

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

Objections of: WILLIE B. COCHRAN)
)
)
To the Nomination) No.: 15-EB-ALD-039
Papers of: KEVIN BAILEY)
) Rel. ALD-143
Candidate for the office of)
Alderman of the 20th Ward, City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections ("Objections") of WILLIE B. COCHRAN ("Objector") to the nomination papers ("Nomination Papers") of KEVIN BAILEY, candidate for the office of Alderman of the 20th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, at 9:00 a.m., in Room 800, 69 West Washington Street, Chicago, Illinois, 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 herein were duly and timely filed.
2. The said Electoral Board has been legally constituted according to the laws of the State of Illinois.

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 Mary Celeste Meehan 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, WILLIE B. COCHRAN, by his attorney, Richard K. Means; the Candidate, KEVIN BAILEY, by his attorney, Dan Garbis.

7. The sole issue in this case is whether the Candidate meets the one-year durational residency requirement for candidates for the office of Alderman in the 20th Ward in the City of Chicago.

8. The Hearing Officer has tendered to the Electoral Board his report and recommended decision. The Hearing Officer concluded that the Objector did not meet his burden of proof to show that the Candidate did not the 1-year durational residency requirement to be a candidate for the office of Alderman in the 20th Ward of the City of Chicago in the February 24, 2015 Municipal General Election. 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. The Objector filed a motion pursuant to Rule 20 of the Electoral Board's Rules of Procedure to address the Board concerning the Hearing Officer's report and recommendation. Objector argues in his Rule 20 motion that the Hearing Officer's recommendation is contrary to the manifest weight of the evidence in this case and contrary to two First District Appellate Court cases – *Delk v. Board of Election Commissioners*, 112 Ill.App.3d 735 (1st Dist. 1983) and *Neely v. Board of Election Commissioners*, 371 Ill.App.3d 694 (1st Dist. 2007). In *Neely*, the aldermanic candidate claimed to be residing in the 20th Ward when he voted and signed an application for ballot in the 8th Ward within the one-year prior to the 2007 aldermanic election. In the instant case, there was evidence that the Candidate established a residence at least year prior to the February 24, 2015 Municipal General Election, but that he also voted in the 27th Ward at the March 18, 2014 general primary, which was less than one year prior to the election. The Objector argues the Candidate's signed ballot application to vote in the 27th Ward on March 18, 2014 constitutes, under *Neely*, an abandonment of any prior 20th Ward residency.

11. The Electoral Board finds that the Hearing Officer carefully and correctly addressed both the *Delk* and *Neely* cases in her recommendation. In *Neely*, the appellate court noted that the candidate there exercised his power to vote in a different ward in the preceding primary election "as a deliberate assertion of residence in that ward" and that the candidate had

“explained that he intentionally misrepresented his residence to the Board in 2006 to keep his actual residence secret.” 371 Ill.App.3d at 700. The *Neely* court further observed that “Neely did not present any evidence that the vote resulted from inadvertent error or misunderstanding.” *Id.*

12. Here, the Hearing Officer found that the Candidate had twice attempted to update his address on his voter registration to reflect the 20th Ward address prior to the March 18, 2014 primary election but, for reasons unexplained, both documents were not date stamped by the Board until well after the primary. When the Candidate attempted to vote in the 20th Ward, he was told he could not vote there; instead, he was sent away from the 20th Ward polling location and directed to vote in the 27th Ward. See, Report and Recommendation of the Hearing Officer, ¶ 31. So, unlike Neely, the Candidate here presented evidence that his vote in the 27th Ward was, in fact, the result of inadvertent error in the handling of his voter registration change of address documents, or misunderstanding, and that there was no intent on his part to “intentionally misrepresent” his residence or to keep his true residence a “secret.”

