

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

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Objections of: ROGELIO VARELA and )  
MICHAEL POLLOCK )  
)  
To the Nomination ) No.: 19-EB-ALD-119  
Papers of: WALTER ZARNECKI )  
)  
Candidate for the office of Alderman for the )  
35th 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 ROGELIO VARELA and MICHAEL POLLOCK (“Objectors”) to the nomination papers (“Nomination Papers”) of WALTER ZARNECKI, candidate for the office of Alderman for the 35th 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 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 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 June Brown 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. On such date and time, the Hearing Officer called the case by calling aloud the case number, the name of the Objectors and the name of the Candidate. The following persons, among others, answered and were present at such hearing: the Objectors, ROGELIO VARELA and MICHAEL POLLOCK and/or their Attorney, STEPHEN BERRIOS.

7. The Candidate, WALTER ZARNECKI, did not answer to the call nor did he appear at the hearing. The case was called again at least two more times at least 15 minutes apart on December 10, 2018 and at no time did the Candidate or any person purporting to represent the Candidate appear.

8. The Electoral Board finds that the Cook County Sheriff personally served the Candidate with a copy of the Objector's Petition and with a copy of the Call to the Monday, December 10, 2018 hearing in this cause on December 8, 2018. The Candidate was also sent a copy of the Call to the December 10, 2018 meeting by certified mail.

9. Because the sheriff's report of personal service on December 8 was not yet returned to the Electoral Board, nor was it known to the Hearing Officer, as of the December 10

initial hearing date, the initial hearing was continued to December 19. At the continued December 19<sup>th</sup> hearing, the Candidate appeared and testified that he was, indeed, served on Dec. 8 with the Objector's Petition and the Board's Call, yet he did not attend the Dec. 10 hearing because he allegedly called the Board and spoke with an unnamed employee who allegedly told him that all cases would be continued from Dec. 10 to a future date. The Hearing Officer found that the Candidate had no good cause for missing the Dec. 10 hearing since he was served with the Objector's Petition, the Board's Call and the Board's draft rules of procedure on Dec. 8.

10. The Electoral Board's Rule 4(b) states that "Attendance at all meetings, hearings and proceedings is mandatory, unless otherwise specified by the Electoral Board or a hearing officer." Rule 4(c) states that "Continuances will be granted only upon a showing of good cause and where the interests of justice require it," and Rule 4(d) states that "On the date set for the initial hearing of the objector's petition, each party must appear and be prepared to proceed."

11. Furthermore, the Electoral Board's Rule 12 expressly pertains to "Failure to appear; Default." Rule 12(a) states that "The failure of a party to appear at the initial meeting of the Electoral Board ... or at any hearing before a hearing officer without good cause shown shall be sufficient grounds to default such party provided that the party was served with notice of the hearing." Rule 12(b) states that "In the case of a defaulted candidate ... the nomination papers or the petition, as the case may be, may be declared invalid."

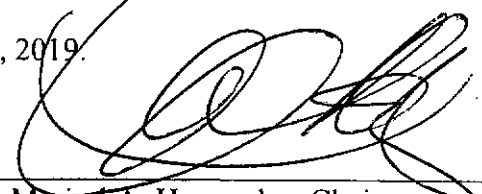
12. The Electoral Board finds that the Candidate, WALTER ZARNECKI, did not appear at the December 10, 2018, initial hearing before the Board and its Hearing Officer. the Electoral Board adopts the Hearing Officer's conclusion that the Candidate had no good cause for failing to appear at the December 10 initial hearing because two days earlier he was personally served with the Objector's Petition and the Board's Call and draft Rules of Procedure.

13. The Electoral Board further finds that the Objector's petition, on its face, contains sufficient allegations, if accepted as true, to invalidate the Candidate's Nomination Papers.

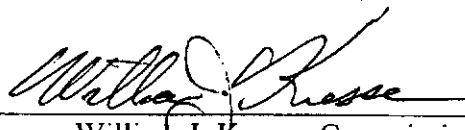
14. Therefore, the Electoral Board finds that the Candidate, WALTER ZARNECKI, is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ROGELIO VARELA and MICHAEL POLLOCK to the Nomination Papers of WALTER ZARNECKI, candidate for the office of Alderman for the 35th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of WALTER ZARNECKI, candidate the office of Alderman for the 35th 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.

