

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

Objections of: ROBERT A BANK and)
RONALD ERNST)
)
To the Nomination) No.: 19-EB-ALD-146
Papers of: JOHN S. ARENA)
)
Candidate for the office of Alderman for the)
45th 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 ROBERT A BANK and RONALD ERNST (“Objectors”) to the nomination papers (“Nomination Papers”) of JOHN S. ARENA, candidate for the office of Alderman for the 45th 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 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 Barbara Goodman for further hearings and proceedings.

6. The Objectors 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 Objectors, ROBERT A BANK and RONALD ERNST, each appeared pro se (the Objectors were later represented by Attorney Michelle Truesdale); the Candidate, JOHN S. ARENA, and/or by Attorney ROSS D SECLER (and later by Burton S. Odelson).

7. The Hearing Officer has tendered to the Electoral Board her report and recommended decision. The Hearing Officer recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be declared valid.

8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer Report and Recommendations is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

9. Specifically, the Electoral Board finds that paragraphs 20 and 21 of the Objectors' Petition fail to state a claim for which the requested relief could be granted, such that even if the Objectors' allegations are taken as true, it still would not invalidate the Candidate's Nomination Papers. The allegation is that the notary of the Candidate's Statement of Candidacy ("SOC")

form, Burton S. Odelson, failed to include his middle initial when notarizing the SOC form, and that his signature when commissioned as a notary did include the middle initial "S".

10. However, this Electoral Board has long held that minor deficiencies in a notarization will not be held against a Candidate or petition circulator. See, for example, *Ziegler v. Beachem*, 11-EB-ALD-056 (CBEC 2011), where the notary failed to confirm the identity of the affiants who were not personally known prior to the notarization. Although such violates the Illinois Notary Act, the remedy for such violation rests with the Notary Act and there is no authority to support a finding that nomination papers infected by the notary's misconduct were thereby invalid; *Moreno v. Delgado*, 08-EB-SS-01 (CBEC 2007), where even if the Notary Act prohibited a wife from notarizing her husband's statement of candidacy, such a violation would not invalidate the acknowledged instrument; and several cases in which the candidates' use of notaries with expired commissions did not invalidate the nomination papers: *Levine v. Simms-Johnson*, 96-EB-WC-31 (CBEC 1996), *Gilbert v. Lavelle*, 80-CO-75 (Cir. Ct. Cook Co., 1980).

11. As additional examples, the failure of a notary public to file his commission with the Cook County Clerk's office does not invalidate nomination papers. *Drake v. Stewart*, 90-EB-REP-11 (CBEC 1990). A notarization made before the commencement date of the notary's commission does not invalidate nomination papers. *Morris v. Turner*, 04-EB-RGA-05 (CBEC 2004). This Electoral Board has ruled many times that a notary's failure to include his notary seal or his signature does not necessarily invalidate nomination papers (*Griffin v. Hazard*, 04-EB-WC-24 (CBEC 2004) and many other prior cases).

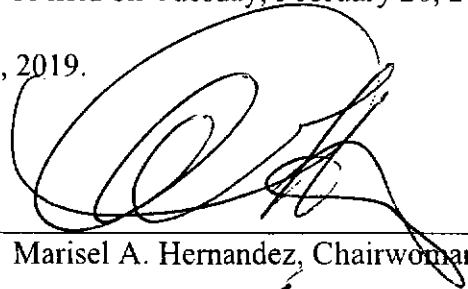
12. Perhaps most relevant to the case at hand, this Electoral Board has previously ruled that a notary who uses her maiden name, rather than the married name under which she was commissioned as a notary, does not invalidate nomination papers. *Duff v. Caldwell*, 87-EB-

ALD-51 (CBEC 1987), citing *People v. Severinghouse*, 313 Ill. 456 (1924). Also, a notary's use of her first and middle initials, instead of her full name under which she was commissioned as a notary, did not invalidate the nomination papers she notarized. *Sanders v. Bradley*, 03-EB-ALD-156 (CBEC 2003).

13. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of ROBERT A BANK and RONALD ERNST to the Nomination Papers of JOHN S. ARENA, candidate for the office of Alderman for the 45th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of JOHN S. ARENA, candidate for the office of Alderman for the 45th Ward of the City of Chicago, SHALL be printed on the official ballot for the General Municipal Election to be held on Tuesday, February 26, 2019.

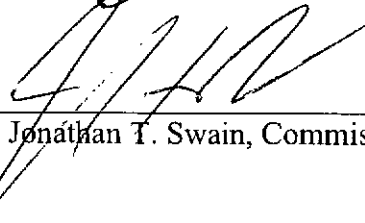
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



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.

