

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

Objections of: MELVIN DELK LARRY G. NELSON)	
)	
)	
To the Nomination Papers of: DONALD PATTERSON)	No.: 07-EB-ALD-089
)	(rel. ALD-182)
)	
Candidate for the office of Alderman of the Twenty-fourth Ward, City of Chicago)	
)	
)	

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners of the City of Chicago Commissioners Langdon D. Neal and Richard A. Cowen, organized by law in response to a Call issued by Langdon D. Neal, Chairman of said Electoral Board, for the purpose of hearing and passing upon objections (“Objections”) of MELVIN DELK and LARRY G. NELSON (“Objector(s)”) to the nomination papers (“Nomination Papers”) of DONALD PATTERSON, candidate for the office of Alderman of the Twenty-fourth Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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 Chairman of the Electoral Board and served upon the members of the Electoral Board, the Objector(s) 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 January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Lynne Ostfeld for further hearings and proceedings.

6. The Objector(s) and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector(s), MELVIN DELK and LARRY G. NELSON, *pro se*; and the Candidate, DONALD PATTERSON, by counsel.

7. The sole objection to the Candidate's Nomination Papers remaining for decision is whether the Candidate resides at the address listed on his Nomination Papers.

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

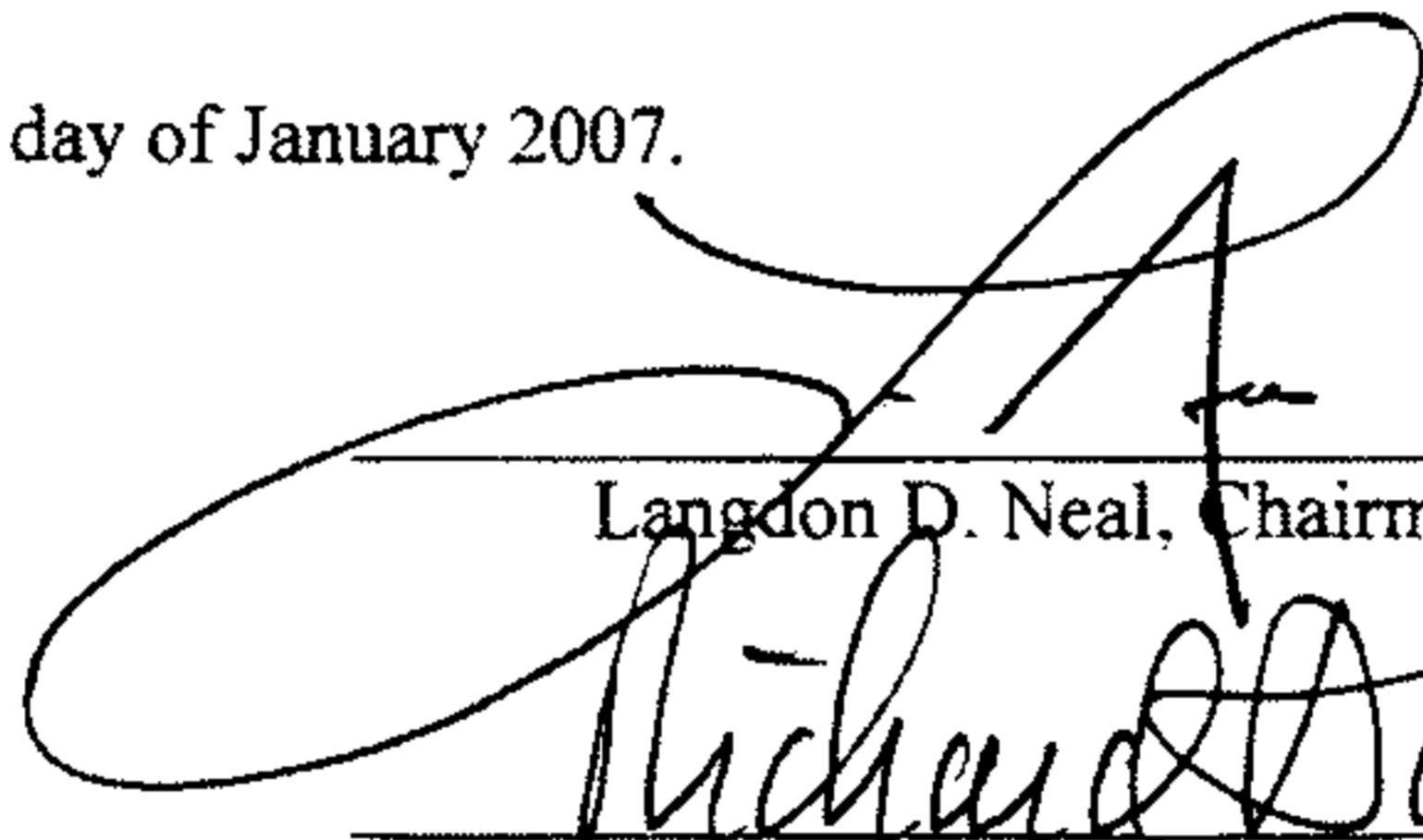
9. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law.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

