

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

Objections of: JORGE C MORALES and)
ALEJANDRA HERMOSILLO)
))
To the Nomination) No.: 19-EB-ALD-027
Papers of: YESSSENIA CARREÓN)
))
Candidate for the office of)
Alderman of the 10th 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, Chair of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of JORGE C MORALES and ALEJANDRA HERMOSILLO (“Objectors”) to the nomination papers (“Nomination Papers”) of YESSSENIA CARREÓN, for the office of Alderman of the 10th 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 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 Chair of the Electoral Board and served upon the members of the Electoral Board, the Objectors 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 Christopher Cohen for further hearings and proceedings.

6. The Objectors 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 Hearing Schedule. The following persons, among others, were present at such hearing: the Objectors, JORGE C MORALES and ALEJANDRA HERMOSILLO, and/or their Attorney, ED MULLEN; and the Candidate, YESSENIA CARREÓN, and or her Attorney, ROSS D SECLER.

7. 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.

8. The Hearing Officer directed all parties to appear and be present, either personally and/or by their authorized representatives, during this records examination.

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

10. The Objectors and/or their duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and 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 Electoral Board's file in this case and a copy has been provided or made available to the parties.

12. 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 remaining number of signatures deemed valid as a result of the records examination and Rule 8 hearing total 406.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination was less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderman of the 10th Ward of the City of Chicago.

14. The Hearing Officer conducted a hearing to allow the Candidate an opportunity to present evidence in support of her Rule 8 motion objecting to the Board's clerk's findings during the records examination.

15. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained only 406 valid signatures (with 30 additional Rule 8 appeals not yet ruled upon), which is 67 less than the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for the office of Alderman for the 10th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found invalid.

16. 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.


17. For the reasons stated above, the Electoral Board finds that the Candidate has an insufficient number of valid signatures on her nominating petitions and that the Nomination Papers of YESSSENIA CARREÓN are, therefore, invalid.

IT IS THEREFORE ORDERED that the Objections of JORGE C MORALES and ALEJANDRA HERMOSILLO to the Nomination Papers of YESSSENIA CARREÓN, candidate for election to the office of Alderman of the 10th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of YESSSENIA CARREÓN, candidate for the office of Alderman for the 10th 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.

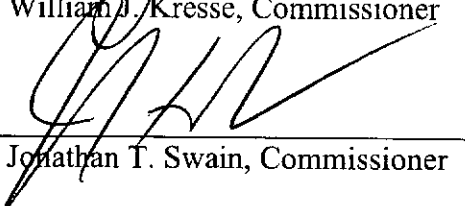
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



Marisel A. Hernandez, Chair



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**

Objections of)	
JORGE MORALES and)	
ALEJANDRA HERMOSILLIO)	
Petitioners and Objectors)	
)	
)	No. 19-EB-ALD-027
)	
To the Nomination Papers of:)	
YESSENIA CARREON)	
Respondent and Candidate for election to the)	
Office of 10 TH Ward Alderman of the City of Chicago to be)	
voted on at the February 26, 2018 Municipal General)	
Election)	

HEARING OFFICER'S RECOMMENDED DECISION

This matter came before the Chicago Board of Election Commissioners sitting as the Duly Constituted Electoral Board for the Hearing and Passing upon Objections to Nomination Papers of Candidates for the February 26, 2019 Municipal General Election in the City of Chicago ("Board") on the Verified Objectors' Petition ("Objections") of JORGE MORALES and ALEJANDRA HERMOSILLIO ("Objectors") to the Nomination Papers of YESSENIA CARREON, Candidate for election to the office of 10th Ward Alderman of the City of Chicago at the February 26, 2019 Municipal General Election ("Candidate"). The Board appointed attorney Christopher B. Cohen as Hearing Officer for this matter and these proceedings. The Hearing Officer finds and recommends as follows:

1. On November 26, 2018, the Candidate filed with the Board Nomination Papers for the office of 10th Ward Alderman of the City of Chicago. The Board issued the Candidate a Receipt indicating that when filed these Nomination Papers included a Statement of Candidacy, a Loyalty Oath and Petitions. The Receipt also indicated that the Board photographed the Nomination Papers and that they were bound when filed.
2. On December 3, 2018, Objectors filed with the Board Objections to the Candidate's Nomination Papers.
3. This Board is the Duly Constituted Electoral Board for hearing and passing on objections to Nomination Papers for the office which is the subject of these proceedings.
4. The Board's official file contained the original Nomination Papers of the Candidate and the original Objections of the Objectors. The file also contained a Petition Summary Report prepared by the Board and dated December 9, 2018. It indicated that the Candidate presented the Board with 95 pages of petitions containing 889 signatures, that 973 Objections had been filed to those signatures, that the number of unchallenged signatures totaled 235 and that the minimum number of valid signatures required for the office of Alderman was 473.

5. The Objections alleged that the Petition Sheets and the Candidate's Nomination Papers of which those Petition Sheets were a part were insufficient in fact and law for the following reasons: (Paragraph 7) they contained petition sheets with names of person who were not registered voters or who were not registered at the addresses shown opposite their respective names; (Paragraph 8) they contained names of persons who did not sign in their own proper person and the signatures were not genuine (Paragraph 9) they contained names of persons who resided outside the 10th Ward; (Paragraph 10) they contained names of persons whose addresses were missing, incomplete or illegible; (Paragraph 11) they contained names of persons who signed more than one time or who previously signed petitions for another candidate for the same office; (Paragraph 12) they contained signatures of persons who were not qualified electors of the 10th Ward; (Paragraph 13) they contained petition sheets which did not comply with circulator's affidavit and notarization requirements of the Illinois Election Code; (Paragraph 14) they contained evidence of a pattern of fraud and false swearing; and (Paragraph 15) the petitions contained fewer than the required minimum of 473 valid signatures.
6. On December 10, 2018, this Board's Hearing Officer began a public hearing in the nature of a case management conference regarding the Objections at 69 W. Washington, Lower Level Pedway, Chicago, Illinois. This hearing was recorded for transcription by a court stenographer.
7. Objectors, JORGE MORALES and ALEJANDRA HERMOSILLIO, appeared not in person but by their attorney, Ed Mullen. The Candidate, YESSERIA CARREON, appeared not in person but by attorney, Ross Secler. The Board's Clerk was Monica Garcia.
8. During the hearing, the Candidate's attorney and the Objectors' attorney each filed a written appearance. Each filed a Non-Disclosure and Confidentiality Agreement. Each indicated on the record that service of the Board's Call had been received and, in any event, each waived service.
9. The Hearing Officer confirmed that a copy of the Board's Rules adopted earlier in the day at its December 10, 2018 meeting as well as the Index of Electoral Board Decisions were each available on the Board's website – www.chicagoelections.com.
10. During the December 10, 2018 hearing, the Candidate timely filed an oral Motion to Strike and Dismiss the Objections pursuant to Board Rule 5(b). That Rule authorizes a Candidate to file Preliminary motions to challenge the legal sufficiency of Objections in the nature of a motion to strike or dismiss the Objectors' petition in whole or in part. Rule 5(b) states in part:

Preliminary motions to challenge the legal sufficiency of the objector's petition in the nature of a motion to strike or dismiss the objector's petition in whole or in part may be filed and may be heard first.
11. The Candidate's Motion claimed that the allegations in Paragraph 6 and Paragraph 7 of the Objections were insufficient and should be stricken.
12. At the December 10, 2018 hearing, the Hearing Officer set a briefing schedule with these deadlines – December 11, 2018 at 5 pm for the Candidate's written Motion to Strike or Dismiss and December 12, 2018 at 5 pm for the Objectors' Response to the Candidate's Motion to Strike or Dismiss. Each party requested service by email.

