

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

Objections of: Wilbon Brown)
)
)
To the Nomination) No.: 11-EB-ALD-007
Papers of: Jesse L. Harley)
) Related Case: 11-EB-ALD-252
Candidate for the office of)
Alderman of the 7th 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, 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 Wilbon Brown (“Objector”) to the nomination papers (“Nomination Papers”) of Jesse L. Harley, candidate for the office of Alderman of the 7th Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 22, 2011, having convened on December 6, 2010, at 9:00 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 December 6, 2010 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer William J. Kresse for further hearings and proceedings.

6. The Objector and the Candidate were directed by the Electoral Board's Call served upon them to appear before the Hearing Officer on the date and at the time designated in the Hearing Schedule. The following persons, among others, were present at such hearing: the Objector, Wilbon Brown, by attorneys Burton S. Odelson, Matthew Welch and Adam W. Lasker; and the Candidate, Jesse L. Harley, pro se.

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

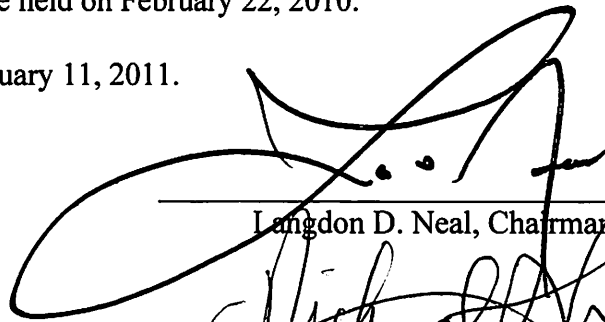
8. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Officer, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Officer's recommended findings and conclusions of law.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

9. 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.

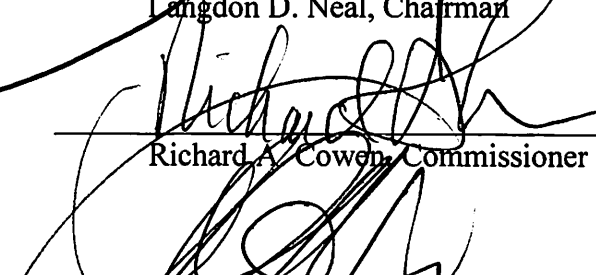
10. The Electoral Board further finds that objections in Related Case 11-EB-ALD-252 were withdrawn.

IT IS THEREFORE ORDERED that the Objections of Wilbon Brown to the Nomination Papers of Jesse L. Harley, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of Jesse L. Harley, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 22, 2010.

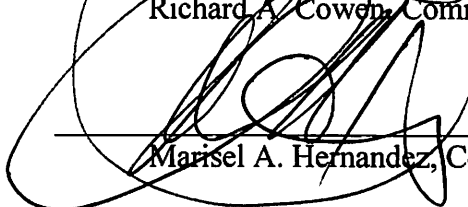
Dated: Chicago, Illinois, on January 11, 2011.



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 5 days after service of the decision of the Electoral Board.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR ELECTION TO THE OFFICE OF
ALDERMAN OF THE 7th WARD, CITY OF CHICAGO TO BE VOTED UPON
AT THE FEBRUARY 22, 2011 MUNICIPAL GENERAL ELECTION**

<p>WILBON BROWN,</p>)	
)	
<i>Objector,</i>)	
)	No. 11-EB-ALD-007
vs.)	
)	Hearing Officer William J. Kresse
JESSE L. HARLEY,)	
)	
<i>Candidate.</i>)	

Report and Recommended Decision of the Hearing Officer

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

Hearing Officer William J. Kresse reports as follows:

1. This matter came before the Hearing Officer, pursuant to notice, for hearing on December 6, 2010. The Objector was present by counsel. The Candidate was present *pro se*. No issue was raised as to sufficiency or timeliness of notice of the objection or of the hearing. Both parties filed written appearances.

2. Without objection, the Candidate's nomination papers for the office of Alderman of the 7th Ward of the City of Chicago were admitted into the record as Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Group Exhibit B; and the return of service of process, and a copy of the Call and attachments were admitted into the record as Group Exhibit C.

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The Claims of the Objector's Petition

3. The Objector's Petition, filed on November 29, 2010, asserted in substance as follows: a) that the Candidate failed to file a Statement of Economic Interest with the Cook County Clerk in violation of the Illinois Election Code, b) that the Candidate failed to file with his nomination papers a receipt for the filing of a Statement of Economic Interest with the Cook County Clerk in violation of the Illinois Election Code, and c) the nomination papers were not securely bound at the time of filing in violation of the Illinois Election Code.

Motion to Strike and Dismiss

4. At the December 6, 2010 status hearing, the Candidate requested leave to file a motion to strike and dismiss the Objector's Petition. The Hearing Officer set a briefing schedule and set a hearing on the motion for December 13, 2010.

5. At the December 13, 2010 hearing, the Hearing Officer, having considered the parties' briefs, allowed the parties to orally argue their positions on the motion. Additionally, the Candidate, having been sworn, testified under oath that he filed a Statement of Economic Interest with the Cook County Clerk after November 22, 2010 (the final day for filing nomination papers), and that as such, he did not file a receipt for the filing of a Statement of Economic Interest with the Cook County Clerk with his nomination papers. Additionally, at the December 13 hearing, the Objector withdrew his objection alleging that the Candidate's nomination papers were not securely bound at the time of filing, and stipulated that the Candidate's nomination papers were securely bound at the time of filing.

