. The Hearing Officer heard oral argument on December 16, 2014. The Hearing Officer determined that sixteen petition sheets were signed by Derrick Butler as being the circulator. Eliminating all of the sheets would eliminate approximately 160 additional signatures. Roughly half of the signatures had already been objected to for other reasons.

18. Given that the candidate still had a sufficient number of signatures above the required amount, and it was unknown whether the objections were valid in whole or in part, she ordered the exam of a sample of 30 pages of signatures, half chosen by each party and jointly submitted for review to the CBOE. The parties duplicated several pages and 28 were submitted for evaluation. It was conducted on December 21, 2014. Notice of the date for the examination was given to both the objector and to the candidate and they were represented at the examination.

19. Hearing was continued to December 29, 2014, at 9:30 a.m., to receive the report of the

examination of a sample of nomination petitions and to hear further argument by the parties. The results are set forth below but indicated that slightly less than half the objections were overruled, or slightly more than half sustained.

20. The objector believed that the results justified his objections and that a full record review would yield 80+% invalidity. The candidate believed that the results justified his motion to strike and that a full record review would reduce the valid objections found by the CBOE, even before he had a chance to rehabilitate certain signatures, to less than 46%.

21. The parties repeated the arguments made in their written briefs and in their oral arguments on December 16, 2014.

22. The objector stated that the number of problems with the signatures and the circulators established a pattern of fraud and false swearing which the CBOE could not ignore. The specific allegations are contained in the appendix-recapitulations sheets. The entire petition should be voided and the candidate's name not be placed on the ballot.

23. The candidate stated that he had more than enough signatures to be placed on the ballot and that a pattern of fraud allegation requires specifics, which the objector had not provided. His motion to strike and dismiss went to the legal sufficiency of objector's petition. It should be granted in its entirety because the objector had not met his burden. The candidate had enough signatures to appear on the ballot for Alderman of the 21st Ward and this is what the CBOE should order.

Findings of Fact and Conclusions of Law

24. The candidate submitted nominating papers containing 3146 signatures. The required number in order to be placed on the ballot for Alderman of the 21st Ward is 473 valid signatures.

25. The objector submitted a petition objecting to various signatures and circulator affidavits. A preliminary review showed objections to 2402 signatures. This number did not go to the signatures objected to solely because of objections to the circulator affidavits. He also alleged a pattern of fraud and false swearing which he argued should invalidate all of the petitions.

26. The candidate calculated the number of valid signatures remaining, if taking all objections as true, including the signatures gathered by circulators attacked as having deficient affidavits. He calculated that he would have 706 signatures not challenged on any basis whatsoever, or 233 more than the statutory minimum. The objector did not contest this calculation.

27. The Hearing Officer calculated that an additional 80 signatures might be lost if Derrick Butler's petition sheets were rejected after a finding of dishonesty due to stating that he lived at one address although swearing to a different address when he registered to vote. She did not take evidence on this issue nor rule on it. The 80 signatures lost are based on 16 sheets with 20 signatures per sheet, objections to half of these, and half of those being overruled.

28. The candidate would have at least 153 signatures more than required, before a record exam and before he had a chance to rehabilitate signatures.

29. The Record Examination Results, based on a sampling of 28 sheets and prepared by staff of the Chicago Board of Election Commissioners, in addition to a desk audit prepared by the CBOE before a formal record exam was conducted, showed the following:

Minimum signature requirement	473
Number of signatures on petitions	3146
Number of objections	2396
Number ruled on	452
Number of objections overruled	200
Number of objections sustained	252

Number of unchallenged signatures	750
Number of valid signatures	2894

30. Of the 452 signatures reviewed, 252 objections were sustained and 200 objections were overruled. Slightly less than half the objections were overruled.