13. The Hearing Officer scheduled the hearing and oral argument on the Candidate's Motion and responsive pleadings for December 13, 2018 at 2 pm. Each of the two parties in attendance at the December 10, 2018 hearing received oral notice on the record of the date and time of the upcoming hearing.
14. The Objector then requested a Records Examination. After conferring on the record with Charles Holiday, the Board's Records Examination Assignment Officer, the Hearing Officer signed an order directing that a Records Examination be conducted by Board staff. Mr. Holiday indicated that it would begin at 10 am, December 21, 2018 with three teams.
15. At the reconvened December 13, 2018 hearing, the Candidate appeared by attorney Ross Secler and Objectors appeared by attorney Ed Mullen. The Board's Clerk was Monica Garcia. This proceedings were recorded for transcription by a court stenographer.
16. The Board's official file contained the Candidate's Motion to Strike and Dismiss the Objectors' Verified Petition as well as the Objector's Opposition to Motion to Strike. Each was timely filed.
17. The Candidate argued that the Objections 1) did not strictly comply with the requirement in 10 ILCS 5/10-8 to fully state the nature of the objections; 2) constituted shotgun Objections that were filed without reasonable inquiry or investigation; 3) were brought in bad faith; 4) were filed for purposes of harassment; 4) do not comply with the notice requirements of 10 ILCS 5/10-8; 5) objected to almost every signature line; 6) were filed without the Objectors having conducted any review of the Board's official records; 7) fail to state proper grounds or a reasonable basis for a pattern of fraud; 8) are nothing more than a fishing expedition and a witch hunt; 9) contain allegations that are false; 10) objected to signatures of the Candidate and the Candidate's family; and 11) did not take into account that most of the petitions were circulated by the Candidate and another circulator.
18. As Exhibit A, the Candidate attached to her Motion to Strike two items – 1) her December 6, 2018 email to the Board's attorney, Joan T. Agnew requesting, pursuant to the Illinois Freedom of Information Act, sign-in sheets indicating individuals who sought to view voter registration records and/or nominating petitions for the period November 19, 2018 through December 3, 2018 and 2) a list from the Board of named individuals who had requested to examine voter registration and petition records from November 13, 2018 through November 21, 2018. The Candidate's Motion to Strike was marked as Board Exhibit F.
19. The Candidate argued that some of the information requested from the Board was not available via her Freedom of Information Act request.
20. The Candidate's Motion to Strike also requested that, pursuant to Supreme Court Rule 137, the Board award attorney fees for costs associated with her having to defend against the Objections.
21. The Objectors argued that the Objections 1) were based on a careful review of signatures on petitions with signatures in the Board's voter registration records; 2) were not shotgun objections; 3) were not filed in bad faith; 3) did not object to 235 of the 889 signatures filed by the Candidate; and 4) contain evidence of a pattern of fraud by the Candidate.

22. As Exhibit 1, Objectors attached to their pleadings the notarized Affidavit of Erik Martinez. In it, Mr. Martinez stated that 1) he was an experienced collector and reviewer of petitions and objections; 2) with others, he signed in at the Board and reviewed this Candidate's petition sheets; 3) he checked petition signers names against Board records; 4) he marked Appendix-Recapitulation sheets objecting to signatures when appropriate; and 5) he had a good faith basis to object to each of the signatures where he marked the Appendix-Recapitulation sheets.
23. After both sides had the opportunity to state their arguments and analyze cases they cited, the Hearing Officer denied the Candidate's Motion to Strike and left the Objections as originally filed. The Hearing Officer did not take up or rule on the Candidate's request in her Motion to Strike that the Board award attorney fees pursuant to Supreme Court Rule 137 for costs associated with her having to defend against the Objections.
24. During the December 13, 2018 hearing, in response to the Hearing Officer's inquiry, each attorney acknowledged being aware of the Board's Rules regarding subpoenas and the deadline for requesting them.
25. Each party indicated further that the Records Examination had begun December 13, 2018 at 10:15 am and was not yet completed. As a consequence, the Hearing Officer continued these proceedings to 5:15 pm, December 17, 2018 to receive results from the Records Examination. Each of the parties in attendance at the December 13, 2018 hearing received oral notice on the record of the date and time of the upcoming hearing.
26. During the reconvened hearing December 17, 2018, the Candidate appeared by attorney Ross Secler. Objectors appeared by attorney Ed Mullen. The Board's Clerk was Monica Garcia. This hearing was recorded for transcription by a court stenographer. Because the Records Examination had not yet been completed, the Hearing Officer continued these proceedings to 2 pm, December 20, 2018 for a Records Examination Report. Each of the litigants at the December 17, 2018 hearing received oral notice on the record of the date and time of the upcoming hearing.
27. The Objectors filed a timely Subpoena Request a Subpoena Request as well as a draft of the Subpoena/Subpoena Duces Tecum requested and a Notice of Filing and Proof of Service as required by Board Rule 19(c). No materials were sought in the subpoena – only the personal appearance of Erik M. Gonzalez to testify. The Candidate did not file pleadings in opposition to issuance of the subpoena.
28. On December 19, 2018, the Hearing Officer filed a written recommendation in favor of the Board's issuing the subpoena. In this recommendation, the Hearing Officer indicated that, as required by Board Rule 19 (c), the Subpoena Request identified the person or entity being subpoenaed as well as the purpose of the subpoena and why Objectors believed it was relevant to issues presented by their Objection Petition. The Hearing Officer noted that although no documents were requested, the draft subpoena included language regarding redaction of personal identity information as required by Board Rules 19(a) and 16(d). The latter section reads in part:

