

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

Objections of: Mildred Hare)
)
)
To the Nomination) No.: 17-EB-ALD-02
Papers of: Gregory Seal Livingston)
)
Candidate for the office of)
Alderman of the 4th Ward, City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Marisel A. Hernandez, William J. Kresse and Jonathan T. Swain, organized by law in response to a Call issued by Marisel A. Hernandez, Chairwoman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of Mildred Hare (“Objector”) to the nomination papers (“Nomination Papers”) of Gregory Seal Livingston, candidate for the office of Alderman of the 4th Ward of the City of Chicago (“Candidate”) to be elected to fill the vacancy for the remainder of the term (2 years) at the General Municipal Election to be held on February 28, 2017, having convened on December 12, 2016, at 10:00 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 Chairwoman 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 was held on these Objections commencing on December 12, 2016, and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Barbara Goodman for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Mildred Hare, by her attorney, Michael C. Dorf; and the Candidate, Gregory Seal Livingston, by his attorney, Andrew Finko.

7. The Candidate filed a Motion to Strike Paragraphs 10, 11, 12 and 13 or in the Alternative for Preliminary Showing as to Paragraphs 10, 11, 12 and 13 and Motion for Summary Judgment/Decision as to Paragraph 14. The motions were taken under advisement and were fully briefed.

8. The Hearing Officer ordered that an examination of the voter registration records be conducted by clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

9. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination and set the matter for further hearing on December 19, 2016.

10. At the hearing on December 19, 2016, the Objector withdrew paragraphs 11, 12 and 13 of the Objector's Petition. The Candidate moved to dismiss paragraph 10 of the Objector's Petition, arguing that the paragraph was "shotgunned" and further that the paragraph failed to allege specific facts upon which the allegation was based. The Hearing Officer, for the reasons set forth in her report, denied this motion. The Hearing Officer, again for the reasons set forth in her report, also denied the Candidate's motion for summary judgment/decision as to paragraph 14 relating to the allegation that the Candidate failed to meet the 1-year durational residency requirement for Aldermanic candidates.

11. The Candidate and/or his duly authorized representative was present during the examination of the registration records.

12. The Objector and/or her duly authorized representative were present during the examination of the registration records.

13. By December 20, 2016, the preliminary examination of the registration records was completed but the further examination of signatures by the Electoral Board's handwriting expert had not yet been made. Nevertheless, the Objector advised the Hearing Officer and the Candidate by email on December 20, 2016, that she would pursue the objections in paragraph 14 of the Objector's Petition but that she would stand on the results of the preliminary records examination and present no further evidence regarding the validity of petition signatures. Therefore, it was unnecessary for the handwriting expert to proceed with a review of the Candidate's petition.

14. The Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the

registration records examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

15. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,457.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 763.

D. The remaining number of signatures deemed valid as a result of the records examination total 694.

16. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 4th Ward of the City of Chicago.

17. The Hearing Officer conducted a hearing to allow the Objector an opportunity to present evidence in support of paragraph 14 of the Objector's Petition regarding the alleged failure of the Candidate to meet the 1-year durational residency requirement imposed on candidates for the office of Alderman in the City of Chicago.

18. Section 3.1-10-5 of the Illinois Municipal Code (65 ILCS 5/3.1-10-5) sets forth the following residency qualifications for elective municipal office: (a) "A person is not eligible for an elective municipal office unless that person is a qualified elector of the municipality and has resided in the municipality at least one year next preceding the election" and (b) "A person is

not eligible for the office of alderman of a ward unless that person has resided in the ward at least one year next preceding the election or appointment.”

19. Section 21-14(a) of the Revised Cities and Villages Act (65 ILCS 20/21-14) pertaining to the qualifications of Alderman in the City of Chicago provides that “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.”

20. “What constitutes a residence in the abstract is a question of law, but whether it exists in a particular case is one of fact.” *People ex rel. Madigan v. Baumgartner*, 355 Ill.App.3d 842, 849, 823 N.E.2d 1144 (4th Dist. 2005), quoting *Welsh v Shumway*, 232 Ill. 54, 76 (1907).

