

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

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Objections of: JOHN FRITCHEY )  
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To the Nomination ) No. 08-EB-WC-37  
Papers of: ROGER J. ROMANELLI )  
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Candidate for the office of )  
Ward Committeeman for the 32nd Ward of )  
the City of Chicago, 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 JOHN FRITCHEY (“Objector”) to the nomination papers (“Nomination Papers”) of ROGER J. ROMANELLI, candidate for election to the office of Ward Committeeman for the 32nd Ward of the City of Chicago, Democratic Party (“Candidate”), having convened on November 26, 2007, at 10:00 a.m., at 69 W. Washington Street, 8<sup>th</sup> 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 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 26, 2007 and was continued from time to time.

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

6. The Objector and the Candidate were directed by the Electoral Board to appear before the Hearing Examiner for a hearing on the date and at the time designated on the Electoral Board's docket. The following persons, among others, were present at such hearing: the Objector, JOHN FRITCHEY, appearing by counsel, Michael J. Kasper; and the Candidate, ROGER J. ROMANELLI, appearing by counsel, Nicholas C. Kefalos.

7. The Objector raised several objections to the Candidate's Nomination Papers, including the allegation against the validity of individual signatures identifying them by sheet and line and that the Candidate's petition did not contain a sufficient number of valid signatures to meet the minimum signature requirement for the office sought.

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

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

10. The Candidate or his duly authorized representative(s) was present during the examination of the registration records.

11. The Objector or his duly authorized representative(s) was present during the examination of the registration records.

12. 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 results of the registration records examination is contained in the Electoral Board's file in this case and is available for inspection upon request of a party.

13. The results of the records examination conducted in this case as corrected indicate that:

- A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 247;
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 710;
- C. The number of signatures deemed invalid because of objections sustained during the records examination total 483;
- D. The remaining number of signatures deemed valid total 223.

14. Subsequent to the records examination, the Candidate submitted 47 affidavits of individuals who purported to sign the Candidate's nominating petition sheets in an effort to rehabilitate those signatures, objections to which had been sustained at the records examination.

15. The Objector objected to consideration of affidavits and the form of several affidavits.

16. After considering the affidavits and evidence submitted by the Candidate, the Hearing Examiner concluded that the Candidate only rehabilitated 4 signatures, and that the Candidate was still 20 signatures short of meeting the statutory minimum signature requirement.

17. Because the Candidate had an insufficient number of valid signatures on his nominating petition sheets as the close of his case, the Hearing Examiner did not need to consider or rule upon the Objector's evidence.

18. 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 sustained and that the Nomination Papers be found invalid.

19. 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 Report and Recommended Decision is attached hereto and is incorporated herein as part of the decision of the Electoral Board.

20. The Electoral Board finds, therefore, that the objections to signatures on listed sheets and lines of the Objector's Petition are sustained in part and overruled in part as more fully indicated in the results of the records examination.

21. The Electoral Board finds that the Candidate has an insufficient number of valid signatures on his Nomination Papers to be placed upon the official ballot as a candidate for election to the office of Ward Committeeman for the 32nd Ward of the City of Chicago, Democratic Party.

22. For the reasons stated above, the Electoral Board sustains the Objections to the Candidate's Nomination Papers and finds that the Nomination Papers of ROGER J. ROMANELLI are not valid.

IT IS THEREFORE ORDERED that the Objections of JOHN FRITCHEY to the Nomination Papers of ROGER J. ROMANELLI, candidate for election to the office of Ward Committeeman for the 32nd Ward of the City of Chicago, Democratic Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of ROGER J. ROMANELLI, candidate for election to the office of Ward Committeeman for the 32nd Ward of the City of Chicago, Democratic Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 16th day of December, 2007.



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Langdon D. Neal, Chairman



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Richard A. Cowen, Commissioner



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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.**



December 11, 2007:

Number of Signatures on Petition	710
Number of Objections Overruled	83
Number of Objections Sustained	483
Number of Valid Signatures	223
Minimum Signature Requirement	247
Number of Signatures Below Minimum	24

5. Prior to the return of the results from the record examination, the parties had a telephone conference, on December 5, 2007, for purposes of pre-trial case management. An order was issued setting forth the schedule for a Rule 8 hearing, should that be requested.

6. The candidate submitted a request for subpoenas of the objector and two employees of the objector's attorney. The stated purpose was the taking of testimony relative to the claim that the objector was required to personally investigate the CBOE's records prior to submitting objections to the nominating petitions, and that he had not done so. This request for subpoenas was opposed by the objector and briefed. The hearing examiner denied it on the basis that the issue had already been ruled on, and denied, and that the purpose stated for the subpoenas had no relevance to the hearing on the validity of certain signatures.

7. A second pre-trial case management telephone conference was scheduled for December 10, 2007 at 4:00 p.m. The candidate was available through his attorney but the objector was not. Because of the inability to conduct any business and resolve any issues capable of resolution prior to the hearing, the hearing examiner did not issue an order.

8. The hearing was reconvened on December 11, 2007, at 1:00 p.m. Both parties were present, through their attorneys. Pursuant to the submittal of Rule 8 Memoranda, no witnesses were present but each party relied on evidence which they provided to the CBOE and to each other the day before.

9. The hearing examiner received into evidence the documents previously provided by the parties, as well as the documents submitted to the CBOE at the beginning of the case and labeled as Exhibits A-D.