13. “Both the establishment and abandonment of a residence is largely a question of intent, and while intent is shown primarily from a candidate’s acts, a candidate is absolutely competent to testify as to his intention, though such testimony is not necessarily conclusive.” *Maksym v. Board of Election Commissioners of the City of Chicago*, 242 Ill.2d 303, 326 (2011). “Once a residence has been established the presumption is that it continues, and the burden of proof is on the party claiming that it has changed.” 242 Ill.2d at 327. “On the question of abandonment, a party’s intention is controlling.” *Id.*

14. Here, the Electoral Board finds that the Hearing Officer correctly concluded that the Candidate timely established a residence within the 20th Ward at least one year prior to the

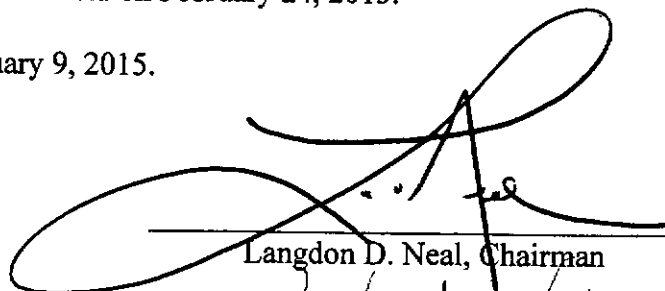
February 24, 2015 Municipal General Election and he did not, under the circumstances here, abandon such residence by voting in the 27th Ward in the March 2014 primary election.

15. 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.

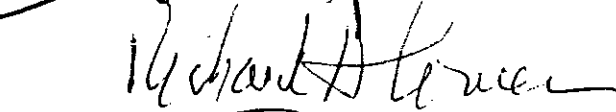
16. The Electoral Board further finds that there were additional objections to the Candidate's Nomination Papers in related case ALD-143 but that the objections in that case were withdrawn. There are no other pending objections against the Candidate's Nomination Papers.

IT IS THEREFORE ORDERED that the Objections of WILLIE B. COCHRAN to the Nomination Papers of KEVIN BAILEY, candidate for election to the office of Alderman of the 20th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of KEVIN BAILEY, candidate for election to the office of Alderman of the 20th 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.

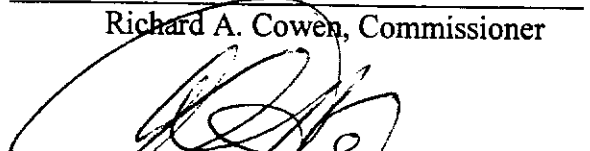
Dated: Chicago, Illinois, on January 9, 2015.



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**

WILLIE B. COCHRAN)	
Objector)	14-EB-ALD-039
)	
-v-)	
KEVIN BAILEY)	Mary C. Meehan
Candidate)	Hearing Officer

REPORT AND RECOMMENDED DECISION OF THE HEARING OFFICER

INTRODUCTION AND BACKGROUND

The above named cause came to be heard before the Chicago Board of Election Commissioners ("CBOE") on verified objection of Willie B. Cochran ("Objector") to the nomination papers of Kevin Bailey ("Candidate") for the Office of Alderman of the 20th Ward for the City of Chicago, State of Illinois. The Objector was represented by attorney Richard Means. The Candidate was represented by attorney Dan Garbis. Mary C. Meehan, Hearing Officer finds and recommends as follows:

WITNESSES AND EXHIBITS

Kevin Bailey, Candidate, witness for Objector and Candidate
Maria Bailey, witness for Objector and Candidate
Steven McKessey, witness for Candidate
Board Group Exhibit A consisting of the Nominating Papers
Board Group Exhibit B consisting of the Objector's Petition and any attachments
Board Group Exhibit C consisting of the Call and Service of the Call
Board Group D consisting of the parties Appearances
Objector's Exhibit #1 Board records of voter registration
Objector's Exhibit #2 (Candidate's Exhibit #1) Land Sale Contract
Objector's Exhibit #4 Lease Agreements for N. Burling
Objector's Exhibit #5 Com Ed bills
Objector's Exhibit #6 Sprint bills

Objector's Exhibit #8 RCN cable bills
Objector's Exhibit #9 (Candidate's Exhibit #8) IL Secretary of State records
Objector's Exhibit #10 US Bank records
Objector's Exhibit #11 (Candidate's Exhibit #2) Chase Bank records
Objector's Exhibit #12 Union Pacific Credit
Objector's Exhibit #13(Candidate's Exhibit #3) tax records of the Candidate
Candidate's Exhibit #2 Check to Mother's touch and expenditure chart
Candidate's Exhibit #4 Courtesy Courier moving receipt
Candidate's Exhibit #5 Cook County tax bill receipts for S. Calumet
Candidate's Exhibit #6 Cook County tax bill and plumbing receipt
Candidate's Exhibit #9 Omaha NE lease