21. Here, the Hearing Officer considered the legal arguments of the parties, heard the testimony of the witnesses and considered the evidence offered. “It is the responsibility of the trier of fact to assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence and draw reasonable inferences from the evidence” *People v. McCulloch*, 404 Ill.App.3d 125, 131-132, 936 N.E.2d 743 (2nd Dist. 2010).

22. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer concluded, after having observed and judged credibility of the testimony of the witnesses, considered and weighed the evidence and having heard the arguments of the parties, that the Candidate did meet the 1-year durational residency requirement for the office of Alderman of the 4th Ward of the City of Chicago. The Hearing Officer recommends, therefore, that the Objections to the Candidate’s Nomination Papers be overruled and that the Nomination Papers be declared valid.

23. 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 recommended decision and the Objector did address the Board concerning the legal issues raised by her motion.

24. The Objector contends that certain facts were "uncontested," including that "[O]n May 13, 2016, Candidate changed his voter registration address to 5400 S. Hyde Park Boulevard, Chicago, Illinois, an address in the 5th Ward" and that this "change was completed on May 25, 2016." Rule 20 Motion, at 2. This "fact" is critical to Objector's case because, as Objector's counsel argued at the hearing on December 23, 2016:

"I will candidly tell you that I would not be here today if the candidate had not changed his registration. *** I believe that the sole question of law is irrespective of the subjective intent of the candidate, the act of changing is voter registration, and this is an act which the Neely court called a deliberate assertion of residence. Whether this deliberate assertion of residence broke the duration of residency requirements required by Section 21-14(a) of the Revised Cities and Villages Act of 1941, and of Section 3.1-10-5(c) of the Illinois Useful Code."

12/23/16 Transcript of Proceedings ("Tr."), at 6.

25. The above statement is important for two reasons. *First*, it seems that the Objector's sole argument of residency is based on the May 2016 change of voter registration address to an address in the 5th Ward, notwithstanding all the other evidence presented regarding residency. In other words, but for the May 2016 change of voter registration address, Objector concedes that she would have no other basis upon which to object to the Candidate's durational residency in the 4th Ward. *Second*, the Objector contends –notwithstanding Illinois case law to the contrary – that the intent of the Candidate regarding his residency is irrelevant. Objector's counsel repeated that argument several times in the December 23 hearing, stating, "We don't believe subjective intent is relevant," (Tr. 9), and, "I don't believe questions of intent are relevant." (Tr. 39)

26. With respect to the first argument that the May 2016 change of voter registration address is grounds enough to find that the Candidate “broke the duration of residency requirements,” the Candidate testified under oath that he did not intend to change his voter registration address to the 5th Ward address. (Tr. 33) Rather, the Candidate said he went on the United States Postal Service web site late at night to change his address to get his mail forwarded to the 5th Ward address, but did not intend to change his voter registration address to the 5th Ward. (Id.) He testified that he did not understand that the postal service mail forwarding order was also going to change his voter registration address. (Tr. 35) Rather, when asked whether the voter registration address change to the South Hyde Park address was an inadvertent error or misunderstanding on his part, the Candidate answered “yes.” (Tr. 35). The Candidate testified that later in August 2016 he went on the Chicago Board of Election website and then changed his voter registration address to the South Cottage Grove address in the 4th Ward. (Tr. 37).

27. The Objector offered as evidence copies of two records in the possession of the Chicago Board of Election Commissioners reflecting both the May and August 2016 changes of address. (Objector’s Exhibit No. 1) Objector did not, however, question any Board employee regarding those records and how they may have been created. Nor did Objector elicit any evidence seriously undermining the Candidate’s testimony that he never intended to change his voter registration address to the South Hyde Park address in the 4th Ward.