10. 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.


11. The Electoral Board further finds that there was another objection filed against the Candidate's Nomination Papers in case 07-EB-ALD-182 and that the objections in that case were overruled and the Candidate's Nomination Papers deemed valid.

IT IS THEREFORE ORDERED that the Objections of MELVIN DELK and LARRY G. NELSON to the Nomination Papers of DONALD PATTERSON, candidate for election to the office of Alderman of the Twenty-fourth Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of DONALD PATTERSON, candidate for election to the office of Alderman of the Twenty-fourth Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 25th day of January 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

Objections of:)
MELVIN DELK and LARRY G. NELSON)

To the Nomination)
Papers of: DONALD PATTERSON)

No. 07-EB-ALD-089

Candidate for the Office of)
Alderman of the 24th Ward)
in the City of Chicago)

Lynne R. Ostfeld
Hearing Examiner

2007 JAN 22 PM 5:37

RECOMMENDED DECISION

BACKGROUND

This matter having come before the Chicago Board of Election Commissioners ("CBOE") on objection by MELVIN DELK and LARRY G. NELSON ("objectors") to the nomination papers of the candidate, DONALD PATTERSON ("candidate"), Lynne R. Ostfeld, Esq., hearing examiner, finds and recommends as follows:

1. The hearing was begun on January 2, 2007. In attendance at the hearing were the objectors, Melvin Delk and Larry G. Nelson, the candidate, Donald Patterson, and his attorney, Gary A. Weintraub. An additional attorney, David A. Epstein, filed his additional appearance on behalf of the candidate on January 13, 2007.
2. The CBOE had jurisdiction of the parties.
3. The objectors' Verified Objectors' Petition alleged that: there are signatures which were forged at the request of the circulator; certain signatures were not genuine; certain signers were not properly registered voters at their addresses shown; certain addresses are not in the 24th Ward; certain addresses were either missing or incomplete; the purported circulators did not circulate the sheets which they signed; the petitions were circulated by many individuals, indicating false swearing; the candidate does not reside at the address on his Statement of Candidacy; the petitions demonstrate a pattern of fraud and disregard for the Election Code; the candidate's circulator affidavit was signed by "Don" Patterson which is not the proper name of the candidate; the petitions have less than the 172 valid signatures required for the candidate's name to be placed on the ballot for the Aldermanic Election from the 24th Ward.
4. The candidate filed a Motion to Strike and Dismiss Objector's Petition or Portions Thereof. The objectors had until January 9, 2007 to file their response and hearing was scheduled for January 10, 2007, at 1:30 p.m. The objectors requested and received approval for the issuance of three subpoenas.

5. Discussion was had about the number of the signatures obtained and the objections to them. The objectors withdrew their objections contained in 5-9, 10, 11 and 13 of the Objectors' Petition.

6. The objectors did not respond to the Motion to Strike.

7. The candidate requested a continuance of the hearing, due to his attorney's being out of town on January 10, 2007. This was granted and the hearing was continued to January 13, 2007.

8. An attorney, Leonard Murray, filed his appearance on behalf of the objectors on January 9, 2007. He requested issuance of an additional 15 subpoenas. Inasmuch as the request did not indicate the specifics of the information sought or the relevance, this request was denied. The objectors then elaborated slightly on their request for these subpoenas and it was granted.

9. At the hearing on January 13, 2007, the objections contained in paragraph 14 were stricken, on the basis that there was insufficient difference between "Don" and "Donald" Patterson to support a claim of fraud or false statement when the candidate used both versions of his name.

