

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

Objections of: RICHARD L BARNETT)	
)	
)	
To the Nomination)	No.: 19-EB-MUN-008
Papers of: CATHERINE BROWN)	
D'TYCOON)	Rel.: 19-EB-MUN-004, 19-EB-MUN-027
)	
Candidate for the office of Mayor 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, Chair of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of RICHARD L BARNETT (“Objector”) to the nomination papers (“Nomination Papers”) of CATHERINE BROWN D'TYCOON, candidate for the office of Mayor for 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 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 June Brown 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, RICHARD L BARNETT, and/or his Attorney, DOUG E IBENDAHL; and the Candidate, CATHERINE BROWN D'TYCOON, 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 filed her nomination papers in multiple sets of individually bound volumes, none of which individually contained the minimum 12,500 petition signatures required for the office sought. 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. In a decision

that was affirmed on judicial review by the Circuit Court of Cook County, this Electoral Board has previously ruled that filing petitions in multiple bound volumes does not necessarily invalidate the Nomination Papers, but the petition signatures contained in only one of said multiple volumes may be counted towards the statutorily required minimum. *Barnes v. Smith*, 95-EB-MUN-15 (CBEC 1995), affirmed: *Smith v. Barnes*, 95-CO-22 (Cir. Ct. Cook Co., 1995).

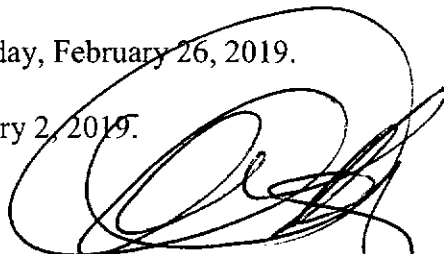
9. When none of the individual bound volumes contains the minimum number of signatures required, this Electoral Board has ruled that the candidate's nomination papers are invalid and the candidate's name may not be printed upon the ballot. *Moss v. Austin*, 11-EB-ALD-185 (CBEC 2011), and *Moses v. Thomas*, 11-EB-ALD-192 (CBEC 2011).

10. 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.

(continued on next page)

IT IS THEREFORE ORDERED that the Objections of RICHARD L BARNETT to the Nomination Papers of CATHERINE BROWN D'TYCOON, candidate for the office of Mayor for the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CATHERINE BROWN D'TYCOON, candidate for the office of Mayor for 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.

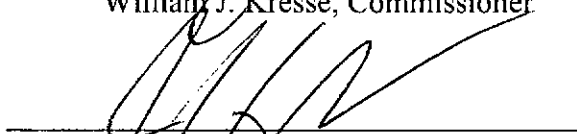
Dated: Chicago, Illinois, on Wednesday, January 2, 2019.



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 FOR THE HEARING AND PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR THE OFFICE OF MAYOR OF THE CITY OF CHICAGO, COUNTY OF COOK AND STATE OF ILLINOIS TO BE VOTED ON AT THE FEBRUARY 26, 2018 GENERAL MUNICIPAL ELECTION.

RICHARD L. BARNETT)
)
)
) *Objector*)
) Case No: 19-EB-MUN-008
)
 CATHERINE BROWN D'TYCOON,)
)
) *Candidate*)
)
)

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

The above-named cause came to be heard before the duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners ("CBOE"). Pursuant to section 10-10 of the Illinois Election Code (10 ILCS 5/10-10), and the Rules and Regulations of the Chicago Board of Election Commissioners ("CBOE"). The official appointment by the Chicago Board of Election Commissioners ("CBOE") to act in the above-designated matter, assigned June A. Brown as that Hearing Officer for hearings and passing on Objectors Petitions at the Offices of the Chicago Board of Election Commissioners ("CBOE") at 69 W. Washington Lower Level, Chicago, Illinois.

The initial hearing on the Objector's Petition was called on December 10, 2018. The Objectors appeared by Counsel, **Doug E. Ibendahl**, and the Candidate, **Catherine Brown**

D'Tycoon appeared "Pro Se". At the initial hearing, the file exhibits were read and admitted into the record, service was waived and the Rules of Procedure were introduced to parties. The Candidate, **Catherine Brown D'Tycoon**, requested the opportunity to file a Motion to Strike and Dismiss Objectors' Petition, which was granted with Objectors' stating that there would be a Response. A briefing schedule was set pursuant to the Rules of Procedure for the Board of Election Commissioners for the City of Chicago. This FINAL RECORD AND RECOMMENDATION is based on evidence, timely submissions and prior hearings in this Matter.