28. With regard to Objector’s contention that the Candidate’s intent as to his residency is irrelevant, cases that Objector herself cites -- *Maksym v. Board of Election Commissioners of the City of Chicago*, 242 Ill. 2d 303, 950 N.E.2d 1051 (2011), and *People ex rel. Madigan v. Baumgartner*, 355 Ill.App.3d 842, 823 N.E.2d 1144 (4th Dist. 2005) – clearly establish that intent is extremely relevant. Rule 20 Motion, at 2.

29. In *Maksym*, the Supreme Court discussed four “well-settled principles.” First, to establish residency, two elements are required: (1) physical presence, and (2) an *intent* to remain in that place as a permanent home. Second, once residency is established, the test is no longer physical presence but rather abandonment. Indeed, once a person has established residence, he or she can be physically absent from that residence for months or even years without having abandoned it. *Third, both the establishment and the abandonment of a residence is principally a question of intent.* Fourth, 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. 242 Ill.2d at 319. Thus, a voter's temporary absence from an established residence will not cause him to lose that residence for voting purposes if at all times he *intends* to return and never intends to permanently abandon the place as his permanent residence. “Residence is lost upon abandonment; however, ‘an 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 the former residence, will not be an abandonment’.” *Baumgartner*, 355 Ill.App.3d at 847. “[W]here a person leaves his residence and goes to another place, even if it be another [s]tate, with an *intention* to return to his former abode, or with only a conditional *intention* of acquiring a new residence, he does not lose his former residence so long as his *intention* remains conditional.” *Baumgartner*, 355 Ill.App.3d at 847-848. “To change residence, ‘there must be, *both in fact and intention*, an abandonment of the former residence and a new domicile acquired by actual residence, coupled with the *intention* to make it a permanent home’.” *Id.* Implicit in the residency requirement of intention to make a place a person’s permanent home is the ability of that person to choose whether he wishes to exercise the rights afforded to a permanent resident in his new location or if he wishes to continue his residence at the home he has temporarily left.

Baumgartner, 355 Ill.App.3d at 849. “If a person has established a physical presence in two places where he may reside, he may choose which he intends to make his permanent home.”

Baumgartner, 355 Ill.App.3d at 850.

30. Thus, the Electoral Board must reject Objector’s contention that the Candidate’s intent regarding this residency is irrelevant. Evidence presented here indicates that the Candidate intended to make the South Cottage Grove address his permanent residence after leaving the Drexel address and he did not abandon the Cottage Grove address when he and his wife temporarily stayed at the South Hyde Park Boulevard address while the Cottage Grove building was being rehabilitated.

31. Objector next argues that the Hearing Officer ignored the clear language of the *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill.App.3d 694 (1st Dist. 2007), and the *Baumgartner* and *Maksym* cases when she found the Candidate’s testimony to be conclusive, ignoring the Candidate’s acts. As discussed above, the *Baumgartner* and *Maksym* cases clearly establish that the Candidate’s *intent* to establish a residence is an essential element. And while the Candidate’s testimony is not necessarily conclusive, the Hearing Officer found that despite some questions regarding how the May 2016 registration address change actually occurred, such questions must be resolved in favor of the Candidate’s eligibility where the Objector has failed to establish that the Candidate does not meet the durational residency requirement.

32. Regarding *Neely*, and the Hearing Officer’s alleged misinterpretation (according to Objector) of this Electoral Board’s previous holdings in *Riley v. Dukes*, 15-EB-ALD-11 (Chicago Electoral Board, 2015) and *Quadri v. Kuriakose*, 15-EB-ALD-016 (Chicago Electoral Board, 2015), the *Neely* case is distinguishable from this case in several respects.

33. 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. 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.*

34. Here, the Candidate did not vote from the 5th Ward address. Rather, he voted in the March 2016 primary and in the November 2016 general election from 4th Ward addresses.

35. In addition, there is evidence here, which is unrebutted, that the Candidate did not intend to change his voter registration address to the 5th Ward. Rather, it was the Candidate’s testimony that such change resulted from the Candidate’s misunderstanding and inadvertent error when attempting to change his mailing address through the United States Postal Service web site.