10. The motion to strike the objection, in paragraph 12, was not stricken because it was deemed to be a factual issue regarding evidence. The objectors' argument that the candidate would need to prove that he was a resident at the 1542 S. Keeler address for one year prior to submitting his nominating paper was not accepted because the one-year residency issue had not been included in the objection.

11. Hearing was scheduled for January 17, 2007, on the remaining objection, to wit: whether the candidate resided in the 24th Ward, at the address on his Candidacy Statements.

12. The candidate submitted a Candidate's Statement of Issues, pursuant to Rule 8 of the CBOE's Rules of Procedure. The objectors did not. They argued that it was not specifically ordered by the hearing examiner.

HEARING TESTIMONY

13. There was only one witness called by either party, the candidate himself. He stated as follows:

He is 39 years old, born July 14, 1967. He is married and separated, since 1997-98. His wife lives at 332 Cane Garden Circle, Aurora. She has lived there since June, 2006.

He does accounting. He has two locations: 4386 W. Ogden, Chicago and 4100 W. Ogden, Chicago. He has worked outside of Chicago in Bolingbrook and

Aurora. The Bolingbrook office closed in 2005. The Aurora location is not closed but relocated.

He does taxes in the Aurora office. He is there when he has clients and when he goes to see his family.

He owns numerous vehicles: 2006 Hummer, 2001 Mercedes, 2002 Mercedes, 1981 Rolls Royce, 1991 Lexis. Some of them have state plates. Some are licensed to him and some to the business. He has a City of Chicago sticker on the 2002 Mercedes, which is at 1542 S. Keeler.

Those licensed to him are the 2002 Mercedes at 1542 S. Keeler. The 2002 Hummer is parked on the street at 1542 S. Keeler and elsewhere. It's now at Ogden – it does not have a Chicago sticker.

He has 7 vehicles. The-2001 Mercedes is owned by Patterson Tax Service Corp. and located at Molitor.. A Lexis is off the street, not plated, in storage. A 19881 Rolls Royce is plated. There are 2 vans in storage, off the street, with no plates or stickers. He has 5 vehicles are available for use.

The 2006 Hummer is registered at 2727 Molitor Rd., Aurora That is a business/residential location. It is a home and he runs a business out of it. It is his wife's home and his business. He has purchased a City of Chicago sticker for the 2002 Mercedes. He had some vehicles licensed to him in Aurora because he has business there.

His driver's license is at 1542 S. Keeler.

Defendant/candidate's exhibit #7 is a photocopy of his driver's license, which indicates that it was issued on November 22, 2005, and not on his birthday. He had a license issued to him on that date for business reasons. He changed the address and had it reissued.

Plaintiff/Objectors' exhibit #1 is composed of copies of four pages of records from the Secretary of State's office concerning the 2006 Hummer. He purchased it in approximately 2005, in the summer. It is licensed to him at an address in Aurora. It was purchased by the business. It is licensed to him personally. Although he lives in Chicago, it is licensed to him in Aurora.

Plaintiff/Objectors' exhibit #2 is composed of copies of three pages from the Secretary of State's records concerning a 1999 Mercedes Benz which is registered to him at 2727 Molitor, Aurora. – it is a 1999 Mercedes. He does not own the vehicle. He sold it in 2006, early in the year. He is not sure of the exact date. The expiration on the plate sticker was July, 2006 but he sold it before then at an auction in Bolingbrook

He does not still own the property on Molitor. He sold it. It was on the market. He thinks that he sold it to Anna Cho. It closed in November, 2006. He never lived there. It is a residential home. He never lived there. Before he sold it, his family lived there. His wife bought it in 1998. They were jointly on title.

Plaintiff/Objectors' exhibit #3 (copy of a Warranty Deed transferring, on November 15, 2006, 2727 Molitor Road, Aurora, IL 60205 from Donald Patterson to Anah Choe and, on August 14, 1998, transferring it from Steve Carr Builders to Donald Patterson) This is a warranty deed. This is the deed by which the Molitor property was conveyed to Anah Choe. The deed says that the

execution date was Nov. 15, 2006. He did not have a lawyer for this transaction but did it himself.

He said that he and his wife owned the property but only his name appears on the deed. They purchased it together but his wife's name was not on it due to credit reasons.