BACKGROUND

1. The above matter came to be heard on December 9th, 2014 for initial hearing. The parties agreed no records exam was necessary because the only issue in this case relates to residency. The matter was set for December 16th, 2014 for a status hearing on the subpoena and document requests. A briefing schedule was set for trial briefs.
2. The Objector timely requested subpoenas and documents from the Candidate and Board. The Candidate responded and objected on the grounds the information being sought was too broad and unduly burdensome. The Board issued the Objector's subpoenas but for the subpoena upon itself. The Objector also filed a Notice to Produce records from the Board and a Motion to Produce from the Candidate. The Board produced all of the requested documents but for the Candidate's signed application of ballot from the March 18, 2014 election. The Candidate agreed to produce and was ordered to produce the records requested by the Objector to the best of his ability.
3. On December 19th, a status hearing was held. On December 26th, 2014 a phone conference was conducted regarding the status of the subpoenas and requests for records.

The Candidate tendered most of the requested documents but was unable retrieve documents from his employer regarding a work address on file.

PRE-TRIAL MOTIONS AND RULINGS

4. On December 9th at the initial hearing the Candidate filed an Answer and Affirmative Defenses. The Objector responded, in essence saying the pleading was not proper. On December 29th, 2014 the Candidate filed a Motion to Deem Facts Admitted, stating that the affirmative defenses listed in his Answer should be deemed facts because of the Objector's failure to respond to the facts plead. The Hearing Officer ruled the Answer and Affirmative Defenses was an improper pleading and denied the Motion to Deem Facts Admitted.
5. On December 29th, 2014 the Candidate filed a Motion in Limine requesting that because the Objector had not informed the Candidate of any witnesses to be called, any witnesses called by the Objector should be barred from testifying. The Objector stated the only witnesses he may be calling to testify would be keepers of record pursuant to subpoenas and possibly representatives from the moving and leasing companies which were also subpoenaed. The Hearing Officer found none of the Objector's possible witnesses would be of a surprise to the Candidate and denied the Motion in Limine.
6. A non-party, Mr. Steven McKessey filed a Motion to Quash one of the Objector's subpoenas served upon AT&T regarding phone records for the N. Burling address. Before the hearing on December 30th, 2014 the motion was granted in respect to any records regarding Mr. McKessey as irrelevant and an invasion of privacy. No records were tendered by AT&T and in addition the Objector withdrew his request in respect to any documents of Mr. McKessey.

ISSUE

7. All parties agreed the issue is whether Candidate Kevin Bailey meets the 1 year duration residency requirement to be a candidate for Office of Alderman in the 20th Ward, City of

Chicago in the February 24th, 2015 municipal election. The parties agree the governing statute is Section 21-14(a) of the Revised Cities and Villages Act, which is part of the Illinois Municipal Code (65 ILCS 20/21-14(a)), and which establishes certain qualifications for Alderman in the City of Chicago and provides that he or she must be a qualified elector who has resided in the ward he or she seeks to represent at least 1 year before the date of the election.

8. The parties agreed the residences at issue are 1329 N. Burling located in the 27th ward (herein after referred to as the "N. Burling address") and 5944 S. Calumet located in the 20th ward (herein after referred to as the "S. Calumet address"). At the status hearing of December 16th, the parties stipulated that no part of the 27th ward is now in the 20th ward and therefore the residency would only be perfected by a physical move at the appropriate time.