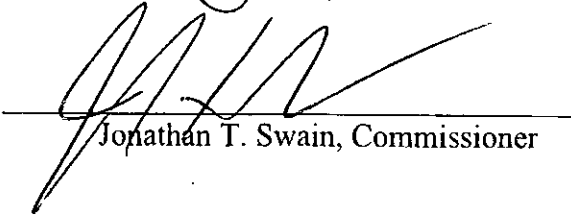
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



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.

BEFORE OF THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF ALDERMAN OF THE THIRTY-FIFTH (35<sup>TH</sup>) WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS, TO BE VOTED UPON DURING THE FEBRUARY 26, 2019 GENERAL MUNICIPAL ELECTION.

ROGELIO VARELA and )  
MICHAEL POLLOCK, )  
 )  
 Objectors, )  
 )  
 -VS- )  
 )  
 WALTER ZARNECKI, )  
 )  
 Candidate )

Case No: 2019-EB-ALD-119

**HEARING OFFICER'S REPORT AND RECOMMENDATION**

Pursuant to section 10-10 of the Illinois Election Code (10 ILCS 5/10-10) , the Rules and Regulations of the Board of Election Commissioners, and official appointment by the City of Chicago Electoral Board to act in the above-designated Matter, the Hearing Officer, *June A. Brown*, convened a hearing on December 10, 2018 at the Offices of the City of Chicago Board of Elections at 69 W. Washington, Lower Level-Pedway Conference Room Chicago, Illinois 60602, to hear testimony and receive documents concerning the objection of **ROGELIO VARELA and MICHAEL POLLOCK** to the candidacy of **WALTER ZARNECKI** for the Office of **OFFICE OF ALDERMAN OF THE THIRTY-FIFTH (35TH) WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS** in the **FEBRUARY 26, 2019 General Municipal Election**.

## II. FINDINGS OF FACT

1. This matter came before the Hearing Officer for an initial hearing on December 10, 2018
2. The objectors, **ROGELIO VARELA** and **MICHAEL POLLOCK**, appeared by Legal Counsel, **STEPHAN BERRIOS-SHILLER PREYAR LAW OFFICES**
3. Neither the Candidate, **WALTER ZARNECKI**, nor Legal Counsel **APPEARED** at the initial hearing on December 10, 2018
4. Upon review of the file, and finding no record of Service, a request was made for confirmation of Service on the Candidate, **WALTER ZARNECKI**
5. The Matter was rescheduled for a hearing on December 19, 2018
6. The Matter reconvened on December 19, 2018.
7. The Objectors, **ROGELIO VARELA** and **MICHAEL POLLOCK**, appeared by Legal Counsel, **STEPHAN BERRIOS-SHILLER PREYAR LAW OFFICES**
8. The Candidate, **WALTER ZARNECKI**, appeared stating he is an attorney and was representing himself at the hearing
9. The records include an Affidavit of Service, which reflects that personal service was made on the Candidate, **WALTER ZARNECKI**, on December 8, 2018 at the address of record, 2707 N. Drake Ave. Chicago, Illinois 60647.

10. The Candidate, **WALTER ZARNECKI**, admitted that he received service on December 8, 2018 notifying him of the Initial Meeting/Mandatory Attendance on December 10, 2018. He stated that he called the Electoral Board and requested a continuance but was told that continuances were not being given. Mr. Zarnecki stated that he again called the Electoral Board on December 10, 2018 and was told that the case would be continued, because all December 10, 2018 cases were being continued, *so he did not attend the initial hearing*. Mr. Zarnecki did not provide proof as to the calls, who he spoke to when he called, nor the times when he called the Electoral Board. There was also no offer proof of contact from Mr. Zarnecki by EMAIL.

11. On December 19, 2018, Mr. Zarnecki stated that he did not review any information or websites, including the 2019 Rules of Procedure in making his decision not to appear at the December 10, 2018 hearing. Mr. Zarnecki then requested that all motions and objections against his candidacy be stricken, based on fundamental fairness.

12. The Counsel for the objectors, Stephen Berrios, responded that the matter *originally scheduled for 10:45am* was held open until after 12:30pm on December 10, 2018 for the candidate to appear. He stated that Mr. Zarnecki's statements are on December 19, 2018 were hearsay with no specificity. Mr. Berrios also stated that even if Mr. Zarnecki was told during a call that he did not need to attend the initial hearing, the

information as to the process and consequences was available and it was not *reasonable* to rely on what Mr. Zarnecki said he was told on a call to the Electoral Board.