At the closing, he was present, Anah Choe, was present and no one else. It was at a mortgage company.

The tax bill to Molitor came in his name.

His wife and family lived on Molitor; he did not.

A homeowner's exemption is a tax benefit, a tax break for a homeowner, possibly if you live there. He applied for a homeowner's exemption for the Molitor address because he purchased it for his family, they lived there. He got advice from Stuart Edelstein at the closing about this.

Plaintiff/Objectors' exhibit #4 (eight pages of copies of computer print-outs) This is an affidavit from the Clerk of the Board of Review, regarding the home owner's exemption.

He does not know in whose name the utilities are for Molitor. For the business on Ogden, the utilities are in his name.

Keeler is a 3 flat. He lives on the 3rd floor. His parents live there. He does not know who pays the utilities. He pays the bills but they are not in his name. The tax bill, gas bill, water bill are not in his name. He gets a phone bill there, 773.677.6496, at that address. It is a cellular phone. He receives no other utility bills there.

After he married, he did not live on Keeler with his wife but in Michigan. He occasionally lived there with his wife. When he moved to Michigan in 1991 they went back and forth. From 1991-94 they were in Michigan.

From high school to 2001, he considered the house to be his residence.

He married in July 1991 or 1992. He has two children. The oldest is 15. The youngest is 7, he thinks.

After his marriage, he resided in Michigan, in an apartment.

After he left Michigan, he resided at 1542 S. Keeler, in about 95-96. His wife came back and moved someplace else.

They separated because she did not want to live in Michigan. She came back in 1994 and he moved back a year later. Since 1995, he lived at the Keeler address.

He purchased the house on Molitor for his family in 1998. He does not know who has the utility bill for Molitor. He does not know if the utility service is in his name or not.

He owned several other properties.

He owns the business locations.

He owns residential places, but never lived there.

He owned property at Cane Garden Circle. That was a townhouse. He never lived there. He sold it.

His family lived there for a period of time and then rented it under Section 8. He held it as a landlord. He paid the utilities once and then the tenants paid

them. His wife and children are there now. He does not know whose name the utilities are in.

At the time he sold the Molitor property, no one was living there when he sold it. It had been vacant about 6-7 months. His family lived there but his wife became disabled, with lupus, and they had to relocate so she does not need to walk upstairs. They relocated to 322 Cane Garden Circle. She has been at 1541 Avers in Chicago for 1-2 years due to her having lupus.

The phone 630..... is his wife's number. He doesn't know whose name the bill is in. He does not know if there is a voice mail at the phone. He does not know if she has a voicemail there. His voice is not on the voicemail. His voice is not on any voicemail. He has too many clients to do that.

Defendant/Candidate's exhibit #01 (certified copy of birth certificate). The residence at the time of his birth was 1542 S. Keeler. This is a 3 flat.

Defendant/Candidate's exhibit #1 (photocopy of a picture of a building). This is a picture of the house; there are 3 apartments and it is a multifamily unit.

His parents own the building.

Defendant/Candidate's exhibit #2 (Trustee's Deed). The grantees are Farris Patterson, Jr. and Louise Patterson. They bought the building on January 10, 1964.

His parents have lived there all his life.

He occupies the top of the 3 flat. It was true on December 10, 2006. His parents occupy the middle flat. His uncle, Ned Adams, occupies the lower flat

He contributes to the payment of the bills and the upkeep of the building, to his parents.

He is married but separated. He has filed for divorce but they withdrew it.

They have been separated since 1997 or 1998.

He attended Our Lady of Lourdes.

Defendant/Candidate's exhibit #3 (a copy of a report card). This is a copy of a report card from Our Lady of Lourdes.

He lived at 1542 S. Keeler when he attended elementary school. He attended De LaSalle high school.

Defendant/Candidate's exhibit #4 (report card). This is his high school report card when he lived at 1542 S. Keeler.

He went to Langston University at Langston, OK for college.

His permanent address was 1542 S. Keeler.

Defendant/Candidate's exhibit #5 (grades). This is his report card from Langston University, with a home address of 1542 S. Keeler, Chicago. He was born and raised at 1542 S. Keeler.

He is registered to vote at 1542 S. Keeler.