EVIDENTIARY HEARING

9. Mrs. Maria Bailey testified for both the Objector and the Candidate, her testimony is summarized as follows: She is mother of the Candidate and lives at 5944 S. Calumet Chicago, IL (20th ward). Candidate Kevin Bailey currently lives with her. In addition her daughter, son in law, and their child live there. Mrs. Bailey bought 5944 S. Calumet from a bank and moved into the house sometime in 2013. The home has seven bedrooms with one kitchen and a kitchenette upstairs. One of the bedrooms is the Candidate's room. Mr. Bailey moved into the house in June of 2013 after his grandmother died. Maria Bailey stated she had become very sick with meningitis and was having thyroid storms and that is why the Candidate moved in.
10. Mrs. Bailey testified to a land sale contract for the sale of the property located at 5944 Calumet with Mr. Bailey entered into May 15, 2013. She also confirmed the Candidate paid \$20,000 at the time of the contract. \$18,500 by check made out to her business Mother's Touch and \$1,500 in cash. Mrs. Bailey also brought in a spread sheet which attempted to reflect all the expenditures her son has made toward the house (see Candidate's Exhibit#2, check and spread sheet). The agreement called for the Candidate

to pay \$10,000 per year until the property is paid off. The consideration price is \$250,000. (See Objector's Exhibit #1 Land Sale Contract).

11. Bailey was witness for the Objector and for his own case in chief and his pertinent testimony is as follows: Mr. Bailey works as a Civil Engineer for Union Pacific headquartered in Omaha, NE. In high school, Mr. Bailey lived in Olympia fields, IL with his family. During college he lived at college in Urbana and would return to the Olympia Fields home until the family moved from there in approximately 2008. Mr. Bailey admitted he signed three year-long leases together with Steven McKessey for 1329 N. Burling apt. 2E in Chicago from April 2012 through March 2015. (See Objector's Group Exhibit # 4, 3 Leases for N. Burling). The Candidate testified he moved out of the N. Burling apartment and moved into the S. Calumet house in June of 2013.
12. Mr. Bailey presented a receipt for \$320 made to him from Courtesy Courier for a move from the N. Burling address to the S. Calumet address. The receipt was dated June 15, 2013 (see Candidate's Exhibit#4). After Bailey moved out, he and McKessey continued the agreed upon arrangement wherein Bailey paid half the rent (\$485) and the cable bill (see Objector's Exhibit #8).
13. Mr. Bailey testified he frequently travels for his work as a civil engineer for Union Pacific and is often out of town. When travelling for work, he is in Chicago approximately 3-4 days a week.
14. Mr. Bailey testified that when he moved out of the N. Burling apartment in June of 2013, he failed to timely update his address on his bank statements, Sprint phone bill, credit card statement, and driver's license, and vehicle registration (see Objector's Exhibit's #6, #3, and #9). Mr. Bailey stated he didn't update all of his addresses because he did all of his business such as paying bills and checking bank statements online.
15. Mr. Bailey did however testify that he submitted voter registration records updating his address to the IL Dept. of Public Aid and to another location that was collecting voter registration applications. He testified he submitted the documents on or about when he

signed and dated the documents in January and February of 2014 (see Objector's Exhibit #1 Board records). Mr. Bailey admitted to voting in the 27th Ward in the March 18, 2018 election. He testified when he tried to vote in the 20th ward, he was turned away, told he could not vote there, and was directed to vote in the 27th Ward. He stated he signed a document before he voted but did not read it. He stated that he did not intend to abandon his S. Calumet residence by voting in the 27th ward.

16. Mr. Bailey testified to a receipt for plumping and payment of Cook County taxes on the S. Calumet property. He also presented a spread sheet totaling approximately \$48,000 (including his \$20,000 down payment) which purported to show the expenditures he's made toward the S. Calumet address (see Candidate's Exhibits #2 and #6).
17. Mr. Steven McKessey was called as a witness by the Candidate. Mr. McKessey is a project manager for Accenture. He was the roommate of Kevin Bailey at the N. Burling address. He stated that Mr. Bailey moved out in the spring of 2013. He testified that Mr. Bailey's former bedroom is now a guest room. He testified that Mr. Bailey continues to pay rent and comes to the apartment once or twice a month to entertain. He said he and Mr. Bailey had an agreement that Mr. Bailey would continue to pay half the rent until 2015, when McKessey possibly relocates for his job. He stated Mr. Bailey pays the cable bill and that he, Mr. McKessey buys the food and pays all of the utilities.
18. To prove their case, the Objector relied heavily on two points brought out in testimony of Mr. Bailey and documentary evidence. The first is that Mr. Bailey's bank statements, credit card bill, phone bill, tax documents, driver's license, and vehicle's registration continued to have the N. Burling address listed long after June 15, 2013, which is the date the Candidate claimed to have moved. Secondly, central to the Objector's case was that Mr. Bailey admittedly voted in the 27th Ward in the March 18, 2014 election.
19. The Candidate contended he moved out of the N. Burling address and into the S. Calumet address in June 2013 when his mother became sick. His position is that he remained on the lease with Mr. McKessey because he was honoring the initial agreement they had but he resided in the S. Calumet home. He claimed he still used the N. Burling apartment on