36. As for the *Riley* and *Quadri* cases, the Hearing Officer carefully and correctly addressed those cases in her report and recommended decision.

37. Finally, Objector argues that the Hearing Officer’s conclusions will set a dangerous precedent for this Electoral Board and make the act of voter registration meaningless. This Board must address every residence case based upon the facts presented in each case. Voter registration is, and will remain always, meaningful in cases before this Electoral Board. However, this Board must weigh *all* the evidence presented and resolve each case based upon the totality of the circumstances. How other state agencies, like the Illinois Secretary of State, treat

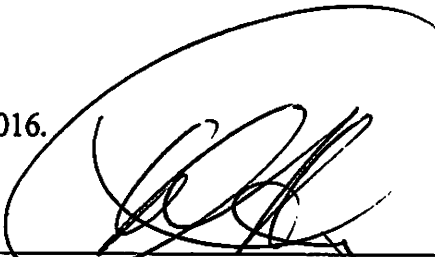
voter registration records has not, in this case at least, been shown to be material as to the Candidate's residence.

38. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report and recommended decision is attached and incorporated herein and is adopted as though fully set forth herein, except that the conclusion's reference to the office of Ward Committeeman for the 4th Ward should refer instead to the office of Alderman for the 4th Ward.

39. For the reasons stated above, the Electoral Board finds that the Nomination Papers of Gregory Seal Livingston are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Mildred Hare to the Nomination Papers of Gregory Seal Livingston, candidate for election to the office of Alderman of the 4th Ward of the City of Chicago, to be elected to fill the vacancy for the remainder of the term (2 years) are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of GREGORY SEAL LIVINGSTON, candidate for election to the office of Alderman of the 4th Ward of the City of Chicago to be elected to fill the vacancy for the remainder of the term (2 years), SHALL be printed on the official ballot for the General Municipal Election to be held on February 28, 2017.

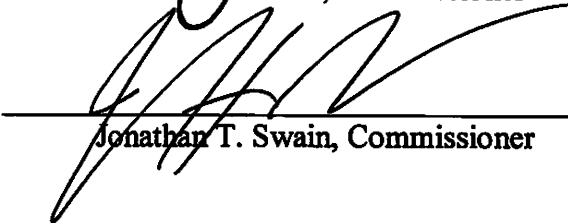
Dated: Chicago, Illinois, on December 29, 2016.



Marisel A. Hernandez, Chairwoman



William J. Kresse, Commissioner



Jonathan T. Swain, 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 FOR THE
HEARING AND PASSING UPON OF OBJECTIONS TO THE
NOMINATING PAPERS OF CANDIDTES FOR THE
FEBRUARY 28, 2017 MUNICIPAL ELECTION FOR ALDERMAN
OF THE 4th WARD IN THE CITY OF CHICAGO**

Mildred Hare)	
)	
Objector)	17-EB-ALD-02
-v-)	
)	
Gregory Seal Livingston)	
)	
Candidate)	

HEARING OFFICER’S REPORT AND RECOMMENDED DECISION

This matter was first heard on December 12, 2016. The Objector appeared through counsel Michael Dorf and the Candidate appeared through counsel Andrew Finko. The parties were given the opportunity to file preliminary motions. The candidate filed candidate’s *Motion to Strike Paragraphs 10, 11, 12 and 13 or in the Alternative for Preliminary Showing as to Paragraphs 10, 11, 12, 13 and Motion for Summary Judgment/Decision as to Paragraph 14*. The Objector filed *Objector’s Response to Candidate’s Motion to Strike Paragraphs 10, 11, 12 and 13 or in the Alternative for Preliminary Showing as to Paragraphs 10, 11, 12, 13 and Motion for Summary Judgment/Decision as to Paragraph 14*. The Candidate filed a *Reply in Support of Candidate’s Motion to Strike Paragraphs 10,11,12 and 13 and Other Relief*. A records examination was ordered and the matter was set for further hearing on December 19, 2016.