6. With the matter of the binding of the Candidate's nomination papers no longer an issue, the Hearing Officer considered only the arguments regarding the Candidate's filing of the Statement of Economic Interest. In his motion to strike and dismiss the Objector's Petition, the

Candidate seemingly relies on the case of *Coleman v. Jagielski* (91 CO 5, Cir. Ct. Cook County, 1991) to counter the Objector's argument that the Candidate's failure to file a Statement of Economic Interest and failure to file a receipt of a filed Statement of Economic Interest with the nomination papers are valid bases for removing the Candidate's name from the ballot.

7. The Hearing Officer found that the Candidate's reliance on *Coleman v. Jagielski* is misplaced. To the extent that *Coleman v. Jagielski* may have held that the requirement of filing a receipt of a filed Statement of Economic Interest with the nomination papers was directory and not mandatory, such a holding can no longer be sustained. In light of the subsequent holding in the Illinois Appellate Court case of *Bolger v. Electoral Board of the City of McHenry*, 210 Ill. App. 3d 958, 569 N.E.2d 628 (2nd Dist. 1991), reliance on *Coleman v. Jagielski* cannot be sustained. Accordingly, the Hearing Officer denied the Candidate's Motion to Strike and Dismiss.

8. Also at the December 13, 2010 hearing, the Hearing Officer requested, in the interest of justice, that the Objector file a brief in support of the Objector's Petition; there being no objections, a briefing schedule was set and a hearing on the Objector's Petition was set for December 20, 2010.

Proceedings on the Objector's Petition

9. At the December 20, 2010 hearing, it became apparent to the Hearing Officer that due to a series of unintentional and unfortunate miscommunications and technical difficulties, the parties, especially the Objector, had not been able to successfully serve their briefs on each other by the deadlines set by the Hearing Officer's briefing schedule. Noting that the briefing schedule was created by the Hearing Officer, and finding that the parties would not be prejudiced

by a short delay, the Hearing Officer denied the Candidate's request to dismiss the Objector's Petition, set a revised briefing schedule, and re-set the hearing on the Objector's Petition for December 29, 2010.

10. At the December 29, 2010 hearing, the Hearing Officer noted a "Motion to Dismiss the Objector Petition" filed by the Candidate on December 23. Finding that the motion was not in order and further that the motion was essentially based on the previously addressed briefing schedule difficulties, the motion was denied.

11. Also at the December 29, 2010 hearing, the Hearing Officer, having considered the parties' briefs and filings, allowed the parties to orally argue their positions on the Objector's Petition. The Candidate again stated that he filed a Statement of Economic Interest with the Cook County Clerk after November 22, 2010 (the final day for filing nomination papers), and that he did not file a receipt for the filing of a Statement of Economic Interest with his nomination papers.

Question Presented

12. As thus submitted to the Board, this case presents the question: Does the Candidate's failure to file a Statement of Economic Interest with the Cook County Clerk prior to the final day for filing nomination papers, and thus not filing with the Board prior to the final day for filing nomination papers a receipt evidencing that the Candidate properly filed a Statement of Economic Interest invalidate his nomination papers?

Recommended Findings, Conclusions, and Decision

13. On the bases of the Objector's Petition and attachments; of the statements and sworn testimony of the parties, including the Candidate's sworn testimony that he did not file a

Statement of Economic Interest with the Cook County Clerk prior to the final day for filing nomination papers, and did not file with the Board prior to the final day for filing nomination papers a receipt evidencing that the Candidate properly filed a Statement of Economic Interest; of a facial inspection of the nomination papers which do not include a receipt evidencing that the Candidate filed a Statement of Economic Interest; and of all other proceedings held herein; the Hearing Officer recommends that the Electoral Board enter the following finding of fact: the Candidate did not file with the Board prior to the final day for filing nomination papers a receipt evidencing that the Candidate filed a Statement of Economic Interest.

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

- a) Section 10-5 of the Illinois Election Code, 10 ILCS § 5/10-5, requires that “the candidate must file ... a receipt from the officer with whom the statement of economic interests is filed.... Such receipt shall be so filed not later than the last day on which the nomination papers may be filed.”
- b) That having found that the Candidate failed to file with the Board prior to the final day for filing nomination papers a receipt evidencing that the Candidate filed a Statement of Economic Interest, such failure invalidates the Candidate’s nomination papers. *Henning v. Lawrence*, 07-EB-ALD-052, CBEC, January 16, 2007, affirmed, *Lawrence v. Board of Election Commissioners, et al.*, Cir. Ct. of Cook County, 2007-COEL-0008, affirmed, Ill. App. Ct., No. 1-07-0286 (unpublished order).
- c) That the Candidate’s nomination papers are insufficient in law and fact.

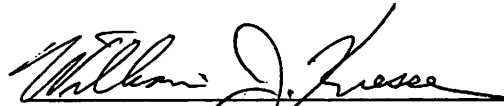
d) That the Objector's Petition is well founded, and the relief sought therein should be granted.

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

The name of **JESSE L. HARLEY** shall not appear and shall not be printed on the ballot for election to the office of Alderman of the 7th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 22, 2011.

Dated: January 3, 2011.

Respectfully submitted,


William J. Kresse
Hearing Officer