

DEFAULTCAND-RGA

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

Objections of: ANDRE THAPEDI)
)
)
)
)
To the Nomination) No. 08-EB-RGA-28
Papers of: SEAN J. SMITH)
) (rel. case RGA-15, RGA-24)
)
Candidate for the office of Representative)
in the General Assembly, 32nd District,)
State of Illinois, Democratic Party)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Chicago Board of Election Commissioners Langdon D. Neal, Richard A. Cowen, and Marisel A. Hernandez, 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 ANDRE THAPEDI ("Objector") to the nomination papers ("Nomination Papers") of SEAN J. SMITH, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd Representative District, State of Illinois ("Candidate"), having convened on November 20, 2007, at 10:00 a.m., at 69 W. Washington Street, 8th Floor Conference Room, 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 November 20, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Joseph A. Morris for further hearings and proceedings.

6. The Objector and the Candidate appearing were directed by the Electoral Board's Call served upon them to appear before the assigned Hearing Examiner on November 20, 2007, at the time and location designated in the Electoral Board's docket.

7. The Hearing Examiner conducted an initial hearing of this case on November 20, 2007. The Objector appearing by counsel, Llwellyn Thapedi, was present. The Candidate did not respond to the call of the case on three occasions and was not otherwise present.

8. The Hearing Examiner has tendered his report and recommendation to the Electoral Board. The Hearing Examiner's report recites the various attempts, successful and unsuccessful, to personally serve the Candidate with the Call and notice of the Electoral Board's hearings scheduled in this matter. The Hearing Examiner found that:

A. The Candidate was served with notice of the proceedings by certified mail on November 17, 2007 and that he had actual notice of the proceedings.

B. The Candidate failed to appear in these proceedings or to communicate in any way his intentions to participate in the proceedings or to defend his candidacy after having been given notice of the proceedings.

C. The Objectors' established by sufficient evidence that the Candidate's Nomination Papers contained fewer than the 500 minimum number of valid signatures required by law.

D. The Candidate is in default.

E. The Candidate's Nomination Papers are supported by the signatures of fewer than the minimum number of persons required by law.

F. The Candidate's Nomination Papers are, therefore, invalid.

9. The Electoral Board hereby adopts the Hearing Examiner's findings and conclusions of law and finds and a copy of the Hearing Examiner's report is attached hereto and incorporated herein as though fully set forth.

10. The Electoral Board finds that:

A. The Candidate, SEAN J. SMITH, was served with a copy of the Electoral Board's Call to the November 20, 2007 meeting by certified mail on November 17, 2007 and a Domestic Return Receipt was acknowledged receipt of the certified mail item.

B. The Candidate, SEAN J. SMITH, did not appear at the duly called meeting of the Electoral Board nor at the initial hearing conducted in this

matter after having been duly served with a copy of the Call and having been notified of the meeting and hearing in this cause as required by law.

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


12. Therefore, the Electoral Board finds that the Candidate, SEAN J. SMITH, is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

13. The Electoral Board further finds that there were additional objections filed against the Candidate's Nomination Papers in cases 08-EB-RGA-15 and 08-EB-RGA-24 and that the Candidate did not appear at any hearings in those cases and was in default in those cases as well.

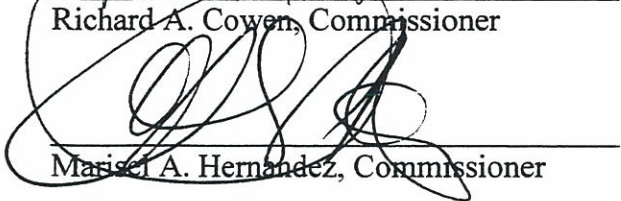
IT IS THEREFORE ORDERED that the Objections of ANDRE THAPEDI to the Nomination Papers of SEAN J. SMITH, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd Representative District, State of Illinois, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of SEAN J. SMITH, candidate for nomination of the Democratic Party to the office of Representative in the General Assembly for the 32nd Representative District, State of Illinois, SHALL NOT be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 4th day of December 2007.

Langdon D. Neal, Chairman



Richard A. Cowen, Commissioner



Marisel A. Hernandez, 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.

