

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

Objections of: GEORGE C. MCKINLEY)	
)	
)	
To the Nomination)	No.: 19-EB-ALD-083
Papers of: OTIS PERCY)	
)	
)	
Candidate for the office of Alderman 37th)	
Ward of the City of Chicago)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of 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 GEORGE C. MCKINLEY (“Objector”) to the nomination papers (“Nomination Papers”) of OTIS PERCY, candidate for the office of Alderman for the 37th 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 Christopher Cohen 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, GEORGE C. MCKINLEY, and/or his Attorney, JAMES P. NALLY; and the Candidate, OTIS PERCY, pro se.

7. 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 failed to timely file in relation to his nomination papers a receipt or other proof of having timely filed a Statement of Economic Interests ("SEI") with the Cook County Clerk. The Hearing Officer found this to be a violation the Illinois Election Code (10 ILCS 5/10-5) and the Illinois Governmental Ethics Act (5 ILCS 420/1-101, *et seq.*) The Hearing Officer found, therefore, that the Candidate's Nomination Papers are invalid.

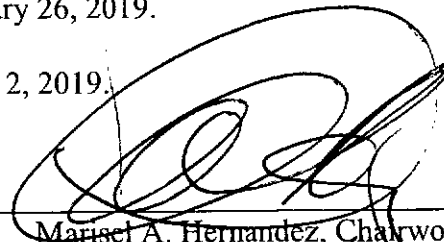
8. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law and incorporates them herein by this reference. The Electoral Board finds that the failure to timely

file a Statement of Economic Interests with the county clerk, and the failure to timely file a receipt or other proof of filing for that form with the election authority in relation to the nomination papers, is fatal to a candidacy. *Cortex v. Municipal Officers Electoral Bd.*, 2013 IL App (1st) 130442 at ¶¶24-27.

9. For the reasons stated above, the Electoral Board finds that the Objections filed in this matter should be sustained and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of GEORGE C. MCKINLEY to the Nomination Papers of OTIS PERCY, candidate for the office of Alderman for the 37th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of OTIS PERCY, candidate for the office of Alderman for the 37th 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.

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

Objections of)	
GEORGE C. MCKINLEY)	
Petitioner and Objector)	
)	
)	19-EB-ALD-083
)	
To the Nomination Papers of:)	
OTIS PERCY)	
Respondent and Candidate for)	
election to the Office of 37TH WARD Alderman)	
of the City of Chicago to be voted on at the)	
February 2, 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 (hereinafter "Board") on the Verified Objector's Petition ("Objections") of GEORGE C. MCKINLEY ("Objector") to the Nomination Papers of OTIS PERCY, Candidate for election to the office of 37TH 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. 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.
2. On November 26, 2018, the Candidate filed Nomination Papers with the Board for the office of 37TH Ward Alderman of the City of Chicago.
3. On December 3, 2018, the Objector filed with the Board Objections to the Candidate's Nomination Papers. Objectors' Verified Petition in this matter alleged that the Candidate's Nomination Papers were insufficient in fact and law for the following reasons: (¶2) some signers were not registered at the address shown; (¶3) some signers' signatures were not genuine; (¶4) some signers resided outside the 37th Ward; (¶5) some signers signed more than once; (¶6) Some signers signed a petition of another candidate for the same office prior to signing this Candidate's petition; (¶7) the petitions contained fewer than the required minimum of 473 valid signatures; (¶9) As part of the Nomination Papers he filed, the Candidate failed to include a time-stamped Receipt showing that he had filed with the County Clerk his Statement of Economic Interests; and (¶10) the Nomination Papers were not "securely bound in book form" as required by 10 ILCS 5/10-4.
4. On December 10, 2018, this Board's Hearing Officer began a public hearing regarding the Objections in the nature of a case management conference at 69 W. Washington, Lower Level Pedway, Chicago, Illinois. This hearing was recorded for transcription by a court stenographer.

5. At the hearing, the Objector, GEORGE C. MCKINLEY, appeared not in person but by his attorneys James P. Nally and Scott Erdman. Candidate OTIS PERCY did not appear at the December 10, 2018 hearing either in person or by counsel. Also, present at this hearing was this Board's Clerk, Monica Garcia. The Hearing Officer held the proceedings over from the 10:15 scheduled time until 11:16 am.
6. When at 11:16 am the Hearing Officer began the held-over hearing, the Candidate still had not appeared in person or by counsel and had not filed an appearance, any pleadings or any other document.
7. The Hearing Officer confirmed that a copy of the Board's Rules adopted at its December 10, 2018 meeting and the Index of Electoral Board Decisions were available on the Board's website – www.chicagoelections.com.
8. On December 10, 2018, the Board's official file contained the original Nomination Papers of the Candidate and the original Objections of the Objector. The file also contained a Petition Summary Report indicating that the Candidate filed 63 pages of petitions containing 622 signatures, that 948 Objections had been filed to those signatures, that the number of unchallenged signatures totaled 161 and that the minimum number of valid signatures required for the office of 37TH WARD Alderman was 473.
9. The Board's official file also contained two documents filed previously with the Board by the Objector's attorney on December 5, 2018 – an Appearance and the Receipt of the Board's Call and Waiver of Statutory Service. At the December 10, 2015 hearing, Objector's attorney also filed a Non-Disclosure and Confidentiality Agreement.
10. The Hearing Officer asked if there were preliminary motions to be filed by either party. None were offered, however, Objector's attorney called attention to the Objector's Petition which, among other claims, alleged that the Candidate failed to file a Statement of Economic Interests Receipt as part of his Nomination Papers. After checking the file, the Hearing Officer noted that the Receipt given to the Candidate when he filed his Nomination Papers with the Board indicated that no such Statement of Economic Interests Receipt had been included or filed. The Hearing Officer took judicial notice of the indication of the absence of a Statement of Economic Interests Receipt on the Board's Receipt. In the absence of the Candidate and in the absence of any objection, pleadings or appearance from the Candidate, the Hearing Officer sustained the Objector's Petition.
11. On the afternoon of December 12, 2018, the Hearing Officer was informed by Board staff that Candidate Percy had appeared at the Board and filed his written appearance earlier that day. The Hearing Officer checked the Board's official file and discovered that the Sheriff's Affidavit of Service on the Candidate had now been returned. It indicated that the Sheriff had personally served the Candidate with the Board's Call on December 8, 2018 – two days prior to the initial case management hearing. The Hearing Officer took judicial notice of these two documents filed after the December 10, 2018 hearing. Upon reflection and on his own motion, the hearing officer decided to set aside his prior decision and to schedule another hearing at which the Candidate Percy could appear.
12. The Hearing Officer reviewed the litigants' appearance forms and, using their email addresses, endeavored to reschedule the hearing for December 17, 2018. Then he rescheduled that hearing for December 19, 2018 at 10:30 am. The Hearing Officer indicated to the parties that December 19 would be the time for them to present evidence and argument regarding whether some or all of the Objections should be overruled or sustained.