Subpoenas shall request that the person or entity subpoenaed redact personal identity information before providing any document in response to the subpoena.

29. In his recommendation, the Hearing Officer indicated that based on the reasoning stated in Objectors' Request, it was fair, reasonable and relevant for the Objectors to want to examine the individual listed in the subpoena – Mr. Gonzalez. The Hearing Officer further recommended that the Board make the subpoena's issuance subject to subsequent approval or limitation by the Hearing Officer if the results of the Record Examination or other events were to cause a subpoena to be unnecessary or of limited value.
30. At the reconvened December 20, 2018 hearing, the Candidate appeared by attorney Ross Secler. Objectors appeared by attorney Ed Mullen. The Board's Clerk was Monica Garcia. This hearing was recorded for transcription by a court stenographer.
31. On December 20, 2018, the Hearing Officer and the parties confirmed receipt of a Final Petition Summary Report indicating that after the Rule 6 Records Examination, 261 Objections had been overruled and 645 were sustained. According to the Report, this left the Candidate with 350 Valid signatures which was 123 fewer than the required minimum of 473.
32. The Hearing Officer took judicial notice of the following portions of Rule 8:
- Rule 8 Evidentiary hearings
- (a) Written motion. On the written motion of any party, the Electoral Board or the hearing officer, as the case may be, may conduct hearings for the purpose of receiving evidence and argument relevant to the issues presented by the objections raised in the Objector's petition, including evidence and argument relating to the findings made during a records examination conducted under Rule 6 which the moving party tested only appeal during the records examination.
- ...
- (d). Contents. A motion requesting an evidentiary hearing shall contain a written statement or outline sufficient to advise the other parties of the factual and/or legal issues to be addressed by moving party at such hearing.
- (i) a motion requesting an evidentiary hearing asserting the results is records examination must identify the petition sheet and line number for any signature that was examined and objected to during the Rule 6 records examination and concerning which the moving party wishes to challenge the ruling on such signature....
33. After conferring with the litigants, the Hearing Officer set the deadline for requesting a Rule 8 Motion for an evidentiary hearing as 5 pm, December 20, 2018.
34. The parties requested and the Hearing Officer set 5 pm, Monday December 24, 2018 as the deadline for them to exchange documents including lists of witnesses and exhibits.
35. On December 20, 2018, the parties requested and the Hearing Officer set 10:30 am, Thursday, December 27, 2018 as the time for commencing the evidentiary hearing and for taking evidence and argument on any Rule 8 Motion and responsive pleadings that might be timely filed. Each of the parties in attendance at the December 20, 2018 proceedings received oral notice on the record of the date and time of the upcoming hearing.
36. At the reconvened hearing December 27, 2018, the Candidate appeared in person and by attorneys Ross Secler and Mary Ryan Nordell. Objectors appeared by attorneys Ed Mullen

and John Fox. The Board's Clerk was Monica Garcia. This hearing was recorded for transcription by a court stenographer.