BEFORE
 THE BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
 AS THE DULY CONSTITUTED ELECTORAL BOARD
 FOR THE HEARING AND PASSING UPON OBJECTIONS
 TO NOMINATION PAPERS OF CANDIDATES
 FOR NOMINATION FOR THE OFFICE
 OF REPRESENTATIVE IN THE GENERAL ASSEMBLY
 FOR THE 32ND REPRESENTATIVE DISTRICT OF ILLINOIS
 IN THE PRIMARY GENERAL ELECTION TO BE HELD
 ON FEBRUARY 5, 2008

ANDRE THAPEDI,)	
)	
	<i>Objector,</i>	
)	No. 08-EB-RGA-28
vs.)	
)	Hearing Examiner Morris
SEAN J. SMITH,)	
)	
	<i>Candidate.</i>	

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REPORT OF THE HEARING EXAMINER

To the Board of Election Commissioners of the City of Chicago:

Hearing Examiner JOSEPH A. MORRIS reports as follows:

1. This matter came before the Hearing Examiner, pursuant to notice, for initial hearing on November 20, 2007. The Objector was present in his proper person and by his counsel, Llewellyn Thapedi. The Candidate was not present. The return of service made by the Sheriff of Cook County showed that the Sheriff had attempted personal service upon the Candidate of Notice of the Initial Call and of the Objector's Petition, but the Sheriff reported the Candidate was "not found" at the address set forth on the Candidate's nominating papers and that the Sheriff had not succeeded in finding the Candidate and in serving those instruments upon him. Accordingly, the Hearing Examiner directed that the initial hearing be continued to November 27, 2007, at the hour of 2:00 p.m. and that notice of the continued hearing be personally served upon the Candidate.

2. The continued initial hearing convened on November 27, 2007, at the scheduled hour of 2:00 p.m. The Objector was present in his proper person. The Candidate did not appear. The name of the Candidate was repeatedly called, both in the hearing room and in the corridor outside the hearing room, but the Candidate still did not appear.

3. The Hearing Examiner proceeded, in the absence of the Candidate, to examine the record in this matter. The Candidate's nomination papers for the office of Representative in the Illinois General Assembly for the 32nd Representative District of the State of Illinois were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; the returns of service by the Sheriff of the Notice of the Initial Call were admitted into the record as Group Exhibit C; the Objector's written appearances *pro se* and by counsel was admitted into the record as Exhibit D; the returns of service by the Sheriff of the Notice of Continued Hearing were admitted into the record as Group Exhibit E; and the Return Receipt for Certified Mail (USPS Form 3811) of the mailing by the Chairman of this Board to the Candidate of the Notice of Initial Call and the Objector's Petition was admitted into the record as Exhibit F. After a final call for the Candidate, the record was closed and the matter submitted for decision by the Board.

4. The Return Receipt for Certified Mail, Exhibit F, showed on its face that Notice of the Initial Call and a copy of the Objector's Petition, as mailed to the Candidate by the Chairman of this Board, were delivered by the United States Postal Service to the Candidate at the address set forth on his nomination papers, to wit: 433 West Marquette, Unit D, Chicago, Illinois, 60621; and was signed by "Sean Smith" on November 17, 2007. The Hearing Examiner compared the signature of "Sean Smith" as it appeared on the Return Receipt for Certified Mail with the signature of "Sean

J. Smith” as it appeared on the Candidate’s nomination papers, and found that the two signatures were nearly identical.

5. The Sheriff’s return of service of Notice of the Initial Call, Exhibit C, is a report dated November 20, 2007, and it shows that the Sheriff made three attempts to serve process upon the Candidate at his address of record, once on November 16, 2007, at 4:12 p.m., and again on November 16, 2007, at 5:45 p.m., and yet again on November 19, 2007, at 10:18 a.m., and on each occasion the Candidate was “not found” at that address.

6. The Sheriff’s return of service of Notice of Continued Hearing, Exhibit E, is a report dated November 27, 2007, and it shows that the Sheriff made two further attempts to serve process upon the Candidate at his address of record, once on November 21, 2007, at 5:16 p.m., and again on November 23, 2007, at 12:27 p.m., and on each occasion the Candidate was “not found” at that address.

7. Administrative notice may be taken that proceedings are pending before this Board in another matter involving this Candidate and a separate objection to the same nomination papers, known as *Williams v. Sean J. Smith* and numbered as No. 08-EB-RGA-15. In that case the record shows that, on November 17, 2007, the United States Postal Service delivered Notice of Initial Call and the objectors’ petition in that case and that the same was received by the Candidate, as indicated by his signature on a return receipt; that the Sheriff made four separate attempts, on November 16, 2007, at 4:29 p.m., on November 19, 2007, at 9:58 a.m., on November 21, 2007, at 5:16 p.m. and on November 23, 2007, at an unspecified time in the afternoon or evening, and that on each occasion the Candidate was “not found” at his address of record; and that the Candidate failed to appear, in his proper person, by counsel, in writing, or otherwise, in that proceeding at any stage.

