

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

Objections of: MICHAEL D. DANIELS)
)
To the Nomination) **No.: 07-EB-ALD-114**
Papers of: L. ELIZABETH LEWIS)
)
Candidate for the office of)
Alderman of the Sixteenth 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 MICHAEL D. DANIELS (“Objector”) to the nomination papers (“Nomination Papers”) of L. ELIZABETH LEWIS, candidate for the office of Alderman of the Sixteenth Ward in 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 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 David Tecson for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, MICHAEL D. DANIELS, by counsel, Dan Johnson-Weinberger; and the Candidate, L. ELIZABETH LEWIS, pro se.

7. The Hearing Examiner ordered that an examination of the registration records be conducted by its clerks and agents under the Board's direction and supervision, in accordance with the laws of Illinois and the rules of the Board.

8. The Hearing Examiner directed all parties to appear and be present, either personally and/or by their authorized representatives during this records examination.

9. The Candidate and/or her duly authorized representative was present during the examination of the registration records.

10. The Objector and/or his duly authorized representative was present during the examination of the registration records.

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination

conducted by its clerks and agents. The written report of the result of the registration records examination is contained in the Electoral Board's file in this case and a copy has been provided to the parties.

12. The Electoral Board has considered all evidence and arguments tendered by the parties and the Hearing Examiner's report of recommended findings and conclusions of law.

13. The results of the records examination indicate that:

A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 116;

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 310;

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 143;

D. The remaining number of signatures deemed valid as a result of the records examination total 167.

14. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeded the minimum number of valid signatures required by law to be placed upon the official ballot as a candidate for election to the office of Alderman of the Sixteenth Ward of the City of Chicago.

15. The Hearing Examiner then set a hearing to hear evidence on the Objector's allegation that the Candidate did not, in fact, reside at the address listed on her Nomination Papers.

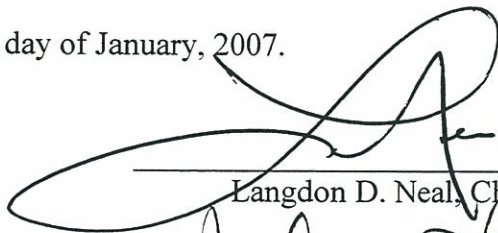
16. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be sustained and that the Nomination Papers be found invalid.

17. 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 Recommendation is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

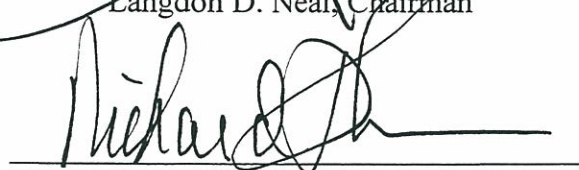
18. For the reasons stated above, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of MICHAEL D. DANIELS to the Nomination Papers of L. ELIZABETH LEWIS, candidate for election to the office of Alderman of the Sixteenth Ward of the City of Chicago are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of L. ELIZABETH LEWIS, candidate for election to the office of Alderman of the Sixteenth Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 28th 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.

**BOARD OF ELECTION COMMISSIONERS
OF THE CITY OF CHICAGO**

MICHAEL D. DANIELS

Petitioner-Objector,

v.

L. ELIZABETH LEWIS

Candidate.

No.07-EB-ALD-114

Hearing Examiner: David J. Tecson

No. 07-EB-ALD-114
8-29

RECOMMENDATION

This cause coming to be heard on Michael D. Daniels' (the "Objector") Verified Objector's Petition to bar L. Elizabeth Lewis (the "Candidate") from appearing on the ballot for election for Alderman of the 16th Ward in the General Municipal Election to be held on February 27, 2007, the hearing examiner finds as follows:

I. Allegations of the Objection

Objector brought this action challenging both the Statement of Candidacy and the nominating petitions filed by the Candidate for Alderman of the 16th Ward. With respect to the nominating petitions, Objector claims multiple violations of the Illinois Election Code. These objections were grouped into categories and labeled; 1) "Signer Not Registered At Address Shown," 2) "Signer's Signature Not Genuine," 3) "Signer Resides Outside of District," 4) "Signer's Address Missing or Incomplete, 5) "Signer Signed Petition More Than[k]sic Once at Sheet/Line Indicated," 6) "Not Genuine; Signer's Signature Printed and Not Written, and 7) "Circulator's Affidavit Not Properly Notarized." The Objector also raises an issue of the

Candidate's residency, alleging that the Candidate has not lived in the 16th Ward for the requisite period of time.