occasion to entertain. The Candidate admits to failing to timely update his address because he does his business and pays bills online. Further, he claimed he voted in the 27th ward in March 2014 because of an error with the Board or with whoever processed his voter registration card.

FINDINGS OF FACT

20. A hearing examiner is authorized and directed to prepare and submit to the electoral board an outline of the issues, evidence and argument as well as a recommendation of proposed findings and decision. See, Hearne v. Chicago School Reform Board of Trustees, 322 Ill.App.3d 479. The Hearing Officer reviewed the exhibits, listened to the testimony, observed the witnesses and parties, assessed conduct, demeanor and credibility. After careful review of all the testimony and evidence from the hearing, the hearing officer makes the following findings of fact:
21. Maria Bailey is the mother of Kevin Bailey and lives at 5944 S. Calumet in Chicago. 5944 S. She purchased the property from a bank in 2013. Calumet is a seven bedroom house with a kitchen and kitchenette located in the 20th ward of Chicago. Mrs. Bailey has a daughter, son in law, and grandchild who also live with her at that address. Kevin Bailey, the Candidate moved in the home in June 2013 after the death of her mother and when she became ill.
22. In light of her relationship to the Candidate and her defensive demeanor while testifying, the Hearing Officer found Mrs. Bailey to be a moderately credible witness. These factors were taken into consideration when the weight of her testimony was assessed. The Hearing Officer also considered the fact that neither her daughter or son in law, who lived in the house on S. Calumet came in to testify nor gave affidavits asserting the residency of the Candidate.
23. In high school, Mr. Bailey lived in Olympia Fields, IL with his family. During college he lived at school during the school year but would return to the Olympia Fields home. The family moved out of Olympia Fields and into Chicago sometime in 2008. After college, he moved to Omaha NE for his employment with Union Pacific.

24. Mr. Bailey entered into three year-long leases with Steven McKessey for the N. Burling apartment. The time frame for the leases was from April of 2012 through March of 2013, from April 2013 through March of 2014, and again from April 2014 through March 2015. Mr. Bailey pays half of the rent (\$485 per month) to a property manager.
25. Mr. Bailey entered into a land sale contract May 15th 2013 to purchase 5944 S. Calumet in Chicago in the 27th ward from his mother, Maria Bailey. Mr. Bailey paid \$20,000 (\$18,500 by check and \$1,500 cash) as a down payment, and agreed to pay \$1,000 per month until the purchase price of \$250,000 was paid. Mr. Bailey paid the Cook County taxes for the S. Calumet address in August 2013 and July 2012. He also pays the electric bill. Mr. Bailey paid for plumbing work on the property in November 2013, in the amount of \$350. It is unclear what else exactly Mr. Bailey paid although it appears he was giving money to Mrs. Bailey whether in the form of cash or by paying for expenses incidental to the running of the house.
26. The Hearing Officer found Mr. Bailey to be a young person of today who pays most of his bills and conducts most of his business online. The Hearing Officer found him to be a truthful and credible witness.
27. The Hearing Officer finds that the documentation such as phone bills, bank statements, and credit card statements reveal that Mr. Bailey continued to use the N. Burling address after he moved out in June of 2013. Mr. Bailey paid his Sprint bill online but the addresses listed with Sprint were the Olympia fields address until January 2013 and the N. Burling address until August or September of 2014. Mr. Bailey finally updated his bank and credit card statements to the S. Calumet address in the latter half of 2014.
28. The fact that Mr. Bailey continued to use the N. Burling apartment on occasion to entertain coupled with the fact that most, if not all of his business and banking was done online show his failure to timely update his address from the N. Burling address would appear to have no negative consequences upon him. The fact that he was lax about

updating his address under these circumstances showed lack of diligence but was given little weight by the Hearing Officer.