MOTION TO STRIKE AND DISMISS

CANDIDATE'S MOTION: The candidate, Catherine Brown D'Tycoon, submitted the following argument in her request for a Motion to Strike and Dismiss the Objectors' Petition to her Candidacy for Mayor of the City of Chicago in the February 26, 2019 Municipal Election.

1. *Objector states that Candidate's Nomination Papers contain less than 12,500 valid signatures of duly qualified, registered, and legal voters of the City of Chicago*
2. *Objector alleges that Candidate's Nomination Papers include petition sheets which are not original sheets, but instead are photocopies, in violation of the Illinois Election Code. Objector enumerated the specific pages of concern.*
3. *Objector charges that Candidate filed her Statement of Economic Interest with the Illinois Secretary of State and not with the Cook County Clerk as required by the Illinois Election Code.*
4. *In fact, Candidate submitted original Petition Sheets containing the signatures of more than 12,500 voters in the City of Chicago.*

5. *Some of the Nominating Petitions submitted by Candidate were double sided with signatures on both sides. It is possible that* when Objector reviewed copies of the petitions, this unorthodox but completely legal format may have given Objector the false impression that those petition sheets were photocopies and not originals.*
6. *Pursuant to the Illinois Election Code, 10 ILCS 5/10-5 and the Illinois Governmental Ethics Act , 5 ILCS 420/4A-106, Candidate properly and timely filed her Statement of Economic Interests with the Cook County Clerk.*
7. *Candidate acquired her Statement of Economic Interest Form from the Cook County Clerk. That Statement was one printed by the Illinois Secretary of State. Candidate completed that form and then filed it in the office of the Cook County, Clerk. Candidate never filed a Statement of Economic Interest with the Illinois Secretary of State.*
8. *The Election Department Of the office of the Cook County Clerk dated and time stamped Candidate's Statement of Economic Interest when Candidate Properly filed it with the County Clerk, as required by Illinois Election Law.*
9. *The Chicago Board of Elections receipt clearly indicates Candidate's Statement of Economic Interest, properly filed with the Cook County Clerk, was included with Candidate's Nomination Papers when they were presented to the Board.*

The Candidate has submitted original Petition sheets that contain more than 12,500 valid signatures of duly qualified and legal voters, registered in the City of Chicago. Petitioner did not challenge the validity of those signatures. Candidate requests this Board Strike and Dismiss this Objector's Petition which, even if some aspects are proven, would not result in the Candidate being removed from the ballot.

OBJECTORS' RESPONSE:

The Objectors' Counsel responded to the Motion stating that the Candidate's Motion to Strike and Dismiss does little more than make unsubstantiated claims regarding the evidence in this matter. As such, the relief the Candidate seeks cannot be granted. The Objector's Petition properly and sufficiently alleges specific deficiencies inherent in the

Nomination Papers filed by the Candidate. The Objector's Counsel posited that the Objection was legally sufficient, based on Section 10-8 of the Illinois Election Code. The Objector's Counsel requested that the Motion to Strike and Dismiss be denied.

Upon complete review of the submissions, the found as follows:

There are no allegations that the Objectors' Petition is deficient based on the Section 10-8 standard of the Illinois Election. The Objectors Petition met the 10-8 standard. The Candidate's issues as posited in the Motion the Strike and Dismiss relate to the facts and as such are not to be decided as a preliminary matter. The Candidate's Motion to Strike and Dismiss failed to provide grounds upon which a finding could be made and was DENIED.

FINDINGS AND RECOMMENDATIONS ON OBJECTOR'S PETITION

This Matter comes before the Hearing Officer as a related case to 2019-EB-MUN-004-KURIAKOSE ET AL v. CATHERINE BROWN D'TYCOON. For the record, the Objections in this case - 2019-EB-MUN-008 alleged that there were not sufficient valid signatures of Chicago voters to meet the requisite 12,500 required to be on ballot for the Office of Mayor of Chicago in the February 26, 2019 General Municipal Election. It was posited that the failure to meet the required 12,500 signatures was due in part to several pages of the submissions being photocopies, with the sheets in question listed in the Objector's petition. It was also alleged that the Candidate failed to file the Statement of Economic Interest in the appropriate office. These are factual matters that require the

finder of fact to examine the evidence fully, which the Hearing Officer reviewed in the files, including the highlighted pages appearing as being photo copies that was a colorable claim of the insufficiency of valid signatures for the candidate, Catherine Brown D'Tycoon to appear on the ballot for the office of Mayor of Chicago, Illinois on the February 26, 2019 General Municipal Election.