II. Candidate's Motion to Strike

Both the Candidate and the Objector appeared before the Board of Election Commissioners for the initial status hearing set for January 2, 2007. The Candidate and the Objector filed appearances and submitted to the jurisdiction of the Chicago Board of Election Commissioners. The Candidate filed a Motion to Strike and Dismiss the Objector's petition. The Motion to Strike and Dismiss asserted that the Objector had not adequately alleged that he was a registered voter in the 16th Ward, and that the Objector's petition did not contain a specific description of his interest. With respect to residency, the Verified Objector's Petition states in Paragraph 1, "The Objector, Michael Daniels, resides at 5644 S. Morgan Street, Chicago, Illinois, and is a duly qualified, legal and registered voter at that address." The hearing examiner finds that the Chicago Board of Elections Commissioners can take judicial notice of the fact that 5644 S. Morgan Street is within the 16th Ward. Thus, the Objector alleged sufficiently that he is a registered voter within the 16th Ward.

The Objector's Statement of Interest is as follows:

The Objector's interest in filing this Petition is that of a voter interested in ensuring the laws governing the filing of nominating petitions for the office of Alderman of the City of Chicago are properly complied with and that only qualified candidates appear on the ballot for said office (Verified Objector's Petition, Paragraph 2).

The hearing examiner finds that the foregoing statement of interest is sufficient to support the Verified Objector's Petition. The remaining issues in the Motion to Strike and Dismiss filed by the Objector related to the signatures submitted in support of her candidacy. All of those

issues were rendered moot by the record examination described below. Therefore, the hearing examiner denies the Candidate's Motion to Strike and Dismiss the Objector's petition.

In light of the Objector's multiple challenges to the signatures on the Candidate's petition sheets, both the Candidate and Objector agreed that a record examination should proceed.

III. Record Examination

The Chicago Board of Election Commissioners conducted an independent examination of the signatures. The examination was completed January 13, 2007 and the results of the record examination showed that of a total of 310 signatures on the petitions, 187 of the signatures were in fact valid. The minimum signature requirement for the office of Alderman of the 16th Ward is 116. Candidate has obtained a sufficient number of signatures to appear on the ballot for the upcoming election on February 27, 2007 and therefore, Objector's petition with respect to said signatures should be overruled.

IV. Residency

Section 21-14(a) of the Revised Cities and Villages Act (65 ILCS 20/21-14(a)) describes the qualifications for an Aldermanic candidate in the City of Chicago. The pertinent part states as follows:

"No member may be elected or appointed to the city council after the effective date of this amendatory Act of the 93rd General Assembly unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment." 65 ILCS 20/21-14(a).

Objector alleges in his petition that Candidate has filed a 'false, fraudulent and perjurious Statement of Candidacy.' Objector alleges Candidate has not lived in the 16th Ward for the requisite period of residency, i.e. one year. As proof of this Objector points to Candidate's voter

registration under two separate names at two separate addresses and records of the Chicago Board of Election Commissioners that evidence a Lai Jacqueline E. Lewis, registered to vote at 5035 South Drexel for the March 21, 2006 election.

To rebut these allegations, Candidate has, in her Motion to Strike and Dismiss Objector's Petition, stated that; 1)Candidate's name is Lai Jacqueline E. Lewis, 2) Candidate was once registered to vote using that full name, 3) Candidate transacts business under, holds a drivers license in and has registered to vote under the name of L. Elizabeth Lewis and 4) Candidate has resided at 5649 S. Elizabeth Street since November of 2004. In support of her statements, Candidate has attached to her Motion a Master Account Agreement with Washington Mutual Bank evidencing her address as 5649 S. Elizabeth Street and two affidavits from persons purporting to know the Candidate and swearing that Candidate has resided and cared for her father at 5649 S. Elizabeth.