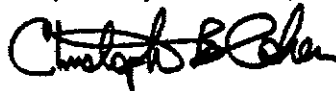
13. At the reconvened hearing December 19, 2018, the Candidate, Otis Percy, appeared in person without legal representation, that is *pro se*. The Objector appeared not in person but by his attorney, James P. Nally. Also, present was the Board's Clerk, Monica Garcia. This hearing was recorded for transcription by a court stenographer.
14. The Hearing Officer made a finding that the Candidate's Nomination Papers were timely filed and that the Objections were timely filed.
15. The Candidate then made oral comments which the hearing officer deemed to be a Motion to Strike and Dismiss. No written motion was filed. None was in the Board's file. For a Receipt, the Candidate provided a copy of his Statement of Economic Interests filed-stamped by the County Clerk at 1:24 pm on December 18, 2018, one day prior to this hearing.
16. The Candidate argued that the Illinois State Board of Elections publishes a Candidates Guide which states which documents a candidate must file as part of Nomination Papers. He also stated that the Illinois Governmental Ethics Act requires a candidate to file a Statement of Economic Interests with the County Clerk and that he had filed such a statement. He cited a case saying that a stamped document is sufficient to prove that the Statement of Economic Interests was, in fact, filed.
17. The Objector argued 1) that the Board's deadline for this Candidate to file his Nomination Papers was December 3, 2018; 2) that the Nomination Papers the Candidate filed on November 26, 2018 did not include either the Receipt or Statement of Economic Interests; 3) that once Nomination Papers are filed, they cannot be amended; 4) that the Statement of Economic Interests filed with the County Clerk was not filed with this Board until the Candidate brought it to this December 19, 2018 hearing; and 5) that, in any event, if the Candidate had filed a Receipt with the Board on December 18, 2018, that would have been past the deadline. The Objector added that the Candidate's use of paperclips to hold his Nomination Papers did not meet the requirement in 10 ILCS 5/10-4 that they be "securely bound in book form"
18. Following argument and rebuttal, the Hearing Officer noted that no Records Examination had been requested or held. He inspected the Board's official file which contained the Board's Receipt for the Candidate's Nomination Papers filed at the Board on November 26, 2018 and found that it provided convincing evidence that no Receipt for the Candidate's Statement of Economic Interests had been filed with or as part of the this Candidate's Nomination Papers.
19. The Hearing Officer concluded that he was bound by 10 ILCS 5/10-5 and previous cases holdings that Nomination Papers are invalid where a candidate files a Statement of Economic Interests with the County Clerk but fails to file with the Electoral Board before the end of the Nomination Papers filing period a receipt evidencing that she had filed such a Statement. He concluded further, as a matter of law, that failure to timely file with the Board a Receipt showing the Candidate filed a Statement of Economic Interests with the Cook County Clerk invalidated this Candidate's Nomination Papers.
20. At the December 19, 2018 hearing, the Hearing Officer made four rulings – 1) that failure to timely file the Receipt for the Candidate's Statement of Economic Interests was fatal; 2) that the Motion to Strike was denied; 3) that the Board's file contained sufficient factual evidence to sustain the Objection and 4) that ¶9 of the Objector's Petition was sustained.

21. The Hearing Officer indicated that in light of these rulings, he did not need to reach the allegation in ¶10 of the Objections that the Nomination Papers were not "securely bound in book form."
22. Consequently, based both on the evidence in the Board's official file and the arguments of the parties, the Hearing Officer recommends that the Board sustain ¶9 of the Objector's Petition and find that the Candidate's Nomination Papers are not valid.
23. With no other issues to be decided, at the close of the December 19, 2018 hearing, the Hearing Officer determined that these proceedings were concluded.

DECISION

In light of the above findings of fact and conclusions of law, it is this Hearing Officer's recommendation to the Board that ¶9 of the Objector's Petition filed by GEORGE C. MCKINLEY be sustained, that the Nomination Papers filed by OTIS PERCY be found not to be valid in law or in fact and that the name of OTIS PERCY, Candidate for election to the Office of 37TH WARD Alderman of the City of Chicago, not appear on the official ballot 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 27, 2018