10. The candidate renewed his motion to strike the objector's petition on the basis that the objector had not personally investigated the validity of the signatures of the signers of the petitions at the office of the CBOE. This was again denied, without argument.

11. The objector presented his objection to the Hearing Examiner relying on any affidavits,



claiming that these were hearsay. Inasmuch as the objector failed to present this issue in the pre-trial case management conference, due to his failure to have anyone in attendance, the issue was reserved for later ruling. At the end of the time for receiving evidence and argument on same, the hearing examiner set a schedule to allow the parties to brief the following issues, if done by noon the following day:

A. The ability and obligation of the hearing examiner to accept the affidavits "as is", or to deny them based on the facts visible on their face;

B. The validity of an affidavit with a defective jurat, one which does not state that the affiant appeared before the notary.

12. Both parties submitted responsive memoranda of law. The objector provided copies of the cases argued in his memorandum; the candidate did not. The objector did not provide argument supporting his oral motion that the affidavits be stricken from consideration on the basis that they are hearsay. The hearing examiner therefore now denies that motion.

The Candidate argued that the affidavits submitted are admissible, according to Rule 8 of the CBOE's Rules of Procedure, to wit: "Properly executed affidavits may be used to establish that signatures found not [to] be genuine during a records examination are, in fact, the genuine signatures of those signing the petition." As to defects in the jurats on several affidavits, he argued that "(t)he fact that the notary wrote his or her name in the jurat rather than printing the affiant's name on a line within the certificate of the notary is of no legal import." *citing Cintue, Inc. v. Kozubowski, et al*, 230 Ill. App. 3d 969, 974, 596 N.E.2d 101, 104 (1st Dist. 1992).

The objector argued that many of the affidavits were defective on their face inasmuch as the signatures did not compare well with the person's signature on the nominating petition, or the signature clips requested from and provided by the CBOE, or they had other easily visible problems. He argued that the affidavits provided by the candidate were insufficient to reverse the rulings of the CBOE staff and handwriting expert. As to the validity of jurats where the notary had written her name rather than that of the affiant in the spot to indicate who had appeared before her, he argued that these affidavits should be stricken as they offer no proof that the person appeared before the notary and was properly sworn. He cited *Bowe v. Chicago Electoral Board*, 79 Ill.2d 469, 404 N.E.2d 180 (1980), and *In re Petition to Form a New Park District*, 182 Ill.App.3d 973, 538 N.E.2d.849 (1st Dist. 1989) in support of his argument that a document is invalid where an affiant fails to appear before the notary public.

13. The hearing examiner agrees in part and disagrees in part with the oral and written arguments of the parties.

It is clear that the CBOE Rule 8 allows for the use of affidavits in a hearing such as this, and can expressly rely on affidavits. *Bergman v. Vachata*, 347 Ill.App.3d 339, 348, 807 N.E.2d 558 (2004); Rule 8, Rules of Procedure for the Board of Election Commissioners of the City of Chicago ("*Except as otherwise provided in these Rules, the Electoral Board may consider all evidence relevant to the issues presented by the objections, including, but not limited to, documentary evidence, affidavits and oral testimony. Properly executed affidavits may be used to establish that signatures found not be genuine (sic) during a records examination are, in fact, the genuine signatures of those signing the petition.*"). Supreme Court Rule 191 allows the use of affidavits in lieu of "in person testimony", so long as they "set forth with particularity the facts upon which the claim, counterclaim, or defense is based...". Thus, where the objector objected to a signature, and such objection was sustained by the CBOE staff and its handwriting expert, the hearing examiner can accept the use of an affidavit to overrule that ruling, unless it is clear from the face of the affidavit that the requisite particularity is not present, the facts shown are not within the personal knowledge of the person, or a reasonable person could not believe the truth of the statements.

As to the issue of several of the candidate's affidavits having defective jurats, such that the notary put her name in the spot where the affiant's name should have appeared so as to recite that the affiant appeared before the notary, the hearing examiner finds that it is a technical defect. It is true, as the objector argues, that the Supreme Court of Illinois has ruled that a statement required to be sworn before an officer authorized to administer oaths in this State is mandatory and not directory. *Bowe v. Chicago Electoral Board, et al*, 79 Ill.2d 469 (1980). However, the Court in the First Appellate District subsequently looked at the same issue as exists in this case and determined that the form of the jurat is not mandatory, it is merely part of an affidavit and not the affidavit itself. *Cintuc, Inc. v. Kozubowski*, 230 Ill.App.3d 969, 596 N.E.2d 101 (1st Dist. 1992). It held that a notary printing his or her name in the space where the name of the circulator should have been written did not invalidate the affidavit. *at* 973.

