

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 Linda R. Crane 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, JANELLE RAU-CLAUSON, by her attorney Ross D. Secler; the Candidate, MICHAEL C. DUDA, by his attorney, Adam Lasker.

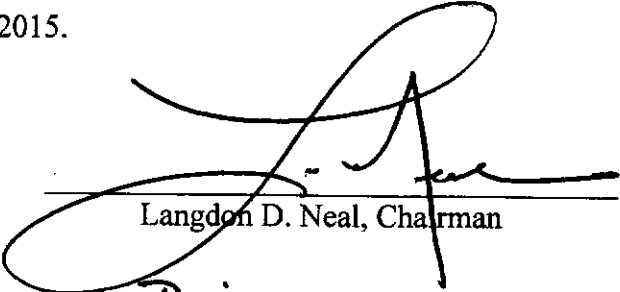
7. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be dismissed in part and overruled in part and that the Nomination Papers be declared valid.

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. A copy of the Hearing Officer report and recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

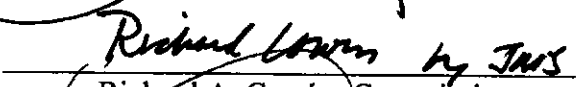
9. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of JANELLE RAU-CLAUSON to the Nomination Papers of MICHAEL C. DUDA, candidate for election to the office of Alderman of the 38th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of MICHAEL C. DUDA, candidate for election to the office of Alderman of the 38th 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.

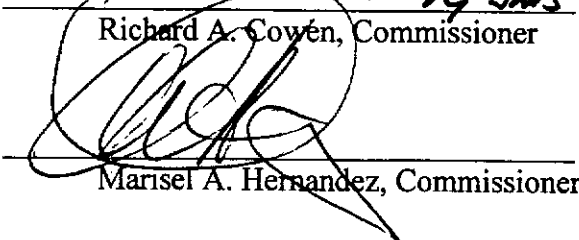
Dated: Chicago, Illinois, on January 13, 2015.



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.

**BEFORE THE BOARD OF ELECTION COMMISSIONERS
SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS
ELECTORAL BOARD FOR THE CITY OF CHICAGO**

CHICAGO BOARD OF
ELECTION COMMISSIONERS
2015 JAN - 8 PM 1:56

JANELLE RAU-CLAUSON)
)
 Petitioner-Objector)
)
)
 Vs.)
)
)
 MICHAEL C. DUDA)
)
 Respondent-Candidate)

No. 15 – EB – ALD – 167

HEARING OFFICER’S RECOMMENDED DECISION

This matter having come before the Chicago Board of Election Commissioners (Board) on verified objections of JANELLE RAU-CLAUSON (“Objector”) to the nomination papers of MICHAEL C. DUDA, (“Candidate”), Linda R. Crane, the Hearing Officer, finds and recommends as follows:

1. That the Candidate, MICHAEL C. DUDA, has filed nomination papers in support of his nomination to the office of Alderman of the 38th Ward in the City of Chicago to be voted upon during the upcoming election on February 24, 2015 (Election).
2. That the Objector, JANELLE RAU-CLAUSON, has filed a Verified Objector’s Petition objecting to the sufficiency of the Candidate’s nomination papers for various reasons stated in Paragraphs 6 through 8 of her Petition.

3. That Paragraph 6(a) of the Objector's Petition alleges that the "*nomination papers contain the names of numerous persons who are not in fact duly qualified, registered, and legal voters at the addresses shown opposite their names in the 38th Ward of the City of Chicago in the County of Cook and State of Illinois . . .*" Paragraph 6(b) of the Objector's Petition alleges that the "*nomination papers contain the names of numerous persons who did not sign the said nomination papers in their own proper persons, and that the said signatures are not genuine, as more fully set forth in Appendix Recapitulation . . .*" Paragraph 6(c) of the Objector's Petition alleges that the "*nomination papers contain the names of numerous person who have signed said petition but who are not, in fact, duly qualified, registered, and legal voters at addresses that are located within the boundaries of the 38th Ward of the City of Chicago in the County of Cook and State of Illinois . . .*" Paragraph 6(d) of the Objector's Petition alleges that the "*nomination papers contain the signature of various individuals who have listed incomplete addresses as their own legal addresses, as more fully set forth in the Appendix-Recapitulation . . .*" Paragraph 6(e) of the Objector's Petition alleges that the "*petition contains the signatures of various individuals who have signed the petition more than once, and such duplicate signatures are invalid, as more fully set forth in the Appendix-Recapitulation . . .*"
4. That Paragraph 7 of the Objector's Petition alleges that "*nomination papers contain the signatures of various individuals who have previously signed a nominating petition of another candidate for the same office, thereby precluding them from petitioning for the Candidate's attempt to access the ballot . . .*"