In order to establish residency, two elements must be established: (1) physical presence in the place, and (2) the intention to remain thereof as a permanent home. Although declarations of intent are admissible as evidence thereof, acts and surrounding circumstances should be given more weight in making the factual determination of intent. Stein v. County Board of Trustees of DuPage County, 85 Ill.App.2d 251, 229 N.E.2d 165, aff'd, 40 Ill.2d 477, 240 N.E.2d 668 (1968).

V. Evidentiary Hearing and Ex Parte Communications

The Candidate and the Objector appeared for an evidentiary hearing on January 17, 2007 at approximately 11:15 a.m. to present evidence regarding the issue of whether the Candidate resided within the 16th Ward for at least one year prior to the election of February 27, 2007. On that date and time, the Objector filed a Motion to Support the Objector's petition and served it on

the Candidate and the hearing officer. After a recess, the Candidate indicated that she wanted to proceed with the evidentiary hearing (transcript, page 5).¹

The Candidate testified that she currently lives at 5649 S. Elizabeth and cares for her father at that address (transcript, pages 5-6). She conceded that she is a registered voter at 5035 S. Drexel ("Drexel Address") because she owned property at 5035 S. Drexel (transcript, page 7). The Candidate testified that she moved out of the Drexel property to the home at 5649 S. Elizabeth ("Elizabeth Property") to care for her father in approximately October of 2005 (transcript, page 14).

After clarifying that she is the co-owner of the Drexel property, the Candidate testified that she is leasing the property to a tenant, and that she would be able to produce a lease for the Drexel property (transcript, page 20). She went on to specify that the rent for the lease is \$875 per month (transcript, page 21).

Under cross-examination, the Candidate admitted that her Illinois drivers license (expired June of 2006) reflected an address of South Holland, Illinois. She also produced an Illinois I.D. card that was issued on July 14, 2006 showing an address of 5035 S. Drexel Blvd. (transcript, page 24).

In concluding the hearing, the hearing officer directed both parties to file any other documents or evidence they had related to the residency of the Candidate by Friday, January 19. The Candidate and the Objector filed documents of limited probative value regarding the issue of where the Candidate lived during the year 2006.

The Objector filed two notarized letters dated January 18, 2007 and January 19, 2007 signed by Michael D. Daniels and Sandra C. Thompson. These letters contain hearsay

¹ The transcript from the evidentiary hearing on January 17, 2007 is available for inspection within the Board of Election Commissioners file for Case No. 07-EB-ALD-114.

statements alleging that the Candidate was a resident of the Drexel property until she was evicted in the Summer of 2006. Thereafter, she allegedly lived in the basement of a nearby church.

The Candidate filed a letter addressed to her at the Elizabeth property from the office of the Attorney General for the State of Illinois dated January 18, 2006 and another document issued by the State of Illinois. Unfortunately for the Candidate, she also filed a letter addressed to the hearing officer which stated as follows, "I was not willing to disclose to Mr. Daniels or to counsel I was defrauded out of my house in March, 2005."

From this tangle of facts, a recommendation must issue. The Candidate testified persuasively that she resided with her father at the Elizabeth property from on or about October of 2005 through the present time.

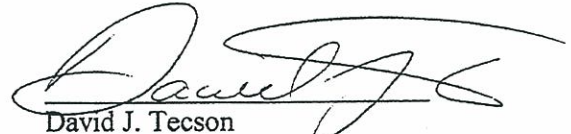
The Candidate also persuasively testified that she continued to own the Drexel property, that she rented the Drexel property, that she could produce a lease related to the Drexel property, that she had a silent partner co-owner of the Drexel property, and that the sub-tenant paid her \$875 per month for the use and enjoyment of the Drexel property. None of these statements were true according to the letter the Candidate filed with the Chicago Board of Elections on January 19, 2007. Thus, the Candidate has undermined her own credibility.