**THE CANDIDATE'S MOTION TO STRIKE PARAGRAPHS 10, 11, 12 AND 13 OR IN
THE ALTERNATIVE FOR PRELIMINARY SHOWING AS TO PARAGRAPHS 10, 11,
12, 13 AND MOTION FOR SUMMARY JUDGMENT/DECISION
AS TO PARAGRAPH 14**

***A. Motion To Strike Paragraphs 10, 11, 12 And 13 Or
In The Alternative For Preliminary Showing As To Paragraphs 10, 11, 12, 13***

At the hearing on December 19, 2016, Objector withdrew paragraphs 11, 12 and 13 of the Objector's Petition, leaving at issue paragraphs 10 and 14. Paragraph 10 alleged:

The Nomination Papers contain the names of persons who have signed the nominating papers and have also previously signed the nominating papers of another candidate for the office of Alderman of the 4th Ward of the City of Chicago, as is set forth specifically in the Appendix-Recapitulation attached hereto and incorporated herein, under the heading, Column F, "Signer Signed Another 4th Ward Candidate's Petition Prior to This Signature as Indicated", in violation of the Illinois Election Code. The details of each line marked in Column F are set forth in the Supplemental Appendix-Recapitulation attached hereto and incorporated herein, showing the page and line of the multiple signatures, and copies of the relevant pages from other candidates' petitions.

Candidate moved to strike paragraph 10 on the basis that the paragraph was shotgunned and further that the paragraph failed to allege specific facts upon which the allegation was based. According to the Candidate, it was the Objector's obligation to allege, at a minimum, the date upon which the signings were made and that the date column in the Supplemental Appendix-Recapitulation column is misleading because it sets forth the date of notarization but purports to be the date of signing. As an alternative to striking paragraph 10, Candidate argued that the Objector should be required to make a preliminary showing "*to identify all factual bases supporting the Objector's allegation that a signature upon another petition sheet was actually signed before the signature upon Candidate, Livingston's, petition sheets.*" Candidate further added that "*a preliminary showing is requested for Mildred Hare's good faith basis and her reasonable inquiry into the allegations in Paragraphs 10, 11, 12, and 13.*" (Candidate's Motion

to Strike at page 3).

In response, Objector contended that paragraph 10 of the Objector's Petition meets the pleading requirements of 10 ILCS 5/10-8 and that the Supplemental Appendix-Recapitulation not only contains the name, address, sheet number and line of each signer who signed multiple petitions but it also includes copies of the actual sheets of petitions which provides more specificity than required. Objector further argued that evidence supporting the allegation is a matter of proof to be submitted at the hearing, not a required part of the pleading.

A review of the objection and the information provided in the Supplemental Appendix-Recapitulation established that the Objection contained sufficient information as to the nature of the objection as required by 10 ILCS 5/10-8 and contained such other information as to allow the Candidate to prepare a defense. Accordingly, the motion to strike paragraph 10 of the Objector's Petition or to require a preliminary showing was denied.

B. Motion For Summary Judgment/Decision As To Paragraph 14

Paragraph 14 of the Objector's Petition provided as follows:

14. The Respondent does not meet the qualifications for the office of Alderman of the 4th Ward of the City of Chicago, Illinois, in that the Respondent has not resided in the 4th Ward for at least one year prior to February 28, 2017, the date of the election, as required by the Illinois Revised Cities and Villages Act of 1941, including 65 ILCS 20/21-14(a), and the Illinois Municipal Code, including 65 ILCS 5/3.1-10-5(c). Respondent's statement in his Statement of Candidacy that he is legally qualified to hold such office is therefore false and perjurious, in violation of the Illinois Election Code. A copy of Respondent's certified voter's registration record, indicating that Respondent was registered to vote in the 5th Ward of the City of Chicago within one year of the date of the election, is attached as Exhibit A to this Objector's Petition and incorporated therein.