As stated above, this matter is a related case to Case No. 2019-EB-MUN-004. The findings and recommendation in that matter reflect a fatal flaw per the Section 10-4 standard of the Illinois Election Code, resulting in the nomination papers filings of the candidate, Catherine Brown D'Tycoon, being invalid and rendering all other issues **MOOT**.

Below is a discussion of the Illinois Election Code and relevant case law and rulings of how the findings were made in 2019-EB-MUN-004, which recommends that the nomination papers filed are invalid and in all related cases the candidacy of Catherine Brown D'Tycoon for Mayor of Chicago.

In making the aforementioned finding, the Hearing Officer focused on Section 10-4. In the Illinois Election Code (10 ILCS 5/10-4) (from Ch. 46, par. 10-4), **Section 10-4 addresses the filing of nomination petitions. It states in part-Form of petition for nomination- All petitions for nomination under this Article 10 for candidates for public office in this State, shall in addition to other requirements provided by law, be as follows:**

1. **No signature shall be valid or be counted in considering the validity or**

sufficiency of such petition unless the requirements of this Section are complied with.

2. Such sheets, before being presented to the electoral board or filed with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form ...
3. All petition sheets which are filed with the proper local election officials, election authorities or the State Board of Elections shall be the original sheets which have been signed by the voters and by the circulator, and not photocopies or duplicates of such sheets. (Source: P.A. 98-756, eff. 7-16-14.)

In determining whether the nomination papers filing of the candidate, Catherine Brown D'Tycoon, was in violation of the Section 10-4 standard was a fatal flaw the issue of mandatory versus directory consequences of failure to fulfill an obligation, i.e., whether 'the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates' " was reviewed as discussed in *Jackson-Hicks v. East St. Louis Board of Election Commissioners*, 2015 IL 118929, ¶ 22, quoting *People v. Robinson*, 217 Ill.2d 43, 51-52 (2005). "Generally speaking, requirements of the Illinois Election Code are mandatory, not directory [citations]". Consistent with the principles governing the mandatory-directory dichotomy, a candidate's failure to comply with mandatory provisions of the Election Code governing nomination papers will therefore render the nomination papers invalid [citation] and require that the candidate's name be removed from the ballot

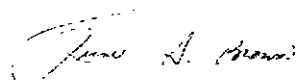
[citation]." *Id.*, ¶ 23. "Statutory provisions such as those contained in our Election Code specifying numerical signature requirements and I would posit *binding nomination papers filing in one book form*, are among those that are regarded as mandatory." *Id.*, ¶ 24.

In the related case 2019-EB-MUN-004 the issue was 1) *whether there was proper binding in the filing of nomination papers of the candidate for Mayor of Chicago, Illinois by the candidate, Catherine Brown D'Tycoon, and 2). if the nomination papers filing contained enough signatures to meet the required 12,500 valid signatures.* The finding was that the binding did not meet the Section 10-4 standard. Further, it was found that the failure to submit the nomination papers in the appropriate form resulted in an insufficient number of valid signatures to meet the requisite 12,500 Chicago voter signatures. The finding was that the Section 10-4 requirement was mandatory, thus the nomination papers filing of the candidate, Catherine Brown D'Tycoon, was invalid. The Recommendation was that the candidate's name not be on the ballot for the Office of Mayor of the City of Chicago, Illinois in the February 26, 2019 General Municipal Election. The 2019-EB-MUN-004 finding impacts all cases related to the nomination papers filing of the candidate, Catherine Brown D'Tycoon. The failure to comply with the mandatory requirements of Section 10-4 standard of the Illinois Election Code, renders this matter and all associated Objections sustained and the nomination papers filing invalid, *in toto*.

RECOMMENDATION

In light of the foregoing, it is the recommendation of this Hearing Officer that the **OBJECTIONS** to the Candidate's Nomination Papers in this Matter Case No. 2019-EB-MUN-008 and related case(s) Case No. 2019-EB-MUN-004 be **SUSTAINED**, and the name of **CATHERINE BROWN D'TYCOON**, Candidate for the **OFFICE OF MAYOR OF CHICAGO, COUNTY OF COOK, STATE OF ILLINOIS**, **SHALL NOT** appear on the ballot for the February 26, 2019 General Municipal Elections.

Respectfully Submitted,



J. A. Brown, Hearing Officer/ALJ