14. Due to the lack of a pre-trial case management conference on December 10, 2007, which which was to have involved both parties, at the hearing the hearing examiner reserved ruling on the validity or not of numerous affidavits and their ability to overrule findings of the CBOE. Based on the legal conclusions explained above and the evidence submitted by the parties, she now sets forth her findings, in the order presented by the candidate, who was given the burden of going forth first, inasmuch as the CBOE found him to be 24 signatures short of the minimum required to be placed on the ballot:

Ruling on the signatures objected to on the basis that they were not in their own proper person but which the Candidate wishes to rehabilitate through the submission of affidavits, in Group Exhibit A

A. *sheet 2, line 2, Robert Lewandowski:* the objection was sustained by CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds the signature on the petition, affidavit and registration card to be dissimilar, without any explanation of that by the affiant - **objection sustained**

B. *sheet 2, line 7, Anthony Corran:* the initial judgment by the CBOE was to sustain the objection despite the lack of a record showing the signature; the handwriting expert did not issue an opinion; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds similarity in the signatures on the petition and on the affidavit, despite the affiant not signing his entire first name on the petition - **objection overruled**

C. *sheet 2, line 9, Alison Porter:* the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, and there was no explanation for this difference - **objection sustained**

D. *sheet 2, line 10, Maria Gomez:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, which was printed, and that there was no explanation for the difference - **objection sustained**

E. *sheet 3, line 3, Carrie Gaston:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, that there was no explanation for the difference, and that the signature on the registration card includes a middle name - **objection sustained**

F. *sheet 3, line 9, Harry Blom:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, and that there was no explanation

for the difference - **objection sustained**

G. *sheet 4, line 4, Craig Gould:* (a signature clip was not available at the time of hearing but later provided to hearing examiner by the CBOE and is available to parties) the objection to the signature was sustained by the CBOE, a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, affidavit and petition were dissimilar to each other, and that there was no explanation for this - **objection sustained**

H. *sheet 6, line 7 Pamela Brick:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition, and the affidavit are all dissimilar to each other, and that no explanation was given for this dissimilarity - **objection sustained**

I. *sheet 6, line 8 Kathleen Ogilvie:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signature on the petition is different from those of the registration card and affidavit which bear some resemblance, and that no explanation was given for the difference- **objection sustained**

J. *sheet 7, line 2 Kathleen Owe:* (signature clip not available at the hearing but later provided by the CBOE to the hearing examiner and available to the parties) the objection to the signature was sustained by the CBOE; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition, the registration card and the affidavit were dissimilar to each other, and that no explanation was given for the difference - **objection sustained**

K. *sheet 7, line 8 Ben Roxworthy:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, and that no explanation was given for this dissimilarity - **objection sustained**

L. *sheet 7, line 9 Tim Wells:* (a signature clip was not available at the hearing but was later provided to the hearing examiner by the CBOE and is available to the parties) the objection had been sustained by the CBOE; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition and affidavit are similar but dissimilar from that on the registration card, and that no explanation was given for this difference - **objection**

**sustained**

M. *sheet 7, line 13, Christina O Malley*: the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, and that no explanation was given for the difference - **objection sustained**

N. *sheet 8, line 15, Joseph Garsec*: the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition and the affidavit were similar to each other but dissimilar from the signature on the registration card and, in fact, the spelling is different between the affidavit and the registration card, all without explanation - **objection sustained**

O. *sheet 9, line 2, Trudy Swanson*: the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition, affidavit and registration card are all dissimilar to each other, and that no explanation was given for these differences - **objection sustained**

P. *sheet 9, line 7, Ken Duncan*: the objector objected to including this signature in the review at the hearing inasmuch as it was not included in Candidate's original Rule 8 Motion; the candidate argued that the omission is a scrivener's error, that they had objected at the records exam; the objection had been sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition, affidavit and registration card are dissimilar, and that no explanation was given for these differences; she also agrees that the signature appeal was not raised by the candidate in his Rule 8 Motion and should not be heard in the hearing - **objection sustained**

Q. *sheet 9, line 8, Kathryn McMillan*: the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the affidavit, and the petition were all dissimilar to each other without an explanation being provided - **objection sustained**

R. *sheet 11, line 2, Philip Serno*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition and the affidavit were dissimilar, and that no explanation was given for the differences- **objection sustained**

S. *sheet 14, line 11, Mary Blair Sneddon*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, petition and the affidavit were all dissimilar and that it is unclear whether the person is Blair Sneddon or Mary Blair Sneddon; no explanation was given for the differences in the handwriting or the variable inclusion of the first name - **objection sustained**

T. *sheet 15, line 4, Edwardo Martinez*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition and the affidavit were dissimilar to each other, and that no explanation was given for this - **objection sustained**

U. *sheet 15, line 5, Gregoria Martinez*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition and the affidavit have some similarities but are all three dissimilar from each other, and that no explanation was given for this - **objection sustained**

V. *sheet 16, line 9 Mark Gilbert*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition, and the affidavit were all dissimilar to each other, without an explanation being given for this - **objection sustained**

W. *sheet 16, line 10 Javier Gomez*: (the signature clip was not available at the hearing but later provided to the hearing examiner by the CBOE and is available to the parties) the objection was sustained but not ruled on by the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the petition, the affidavit, and the signature clip are similar - **objection overruled**

X. *sheet 17, line 12 Jennifer Kalem*: the objection was sustained by the CBOE and its handwriting expert; the candidate did not appeal the ruling during record examination; a sworn affidavit was submitted that the signature was that of the signer of the petition; in addition to the lack of a noted appeal, the hearing examiner finds that the signature on the petition, affidavit, and registration card are dissimilar without an explanation being given **objection sustained**

Y. *sheet 19, line 4, Maria Paz Martinez*: (no signature clip has been made available to the hearing examiner) the objection was sustained but not ruled on by the handwriting expert; a sworn affidavit was

submitted that the signature was that of the signer of the petition; on the basis of the signatures on the petition and the affidavit, the hearing examiner finds them sufficiently similar - **objection overruled**