Defendant/Candidate's exhibit #6 (voter's registration card). This is a registration card; he filled it out and signed it. His signature is on the bottom

Defendant/Candidate's exhibit #7 (driver's license). He has a current Illinois driver's license. This is the current license. It was issued November 11, 2005.

He has a vehicle at 1542 S. Keeler, an S22 Mercedes.

Defendant/Candidate's exhibit #8 (three pages regarding the Mercedes Benz). The registration to that vehicle is at 1542 S. Keeler. The second page is the warranty on the vehicle at that address. The third page is the vehicle emission test. The address is at 1542 S. Keeler.

He receives mail and bills at 1542 S. Keeler, and on a regular basis Defendant/Candidate's exhibit #9 (copies of multiple documents).

The first page is a credit card from Household bank, dated 11/29/2006, and sent to him at 1542 S. Keeler;

p. 2 a bill from the bank, to the Keeler address;

p. 3, a cell phone account bill to him at that address;

p. 4, a bank statement from Chase to him at that address;

p. 5 medical bills to him at 1542 S. Keeler (this covers May 16, 2005);

p. 6 invitation to his university 9/24/06, at 1542 S. Keeler;

p. 7 he receives all of his alumni mail at 1542 S. Keeler;

p. 8 dental insurance, at 1542 S. Keeler;

All of these documents came to him at 1542 S. Keeler

He keeps his clothes at 1542 S. Keeler

He has furniture in his flat at 1542 S. Keeler. He owns it and bought it. He has a TV, a refrigerator, a stove, and kitchen utensils

He spends nights there -6-7 days a week when he is in town.

He considers 1542 S. Keeler to be his permanent on-going residence, since 1995.

Since 1995 there has never been a time when he did not receive mail at 1542 S. Keeler.

He owns all of these vehicles because he used to have a limousine business. He has a consulting business with a lot of NFL players and uses these cars to take them out. His 2006 Hummer was used for business.

The property at 332 Cane Garden Circle, Aurora is owned by his mother-in-law. She has owned it for 2-3 years. His mother-in-law bought the property about 2 years ago. He has no ownership interest in this property, and has not for 2-3 years.

He supports his family.

14. Over objections to some of the evidence presented, all of the candidate's and the objectors' exhibits were entered into evidence by the hearing examiner.

15. The closing arguments by the parties were as follows:

OBJECTORS

In election law, residency cases are among the most difficult, no candidate ever comes in and states that he does not live where he says he lives. It is a subjective/objective analysis.

The subjective part is the candidate claiming that he has sufficient connections to the address to qualify under the election code.

The objective part is how he has lived his life.

What is the objective evidence suggesting that he does not reside in the 24th ward, that he has a connection for purposes of election law somewhere else?

He has a number of vehicles, some of which are registered outside the city of Chicago, with only one with a sticker at Chicago.

His parents have had a stable location. He would have us believe that he left home to go to college, came back, is now separated and still lives with mom and dad, in their building. He claims to be contributing to the upkeep of the building by paying certain items but there is no proof.

We know that he owns several properties where his wife and children live without him. It's confusing as to whether she was in title or not.

He claimed an exemption as being the owner of the property. This would require his arguing that he resides there. He testified that he never lived there. He has admitted fraud because he should not be entitled to the exemption.

For insurance purposes, a number of his vehicles are licensed elsewhere. It may be because car insurance is cheaper out of the city than inside.

All of these things speak to where his connections are.

He brought in a number of documents: birth certificate, parents' title; grades. This does not demonstrate that he lives where he claims to live and has the connections which are necessary. It would be convenient for him to receive mail at his parents' address. Given his unstationary life, at his own admission, his parents' home is a safe haven.

He claims that he has a wife who is ill, but that the caretaking of his children is done outside himself.

He runs several businesses.

Would it not be logical that he would be more present in his children's lives.

In residency matters you have to get beyond the superficial evidence of a person's life as to where they live. The arrow most directly points to Aurora; his connection is not with Chicago. His business is there, he has an exemption there, he has cars there. There is nothing about this which orients to Chicago, it orients to Aurora.

They have not put much forward. They have a lot of paper dating from his birth and forward. This is a man who is almost 40 years old without a home phone, he has a cell phone. Is this a connection with Keeler?

Maybe there is just an empty space. There are no photos showing his living environment.

The objectors have the burden but by looking at the objective test, there is not much but the circumstances which he has created on his own.