The Candidate also engaged the hearing examiner in ex parte communications. On Friday, January 19, 2007, the Candidate called the hearing examiner's office and left a voicemail alleging that Michael D. Daniels is a convicted felon currently on probation. On Monday, January 22, the Candidate spoke with the hearing examiner by telephone and advised the hearing examiner she had lost the Drexel property due to fraud. The hearing examiner advised the Candidate that she should not engage in ex parte communications, and terminated the call.

In light of all the foregoing evidence, the hearing examiner must conclude that the Candidate has not resided at the Elizabeth property for the requisite year, and recommend that the Objector's petition be sustained.

VI. Recommended Findings of Fact and Decision

The record examination conducted by the Chicago Board of Election Commissioners demonstrates that L. Elizabeth Lewis submitted 187 valid signatures to support her candidacy. The minimum number of signatures required for the office of Alderman for the 16th Ward is 116. However, the balance of the conflicting evidence submitted in this case indicates that the Candidate has not been a resident of the 16th Ward for the required year. Therefore, hearing examiner recommends that the Objector's petition be sustained, and that L. Elizabeth Lewis be stricken from the ballot as a candidate for the upcoming election on February 27, 2007.


David J. Tecson
Hearing Examiner

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, COUNTY DIVISION

L. ELIZABETH LEWIS,)
)
)
Candidate/Petitioner,)
)
vs.)
)
BOARD OF ELECTIONS COMMISSIONERS,)
FOR THE CITY OF CHICAGO, ELECTORAL)
BOARD (CBOE);)
COMMISSIONER LANGDON D. NEAL;)
COMMISSIONER RICHARD A. COWEN;)
MICHAEL D. DANIELS,)
)
)
Objector/Respondents.)
)

Case No. 2007 COEL 17

MEMORANDUM OPINION AND ORDER

This matter is before the court, pursuant to 10 ILCS 5/10-10.1 (2007), on Petitioner's Petition for Judicial Review seeking, *inter alia*, an order enjoining Respondent Chicago Board of Election Commissioners "to not have the early voting and the February 27, 2007 election proceed until all matters herein are disposed." The petition also seeks review of City of Chicago Municipal Officers Electoral Board (hereinafter "Board") case number 07-EB-ALD-114. The court, having reviewed the papers, related exhibits, and the Board's record of proceedings, having been fully advised in the premises, and having had due deliberation thereon, hereby rules on said petitions as set forth below.

Background:

On December 18, 2006, Petitioner L. Elizabeth Lewis (hereinafter "the candidate") filed a

nomination certificate and nominating papers for her candidacy for alderman in the City of Chicago's 16th Ward. In her filings, she stated she resides at 5649 S. Elizabeth Street, an address all parties agree is in said ward. On December 26, 2006, Respondent Daniel D. Daniels (hereinafter "the objector") filed a "Verified Objection Petition" (07-EB-ALD-114, hereinafter "objection") alleging, in its relevant part, the candidate failed to comply with the residency requirements for her candidacy. Specifically, the objector alleged the candidate had resided at 5035 S. Drexel Avenue, an address all parties agree is outside the 16th Ward, until less than a year preceding the February 27, 2007, aldermanic election.

Following hearings on the objection and papers addressed to the objection, the hearing examiner recommended, in relevant part, that the Board sustain the objection to the candidate's residency and that the candidate's name be stricken from the ballot for the February 27, 2007, election. Although it is not disputed that, currently and at the time the nominating papers were filed, the candidate resided at the 16th Ward address, the hearing examiner's consideration of the candidate's admission to owning and previously residing at the Drexel Street address, voter registration records showing the candidate to have voted from that address at the March 21, 2006, election, a photo identification card issued July 14, 2006, by the State of Illinois stating the candidate resided at the Drexel Street address, a drivers license (expiration date: June 2006) issued by the State of Illinois stating the candidate resided in South Holland, Illinois, and the candidate's nominally documented assertions she began her current residence at 5649 S. Elizabeth Street in January 2005 led the hearing examiner to conclude the objector had met his burden of proof that the candidate had resided in the ward for less than the required year.