Z. *sheet 20, line 5, Tim Filipiak*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition although not addressing the fact that the signature on the petition was printed, the hearing examiner finds that the signatures on the registration card, the petition and the affidavit were dissimilar to each other - **objection sustained**

AA. *sheet 20, line 6, Ida Smith*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition (which was printed), and that no further explanation was given regarding the printing on the petition - **objection sustained**

BB. *sheet 21, line 4, Denise Kotlarz*: the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, petition and the affidavit were dissimilar to each other and that no explanation was given for this - **objection sustained**

CC. *sheet 21, line 7, Roman Owerko*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition, and the affidavit were dissimilar to each other and that no explanation was given - **objection sustained**

DD. *sheet 24, line 5 Paul Roland Poulet*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, where the signer reverses the order of his first and second names, and that no explanation was given for this - **objection sustained**

EE. *sheet 26, line 13, Melinda Gould*: the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition - **objection sustained** (she notes that there is a MJGould signature, at this address, on sheet 4, line 5, which resembles the signatures on the registration card and affidavit)

FF. *sheet 27, line 6, Tim O'Sullivan:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other (although the person spelled out in full his first name on the registration card but not on the affidavit) but dissimilar from the signature on the petition, which was printed, with no explanation being given for this; the objection to the validity of the jurat is overruled but moot - **objection sustained**

GG. *sheet 38, line 4, Mega Backes:* the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition, and the affidavit were dissimilar to each other, with no explanation being given for this - **objection sustained**

HH. *sheet 38, line 5, Wendy Sebastian:* the objection to the signature was sustained by the CBOE and the handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card, the petition, and the affidavit were dissimilar to each other, without an explanation being given - **objection sustained**

II. *sheet 41, line 6 Keith Ishaug:* the objection to the signature was sustained by the CBOE, but was not reviewed by a handwriting expert; no signature clip was available; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signature on the affidavit are sufficiently similar - **objection overruled**

JJ. *sheet 43, line 11, Steve Roberts:* the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other (although not the same because he used fewer symbolic letters in the affidavit) and dissimilar from the signature on the petition, without an explanation being given - **objection sustained**

KK. *sheet 50, line 13, Will Howell:* the objection to the signature was sustained by the CBOE and its handwriting expert; a sworn affidavit was submitted that the signature was that of the signer of the petition; the hearing examiner finds that the signatures on the registration card and the affidavit were similar to each other but dissimilar from the signature on the petition, which was printed, without an explanation being given - **objection sustained**

The candidate presented his affiants with form affidavits which may have worked against him because they did not allow or require an explicit statement by which the affiant could explain the discrepancies in the signatures between the petitions and the registration cards. These discrepancies



were visible on the face of the documents reviewed. The candidate had the burden of proof to overcome the findings of the CBOE and its handwriting expert that the signatures on the petitions were not in the proper person of the registered voter. The affidavits presented failed to meet the requirements of Supreme Court Rule 191 that the person attest with particularity to the facts. Thus, for the reasons stated above, the hearing examiner finds only four signatures "rehabilitated", i.e., signed in their own proper person: B, W, Y, II.

Ruling on the signatures objected to on the basis that they were for persons not registered at the address shown, which the candidate wishes to rehabilitate in his submittal of evidence in Group Exhibit B

15. The objector made objections to seven persons who signed the candidate's nominating petitions, on the basis that they were not registered at the address shown or were not registered voters. Objector's Petition, paragraph 5. These objections were sustained by the CBOE during the record examination.

At the hearing, the candidate submitted affidavits from these individuals that they were registered voters and resided at the addresses shown on the petition, along with statements over the stamped signature of Lance Gough, Executive Director of the Chicago Board of Election Commissioners, that the individuals were registered voters at those addresses. These statements were dated December 10, 2007.

The hearing examiner looked at the objections, the rulings given by the CBOE, the affidavits submitted to rehabilitate the signers, and the arguments from the point of view that a person signing a petition must be registered to vote at the residence address set forth on the nominating petition when he or she signs the petition. *Greene v. Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 862, 445 N.E.2d 1337 (1st Dist. 1983). The candidate did not present anything, either via affidavit or CBOE statement, that the signer was registered to vote at the stated address when he or she signed the petition. The hearing examiner believes that this is an essential fact to be presented so as to prove that the signer was lawfully entitled to sign the petition. The hearing examiner reviewed the documents presented and heard oral argument on each, and finds as follows:

LL. *sheet 7, line 5, Laura DeMoor*: the objection was made that this person was not registered to vote at her address when she signed the petition; the CBOE evidence shows that she was registered at the address shown on December 10, 2007, but the candidate presents nothing to show that she was registered there on or before November 3, 2007 when she signed the petition, her affidavit says that she was registered there as of December 9, 2007 but says nothing about being registered when she signed

the petition on November 3, 2007 - **objection sustained**

MM. *sheet 18, line 2 Evan Tobias*: the objection was that he was not registered to vote at this address when he signed the petition; the CBOE evidence shows that he was registered at the address shown on December 10, 2007, but the candidate presents nothing to show that he was registered there on or before November 4, 2007 when he signed the petition, his affidavit states that he was registered there as of December 7, 2007 but says nothing about being registered when he signed the petition on or before November 4, 2007 - **objection sustained**