Please sustain the objection in paragraph 12 that he does not reside at the address on the statement of candidacy.

He likely has not resided in the ward for the requisite period of time.

What is the true rule for when he needed to reside there. There is no evidence that he has resided there long enough to establish the residency requirements for the 12 months.

CANDIDATE

He will divide the closing into 3 parts.

First, the evidence and the burden and the issue

Second, is the non-evidentiary and speculative and irrelevant argument of the objectors.

Third, he moves to strike the last portion of the argument dealing with the length of his residency

First, the objector has the burden of proof, as well as the burden of going forward. This is not a terribly unusual or borderline residency case. The objector has the burden of proving two negatives: (1) that the candidate did not physically reside at 1542 S. Keeler on December 10, 2006, and (2) with respect to that date, that the candidate did not intend that the address be the permanent residence.

The objector has the burden of disproving the legal residence of this candidate. This candidate duly registered to vote in 1995, and has voted at that address and maintained his registration at that address – that act of registration is an affirmative act to maintain his address there.

The undisputed facts are:

1. he has maintained continuously his residence at that address since 1995 without a break; there is zero evidence to the contrary. There is no countervailing evidence at all.
2. He has lived there and maintained a connection there his whole life; he grew up there; it has been a residence, his residence his whole life. Even when he established a residence in Michigan with his wife they came back weekends and stayed in that apartment.
3. There is no evidence that he ever spent a night elsewhere; there is no evidence, zero.
4. This is a case based on nothing; there is no evidence that he ever resided elsewhere than 1542 S. Keeler.
5. There is zero evidence relating to the specific date in question.
6. There is no evidence that he treated another residence as his permanent residence.
7. There is no evidence that he treated his Michigan residence as his permanent residence.
8. On this record he has treated 1542 S. Keeler as his permanent residence his whole life.

There are arguments to be made on behalf of the candidate:

1. The candidate has a number of businesses which, in part or in whole, are in Aurora. He has cars registered there.
2. He has maintained a residence for his family in Aurora but there is no showing that this is his residence.
3. There is no nexus between him and Aurora. The CBOE granted 15 subpoenas but nothing was shown proving otherwise.
4. There is the CBOE registration that shows that he was registered at 1542 S. Keeler.
5. The objectors did nothing to show that he was treating another residence as his permanent residence.
6. The objectors only argued that there was a connection to Aurora.
7. He is not living with his parents but in an apartment in his parents' building.

8. It doesn't matter what we think of his choices but what the evidence proves.
9. He thought that his wife had joint ownership of Molitor but it does not matter. We don't know what the form was that was filed to claim the Homestead Exemption. We don't know what was required in DuPage. It may be that the lawyer told him that the fact that the family was there was sufficient to claim the exemption. This is just speculation.
10. There is speculation about the possible insurance motive to base his cars in Chicago or Aurora. This is speculation and some are registered to his corporation out there, not to him.
11. There is solid evidence that this man, this candidate, has already resided at 1542 S. Keeler, as his permanent home.
12. Speculation should not keep him off the ballot.
13. They can't produce anybody to testify that he is not a resident of the 24th ward. Not even the objectors testified to that. The objectors just want the CBOE to surmise this and keep him off the ballot.

Mr. Patterson should be found to be a permanent resident at 1542 S. Keeler, Chicago, and the objection dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The effect of using "Don" or "Donald" Patterson

16. The objections in paragraph 14 were as follows:

"14. That the Nomination Papers contain petitions, where the circulator affidavit is signed by Don Patterson. This is not the proper name of the person appearing before the notary. Therefore, each sheet that contains Don Patterson, and not Donald Patterson, as the circulator should be stricken."

17. In his Motion to Strike, the candidate submitted an Affidavit with the CBOE information regarding his voter's registration. That information indicated that he had completed a registration card on January 28, 1995 using the name Donald Patterson. He signed it "Don Patterson". The CBOE printed it as "Don Patterson" and listed his registration as "Don Patterson".

18. In the recommended decision for a similar objection in another case regarding this candidate, *Sanders v. Patterson*, 07 EB ALD 182, this hearing examiner found that the difference between "Don" and "Donald" to be insufficient to cause confusion, if any, among voters. She found that there was no statute or caselaw supporting a finding of fraudulent conduct on the candidate's part by his using "Don" as well as "Donald" in his legal papers. Further, he could not be bound by the CBOE referring to him as "Don" Patterson.