31. The candidate has sufficient signatures to have his name placed on the ballot for Alderman of the 21st Ward unless there is a finding of a pattern of fraud and false swearing so pervasive as to void all of the candidate's petition sheets. The objector says that it is there if the Board will open its eyes to it. The candidate says that the objector's petition does not meet the legal standards required to go forward to an evidentiary hearing.

32. The Election Code sets forth the following with regard to objections:

The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board.

10 ILCS 5/10-8 (2013)

33. The objector met all the requirements except that contained in the phrase "...and shall state fully the nature of the objections to the certificate of nomination or nomination papers". This was the issue in dispute because if the objector did not satisfy this requirement, then the candidate has sufficient signatures to be placed on the ballot.

34. The Code of Civil Procedure sets forth the following with regard to pleading:

Sec. 2-603. Form of pleadings. (a) All pleadings shall contain a plain and concise statement of the pleader's cause of action, counterclaim, defense, or reply.

(b) Each separate cause of action upon which a separate recovery might be had shall be stated in a separate count or counterclaim, as the case may be and each count, counterclaim, defense or reply, shall be separately pleaded, designated and numbered, and each shall be divided into paragraphs numbered consecutively, each paragraph containing, as nearly as may be, a separate allegation.

(c) Pleadings shall be liberally construed with a view to doing substantial justice between the parties.

735 ILCS 5/2-603 (2013)

35. Fraud must be pled with specificity. *Addison v. Distinctive Homes, Ltd.*, 359 Ill.App.3d 997, 836 N.E.2d 88, 296 Ill.Dec. 673 (1st Dist. 2005)

36. Even allowing the objections to be liberally construed, there is insufficient particularity in the objector's petition to sustain the allegations of a pattern of fraud and false swearing. He does not specify what was the specific fraud, who committed it and how it should apply to the candidate's nominating petitions in their entirety. Even allowing reliance on the Appendix Pattern of Fraud is problematic because he has two people circulating the same petition sheets 42 and 43 (Howard Brookins, Sr. and Howard Brookins, Jr.) Some circulators are listed without any allegation of wrongdoing at all, which means that the Hearing Examiner would have to guess at the problem, or do the objector's work and decide which signatures are suspect.

37. Without more, the candidate argues that he does not know how to defend against the allegations.

38. Without more, the Hearing Officer does not know how to judge the evidence.

39. The objector places great emphasis on *Harmon v Town of Cicero Municipal Officers Electoral Board*, 371 Ill. App. 3d 111, 864 N.Ed.2d 996 (1st Dist. 2007). This, and other cases cited.

do not provide adequate guidance in the instant case because they deal with rulings after a full records exam was conducted and evidentiary hearing held. The candidates did not have a sufficient number of signatures after the record exam. In *Harmon*, there was a record exam and evidentiary hearing. The two candidates discussed had insufficient signatures after deducting invalid signatures and signatures collected by circulators deemed to have lied in their affidavits.

In *Fortas v Dixon*, 122 Ill. App. 3d 697, 462 N.E.2d 615 (1st Dist. 1984), the candidate did not have sufficient signatures because the trial court struck all the signatures on the petitions circulated by someone other than the affiant. It found a pattern of fraud, by that circulator.

In the instant case, the candidate still has sufficient signatures after deducting those objected to and the signatures not already objected to on the Derrick Butler circulated petitions. This is before a review by the CBOE or rehabilitation possibilities by the candidate.

40. In the instant case the parties are dealing with the legal sufficiency of the objections. It may be splitting hairs, given the fact that *Harmon* might keep the candidate from the ballot after a record exam, if the invalid signatures are greater than what seemed to shock the *Harmon* court, but the objector has not alleged who committed the fraud, what kind it is, and how it was presented. He needs to do this to survive the candidate's motion to strike and dismiss. Even if a truly liberal reading of the objections were allowed, by accepting the information on the recapitulation sheets to be sufficient particularity of fraud, those sheets are themselves filled with inaccuracies. As stated in paragraph 36 above, the Appendix Pattern of Fraud worksheet claims that both Howard Brookins, Sr. and Howard Brookins, Jr. circulated sheets 42 and 43.