NN. *sheet 24, line 6 Douglas Faller*: the objection was made that he was not registered to vote at his address in the 32nd Ward when he signed the petition and this was sustained by the CBOE; the candidate presented an affidavit from the party that he is a registered voter residing at 1024 N. Oakley but states nothing further to indicate that he is registered to vote from that address either on December 7, 2007 when he signed the affidavit or on or before November 4, 2007, when he signed the petition; the objector submitted his objector's #1, which is a printout from the CBOE computer showing a list of voters at 1024 N. Oakley, none of whom is named Faller, Douglas Faller, or Douglas - **objection sustained**

OO. *sheet 33, line 9, Kathy Molnar Simpson*: the objection was made that she was not registered to vote from 2675 N. Greenview when she signed the petition on or before November 4, 2007; the candidate submitted Ms Simpson's affidavit that she is a registered voter residing at this address but it does not state that she was registered at that address on the date she signed the petition; the evidence obtained from the CBOE that she is a registered voter from that address was dated December 10, 2007 - **objection sustained**

PP. *sheet 34, line 9 Michael Palm*: the objection was made that he was not a registered voter at 1940 N. Wolcott when he signed the petition; the affidavit which he signed stating that he is a registered voter residing at 1940 N. Wolcott does not address that issue, the letter from the CBOE that he is registered at that address was dated December 10, 2007 and, therefore, not dispositive - **objection sustained**

QQ. *sheet 34, line 14 Maryilu Dian deLeon*: the objection was made that this person was not registered to vote at 1734 N. Wilmot when she signed the petition, her affidavit that she is a registered voter residing at that address does not address the objection; the objector's #2, a CBOE voter view shows that she is not registered at that address; no statement on the subject from the CBOE was included - **objection sustained**

RR. *sheet 38, line 14, Mathew Greenberg*: objections were made to his signature and to the fact that

he was not registered to vote in the 32nd Ward at 2027 W. Iowa when he signed the petition; the objection to the signature was overruled because his card was not found by the examiner; the candidate submitted an affidavit which Mr. Greenberg signed stating that he is a registered voter residing at 2027 W. Iowa but it does not state that he was registered from this address when he signed the petition; the letter from the CBOE that he is a registered voter at that address is dated December 10, 2007, after the petition was signed and, therefore, not dispositive - **objection sustained**

SS. *sheet 50, line 6, Anjeanette Gunter:* the objection was made that she was not registered to vote from 1943 N. Winchester when she signed the petition; the candidate presented her affidavit that she is registered to vote and resides at 1943 N. Winchester as well as a letter from the CBOE that she was registered at 1943 N. Winchester as of December 10, 2007, neither of which are sufficient to overcome the objection that she was not registered to vote at that address when she signed the petition- **objection sustained**

The hearing examiner finds that none of the signers listed above, in candidate's Group Exhibit B, were rehabilitated to be included in the count of valid signatures on the candidate's nominating petitions. None of these objections were overruled.

Objections for other reasons which the candidate wishes to rehabilitate through submission of affidavits in Group Exhibit C and D

16. The objector also made objections to certain other signers of the petition, which were addressed in Candidate's Exhibit C. The hearing examiner finds as follows:

The objector claimed that the address of Karl Emanuel, sheet 18, line 3, is not in the district; this objection was sustained at the record exam. The candidate submitted the voter's affidavit and Lance Gough's statement that Emanuel is registered from 2137 W. Haddon and a CBOE internet record that Emanuel is registered to vote in the 32nd ward. There is no date reference in this latter document, although it was retrieved from the internet on December 10, 2007. The objector objected that there is no showing that this address was in the 32nd Ward on the date that the signer signed the petition. The hearing examiner agrees with the objector and sustains the objection: nothing was presented to explicitly show that this address was in the 32nd Ward, City of Chicago, when the person signed the petition. - **objection sustained**

17. As to sheet 48, lines 6 and 7, the objector objected that the same person signed twice. The candidate submitted an affidavit from Sarah Oster-Gardner that she signed the petition. However, her signature on the affidavit does not resemble the signature on the petition. The hearing examiner

reviewed the signatures and believes that it was likely that the husband signed for his wife; she did not adopt that signing as her own in her affidavit but stated that it is her signature - **objection sustained**

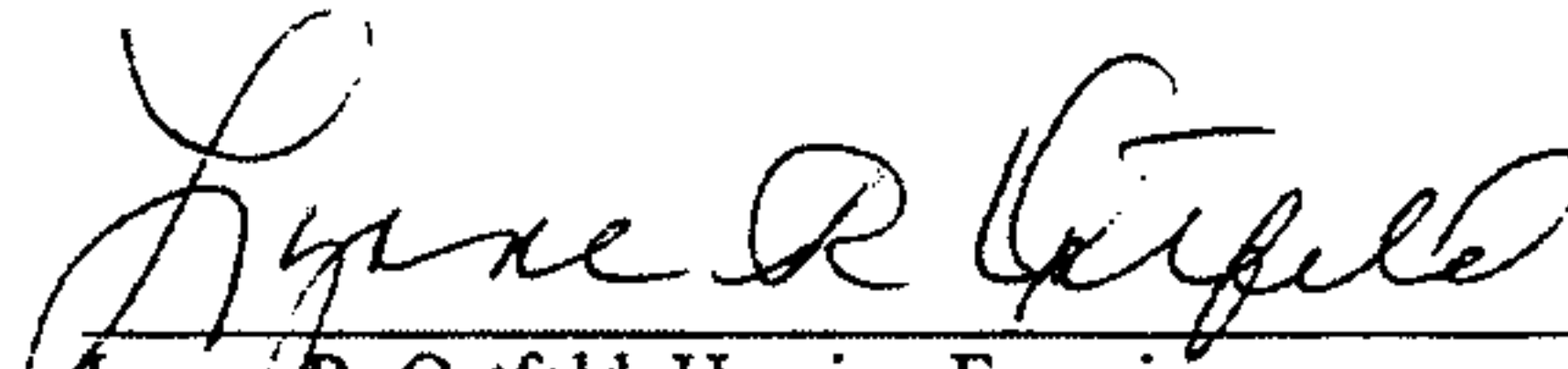
18. The hearing examiner finds that the candidate only rehabilitated four of the signatures objected to, by which he is still 20 signatures short of meeting the minimum requirement to have his name placed on the ballot.