If anything, caselaw allows a person to be placed on a ballot where problems with public variations of his name are relatively insignificant and insufficient to cause

confusion to voters, *see, gen'ly Baggett v Daggett, Sr.* (CBOE 91 EB ALD 82) (*the difference between the candidate's name of Antonio "Tony" Daggett on his nomination papers and Antonio Raul Dagget, Sr. on his Statement of Candidacy was not a substantial difference*); *Erbring v. Butler* (97 COEB CO 06) (*allowing a candidate to be listed as Jerry "Iceman" Butler because he was commonly known by that nickname*).

Issues regarding a one year residency

19. The objection in paragraph 12 was as follows:

"12. That the Candidate do (*sic*) not reside at the address on his Statement of Candidacy, in violation of residency requirements for seeking the office of Alderman in the CITY OF CHICAGO, in violation of Illinois law."

20. At both the January 2nd and January 13th hearings, the objectors contended that this paragraph obligated the candidate to show not only that he resided at 1542 S. Keeler but that he had resided there for the year prior to his filing his nominating petitions and Statement of Candidacy. They argued that the objection made reference to the municipal residency requirements, effectively in their entirety, which require a one year residency. They argued that a one-year residency requirement in the ward must be read into the objection in paragraph 12.

21. In his motion to strike and oral arguments at both the January 2nd and January 13th hearings, the candidate argued that the objection in this paragraph 12 should be stricken for failure to adequately allege a violation of the statutory residency requirements for alderman because the objection did not allege that the candidate did not meet the one year residency requirement or allege any facts that might constitute a disqualification under the one-year residency requirement. He argued that the objection does not allege a failure to meet the statutory residency requirement for alderman. It also does not allege a failure to live within the ward on any day in the year before the election.

22. The hearing examiner rejected the objectors' argument that the objection addressed a one-year residency requirement. She held that the issue was whether the candidate resided at 1542 S. Keeler on December 10, 2006. This was based on a reading of the plain meaning of the language of the objection.

Candidate's residence on December 10, 2006

23. After extensive hearing on the issue, listening to the candidate answer questions from both his attorney and the attorney for the objectors, reviewing the exhibits presented by both sides, and listening to the oral arguments, the hearing examiner ruled that the objectors did not meet their burden to prove that the candidate did not reside at 1542 S. Keeler on December 10, 2006. The reasons for this ruling are as follows:

- A. The candidate at all times maintained that 1542 S. Keeler is his residence and that he intended it to be his residence.
- B. The candidate had a long standing link with the Keeler address, having shown that he grew up there, and that he had registered to vote there in 1995.

C. The objectors were unable to show anything, whether through testimony, photos, or other documents, that the candidate's claim to live at 1542 S. Keeler was unbelievable, or impossible. They presented no other witnesses and had no evidence of any type or value that he did not spend virtually every night, when he was in town, in a habitable apartment at 1542 S. Keeler as he claimed. It is not beyond reason to believe that he lived in an apartment in his parents' three-flat and that he relied on a cell phone rather than a land-line phone, despite their arguments that this was unbelievable for someone of his age.

D. The objectors' submittal of copies of documents showing that he also owned real estate in DuPage County and kept cars outside of Chicago was not sufficient to prove that he resided outside of Chicago. He claimed to be separated from his wife, but was supporting her and their two children, a claim which is not unreasonable. The objectors' argument that the candidate filed for a homeowner's exemption on property in DuPage County was insufficiently addressed by them to disprove the candidate's claim of residency in Chicago. The objectors submitted copies of computer print-outs (Plaintiff/objectors' exhibit 4) without any testimony of value as to what these sheets represented. The closest that they came to any explanation of these sheets was through a handwritten notation by an unknown person "residential exemption". There was a notarization of an affidavit that the documents submitted were true and correct reproductions of data stored in the computer, but there was no further explanation given as to the meaning of these documents.

E. There was no direct proof that the candidate did not reside at 1542 S. Keeler.

F. The candidate was found to be believable when he stated that he resided at 1542 S. Keeler, that he was separated from his wife, and that he bought the house that she and their children resided in, until she moved to another house, due to her lupus.