In his Motion for Summary Judgment/Decision as to Paragraph 14, Candidate provided his own affidavit as well as an affidavit from his wife in which the facts and circumstances surrounding his residences from April 2016 through present are explained. Because there were outstanding questions of fact and in particular, as to how or why a change in registration to the

5th ward address for a short period of time in 2016 occurred, the Motion for Summary Judgment/Decision as to Paragraph 14 was denied. The matter was set for further hearing on December 23, 2016.

On December 20, 2016, after the hearing on the preliminary motion and prior to the final hearing date, counsel for the Objector advised in an email that he would pursue paragraph 14 of the Objector's Petition but as to the other allegations in the Objector's Petition, he would stand on the results of the preliminary records examination and present no further evidence.

THE RECORDS EXAMINATION

The preliminary results of the records examination were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 473.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,457.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 763.
- D. The remaining number of signatures deemed valid as a result of the records examination total 694.

The results of the records examination indicated that the candidate had 221 signatures more than the statutory minimum.

The Hearing on Paragraph 14 of the Objector's Petition

The sole remaining issue after the records examination was whether the Candidate met the residency requirements to run for Alderman of the 4th Ward. The two controlling statutes on the issue are 65 ILCS 20/21-14(a) and 65 ILCS 5/3.1-10-5(c).

Section 21-14(a) of the Revised Cities and Villages Act of 1941, 65 ILCS 20/21-14 which governs election of Chicago Alderman states:

- (a) 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.

Section 3.1-10-5(c) of the Illinois Municipal Code, 65 ILCS 5/3.1-10-5(c) which governs election of aldermen generally states:

- (c) A person is not eligible for the office of alderman of a ward unless that person has resided in the ward that the person seeks to represent, and a person is not eligible for the office of trustee of a district unless that person has resided in the municipality, at least one year next preceding the election or appointment...

In support of her Objection, Objector submitted Objector's Exhibit A, a certified, redacted copy of the voter registration record and change requests for the Candidate. The records supported a finding that the Candidate had been registered to vote at 4317 S. Drexel since August 16, 2016, that from May 25, 2016 to August 16, 2016, the Candidate was registered to vote at 5400 Hyde Park, Chicago and from November 29, 2013 to May 25, 2016, the Candidate was registered to vote from 4143 S. Drexel. Also attached to the record of registration changes were copies of the signed (and redacted) records change forms signed by the Candidate. The Objector then rested her case and the Candidate objected to the use of Objector's Exhibit 1 as it had not been authenticated or explained by a representative from the Board. Candidate also moved for a directed finding. The records, insofar as they established registration and transfer dates, were clear. Whether the records required further explanation at a later point in the hearing or in rebuttal was left up to the discretion of the parties. The motion for directed finding was

denied as the evidence submitted was sufficient to shift the burden to the Candidate to establish the intent and the significance of the change of registration to the address in the 5th Ward.

The Candidate was called to testify and provided the following testimony. On November 29, 2013, the Candidate was registered to vote at a property he owned at 4143 S. Drexel Boulevard, Chicago, Illinois in the 4th Ward. On or around May 25, 2016, the Drexel property was sold and it was the candidate's intention to move to 4317 S. Cottage Grove, Chicago, Illinois in the 4th Ward. The Cottage Grove property was owned by his wife since 2005 and her ownership preceded their marriage in 2013. Sometime prior to the sale of 4143 S. Drexel, the Candidate and his wife learned that the Cottage Grove property was in disrepair and could not be occupied before repair work was completed. A contractor was hired in April or May of 2016 to perform the repair work. The Candidate and his wife moved some of their belongings into the basement of 4317 S. Cottage Grove, including furniture, books, personal items and some clothing. However, until the repair work was completed, the building could not be occupied and the Candidate and his wife secured temporary housing at 5400 S. Hyde Park, Chicago, IL., said address being in the 5th Ward. On or around May 25, 2016, the Candidate changed his voter registration from 4143 S. Drexel (in the 4th Ward) to 5400 S. Hyde Park, Chicago, IL (in the 5th Ward). Thereafter, the Candidate changed his registration to 4317 S. Cottage Grove, Chicago, IL (in the 4th Ward) where the Candidate presently resides. For the 2016 primary, the Candidate voted from the Drexel property and for the 2016 general election voted from the Cottage Grove address, both addresses being in the 4th Ward. At no time did the Candidate vote from the Hyde Park address in the 5th Ward.