5. That the initial hearing on this matter was held on December 10, 2014, and both parties were present and filed their Appearances: the Candidate, by and through his attorney, Adam Lasker; and the Objector, by and through her attorney, Ross Secler.
6. That During the initial hearing, the parties agreed that, although there may be a need for a Records Examination at a later date, that there were other issues that may be dispositive of the matter; and the Hearing Officer agreed to delay ordering the RE until those were determined.
7. That a second hearing was scheduled for December 19, 2014. A schedule was established under which the Candidate was to file his Motion to Dismiss and Strike by 5 p.m. December 11, 2014; the Objector was to file a Response to the Motion by 5 p.m. on December 12, 2014; and any Reply to a Response to be filed by 5 p.m. on December 13, 2014.
8. That before the second hearing, the Candidate filed his Motion to Strike and Dismiss, the Objector filed a Response to the Motion to Strike, and the Candidate filed a Reply to the Objector's Response. The Objector also filed a request for subpoenas, which was denied by the Commissioners.
9. That during the December 19, 2014 hearing, the attorney for the Candidate presented his arguments in furtherance of his Motion to Strike and Dismiss namely:
 1. That there are 52 signatures that are challenged in Group Exhibit B which were also challenged in Group Exhibit A and/or Paragraph 8 of the Objector's Petition.

2. That a notary's failure to place the correct name on the notarial jurat does not invalidate a Candidate's petition sheet.
 3. That six of the signatures challenged only by the Objector's Group Exhibit B are valid as a matter of law due to pleadings that fail to state a claim for which the requested relief may be granted.
10. That during the hearing on December 19, 2014, the Candidate made several arguments in support of these three allegations. The first argument is that of the 174 individual signatures on the Candidate's petition that appear to be challenged in Group Exhibit B, there are 52 such signatures that were also challenged in Group Exhibit A and/or Paragraph 8 of the Objector's Petition, and that because those 52 signatures were challenged in both in Group Exhibit A and Group Exhibit B and/or Paragraph 8 but should not be double counted when determining how many signatures could potentially be removed from the Candidate's total, if all of the objections are sustained. That means that the Group Exhibit B objections could only reduce the Candidate's signature count by an additional 122 signatures, if all of those objections were to be sustained (122 = 174 total objections, minus the 52 signatures that were also objected to on other grounds).
11. That the Candidate's second argument in his Motion to Strike Objector's objection to sheet 41, which was circulated by Lawrence Dunlevy of 5603 N. Osage Avenue in Chicago. The attorney for the Candidate argument was that, Mr. Dunlevy circulated numerous petition sheets for this Candidate, yet only one of his sheets is challenged due to a clear mistake made by the notary. While sheet

41 contains a circulator's statement naming Mr. Dunlevy, providing his residence address, and bearing his own genuine signature, that clearly matches all the other petitions he circulated, the notary erroneously inserted the name of the Candidate, rather than the proper circulator (Lawrence Dunlevy), in the notarial jurat.

Candidate's attorney cites page 61 of the Board's Index of Electoral Board Decision (October 2013 edition), stating that "(t)he jurat is not an affidavit but is evidence of the fact that the affidavit was properly sworn to by the affiant. Thus where the affiant is otherwise identified, courts tend to overlook clerical errors such as naming the wrong person in the jurat or omitting the affiant's name the jurat entirely." *Chicago Bd. Of Election Commissioners Index of Decisions*, p. 61, Oct. 2013. He concludes this argument by saying "since seven of the 20 signatures on sheet 41 are not subject to any other objections . . . , those seven signatures are presumptively valid and must be added back to the Candidate's total of unchallenged signatures.