13. Objectors Counsel, Mr. Berrios stated that the objectors maintain that the Objection was sufficient and that the claims of an insufficient number of valid signatures to be placed on the February 26, 2019 ballot for Alderman of the 35<sup>th</sup> Ward of the City of Chicago, was correct.

14. Mr. Berrios restated that Mr. Zarnecki's failure to appear on December 10, 2018, at the initial call was a DEFAULT

15. Upon review, I find the Objector petition it met the standard of a valid objection in Illinois Election Code Section 10-8 and contains a colorable claim for consideration :

- a. Based on the Objection Petition allegations that the irregularities as to voters and circulators would result in a finding that there was a possibility that the Candidate submitted fewer than the **473** valid signatures required to be on the ballot as a candidate for the office of **ALDERMAN OF THE 35<sup>TH</sup> WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS IN THE FEBRUARY 26, 2019 GENERAL MUNICIPAL ELECTION**

16. I find that there was **not** a showing **GOOD CAUSE** for a lack of an **APPEARANCE** by the Candidate, **WALTER ZARNECKI** and/or his Attorney-representative.



### III. CONCLUSIONS

The Matter was set for both an initial hearing on December 10, 2018 and an additional hearing on December 19, 2018. The information as to the ALL hearings was highlighted in the adopted Rules of Procedures and the schedule and other information was readily available to the parties on the Electoral Board website. The Objectors, **ROGELIO VARELA** and **MICHAEL POLLOCK**, appeared by Legal Counsel, **STEPHAN BERRIOS-SHILLER PREYAR LAW OFFICES** at the December 10, 2018 and on December 19, 2018 hearings. However, neither the Candidate, **WALTER ZARNECKI**, nor his Attorney-representative attended the initial meeting on December 10, 2018 with the Electoral Board or the assigned Hearing Officer, June A. Brown. The Candidate, **WALTER ZARNECKI**, appeared at the December 19, 2018 hearing, where he confirmed that he received proper notice by personal service on December 8, 2018 to attend the December 10, 2018 mandatory hearing. Mr. Zarnecki stated that he was told by an unnamed person that the Electoral Board would continue his hearing of December 10, 2018, so he did not attend. I find that his actions were not reasonable and do not constitute GOOD CAUSE. I further find that the Objection could be sustainable, if there was a need to proceed further.

**The Hearing Officer concludes the following:**

1. The Objector's Petition sets forth valid grounds upon which the candidate's name may be removed from the ballot.

2. The candidate, **WALTER ZARNECKI** and/or attorney-representative, failed to appear, **WITHOUT GOOD CAUSE SHOWN**, for the initial December 10, 2018 initial call of Objection hearing, after receiving proper notice.
3. Pursuant to **Rule 4 adopted** by the Chicago Board of Election Commissioners for the February 26, 2019 Elections, which states:
  - (a) *Expedited proceedings. Due to impending statutory deadlines for the certification of candidates and the preparation and printing of ballots, proceedings before the Electoral Board must be conducted expeditiously.*
  - (b) *Mandatory attendance. Attendance at all meetings, hearings and proceedings is mandatory, unless otherwise specified by the Electoral Board or a hearing officer.*
  - (c) *No continuances. Generally, no continuances or resetting of scheduled hearings will be granted. Continuances will be granted only upon a showing of good cause and where the interests of justice require it.*
  - (d) *Initial hearing. On the date set for the initial hearing of the objector's petition, each party must appear and be prepared to proceed.*

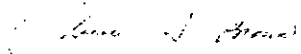
Based upon the foregoing conclusion(s), and the testimony of the Candidate, **WALTER ZARNECKI**, the Hearing Officer finds that the matter of **CASE: 2019-EB-ALD-119** was a **DEFAULT BY THE CANDIDATE, WALTER ZARNECKI**, and no further proceedings are required.

#### **IV. RECOMMENDATIONS**

**IT IS HEREBY RECOMMENDED** that **CASE: 2019-EB-ALD-119 DISMISS** and

close as a **DEFAULT** by the Candidate, **WALTER ZARNECKI**, and his name not appear and be printed on the ballot for the election for the office of **ALDERMAN OF THE 35<sup>TH</sup> WARD OF THE CITY OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS** to be voted upon in the **FEBRUARY 26, 2019 General Municipal Elections**.

Respectfully Submitted,



J. A. Brown, Hearing Officer/ALJ