37. At different points during this extensive hearing, the Candidate testified on her own behalf. Dan Lira who was present during the Records Examination also testified for the Candidate.
38. In the interim between the two hearings, the Candidate had filed a timely Rule 8 Motion. The Candidate moved into evidence 31 affidavits which she had filed prior to the December 24, 2018 deadline. They were marked as Candidate's Exhibit 1. Without objection from the Objectors' attorney, the affidavits were entered into evidence.
39. For the Candidate, attorney Secler indicated that her Rule 8 Request included a list of sheet and line numbers of signature decisions by the Board that the Candidate wished to appeal as part of the evidentiary hearing request.
40. Using the 31 affidavits as a guide and after being sworn under oath, Candidate YESSENIA CARREON testified as to signatures on petition sheets she personally circulated. She also testified as to sheets circulated by her husband and others during periods when she was physically present at the same time as individuals signed who were subsequently objected to by the Objectors. The Candidate was cross-examined by Objectors' attorney.
41. The Candidate testified under oath that when acting as a circulator, she did not submit petition signatures of persons who did not personally sign in front of her. She was unable to recall if she circulated sheets in August, September or October. She did state that she obtained certain signatures in November.
42. The Candidate testified that the Board failed to respond fully to her Freedom of Information Act request for public records, namely, sign-in sheets listing individuals who sought to view voter registration records and/or nominating petitions for the period November 19, 2018 through December 3, 2018.
43. After being sworn and under direct examination by the Candidate's attorney, Dan Lira testified that he was a Records Examination watcher for the Candidate and that in several specific instances, a Board employee failed to properly record Mr. Lira's challenge of a signature ruling. Mr. Lira stated that watchers for Objectors also complained about several instances where this employee inaccurately attributed appeal designations to the correct signatures. Mr. Lira referred to this person as a "new" employee of the Board. He complimented the Board's examiner who came in to replace the prior "new" employee. The witness stated that the employee whom he said the Board sent in to "clean up" the situation was very experienced.
44. At this point, the Hearing Officer asked the litigants for comments on signatures listed in the Candidate's Rule 8 Motion. The Candidate's attorney conceded on several sheets and lines where the Candidate had testified that she did not remember details of obtaining the signature and could not remember if the person signed in her own proper person.
45. Then Objectors' attorney conceded to rehabilitation of some signatures where the Candidate testified to details of certain signings in her presence. During these proceedings, Objectors' attorney did not call for testimony from the individual mentioned in his subpoena – Erik M. Gonzalez.

46. At this point the litigants calculated and agreed to details of the following informal status report:

123 signatures the Candidate was below the minimum at the end of the Records Exam.

-56 signatures rehabilitated during the evidentiary hearing so far.

67 signatures still below the minimum at this point in the Rule 8 hearing.

30 signatures the Candidate's Rule 8 Motion sought to rehabilitate, not yet ruled on.

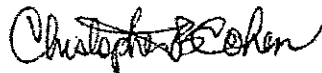
47. During a break in the proceedings, the Candidate consulted with her attorney. When the hearing reconvened, the Candidate did not wish to withdraw, however, her attorney requested the Hearing Officer's decision based on the evidence. The Hearing Officer then sustained the Objections based on the Candidate having fewer valid signatures than the required minimum of 473.

48. With no further issues to be decided, the proceedings were concluded.

DECISION

In light of the above findings of fact and conclusions of law, this Hearing Officer recommends to the Board that the Verified Objectors' Petition filed by JORGE MORALES and ALEJANDRA HERMOSILLIO be sustained, that the Candidate's Nomination Papers be deemed not sufficient or valid in law and in fact and that the name of Candidate YESSERIA CARREON not appear on the official ballot for the office of 10th Ward Alderman of the City of Chicago for the Municipal General Election to be held in the City of Chicago on February 26, 2019.

Respectfully submitted,



Christopher B. Cohen
Hearing Officer
December 30, 2018