12. That the Candidates third argument in his Motion to Strike Objector's objections, was that "(a)ccording to the Objector's Petition and her Group Exhibit B, the signature on the Candidate's petition sheet 17, line 9, is alleged to have been signed on September 28, 2014. whereas the same person's signature is alleged to also have been signed on a petition for Nicholas Sposato on December 30, 1899. It is clear that if this allegation were taken as true, the alleged earlier signature would have been signed in a much earlier election cycle, thus not having any legal effect on any matters related to the 2015 municipal elections. In the event that the objector meant to plead that the earlier signature was signed on December 30,

2013, that also would have been during the prior election cycle. Therefore, even if this allegation is taken as true, it fails to state a claim for which the requested relief may be granted. This same flaw also afflicts the objections to the possible duplicated signatures at the following Sheets and Line numbers: 24/6; 24/8; and 27/9. Candidate's attorney concludes this argument by stating that the "Objector's petitions may not be amended or corrected (apparently referring to the Objector being unable to change the date of the challenged signatures from 1899 to something else) after they are filed." "Therefore, the Objector is locked into the pleading she has filed with this Board, and has not right to amend any such pleading that may be deficient as a matter of law."

13. Similarly, the objection to the signature on the Candidate's petition Sheet 22, Line 10, fails to state a claim for which the requested relief can be granted. This Group Exhibit B objection alleges that Gregory Groth, of 4048 N. Mason, had previously signed the petition of a different candidate in the same race. However, even if that allegation is true, it is not legal grounds for invalidating the signature on the Candidates sheet 22, line 10, which is actually the signature of Emanuel Tellez of 4116 N. Mason. Therefore, signature on Sheet 22, Line 10 is subject to no valid objections and must be restored to the Candidate's minimum. Next, the Objector's Group Exhibit B alleges that the signature on Sheet 27, Line 16, is that of a Mr. Gerald Walker of 3847 New England, who allegedly previously signed another candidate's petition. But if that allegation is true, it still could not invalidate the signature of Joe D. (illegible) of 3831 N. New England whose name appears on that Sheet and Line. Therefore, the Sheet 27, Line 16, signature is

subject to no valid objections and must be restored to the Candidate's minimum.

These deficiencies affected six of Candidate's signatures, and no additional explanation was offered by the Objector as to why they should not be restored to the Candidate; and they were challenged on no other grounds..."

14. That the Objector filed a Response to the Candidate's Motion to Strike that contained the following arguments: "(w)hile Objector does not concede to the Candidate's calculations of the number of signatures Objector challenged in Group Exhibit A and B of her verified Objector's Petition, In Paragraphs 9 through 14 of the Motion, Candidate argued against the allegation that he should lose all 20 signatures petition signature sheet number 41 because the notary made a mistake by placing the name of the Candidate in the jurat instead of the name of the circulator, Lawrence Dunlevy, and was, therefore a mere "clerical error." Objector stated that there is reason to believe that the circulator of petition Sheet number 41 did not actually appear before the Notary to swear his Circulator's Affidavit and that there is some degree of fraud being perpetrated by the Candidate. The Objector continues by saying, "(c)ertain dates in Objector's Group Exhibit B were mis-typed. However, the alleged petition signer, their address, and where (Sheet/Line) they signed each candidate's petition signature sheet is provided accurately. If anything, these clerical errors may inhibit Objector from immediately shifting the burden of proof onto the Candidate to rehabilitate these petition signer's signatures, but surely a clerical error such as this, where the totality of the allegation is clear and the true date of notarization is readily available (See Board's Exhibit A)." Objector concludes her response by

stating, "(b)ecause the Objector should have the opportunity to bring forth evidence and arguments as to the issues of law and fact raised by the Candidate, Candidate's Motion to Strike and Dismiss should be denied and this matter should proceed to the Records Examination."

15. That the Candidate filed a Reply to the Objector's Response to the Candidate's Motion to Strike that contained the following arguments in response. "(a)llowing the Objector to correct her purported clerical errors would result in prohibited and substantive alterations of, additions to and amendments of the Objector's Petition after the time it was filed. Binding Illinois appellate court case law is abundantly clear on the objectors' petitions may not be amended, added to or corrected after the time of filing. Furthermore, this Board's own rules of procedure expressly prohibit amendments to and corrections of objectors' petitions, and require that the objections to be ruled upon by the hearing officers must be confined to the points raised in the Objector's Petition. Since no amendments are permitted, the Objector may not alter the points raised in paragraph 8 of the Objector's Petition by arguing that the circulator of petition sheet 41 failed to appear before a notary public. Such allegation of failing to appear before the notary is not contained in paragraph 8 or any other part of the Objector's Petition. To the contrary, paragraph 8 alleges that Michael C. Duda (the Candidate) was "the true and actual circulator of said petition sheet." Paragraph 8 also alleges that the Candidate, as circulator of sheet number 41, "appeared before the Notary . . . despite the fact that the name of the person making the affidavit is one Lawrence Dunlevy." Therefore, the Objector's Response in which she argues that she is entitled to an

evidentiary hearing to present argument and evidence in regards to Mr. Dunlevy's alleged failure to appear before the notary is contrary to section 10-8 of the Election Code (10 ILCS 5/10-8), it conflicts with the above-cited appellate court decisions, and it violates the Board's rules of procedure cited above."

16. That before both parties rested, Mr. Duda was called as a witness to testify that he did not circulate petition Sheet 41. The Candidate's attorney asked, in addition to other questions, the following: "Did you (Michael Duda) circulate this sheet 41?" The Candidate responded by saying "(n)o, I didn't." Objector was then given the opportunity to cross-examine Michael Duda.
17. That both parties rested after making their arguments.
18. That the Hearing Officer informed both parties that she wanted the Candidate to produce one affidavit from the Notary and one from Lawrence Dunlevy attesting to the fact that Mr. Duda had not circulated Sheet 41 and that Mr. Dunlevy had circulated it.
19. That a third hearing was scheduled for December 29, 2014 to rule on the Motion to Strike sheet 41. During this time I also made both parties aware that the Board cancelled the Records Examination pending a third hearing scheduled for December 29, 2014.
20. That prior to the December 29, 2014 hearing, the Candidate tendered affidavits from Maureen Mann and Lawrence Dunlevy to the Hearing Officer which were read into the file during the hearing.
21. That Maureen Mann's affidavit stated in pertinent part that "I (Maureen Mann) believe that the only way Mr. Duda's name could have appeared in the jurat as the

person who circulated petition sheet 41 is that I (Maureen Mann) erroneously wrote his name in the jurat, despite the fact that it was Mr. Dunlevy who appeared before me and signed sheet 41 as the circulator.”

22. That Lawrence Dunlevy’s affidavit stated in pertinent part that “I (Lawrence Dunlevy) know it is an error for Ms. Mann to have written Mr. Duda’s name as the circulator of sheet 41, because the circulator’s affidavit bears, in my own handwriting, my name, address and signature, and I only wrote that information on sheets that I (Lawrence Dunlevy) actually circulated. I (Lawrence Dunlevy) also never signed a petition sheet as a circulator unless I was in the presence of a notary.”
23. That the Objector raised no objections to the validity of or introduction of the affidavits.
24. That both parties were given a chance to respond and make closing arguments.
25. That the Hearing Officer believes that the affidavits dispositive of the issues related to the objections to sheet 41.
26. In conclusion, it is my recommendation, based on all of the foregoing, that:
 1. The Board should grant the Candidate’s Motion to Strike and Dismiss alleging a Notary’s failure to place the correct name in the notarial jurat does not invalidate a candidate’s petition sheet. The consequence of my recommendation would be that the uncontested signatures on sheet 41 become valid and their totals will be added to the 470 signatures that were not challenged. Results are as follows:

Number of Signatures Filed	1,046
Signatures challenged in Group Exhibit A	(451)

Signatures from Group Exhibit B that were not challenged on any other grounds. (124)

Signatures that Candidate labeled "Category A" objections that were objected to based on time of signature and objection was overruled 4

Signatures that Candidate labeled "Category B" objections that were deemed to have been duplicate signatures 2

Sheet 41 signatures that were deemed void because of Objector's objection to sheet 41 (7)

Sheet 41 signatures that were not challenged on any other ground other than a "Category A" or "Category B" 7

Number of Valid Signatures 477

Number of Signatures Required 474

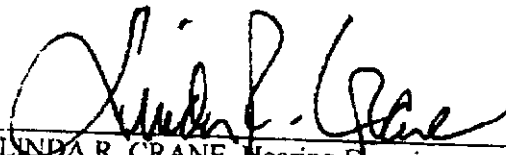
Number of Excess Valid Signatures 3

2. The objection raised in Candidates Motion to Strike that alleged duplicate signatures were in fact not duplicates should be granted
3. The objection based on pattern of fraud be overruled
4. The Motion to Strike alleging that the Objector was trying to amend her objections regarding dating errors should be denied, because there was a primary source for this information.

The further consequence of my recommendation above would be that the name of the Candidate, Michael Duda, should be included on the ballot for February 24, 2015 General Election.

Respectfully submitted,

Date: January 8, 2015

By: 
LINDA R. CRANE, Hearing Examiner