19. Because the candidate has an insufficient number of signatures to be placed on the ballot, the hearing examiner believes that it serves no purpose to rule on the objector's attempts to rehabilitate objections which had been overruled by the CBOE.

20. For the reasons stated above, the hearing examiner recommends that the Chicago Board of Election Commissioners deny the petition of Roger J. Romanelli to be placed on the Democratic Ballot for Committeeman of the 32nd Ward of the City of Chicago.

21 The Hearing Examiner recommends that this Board order that the name of ROGER J. ROMANELLI NOT BE printed on the Democratic ballot for Ward Committeeman, from the 32nd Ward, City of Chicago, in the General Primary Election to be held on February 5, 2008.

Dated: Chicago, Illinois, this 13th day of December, 2007.

  
Lynne R. Ostfeld, Hearing Examiner

**NOTICE**

The text of this order may be changed or corrected prior to the time for filing of a Petition for rehearing or the expiration of same.

**FIRST DIVISION  
FEBRUARY 11, 2008**

No. 1-08-0031

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**IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT**

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<b>ROGER J. ROMANELLI,</b>	)	<b>Appeal from the</b>
	)	<b>Circuit Court of</b>
<b>Petitioner-Appellant,</b>	)	<b>Cook County.</b>
	)	
<b>v.</b>	)	
	)	
<b>JOHN FRITCHEY, Objector, CITY OF</b>	)	
<b>CHICAGO BOARD OF ELECTIONS and</b>	)	<b>No. 2007 COEL 0065</b>
<b>LANGDOND NEAL, Chairman of Chicago Board</b>	)	
<b>of Elections, RICHARD A. COWEN,</b>	)	
<b>Commissioner of Chicago Board of Elections, and</b>	)	
<b>MARISEL A. HERNANDEZ, Commissioner</b>	)	
<b>of Chicago Board of Elections,</b>	)	<b>Honorable</b>
	)	<b>Robert Bertucci,</b>
<b>Respondents-Appellees.</b>	)	<b>Judge Presiding.</b>

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**ORDER**

This is an appeal from an order of the Circuit Court of Cook County affirming the decision of the City of Chicago Board of Elections (Electoral Board), which sustained objections to the nominating petitions of Roger J. Romanelli, who sought placement on the ballot for the office of Democratic Ward Committeeman of the 32nd Ward in the City of Chicago.

The petitions for nomination of Roger J. Romanelli (Petitioner) were filed on November 5, 2007, bearing approximately 700 signatures, well in excess of the 247 minimum signatures required by statute. 10 ILCS 5/7-10 (West 2004). On November 16, 2007, John Fritchey (Objector) filed a timely objection to the petitions, alleging: (1) that numerous petition sheets contained specific signatures that were not genuine; (2) that numerous petition sheets contained specific signatures from voters who were not registered to vote in the 32nd Ward; and (3) that numerous petition sheets contained specific signatures of voters who were not registered to vote at the specific address listed in the petitions. Most of the objections incorporated exhibits, which specified the petition pages and specific signatures on which the particular violations were allegedly found.

The electoral board set November 30, 2007, as the hearing date for the objections and appointed a hearing examiner. On that date, the board-appointed hearing examiner, denied Petitioner's written motion to strike and dismiss the objections.

The examiner requested an official record examination to be conducted by the board's staff members and the board's handwriting expert. The examination was completed on December 4, 2007. At the conclusion of the record examination, the board's staff members and the board's handwriting expert determined that the nominating petition contained 223 valid registered voter signatures, 24 signatures short of the 247 required valid registered voter signatures.

Rule 8 of the electoral board's Rules of Procedure states in pertinent part:

**“Except as otherwise provided in these Rules, the Electoral Board may consider all evidence relevant to the issues presented by the objections, including, but not limited to, documentary evidence, affidavits and oral testimony. Properly executed affidavits may be used to establish that signatures found not to (sic) be genuine during a records examination are, in fact, the genuine signatures of those signing the petition.”**

**On December 10, 2007, in accordance with Rule 8, Petitioner submitted 48 affidavits purportedly from registered voters in the 32nd Ward who allegedly had signed the petitions, in order to rehabilitate those signatures found to be not genuine by the official record examination conducted on December 4, 2007. The affidavits were “form” affidavits, with preprinted text supplemented by vacant spaces where the affiants supplied certain biographical data, including name, date of birth, and address. The “form” affidavits, sworn and notarized, attested that the signatures on the nominating petitions were signed or printed as signatures by the affiant and that each affiant was registered to vote in the 32nd Ward. The hearing examiner received the affidavits into evidence over objection.**

**On December 11, 2007, the hearing examiner conducted another hearing where the parties reviewed the evidence submitted to the electoral board, including the signatures on the affidavits, the nominating petition, and the official registration record (consisting of a master list of voter registration cards). The hearing examiner issued her recommended decision on December 13, 2007. In it, the hearing examiner determined**

No. 1-08-0031

that 4 of the objections sustained by the board's staff and handwriting expert should have been overruled. Therefore, it was determined that Petitioner's nominating petition contained 227 genuine signatures, 20 signatures short of the necessary 247.