According to the Candidate, his change of registration to the 5th Ward Hyde Park address was inadvertent and the result of a mistake. He had gone on the United States Postal Service

(USPS) website late at night in order to have his mail forwarded and checked a number of boxes but did not really pay attention to what boxes he was checking and did not realize that he had effectuated a change in his registration. Once he moved to the Cottage Grove property in August of 2016, he went on the Board of Election Commissioners website and changed his registration to the Cottage Grove address.

It is unclear why, if the Candidate changed his registration by using both the USPS website and the Chicago Board's website, that the two registration forms signed by the Candidate which were appended to Objector's Exhibit 1 are identical forms. Neither the Candidate nor the Objector offered sufficient evidence to address the inconsistency between the Candidate's testimony and the forms themselves. Nonetheless, the totality of the evidence clearly established that the 5th Ward address was intended as temporary housing and was never intended to be a permanent residence.

Objector argues that the sole focus of the residency issue should be the Candidate's registration change to the 5th Ward address. Indeed, the Objector candidly admitted that if the change in registration had not occurred, there would probably be no basis for the Objector's allegation. According to Objector, the act of registering in the 5th Ward evidences the abandonment of the Candidate's prior residence in the 4th Ward and establishment of his residence in the 5th Ward. In support of his argument, Objector relies, in part on, *Maksym v Board of Election Commissioners of the City of Chicago*, 242 Ill. 2d 303, 950 N.E.2d 1051 (2011). In recognizing the long established two part test for determining residency, (1) physical presence and (2) an intent to remain that place as a permanent home, the Illinois Supreme Court in *Maksym* emphasized that intent is shown primarily from a candidate's acts. According to the Objector, the holding in *Maksym* compels a finding in Objector's favor because unlike Mayor

Emanuel, (the candidate in *Maksym*), who never changed his voter registration during his hiatus in Washington D.C., the Candidate here affirmatively transferred his registration thus establishing that the Candidate intended the 5th Ward to be his permanent abode. The Objector further relies on *Sheppard v Neely*, 07-EB-ALD124 (*Chicago Electoral Board 2007*, affirmed *Neely v Chicago Board of Election Commissioners*, 07 COEL 00011, Cir. Ct. Cook Co., affirmed *Neely v Board of Election Com'rs for City of Chicago*, 371 Ill. App. 3d 694, 863 N.E.2d 795 (2007), appeal denied 224 Ill. 2d 577, 871 N.E. 2d 56 (2007)). In *Neely*, the candidate sought to run in the 20th Ward notwithstanding the fact that he was registered to vote from the 8th Ward and had voted from that address. In testifying as to the reason he was registered in and voted from the 8th Ward, Candidate Neely testified that he was trying to keep his 20th Ward address secret because of privacy concerns surrounding his occupation and that he intentionally misrepresented his residence address. In *Neely*, this Board looked to the public record of the Candidate's registration and particularly to the exercise of the power to vote in the 8th Ward as a deliberate assertion of residence in the 8th Ward. 863 N.E.2d at 799, 371 Ill. App. 3d at 700.

Candidate argues that the Candidate's change of registration to the 5th Ward address was simply one act and not dispositive of the issue of the Candidate's intent regarding his residency. According to the Candidate, it is the totality of the circumstances that is controlling as to the issue of intent. Candidate further argues that the facts here are distinguishable from *Neely* not only because the Candidate never voted from the 5th Ward address but because the registration change occurred because of a misunderstanding of what was being changed on the USPS website. Candidate points out and the testimony so supports a finding that there was no intent on the part of the Candidate to misrepresent his true residence like the Candidate in *Neely*.