41. Also, the cited cases, including those not referenced in this opinion, deal with petitions presenting less than the requisite number of signatures for ballot presence after the record exam. In the instant case, the candidate is starting with more than the requisite number of signatures even accepting as true all the objections. Given the results of the sampling, that almost half of the objections are overruled, the candidate will have even more signatures above the required number.

42. As to the objector's plea that the CBOE not close its eyes and ears to evidence, this was discussed in *Fortas*. "...when in the course of hearing objections to nominating papers, evidence beyond specific objections comes to the electoral board's attention, it cannot close its eyes and ears if evidence is relevant to the protection of the electoral process." *Fortas*, 462 N.E.2d at 618. The CBOE cannot be held to have closed its eyes and ears to certain evidence because an evidentiary hearing has not yet taken place in the instant case, and the objector has not specified what needs to be looked at, in order to get the objections to an evidentiary hearing in the first place.

43. A case closer to the facts at hand is that cited by the Candidate, *Davis III v Hendon*, 02 EB SS 09. There, the objector alleged a pattern of fraud and roundtabling in which the candidate himself engaged. The candidate moved to dismiss the allegation on the basis that it lacked specificity in that no facts were alleged and no sheets and lines were referenced. The Hearing Officer held, and the CBOE sustained her holding:

"Paragraph 16 lacks sufficient specificity to put the candidate on notice of the purported deficiency and as such deprives the candidate of the opportunity to prepare a defense. Objector correctly argued that the cases involving a pattern of fraud establish that it is not necessary to plead such a pattern when, in the course of hearing, facts become known to the electoral board beyond the specific allegations made. In such a case, the electoral board is not permitted to 'close its eyes and ears' to the evidence before it. However, here, the question is whether the Objector is entitled to a hearing in the first instance. The Objector has attempted to use this general allegation in conjunction with other general allegations to bolster his objector's petition which, on its face, has insufficient specific allegations to invalidate the nominating papers. If such a practice was permitted, it would result in placing candidate in the untenable position of going through the exercise of participating in a records examination knowing that he will have more than a sufficient number of signatures to remain on the ballot and then having to guess at what further evidence the objector intends to offer to invalidate the nominating papers. Under

this scenario, the candidate is clearly deprived of an opportunity to prepare a defense."

02 EB SS 09. at p. 5

44. The Hearing Officer finds that the objector has not met his burden regarding the allegations of a pattern of fraud and false swearing such that all of the nominating petitions should be rejected as void. His allegations do not have the requisite specificity to withstand the motion to strike and dismiss.

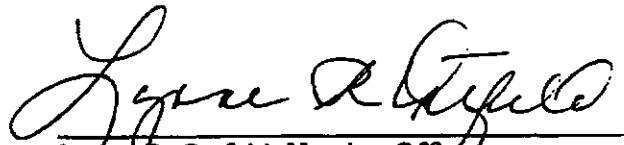
45. The Hearing Officer grants the candidate's motion to strike and dismiss the Objector's paragraph 13, relative to a pattern of fraud and false swearing, and denies the remainder of candidate's motions.

46. The Hearing Officer finds that the candidate has in excess of the 473 signatures needed to be placed on the ballot for Alderman of the 21st Ward, and would have in excess of that amount if a full records exam is conducted.

47. The Hearing Officer recommends that this Board find that the Nomination Papers of HOWARD B. BROOKINS, JR. be declared to be VALID for the reasons stated above.

48. The Hearing Officer recommends that this Board order that the name of HOWARD B. BROOKINS, JR. BE printed on the ballot for the Aldermanic Election, 21st Ward, City of Chicago, to be held on February 24, 2015, for the reasons stated above.

Dated: Chicago, Illinois, this 2nd day of January, 2015.


Lynn R. Ostfeld, Hearing Officer