In finding that the other objections were properly sustained by the board's staff and handwriting expert, the hearing examiner determined that 33 of the 37 affidavits attesting to the genuineness of the signatures on the nominating petitions were inadequate to overrule the objections to the signatures because the signatures on the affidavits, nominating petition, and voter registration cards, differed. The hearing examiner stated that the affidavits submitted in support of overruling the objections were insufficient to overrule the objections because they offered no explanation for the difference in the signatures. The hearing examiner also found that the affidavits in support of overruling 9 objections to signatures on the nominating petitions were inadequate to overrule the objections because the affidavits did not attest to whether the affiants resided at the addresses listed in the affidavits when they signed the petition.

On December 16, 2007, the electoral board adopted the hearing examiner's recommended decision.

Petitioner filed a petition for judicial review of the electoral board's decision on December 26, 2007. The trial court allowed an expedited briefing schedule. Each party submitted a memorandum in support of its position. On January 4, 2008, the trial court conducted a hearing and the parties presented oral arguments. At the conclusion of the hearing, the trial court entered an order affirming the decision of the electoral board.



The trial court held that the electoral board's decision was not against the manifest weight of the evidence. The trial court also stated that the affidavits were not disregarded but were "taken in as evidence [and] were given a certain weight."

#### ANALYSIS

Petitioner sought judicial review of the board's decision in the circuit court under section 10-10.1 of the Election Code (10 ILCS 5/10-10.1 (West 2004)). Section 10.1 provides that a candidate can obtain judicial review of an electoral board decision in the circuit court of the county where the election board's hearing was held. 10 ILCS 5/10-10.1 (West 2004).

Where an administrative board's decision is reviewed by the circuit court under section 10-10.1 of the Code (10 ILCS 5/10-10.1 (West 2004)), we review the decision of the board, not the court. *Rita v. Mayden*, 364 Ill. App. 3d 913, 919 (2006).

The parties to this appeal disagree as to the main issue in the case at bar, and thus disagree as to this court's proper standard of review. Petitioner contends that the issue for this court to resolve is: the proper weight that the Board should have given to the affidavits submitted in support of the rehabilitation of the stricken signatures. Petitioner frames this issue as a question of law, and contends that this court's standard of review is *de novo*. On the contrary, the Objector and the electoral board claim that the main issue in the case at bar is whether the Petitioner had a sufficient number of genuine signatures in his nominating petition to qualify him for placement on the ballot. Thus, the Objector and the board contend that the proper standard of review in this case is whether the

board's findings were against the manifest weight of the evidence. We agree with the Objector and the electoral board.

The proceedings conducted before the electoral board were aimed at ruling on the individual objections to numerous signatures on Petitioner's nominating petition. To that end, the board's staff members and handwriting expert conducted a line-by-line examination of the nominating petitions. This process consisted of comparing the signatures contained on the nominating petitions to the voter registration cards on file with the electoral board. Furthermore, after the affidavits were received into evidence, the hearing examiner compared the signatures contained on the affidavits with the signatures on the nominating petitions and the signatures on the voter registration cards to determine the validity of the signatures. This, as well, was a factual inquiry.

The findings of fact of an electoral board are considered *prima facie* true and correct. *King v. The Justice Party*, 284 Ill. App. 3d 886, 888 (1996), citing *Wicker v. Town of Cicero Municipal Officers Electoral Board*, 247 Ill. App. 3d 200 (1993). "The function of a court on judicial review is to ascertain whether the findings and decision of the electoral board are against the manifest weight of the evidence." *King*, 284 Ill. App. 3d at 888, citing *Williams v. Butler*, 35 Ill. App. 3d 532 (1976). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident. *King*, 284 Ill. App. 3d at 888, citing *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). The fact that an opposite conclusion is reasonable or that the reviewing court may have ruled differently based upon the same evidence will

not justify a reversal of the findings of an administrative agency. *King*, 284 Ill. App. 3d at 888, citing *Abrahamson*, 153 Ill. 2d at 89. Determinations as to the weight of evidence are uniquely within the province of the agency, and a reviewing court will not substitute its judgment for that of the agency on such matters. *King*, 284 Ill. App. 3d at 888, citing *Hahn v. Police Pension Fund*, 138 Ill. App. 3d 206; *Abrahamson*, 153 Ill. 2d at 89. Where the findings of the agency are supported by competent evidence in the record, its decision will be affirmed. *King*, 284 Ill. App. 3d at 888, citing *Commonwealth Edison Co. v. Property Tax Appeal Board*, 102 Ill. 2d 443 (1984).

