

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

Objections of: SUSAN M. LAVEY)
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To the Nomination) No. 08-EB-WC-38
Papers of: CHESTER R. HORNOWSKI)
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)
Candidate for the office of Ward)
Committeeman for the 38th Ward of the)
City of Chicago, Republican 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 SUSAN M. LAVEY ("Objector") to the nomination papers ("Nomination Papers") of CHESTER R. HORNOWSKI, candidate for the office of Ward Committeeman for the 38th Ward of the City of Chicago, Republican Party ("Candidate"), having convened on November 26, 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 26, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Edwin Reyes 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, SUSAN M. LAVEY, appearing by counsel, Jeffrey R. Jurgens and Keri-Lyn Krafthefer; and the Candidate, CHESTER R. HORNOWSKI, appearing by counsel, Russ Stewart.

7. The Verified Objector's Petition objects to the Candidate's Nomination Papers alleging that:

A. The Candidate does not reside at 3837 North Tripp Avenue, Chicago, Illinois, the address listed on his Nomination Papers.

B. The Candidate is not a resident of the 38th Ward, in which he is seeking election.

8. The Hearing Examiner conducted a hearing in this case. After hearing the testimony from the candidate and witnesses who testified under oath, and upon reviewing video and exhibits submitted by the Objector and the Candidate, the Hearing

Examiner concluded that the Candidate resides at 3539 N. Kostner, Apt. 1, Chicago, Illinois, which address is not in the 38th Ward, and not at 3837 N. Tripp Avenue, Chicago, Illinois, as claimed by the Candidate. The Hearing Examiner found the Candidate's testimony to explain the discrepancy was not very credible. The Hearing Examiner found that the Candidate's testimony did not establish a physical presence at 3837 N. Tripp, nor the intention to remain there as a permanent home.

9. Accordingly, the Hearing Examiner found that the Candidate did not reside at the address listed on his Nomination Papers nor does he reside in the 38th Ward, in which he is seeking election.

10. 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.

11. 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.

12. Two elements are necessary to create a "residence" for voting purposes: physical presence in the place, and the intention to remain there as a permanent resident. *Delk v. Board of Election Commissioners*, 112 Ill.App.3d 735, 738, 445 N.E.2d 1232, 1235 (1st Dist. 1983). To change residence, "there must be, both in fact and intention, an

abandonment of the former residence and a new domicile acquired by actual residence, coupled with the intention to make it a permanent home.” *Welsh v. Shumway*, 232 Ill. 54, 77, 83 N.E. 549, 559 (1907). Because a person may only have one residence for voting purposes, when a person has established a physical presence in two locations, he must make a decision about which location he intends to make his permanent residence. *People v. Baumgartner*, 355 Ill.App.3d 842, 849, 823 N.E.2d 1144, 1151 (4th Dist. 2005).

13. Here, the Electoral Board finds that the Candidate did not establish the necessary physical presence at the address listed on his Nomination Papers nor did he establish an intention to remain there as his permanent residence. Therefore, the Electoral Board finds that the Candidate is not a resident at the address listed on his Nomination Papers nor is he a resident of the district in which he seeks election.

14. 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 SUSAN M. LAVEY to the Nomination papers of CHESTER R. HORNOWSKI, candidate for election to the office of Ward Committeeman for the 38th Ward of the City of Chicago, Republican Party, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of CHESTER R. HORNOWSKI, candidate for election to the office of Ward Committeeman for the 38th Ward of the City of Chicago, Republican Party, SHALL NOT be printed on the official ballot for the General Primary Election to be held on February 5, 2008.

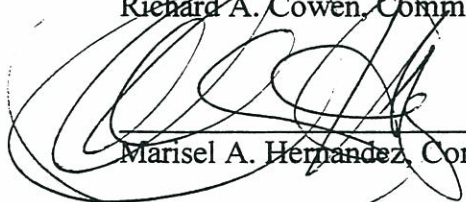
Dated: Chicago, Illinois, this 11th day of December 2007.



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.

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR HEARINGS AND
PASSING UPON OBJECTIONS TO NOMINATION PAPERS OF CANDIDATES FOR
THE FEBRUARY 05, 2008 GENERAL PRIMARY ELECTION FOR THE OFFICE OF
REPUBLICAN WARD COMMITTEEMAN OF THE 38th WARD CITY OF CHICAGO,
STATE OF ILLINOIS**

Objections of:)		
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Susan M. Lavey,)		
)		
Petitioner-Objector,)	NO. 08-EB-WC-38	
)		
vs.)		
)		
To the Nomination Papers of:)		
)		
Chester R. Hornowski, Candidate for the office of Republican Ward Committeeman of the 38 th Ward City of Chicago, State of Illinois)		
)		
)		
Respondent-Candidate.)	Hearing Officer: Edwin Reyes	

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FINDINGS AND DECISIONS

The captioned matter was scheduled for the initial hearing on Monday, November 26, 2007 at 2:00PM, on the lower level at 69 W. Washington Street, Chicago, Illinois.

The Objections raised by the Petitioner-Objector were: 1) That pursuant to the Illinois Election Code, 10 IL CS 5/7-8(b), each candidate for ward committeeman must be a resident of and in the ward where he seeks to be elected ward committeeman.

2) That the Illinois Election Code, 10 IL CS 5/7-10, requires that each candidate for ward committeeman file a Statement of Candidacy wherein each candidate swears under oath that he is a qualified voter therein. Section 7-10 also requires the heading of the nominating petition contain the candidates address.

3) The candidate, Chester R. Hornowski lists as his residence on his Statement of Candidacy and on his nominating Petitions, 3837 N. Tripp Ave. Chicago, Illinois 60641.

4) Upon information and belief, Chester R. Hornowski is not a resident of the ward he seeks to be elected to, the 38th ward.

Analysis

In order to establish residency two elements are necessary: 1) physical presence in the place, and 2) the intention to remain there of as a permanent home. Stein vs. 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).

Chester R. Hornowski testified that he is the incumbent 38th ward Republican Committeeman. At the time of his election in March 2004, he was a property owner and resident at 3630 N. Keeler Ave., Chicago, Illinois 60641. This property which he owned and resided from 1995 until a foreclosure and eviction, which occurred in September 2007.

In September 2007, Mr. Hornowski established a new residence at 3837 N. Tripp Ave. Chicago, Ill. 60641. Mr. Hornowski changed his driver's license to reflect his new residence at 3837 N. Tripp Ave. Chicago, Ill. 60641 and also registered to vote at said address. (See Candidate's Exhibits, A, B & C).

After hearing testimony from the candidate and witnesses who testified under oath, reviewing video and exhibits submitted by the objector and candidate, the Hearing Officer concludes that Chester R. Hornowski resides at 3539 N. Kostner, Apt. 1, Chicago, Illinois 60641 and not 3837 N. Tripp Ave. Chicago, Ill. 60641. Mr. Hornowski's testimony to explain discrepancy was not very credible.

The Objector Susan M. Lavey presented the following credible evidence:

- 1) Video surveillance and testimony by private investigators Roman Tapowski and Steven Dick which showed the candidate and his vehicle at the residence at 3539 N. Kostner residence.
- 2) Affidavit from Sandra J. Doherty, from the United States Postal Service, which show that effective September 17, 2007, a change of address was entered for Chester Hornowski from 3630 N. Keeler, Chicago, Ill. 60641, to 3539 N. Kostner, Apt. 1, Chicago, Ill, 60641-9998. (Objector's Exhibit No. 3).

Chester Hornowski testimony did not establish a physical presence at the 3837 N. Tripp residence nor, the intention to remain thereof as a permanent home.

The Respondent Candidate Chester R. Hornowski is in violation of the Illinois Election Code, 10 IL CS 5/7-8(b), each candidate for ward committeeman must be a resident of and in the ward he seeks to be elected; and 10 IL CS 5/7-10, requires that each candidate for ward committeeman file a Statement of Candidacy wherein each candidate swears under oath that he is a qualified voter therein.

The Hearing Officer Edwin Reyes recommends that Chester R. Hornowski's name not appear on the ballot because he is not a resident of the 38th ward.



Hearing Officer Edwin Reyes