The candidate, pursuant to Board Rule 20¹ filed a timely request for review by the Board. The Board's decision adopted the recommended the hearing examiner's findings of fact and conclusions of law and found the candidate's nomination papers to be invalid. Consequently, the Board ordered that the objection be sustained, declared the candidate's nomination papers invalid, and ordered that the candidate's name not be printed on the ballot for the election to be held February 27, 2007. The grounds for the decision were that the candidate failed to comply with the residency requirements.

Analysis and Law:

Petitioner requests remedies in both law and equity. The requested legal remedy, as provided in the Election Code, 10 ILCS 5/10-10.1 (2007), is reversal of the Board's decision. Giving the petition for judicial review the benefit of the doubt, the equitable relief requested is, in effect, a preliminary injunction.

As recently restated by the Illinois Supreme Court in *Mohanty v. St. John Heart Clinic*, S.C., __ Ill. 2d __, 2006 Ill. LEXIS 1689 (2006), a party seeking a preliminary injunction is required to show the following:

1. a clearly ascertained right in need of protection,
2. irreparable injury in the absence of an injunction,
3. no adequate remedy at law, *and*
4. a likelihood of success on the merits of the case.

¹ Rules of Procedure for the Board of Election Commissioners of the City of Chicago as the Duly Constituted Electoral Board for Hearing and Passing Upon Objections to Nomination Papers and Petitions of Public Policy (Jan. 2, 2007)(hereinafter "Board Rule").

Id. at *12. At a minimum, the petition for judicial review does not allege a likelihood of success on the merits and a preliminary injunction is therefore inappropriate.

The factual allegations of an evidentiary nature in the petition for judicial review, the candidates supporting brief, and the records of the Board's proceedings provide the court with a legally sufficient basis to review the Board's decisions without further evidentiary proceedings.

The applicable standard of review of an election challenge was recently clarified by the Illinois Supreme Court:

This appeal arises not from an administrative review proceeding, but from an election challenge filed in circuit court. There is no decision of an administrative agency at issue in this appeal. We, therefore, review any factual questions under the manifest weight of the evidence standard, but review *de novo* the legal determination of substantial compliance with the [statute]. . . .

A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence.

Samour, Inc. v. Bd. of Election Comm'rs, ___ Ill. 2d ___, 2007 Ill. LEXIS 7, *16, 19 (Jan. 19, 2007)

(citations omitted). *See also Girot v. Keith*, 212 Ill. 2d 372, 378-379 (2004).

The Revised Cities and Villages Act of 1941 provides, in relevant part:

Sec. 21-14. Member residency before election . . . (a) No member may be elected or appointed to the city council . . . unless he or she has resided in the ward he or she seeks to represent at least one year next preceding the date of the election or appointment.

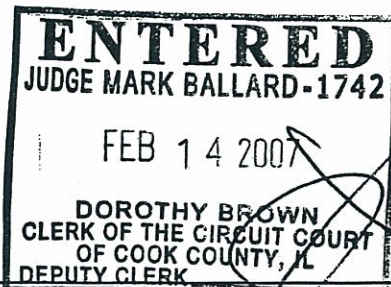
65 ILCS 20/21-14(a) (2007). The record of proceedings before the hearing examiner and the Board contain conflicting, allegations concerning the date on which the candidate's current residency in the ward began, and the testimonial and documentary evidence support the allegations in varying degrees and ways. In such a proceeding, the credibility of the evidence, conflicting and otherwise, is determined by the hearing examiner, subject to approval by the

Board. Board Rule 8 provides, "With regard to the substance of the objections, generally the objector must bear the burden of proving by operation of law and by a preponderance of the relevant and admissible evidence ("the burden of proof") that the objections are true and that the candidate's nomination papers . . . [are] invalid." In light of the facts described above and the verbatim transcripts of the hearings before the hearing examiner and the Board, this court finds the Board's decision to be based on the evidence and reasonable.

IT IS HEREBY ORDERED, that:

1. Petitioner's requests for preliminary injunctions herein are hereby **DENIED**.
2. Petitioner's request for reversal of the decision by the City of Chicago Municipal Officers Electoral Board in the Board case numbered 07-EB-ALD-114 is hereby **DENIED**.

ENTER



Hon. Mark J. Ballard
Circuit Court Judge