The record before us reveals that the hearing examiner ordered a line-by-line examination of the signatures contained in the nominating petitions to be conducted by the Board's staff members and handwriting expert. Thereafter, the hearing examiner reviewed the findings of the staff members and the handwriting expert, the nominating petitions, voter registration cards, and affidavits in evidence. Based upon that review and the evidence before her, the hearing examiner found that the nominating petition contained 227 genuine signatures, 20 signatures short of the necessary 247. The hearing examiner determined that 33 of the 37 objections to the genuineness of voters' signatures were properly sustained because the signatures on the affidavits submitted in support of the rehabilitation of the voters' signatures, nominating petitions, and voter registration cards, differed. The hearing examiner also found that 9 objections to signatures on the nominating petition were properly sustained because the nominating petition and the voter registration cards listed different registered addresses. The electoral board adopted

these findings, which are considered *prima facie* true and correct. *King*, 284 Ill. App. 3d at 888.

We have reviewed the record before us, including the nominating petitions, the registration cards, and the affidavits submitted in support for the rehabilitation of the stricken signatures. Upon this record, we cannot say that the electoral board's findings were against the manifest weight of the evidence. It is not this court's function to reweigh the evidence presented to the electoral board, nor this court's function to disregard the electoral board's findings merely because this court might have found differently. *Dillavou v. County Officers Electoral Board of Sangamon County*, 260 Ill. App. 3d 127, 134 (1994). Rather, this court's function is to determine whether the electoral board's findings are based on competent evidence in the record. *Dillavou*, 260 Ill. App. 3d at 134. We find that it does.

Before the hearing examiner were the findings of the board's staff members, the findings of the board's handwriting expert, the affidavits submitted, the nominating petitions, and the voter registration cards. After examining all of the evidence, and comparing all of the individual voter's signatures against one another, the hearing examiner determined that all but 4 of the objections made to the genuineness of the voters' signatures were properly sustained. The hearing examiner also determined that 9 objections made to the signatures due to discrepancies in the registered voter address were properly sustained, after examining the voter registration cards.

Despite the foregoing, Petitioner argues that the electoral board's findings were in contravention of Illinois law. He contends that the hearing examiner disregarded the affidavits submitted in support of the rehabilitation of the stricken signatures. He also contends that the affidavits should have been assigned "*prima facie* validity," and that no evidence was offered in opposition to the *prima facie* validity of the affidavits. A review of the record demonstrates that Petitioner's contentions are not persuasive.

As noted, the hearing examiner received the affidavits in support of the rehabilitation of the stricken signatures into evidence. The hearing examiner then weighed all of the evidence, including, the findings of both the board's staff members and handwriting expert, the nominating petitions, the voter registration cards, and the affidavits. As noted, after weighing the evidence the hearing examiner found that all but 4 of the objections concerning the genuineness of the voters' signatures were properly sustained by the board's staff members and handwriting expert.

Furthermore, Petitioner's position on appeal that the affidavits submitted in support of the rehabilitation of the stricken signatures should have been accepted as true because the affidavits were not contradicted by counter-affidavits is not persuasive. It is well settled that "a counteraffidavit is not the only means by which an affidavit can be contradicted; an affidavit may be contradicted by other documentary evidence." *Webb v. Mt. Sinai Hospital*, 347 Ill. App. 3d 817, 826 (2004). In the case at bar, the hearing officer weighed the evidence in support of sustaining the objections against the affidavits, and found that most of the objections were properly sustained by the board's staff

members and handwriting expert. Determinations as to the weight of evidence are uniquely within the province of the administrative agency, and this court will not substitute its judgment for that of the agency on such matters. *King*, 284 Ill. App. 3d at 888. The affidavits submitted did not explain why the signatures were different in the petitions as compared with the voter registration cards. Without this type of explanation a hearing officer can reasonably conclude that a registered voter can have someone else sign for him on a nominating petition, and then say in an affidavit that the signature was genuine.

Finally, Petitioner contends that the procedures utilized before the electoral board violated his procedural due process rights. He contends that the board did not give the proper legal weight to the affidavits supporting the rehabilitation of the stricken signatures. He contends that the board's procedures do not follow Illinois law, and fails to follow the board's own procedures in regard to the affidavits, thus depriving him of procedural due process. Petitioner does not state that his claim of deprivation of due process is under the 14th amendment of the United States Constitution; however, we assume this is the basis for his claim.

We firstly note that Petitioner has waived his constitutional claim for failing to raise it before the trial court. While the electoral board lacks authority to consider constitutional issues (*Wiseman*, 5 Ill. App. 3d 249), these issues must be raised before the trial court to be preserved. The trial court is vested with original jurisdiction over constitutional issues raised in a complaint for administrative review. *Puffer Hefty School*

No. 1-08-0031

*Dist. No. 69 v. DuPage Regional Bd. of School Trustees of DuPage County*, 339 Ill. App. 3d 194 (2003).

However, even had Petitioner not waived his constitutional argument, it would still fail. The essence of the procedural due process requirement is “the opportunity to be heard at a ‘meaningful time and in a meaning manner.’ ” *Mathews v. Eldridge*, 424 U.S. 319, 333, 47 L. Ed. 2d 18, 96 S. Ct. 893 (1976). Here, Petitioner was afforded procedural due process when the board-appointed hearing examiner accepted the affidavits submitted in support of rehabilitating the stricken signatures and weighed the affidavits against all of the evidence presented.

#### CONCLUSION

For the foregoing reasons, we affirm the judgment of the circuit court of Cook County and affirm the findings of the City of Chicago Board of Elections.

Affirmed.

R. GORDON, J., with CAHILL, P.J., and GARCIA, J., concurring.