

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

Objections of: RANDY HIPMAN)
)
)
To the Nomination) No.: 19-EB-ALD-013
Papers of: RALPH PAWLIKOWSKI)
)
)
Candidate for the office of Alderman 38th)
Ward of the City of Chicago)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of the Board of Election Commissioners for 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 RANDY HIPMAN (“Objector”) to the nomination papers (“Nomination Papers”) of RALPH PAWLIKOWSKI, candidate for the office of Alderman for the 38th Ward of the City of Chicago (“Candidate”) at the General Municipal Election to be held on Tuesday, February 26, 2019, having convened on Monday, December 10, 2018, at 8:30 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 were duly and timely filed.
2. The Electoral Board was legally constituted under the laws of the State of Illinois.

3. A Call to the hearing on said Objections was duly issued by the Chair 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 Monday, December 10, 2018 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, RANDY HIPMAN, and/or his Attorney, ROSS D. SECLER; and the Candidate, RALPH PAWLIKOWSKI, *pro se*.

7. The Hearing Officer has tendered to the Electoral Board a revised report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate failed to appear at duly noticed hearings on December 17 and 20, 2018. The Candidate was present for, and filed a *pro se* Appearance during, the initial hearing on December 10, during which the Candidate requested leave to file a motion to dismiss, the Hearing Officer set a briefing schedule and informed the Candidate and the Objector's attorney that the matter would be continued for a hearing on the Candidate's motion on December 17 at 9:00 a.m. The Candidate never filed any motion and when he failed to appear at the December 17 hearing, the Hearing Officer called the telephone number on the Candidate's Appearance form and left a voicemail message. The Candidate had not returned the Hearing Officer's call or made any other contact with the Electoral Board as of the deadline for filing a Rule 20 motion after the Hearing

Officer's final report and recommended decision was served on the parties. The Hearing Officer found, therefore, that the Candidate's was in default.

8. The Hearing Officer then found that the Objector's Petition stated sufficient grounds on its face, if accepted as true, to invalidate the Candidate's nomination papers, and that under the Electoral Board's past precedent, the Objector was therefore entitled to a default judgment against the Candidate. *Williams, et al., v. Smith*, 08-EB-RGA-15 (CBEC 2007) and *Austin, et al., v. Tatum*, 08-EB-RGA-13 (CBEC 2007). The Hearing Officer found that the Objector lodged a sufficient number of line-by-line objections that, if accepted as true, would reduce the Candidate's number of valid petition signatures below the required minimum of 473, and that additional objections alleging that some circulators failed to appear before a notary would, if proven, reduce the Candidate's valid signature count even further.

9. The Hearing Officer found that paragraphs 5 and 6 of the Objector's Petition failed to state a claim that would invalidate the Nomination Papers based on the Candidate's statement of candidacy form containing a Democratic Party designation. See, for example, *Dix v. Terry*, 03-EB-ALD-071 (CBEC 2003); accord, *Moses v. Austin*, 07-EB-ALD-004 (CBEC 2007); *Anderson v. Ward*, 07-EB-ALD-034, (CBEC 2007); *Brown v. Washington*, 11-EB-ALD-009 (CBEC 2011); *Wright v Davis*, 11-EB-ALD-100 (CBEC 2011); *Walker v. Earls*, 11-EB-ALD-188 (CBEC 2011); *Bocanegra v. Rodriguez*, 11-EB-ALD-197 (CBEC 2011), candidate defaulted, *Rodriguez v. Bocanegra*, 11 COEL 00031 (Cir. Ct. Cook Co., 2011); and *Stamps v. Lomax*, 15-EB-ALD-140 (CBEC 2015).

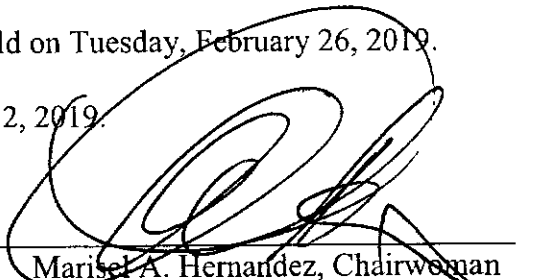
10. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's revised report of recommended findings and conclusions of

law, hereby adopts the Hearing Officer's recommended findings and conclusions of law incorporates them herein.

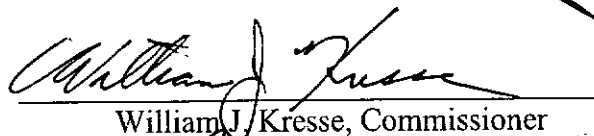
11. For these reasons, the Electoral Board finds that the Objections filed in this matter should be sustained as a default judgment and that the Candidate's Nomination Papers are thereby invalid.

IT IS THEREFORE ORDERED that the Objections of RANDY HIPMAN to the Nomination Papers of RALPH PAWLIKOWSKI, candidate for the office of Alderman for the 38th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of RALPH PAWLIKOWSKI, candidate for the office of Alderman for the 38th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

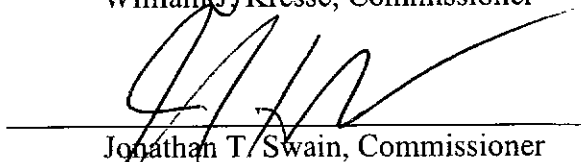
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



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.

Objections of:)	
RANDY HIPMAN)	
)	
To the Nomination)	
Papers of:)	No. 19-EB-ALD-013
RALPH PAWLIKOWSKI)	
)	Lynne R. Ostfeld,
Candidate for the Office of)	Hearing Officer
Alderman of the 38th Ward)	
in the City of Chicago)	

RECOMMENDED DECISION as Revised¹

This matter having come before the Chicago Board of Election Commissioners (“CBOE”) on objections of RANDY HIPMAN (“objector”) to the nomination papers of RALPH PAWLIKOWSKI (“candidate”), Lynne R. Ostfeld, Esq., Hearing Officer, finds and recommends as follows:

1. Pursuant to Call, the hearing was begun on December 10, 2018. In attendance at the hearing were the objector, Randy Hipman through his attorney, Ross Secler, and the candidate, Ralph Pawlikowski, *pro se*.

2. The objector requested that Ralph Pawlikowski's name not be printed on the ballot for election to the office of Alderman of the 38th Ward, City of Chicago, based on the following objections:

- A. Objections to the Nomination Papers and Candidacy:
 - 1. candidates must run as non-partisan, and without a political party affiliation or label;
 - 2. Mr. Pawlikowski stated in his Statement of Candidacy that he was a member of the Democrat Party and was duly nominated at a party caucus.
- B. Objections to the Petition Signatures:
 - 1. the nomination papers contained the names of persons who were not registered voters at the addresses shown;
 - 2. the nomination papers contained the names of people who did not sign the papers in their own proper persons, whose signatures were not genuine;
 - 3. the nomination papers contained sheets with the names of people whose addresses were not in the 38th ward;
 - 4. the nomination papers contained petition sheets with addresses either missing or incomplete;

¹ Paragraphs numbered 17 and 18 have been revised due to further review of the decision; the other paragraphs remain the same.

5. the nomination papers contained petition sheets where signers signed more than one time;

6. the nomination papers contained petition sheets where signers signed nominating petitions of other candidates.

C. Objections to the Notary and Circulator signatures and document execution

1. there are petition sheets where the circulator did not personally appear before the Notary Public;

2. there are petition sheets where the circulator's affidavit had not been properly sworn to before a Notary Public.

3. The Candidate stated that he wished to file a Motion to Strike the Objections. The Hearing Officer set a schedule and, further, advised the Candidate that he might wish to obtain the assistance of an attorney.

4. The Candidate was to file his Motion to Strike and Dismiss by 5:00 p.m. on December 11, 2018; the Objector was to file his Response by 5:00 p.m. on December 12, 2018; the Candidate was to file his Reply, if any, by 5:00 p.m. on December 13, 2018. Hearing was continued to December 17, 2018 at 9:00 a.m. to rule on Candidate's Motion to Strike and Dismiss the Objector's Objections.

5. No Motion to Strike and Dismiss was filed.

6. On December 17, 2018, the Hearing Officer called the case at 9:10 a.m. and only the Objector, through his attorney, was present. The Hearing Officer called the Candidate at the telephone number listed on his Appearance form and left a message asking if he would be attending the hearing or if he was delayed. She called the case again at approximately 9:30 a.m., and the Candidate had still not appeared.

7. The Hearing Officer began the hearing by labeling the documents required and submitted in this case:

1. Exhibit A, which were the Candidate's Nomination Papers;

2. Exhibit B, which were the Objector's Petition;

3. Exhibit C, which were the proof of service of the call and objections;

4. Exhibit D, which were the signed Appearance and Non-Disclosure forms.

8. The Objector's attorney made an oral argument as to why the defects on the face of the Nomination Papers supported the Candidate not being put on the ballot.

9. The Hearing Officer requested that he submit his written memo in support of his Objections by 5:00 p.m. on December 19, 2018. She set continued hearing for December 20, 2018 at 11:30 a.m.

10. The Objector timely submitted his Memorandum in Support of Paragraphs 5 & 6 of Objector's Petition. Citing 65 ILCS 20/21-32 and 10 ILCS 5/10-3 as well as *Toney v. Maxwell*, 91 EB ALD 122 (CBEC, 1991), he stated that candidates for an aldermanic election in the City of Chicago must run as non-partisans. He stated that the candidate in the instant case had violated this requirement by stating that he was a "qualified Primary voter of the Democratic Party" and that he was duly nominated at "said party's caucus".

11. The hearing was reconvened. The Objector was present through his attorney but the Candidate was not present.

12. Not having received any contact from the Candidate as to his absence and failure to file a Motion to Strike per his request at the initial hearing, the Hearing Officer waited 15 minutes and then began the hearing.

13. The Objector repeated his oral arguments from December 17, 2018 and his written arguments submitted previously.

Findings of Fact and Conclusions of Law

14. The Candidate is required to have 473 valid signatures on his nominating papers. 65 ILCS 20/21-28.

15. The Objector stated to have made sufficient objections to disqualify enough signatures on the Candidate's nominating petitions to put him under the requisite number of 473.

16. The number of valid signatures would be further reduced if nominating petitions are stricken due to the allegation that certain circulators did not appear before the Notary Public who subscribed the signature, or that a circulator's affidavit was not properly sworn to before a Notary Public.

17. A candidate for election to the nonpartisan position of alderman in the City of Chicago must not be nominated by a political party. 10 ILCS 5/10-3.1; *Toney v. Maxwell*, 91-EB-ALD-122, CBEC, January 25, 1991.

18. On the face of his Statement of Candidacy (Nomination by Caucus), the Candidate stated to have been nominated at the Democratic Party's caucus. However, his form nominating Petition For Election does not make any reference to a political party. The preamble states that the voters signing the petition do so for a candidate (i.e., Ralph Pawlikowski) who "shall be a **Nonpartisan** Candidate for election". (*emphasis added*). The nominating petitions conform to the requirements of ILCS 5/10-3.1 which addresses nominating petitions and not the statement of candidacy.

The *Toney* case found the nomination petitions to be invalid because they referenced a candidate running as a Democrat. This decision is irrelevant to the instant case inasmuch as the petitions in the instant case did not reference the Democrat Party; that mention was only in the body of the statement of candidacy. When the nominating petitions do not reference a political party, and only the statement of candidacy does so, the nominating petitions in their entirety will not be invalidated. (*Dix v Terry*, COEB 03 EB ALD 071):

"This case is distinguishable from the facts in *Maxwell*. Here, whatever references there are to the Democratic Party are contained in the Statement of Candidacy that was filed with the Chicago Board of Election Commissioners, not in the petition sheets that were presented to the voters of the ward for signature by them. Thus, there was no misleading or incorrect information concerning party affiliation presented to the voters when signing the Candidate's petition sheets. There is no evidence here that the voters were confused about the Candidate's stated or unstated political affiliations. Under these facts, there is not enough to invalidate the Candidate's Statement of Candidacy simply because it contained extraneous information concerning the Candidate's political party affiliation where none was required."

(*Dix*, paragraph 19).

19. Rule 12 allows a candidate to be defaulted for failure to appear. Chicago Board of Election Commissioners Rules of Procedure, adopted 12/10/2018. In the instant case, Ralph Pawlikowski, the Candidate, appeared only for the initial hearing and did not appear physically, through an attorney, or via submitted written pleadings, subsequent to the hearing on December 10, 2018.

20. Further, taking all of the objections submitted as true, Mr. Pawlikowski does not have 473 valid signatures to be placed on the ballot and has violated the law that he not be nominated by a political party.

21. The Hearing Officer recommends that this Board find that the Nomination Papers of RALPH PAWLIKOWSKI be declared to be INVALID for the reasons stated above.

22. The Hearing Officer recommends that this Board order that the name of RALPH PAWLIKOWSKI NOT be printed on the ballot for the Aldermanic Election, 38th Ward, City of Chicago, to be held on February 26, 2019, for the reasons stated above.

Dated: Chicago, Illinois, this 31st day of December, 2018.

Lynne R. Ostfeld, Hearing Officer