29. Mr. Bailey used the N. Burling address for his 2013 IL Dept. of Revenue 1040 and his 2013 IRS 1040 which he likely filed in sometime April of 2014, ten months after his move into the S. Calumet address. Mr. Bailey represented to the Illinois Department of Revenue and the Internal Revenue Service that his address was N. Burling in April of 2014. This fact gave the Hearing Officer pause and was given considerably more weight than bank and phone records.
30. The hearing officer finds that both of Mr. Bailey's vehicles are registered at the S. Calumet address, his current driver's license was issued September 24, 2014 contains the S. Calumet address. His previous driver's licenses which were issued July 3rd, 2008 and December 2nd 2011 both had the Olympia Fields address. This demonstrated the Candidate's lack of diligence in updating his address.
31. In regards to voting and voters registration documents, the Candidate admitted he voted in the 27th ward on March 18, 2014. When the Candidate attempted to vote in the 20th ward, he was told he could not vote there. He was sent away from the 20th ward polling location and directed to vote in the 27th ward. The Candidate completed a change of address for his voter registration with the City of Chicago from the Olympia Fields address to the N. Burling address on October 5th 2012 although he moved out of Olympia Fields sometime in 2008, again showing his lack of diligence in updating his address. Mr. Bailey signed two more voter registration applications to change his address from the N. Burling address to the S. Calumet address. Both voter applications were signed and dated by the Candidate, January 10th, 2014 and February 1st 2014 respectively. Mr. Bailey submitted the first document on January 10th 2014 to a person in Chicago whom he believed was accepting applications for voter registration. Mr. Bailey submitted the second document dated February 1st 2014 on February 3rd 2014 to the Illinois Department of Public Aid on 60th street. Both documents each have a date stamp on them, July 23rd, 2014 and August 25th 2014 respectively. The Hearing Officer found no explanation for

the date stamp and considers the possibility of human error whether by a Board employee or by whomever received Mr. Bailey's records.

32. Mr. McKessey was the most credible witness. He appeared to have little interest in the matter but to testify truthfully. Mr. McKessey is employed as a management consultant for Accenture. The Hearing Officer finds that Mr. Bailey moved out of 1329 N. Burling in June of 2013. The bedroom Mr. Bailey occupied at the N. Burling apartment became a guest room. Pursuant to an agreement, Mr. Bailey agreed to continue to pay his half of the rent until 2015, at which time Mr. McKessey may move because of his work. Mr. Bailey pays the cable bill, but all other expenses are paid for by Mr. McKessey. Mr. Bailey entertains at the apartment once or twice a month. Mr. McKessey travels for work and Mr. Bailey could be at the apartment when he is not present. Mr. Bailey receives some, but not much mail at the N. Burling apartment.

ANALYSIS AND CONCLUSION OF LAW

33. The parties are not disputing the well settled principles that clearly define residency. Two elements are required: (1) physical presence, and (2) intent to remain in that place as a permanent home. *Maksym v. Bd. of Election Comm'rs*, 242 Ill. 2d 303 citing *Hughes v. Illinois Public Aid Comm'n*, 2 Ill. 2d 374, 380, 118 N.E.2d 14 (1954) (citing voting cases). Second, once residency is established, the test is no longer physical presence but rather abandonment. *Id.* Third, both the establishment and the abandonment of a residence is principally a question of intent. *Id.* citing *Park v. Hood*, 374 Ill. 36, 43, 27 N.E.2d 838 (1940). Fourth, and finally, once a residence has been established, the presumption is that it continues, and the burden of proof is on the contesting party to show that it has been abandoned. *Id.* citing *In re Estate of Moir*, 207 Ill. 180, 186, 69 N.E. 905 (1904).
34. The Objector's position is that the by voting in the 27th ward March 18th, 2014 which is 11 months before the February 24th, 2015 Municipal Election, the Candidate signed the voting application and claimed to have been entitled to vote in the 27th ward which is inconsistent with his claim to be living in the 20th ward at that same time. The Objector

argues that the Candidate did not establish residency in the 20th ward and even if he did, the Candidate abandoned his residency by the act of voting in the 27th ward on March 18, 2014 which contradicted any intent to maintain the residency.

35. The Objector points to two 1st District Appellate cases to support his position, *Delk v. Board of Election Commissioners*, 112 Ill. App.3d 735 (1st Dist., 1983) and *Neely v. Board of Election Commissioners*, 371 Ill. App.3d 694 (1st Dist., 2007). The Objector uses the *Delk* case which lays out the basic scope, rules and evidence for the determination of a residency case. Relying on *Delk*, the Objector argues that most important is the principle that "although declarations of intent are admissible as evidence thereof, acts and surrounding circumstances should be given more weight in making the factual determination of intent." *Id.* The Objector argues that in *Delk*, as here, there were persistent claims of residency at a new location and almost all contemporaneous facts showing that residency was impossible at the new location and continued.
36. The Objector also relied heavily on *Neely v. Board of Education Commissioner*, 371 Ill.App.3d 694 (1st Dist. 2007). Comparing *Neely* and the case at hand, he cites the 1st Dist. Appellate court which said:
- Neely's deliberate assertion of residence in the 8th Ward in March 2006 proves that he had not resided in the 20th Ward, for purposes of serving as a representative of that ward, for the requisite year before the February 2007 election. *Id. at 694*
37. The Objector argues that here, even if the Board were to find credible evidence of a move to the 20th Ward prior to February 24, 2014, the voluntary assertion, under oath, of a 27th Ward residency would, under *Neely*, constitute an abandonment of any prior 20th Ward residency.
38. The Hearing Officer finds the Candidate to be correct in his argument that the facts in *Delk* and *Neely* differ greatly from Mr. Bailey's case. The Candidate points to factors *Delk* that existed whereby the Court ruled against the candidate. For example there was testimony that: 1) the candidate's residence in question did not have any electric, gas or

water; 2) the home was boarded up and that there were no signs of lights or living; 3) the candidate's spouse did not change his address to the new residence, and 4) the candidate had in fact, changed all of her identification and voter registration card to the new address.

39. In *Delk*, the candidate merely used a paper trail to establish her residency and successfully changed all her information to demonstrate her residency but the residence was not inhabitable. The Candidate here established his residency at S. Calumet through testimony and evidence that proved he moved into the S. Calumet address in June 2013, was purchasing the property, and was paying towards the upkeep of the home. The Candidate was admittedly very lackadaisical about changing his address on paper. There was no argument made that the S. Calumet address was uninhabitable or it was impossible for the Candidate to be living there. There was no question the property was functioning as a home with family members living there.
40. When comparing *Neely* to this case, the Candidate correctly relies on the important fact that in *Neely* the court found the candidate deliberately voted outside of the 20th ward and there was no evidence of an inadvertent error or misunderstanding. Whereas here, Mr. Bailey clearly voted in the 27th ward because of an inadvertent error or misunderstanding. The Candidate twice attempted to update his address with the Board yet was directed to vote at his former address. The evidence shows this case, that by voting in the 27th ward the Candidate had no intention of abandoning his 20th ward residence. .

RECOMMENDATION

41. After review of all of the facts and evidence, the Hearing Officer recommends the Board find that the Objector did not meet his burden to proof to show Candidate did not meet the 1 year duration residency requirement to be a candidate for Office of Alderman in the 20th Ward, City of Chicago in the February 24th, 2015 municipal election.

42. For the reasons stated above, the Hearing Officer finds and recommends in the above referenced case, the Objector's Petition is **OVERRULED**, the Nominating Papers of the Candidate Kevin Bailey for the Office of Alderman for the 20th Ward, City of Chicago, State of Illinois are **VALID**;

ENTERED THIS 6th day of January, 2015.



Mary C. Meehan
Hearing Officer