Both parties rely on the case of *People ex rel. Madigan v Baumgartner*, 355 Ill. App. 3d 842, 823 N.E.2d 1144 (Fourth Dist. 2005) for its discussion of the concept that in order to change a residence, there must be “both in fact and intention, an abandonment of the former residence and new domicile acquired by actual residence coupled with the intention to make it a permanent home” *Baumgartner*, 355 Ill. App. 3d at 848, quoting *Welsh v Shumway*, 232 Ill. 54, 77, 83 N.E. 549, 559 (1907). According to the Objector, the change in registration was sufficient to establish abandonment of the former residence in the 4th Ward and permanent residence at the 5th Ward address. According to the Candidate, the candidate never intended to abandon residence in the 4th Ward as evidenced, in part, by the fact that items of personal property were moved from the Drexel address in the 4th Ward to the Cottage Grove address in the 4th Ward and as further evidenced by the Candidate’s testimony and affidavit that the 5th Ward address was intended to be only for temporary housing purposes.

Finally, Candidate relies on two electoral board cases in support of the conclusion that the mere act of registering in the 5th Ward does not support a finding that the candidate was a resident of the 5th Ward. The first case is *Riley v Duke*, 15-EB-ALD-011, January 13, 2015. In *Riley*, the Candidate who was seeking office as Alderman in the 17th Ward, was registered to vote at an address not located in the 17th Ward. Prior to the March 2014 Primary Election, the Candidate took all steps necessary to register to vote in the 17th Ward from the address at which the Candidate resided. However, on election day, the Candidate was informed that his registration had not been changed to the new address and was told to vote from his old address. In determining that the Act of voting was not conclusive as to the issue of residency, this Electoral Board noted that unlike *Neely*, the Candidate in *Riley* presented credible evidence that his vote in his old polling place was in fact the result of inadvertent error in the handling of his

voter registration or the result of a misunderstanding and not a deliberate attempt to intentionally mispresent his residence or keep his true residence a secret.

Candidate also relies on the case of *Qaudri v Kuriakose 15-EB-ALD-016, January 19, 2015 affirmed in 2015 COEL 17 (February 9, 2015)*. In *Qaudri*, the Candidate was seeking to run for the office of Alderman in the 50th Ward and evidence established that although the Candidate resided in the 50th Ward as least one year prior to the Municipal election, the Candidate voted within the year in the polling place assigned to his former address which was not in the 50th Ward. The testimony of the Candidate established that the Candidate attempted to change his voter registration but was informed by a Secretary of State employee that the change could not be effectuated because of the close proximity to the March Primary. He was advised to vote at his former polling place and he did so without objection from any of the election officials. This electoral board found that despite his act of voting from a location in his former ward, the Candidate in *Qaudri* timely established a residence within the 50th Ward at least one year prior to the applicable Election.

Candidate's change in registration here, whether occurring out of inadvertence or mistake, was clearly not done with the intent to mispresent or mislead and is therefore distinguishable from *Neely*. Moreover, the affidavits of the Candidate and his wife as well as the testimony of the Candidate clearly and unequivocally establish that the Candidate never intended 5400 Hyde Park in the 5th Ward to be a permanent residence. Rather, there is no question that the Hyde Park location was intended to be used for temporary housing only and it was never the intention of the Candidate to remain there. As counsel for the Candidate pointed out throughout the hearing, it is well established that statutes imposing disqualifications should be construed liberally and every doubt must be resolved in favor of eligibility. Here, despite questions

remaining as to how the 5th Ward registration actually occurred, any such question must be resolved in favor of Candidate's eligibility. Accordingly, I conclude that the Objector has failed to establish that the Candidate does not meet the residency requirements to run as Alderman of the 4th Ward of the City of Chicago.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Mildred Hare to the nominating papers of Gregory Seal Livingston be **overruled** and that the nominating papers of Gregory Seal Livingston for the office of Ward Committeeman for the 4th Ward of the City of Chicago be deemed **valid** and that the name of Gregory Seal Livingston for said office be printed on the ballot at the February 28, 2017 Municipal Election.

Respectfully submitted,



Barbara Goodman, Hearing Officer
12/25/16