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

ROBERT A. BANK and)	
RONALD ERNST)	
)	
Objectors)	19 EB ALD 146
-v-)	
)	
JOHN S. ARENA)	
)	
Candidate)	

HEARING OFFICER’S REPORT AND RECOMMENDED DECISION

This matter first came to be heard on December 10, 2018 before a previously assigned Hearing Officer. A Motion for Substitution of Hearing Officer was filed by the Objectors and the matter was subsequently assigned to this Hearing Officer. The Candidate appeared through counsel Ross Secler of the law firm of Odelson and Sterk and in a subsequent hearing through additional counsel Burton S. Odelson. The Objectors initially appeared pro se and in subsequent hearings through counsel Michelle M. Truesdale. The parties were given the opportunity to file preliminary motions. The Candidate filed *Candidate’s Motion to Strike and Dismiss* and Objectors filed *Objectors’ Response in Opposition to the Motion to Strike and Dismiss*. Objectors also filed a *Motion to Disqualify Candidate’s Counsel of Record for John S. Arena* and Candidate filed a *Response to Motion to Disqualify Counsel of Record for John S. Arena*.¹ Objectors further filed a *Request for Subpoenas* and Candidate filed a *Response in Opposition to Subpoena Requests*. A *Hearing Officer’s Recommendation Regarding Objectors’ Subpoena Requests* was submitted in which it was recommended that the

¹ Although it need not be considered, in the Candidate’s Response to Disqualify Candidate’s Counsel of Record for John S. Arena, the Affidavit of Burton S. Odelson was submitted along with other documentation in which Mr. Odelson confirmed that it was his genuine signature on the Candidate’s nominating papers and that he was a duly authorized notary public.

Electoral Board Review of Hearing Officer's Recommendation Regarding Objectors' Subpoena Requests. The Electoral Board subsequently denied the Objectors' request for subpoenas at a duly called meeting of the Electoral Board. The matter also involved issues to be resolved in a records examination and the matter was sent for a records examination.

THE MOTION TO STRIKE AND DISMISS

In his Motion to Strike and Dismiss, the Candidate alleged that on its face, the Objectors' Petition contained an insufficient number of sheet and line allegations to invalidate the nominating papers. Objectors conceded that the Candidate was correct relative to the individual sheet and line allegations. The case, therefore, necessarily rested on the other remaining allegations.

The remaining allegations were, in pertinent part, as follows:

20. Objectors state that the signature of the Notary, Burton S. Odelson, is not the same signature by which the notary was commissioned as prohibited by 5 ILCS 312/6-104(a).

21. Objectors state on its face, the signature of the notary is missing the middle initial, the letter S. (Paragraphs 20 and 21 of the Objectors' Petition)

According to Objectors in the foregoing paragraphs, the signature of notary Burton S. Odelson was not the genuine signature of Mr. Odelson. Mr. Odelson had notarized the Statement of Candidacy (and the Loyalty Oath). The Objectors contend that the invalid signature of Mr. Odelson necessarily invalidates the Statement of Candidacy which therefore results in the invalidation of the entire nominating petition.

The other remaining allegations related to the signature of another notary. Objectors allege at paragraph 14 that the petitions evidence a pattern of fraud and false swearing requiring the striking of the entire nominating petition because the signature of one of the notaries, specifically Thomas M. Jackson, was not his genuine signature on

Objectors' Petition provides, in pertinent part, that:

the notary signatures on these petitions appear to be not genuine, and appear to have been written by the same hand other than Mr. Jackson's. Mr. Jackson has failed to comply with the Election Code in such a manner that the integrity of the electoral process is impacted, and as such, each of the sheets she [sic] notarized must be invalidated. (Objectors' Petition, paragraph 14a)²

In analyzing the foregoing issues, it is important to consider what is NOT alleged in the Objectors' Petition. There is no allegation that the Candidate did not appear before notary Burton S. Odelson when signing the Statement of Candidacy. There is no allegation that the circulators did not appear before Thomas M. Jackson when they signed their respective circulators' affidavits. There is no allegation that the circulators did not appear before someone purporting to be a notary or purporting to be Thomas M. Jackson. Although counsel for the Objectors in subsequent pleadings and at the hearing on the Motion to Strike and Dismiss attempted to expand the notary related claims, it is well established that an Objectors' Petition once filed cannot be amended (either verbally or in writing) and objections must be plead with sufficient specificity to put the candidate on notice as to the issues against which the candidate must defend.

In the aforementioned paragraphs of the Objectors' Petition, the Objectors attempt to create a completely new category of inquiry and petition invalidation, to wit: the genuineness of a notary's signature. However, nothing in the Election Code requires a Candidate or a Circulator to confirm the identity of a notary or verify the genuineness of a notary's signature. To the contrary, it is the notary that must confirm the identity of the parties for which the notary's act of notarization is performed. Accordingly, paragraphs relating to the genuineness of the notaries' signatures simply fail to state any cognizable

² In his Motion to Strike and Dismiss, the Candidate pointed out that even if all of the signatures were stricken on the *specific* sheets on which Thomas M. Jackson's signature was purportedly not genuine along with all of the alleged invalid signatures that result from a records examination, there would still be an insufficient number of invalid is signatures to invalidate the nominating papers.

therefore be stricken and dismissed.

As previously indicated, there were an insufficient number of individual sheet and line allegations contained in the Objectors' Petition to invalidate the nominating papers and the records examination was discontinued. Additionally, no recommendation in relation to the Objectors' Motion to Disqualify Counsel of Record for Candidate John S. Arena was made because no allegations remained that would involve Candidate's Counsel or require the testimony of Candidate's Counsel.

CONCLUSION

In light of the foregoing, it is my recommendation that the objections of Ronald A. Bank and Ronald Ernst to the nominating papers of John S. Arena be **stricken and dismissed**. It is my further recommendation the nominating papers of John S. Arena for the office of Alderman for the 45th Ward of the City of Chicago be deemed **valid** and that the name of John S. Arena for said office **be** printed on the ballot at the Municipal General Election to be held on February 26, 2019.

Respectfully submitted,



Barbara Goodman, Hearing Officer
12/30/18