8. Administrative notice may be taken that proceedings are pending before this Board in another matter involving this Candidate and a separate objection to the same nomination papers, known as *Kirk v. Sean J. Smith* and numbered as No. 08-EB-RGA-24. In that case the record shows that, on November 17, 2007, the United States Postal Service delivered Notice of Initial Call and the objector's petition in that case and that the same was received by the Candidate, as indicated by his signature on a return receipt; that the Sheriff made four separate attempts, on November 16, 2007, at 5:45 p.m., on November 19, 2007, at 10:18 a.m., on November 21, 2007, at an unspecified time in the afternoon or evening, and on November 23, 2007, at 12:27 p.m., and that on each occasion the Candidate was "not found" at his address of record; and that the Candidate failed to appear, in his proper person, by counsel, in writing, or otherwise, in that proceeding at any stage.

9. Recourse to a default is a matter of last resort, not lightly to be entered. The record shows, however, that the Candidate had timely, actual notice of this proceeding. In addition, administrative notice may be taken that the Candidate also had timely, actual notice of two other pending cases, each of which posed an equally-serious challenge to his candidacy for the office that he seeks. In none of these cases has the Candidate acted to assert his rights or to communicate, in any way, his intention to participate in these proceedings.

10. The Objector's Petition alleges that the Candidate's nomination papers are supported by an insufficient number of valid signatures of persons duly registered to vote in the 32nd Representative District of Illinois. A minimum of 500 such signatures is required by operation of law. The Objector has challenged a number of individual signatures such that, if each such challenge were sustained, the Candidate's nomination papers would be supported by far fewer than 500 signatures.

11. The Objector's Petition appears, on its face, to set forth objections to nominating petitions which have been made in good faith based on reviews of the records of this Board.

Recommended Findings, Conclusions, and Decision

12. On the bases of an examination of the nomination papers, of the Objector's Petition and attachments, of the returns of service, and of the other exhibits submitted herein, the Hearing Examiner recommends that the Electoral Board enter the following findings of fact:

(a) The Candidate was served with notice of this proceeding by certified mail on November 17, 2007.

(b) The Candidate had actual notice of this proceeding.

(c) The Candidate has failed to appear in this proceeding or to communicate in any way his intention to participate in it or to defend his candidacy.

(d) The Objector has established by evidence sufficient in view of the Candidate's default, that the Candidate's nomination papers are supported by the signatures of fewer than 500 persons duly registered to vote in the 32nd Representative District of Illinois.

12. The Hearing Examiner recommends that the Electoral Board enter the following conclusions of law:

(a) The Candidate is in default and it is therefore appropriate to consider the merits of the matter in the absence of the Candidate.

(b) The Candidate's nomination papers are supported by the signatures of fewer than the minimum number of persons registered to vote in the 32nd Representative District of Illinois as required by law.

(c) The Objector's Petition is well founded, and the relief sought therein should be granted.

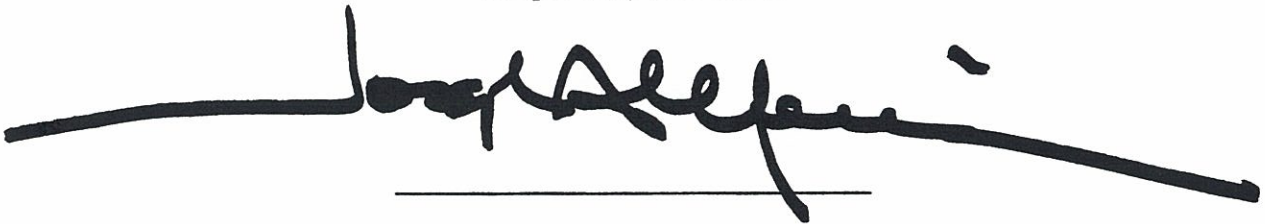
(d) The Candidate's nomination papers are insufficient in law and fact.

13. The Hearing Examiner recommends that the Electoral Board enter the following final administrative decision:

The name of Sean J. Smith shall not appear and shall not be printed on the ballot for the nomination of the Democratic Party for the office of Representative in the Illinois General Assembly for the 32nd Representative District of Illinois in the General Primary Election to be held on February 5, 2008.

Dated: December 2, 2007.

Respectfully submitted,

A large, bold, handwritten signature in black ink, which appears to read "Joseph A. Morris". The signature is written over a horizontal line.

JOSEPH A. MORRIS
Hearing Examiner