G. The discussion about his registration of the greater number of his cars elsewhere than at 1542 S. Keeler was not followed up in a manner to prove that he did not live at this address, or that it was unreasonable to register any of his cars at his business addresses. The circumstantial evidence of possible residency elsewhere was not sufficient to refute the candidate's claim of residency at 1542 S. Keeler.

24. The requirement in Illinois for a person to run for an elective office is that he be a qualified elector of the municipality and that he reside in it for at least one year preceding the election. 65 ILCS 5/3.1-10-5). No allegation was made that the candidate was not an elector of the municipality. No allegation was made that he did not reside in the municipality for one year prior to the election. A hearing examiner should not be expected to read into an objection what is clearly not there, particularly when that reading would deny a person a chance to submit his name for election to the voters.

25. The objectors are well aware of the definition of residency: physical presence and intent to remain there as a permanent home. This was the holding in *Delk v. McGoan*, 112 Ill. App. 3d 735, 445 N.E.2d 1232 (1st Dist. 1983). One of the current

objectors was the named objector in that case. Despite that knowledge of residency requirements in an election, he put on no evidence to show that the candidate had a physical presence in an abode elsewhere than at 1542 S. Keeler, and he presented no evidence to show that the candidate did not intend to live there as his permanent home.

26. Of note is the hearing examiner's belief that the evidence that the candidate had owned a home, where his wife and family resided, in DuPage County, and that he kept a number of his cars registered outside of Chicago, might have been sufficient to show that he resided in Aurora had the candidate run for office there and needed to prove residency there. Were he obligated to prove that he lived in Chicago, he would have a difficult, and possibly impossible task. However, the burden in this instant case was on the objectors to prove that he did not reside at 1542 S. Keeler. They did not meet this burden.

27. Because ballot access has been held to be a substantial right and one not to be lightly denied a voter, it follows that the proof that a candidate does not meet a requirement necessary to run for an election should be clear and convincing. *see, gen'ly, Vestrup v. DuPage County Election Commission*, 335 Ill. App. 3d 156, 779 N.E.2d 376 (2nd Dist. 2002). The objectors presented evidence putting in doubt the candidate's claim to reside at 1542 S. Keeler, but it was simply not sufficient to prove that his claim was false and that his Statement of Candidacy was false.

28. For the reasons explained above, the hearing examiner recommends to this Board that it uphold the decision to grant the candidate's Motion to Strike and Dismiss Objector's Petition or Portions Thereof.

29. The hearing examiner recommends that this Board find that the Nomination Papers of DONALD PATTERSON be declared to be VALID for the reasons stated above.

30. The Hearing Examiner recommends that this Board order that the name of DONALD PATTERSON BE printed on the ballot for the Aldermanic Election, 24th Ward, City of Chicago, to be held on February 27, 2007, for the reasons stated above.

Dated: Chicago, Illinois, this 22nd day of January, 2007.



Lynne R. Ostfeld, Hearing Examiner

ORDER

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MELVIN DELK and LARRY NELSON

Petitioners

v.

No. 2007 COEL 15

DONALD PATTERSON, et al

Respondents.

ORDER

This cause for judicial review of the Electrical Board decision on the petitioners' objections to the nomination papers and residency qualifications of Donald Patterson, candidate for Alderman of the 24th Ward of Chicago, on the petitioners' Petition for Judicial Review, the candidate's Motion to Dismiss and Answer, and the Court having heard oral argument of the parties' counsel, and being advised in the merits, It is ORDERED:

- ① Respondent Patterson's motion to dismiss for lack of jurisdiction and venue is DENIED;
- ② The petition for judicial review is DENIED, and the decision of the Electrical Board of January 25, 2007 (No. 07-FB-ALD 089) is affirmed in the merits.
- ③ This is a final order.

Atty. No. : 52233
 Name : DAVID A. EPSTEIN
 Atty. for : Respondent Patterson
 Address : 36 N. LaSalle St. #2900
 City/State/Zip : Chicago, Ill. 60602
 Telephone : 312/553-1479

ENTERED
 JUDGE MARK BALLARD-1742
 FEB 21 2007
 ENTER :
 DOROTHY BROWN
 CLERK OF THE CIRCUIT COURT
 OF COOK COUNTY, IL
 DEPUTY CLERK
 Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS