

**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-012
Papers of: Lionell R. Martin)
)
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 Lionell R. Martin, 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 was held on these Objections commencing 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 to appear before the Hearing Officer on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, Wilbon Brown , by attorney, ; and the Candidate, Lionell R. Martin, by attorney, Stephen Stern.

7. The Hearing Officer ordered that an examination of the voter 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.

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

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

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

11. The examination of the registration records was completed and the Electoral Board hereby adopts and incorporates by reference the results of the records examination conducted by its clerks and agents. The written report of the result of the registration records

examination is contained in the Board's file in this case and a copy has been provided or made available to the parties.

12. The results of the records examination indicate that:
 - A. The minimum number of valid signatures required by law for placement on the ballot for the office in question is 240.
 - B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1148.
 - C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 813.
 - D. The remaining number of signatures deemed valid as a result of the records examination total 335.

13. The Electoral Board finds that the number of valid signatures appearing on the Candidate's nominating petition following completion of the records examination exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for election to the office of Alderman of the 7th Ward of the City of Chicago.

14. No Rule 8 motions were filed.

15. The Hearing Officer heard argument and considered the Candidate's Partial Motion to Dismiss paragraphs 13 and 14 of the Objector's Petition and recommends that said motion be granted.

16. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found that the Candidate's Nomination Papers contained 335 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate for

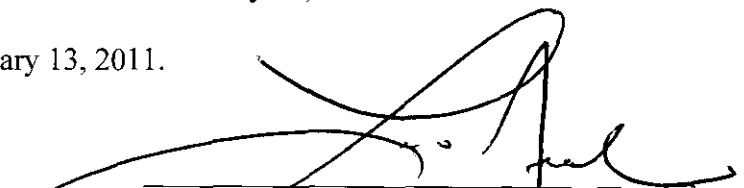
election to the office of Alderman of the 7th Ward of the City of Chicago, and that the Candidate's Nomination Papers should be found valid.

17. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report and recommendations is attached hereto and incorporated herein as a part of the Electoral Board's decision in this case.

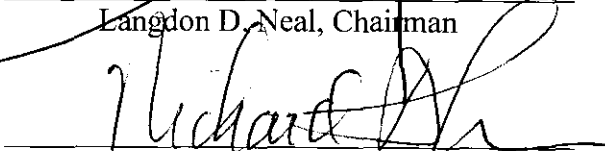
18. For the reasons stated above, the Electoral Board finds that the Candidate has a sufficient number of valid signatures on his nominating petitions and that the Nomination Papers of Lionell R. Martin are, therefore, valid.

IT IS THEREFORE ORDERED that the Objections of Wilbon Brown to the Nomination Papers of Lionell R. Martin, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of LIONELL R. MARTIN, candidate for election to the office of Alderman of the 7th Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 22, 2011.

Dated: Chicago, Illinois, on January 13, 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**

WILBON BROWN,)	
)	
	<i>Objector,</i>	
)	
vs.)	No. 11-EB-ALD-012
)	
LIONELL R. MARTIN,)	Hearing Officer William J. Kresse
)	
	<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:

BOARD OF ELECTIONS
2011 JAN -7 P 5:05

1. This matter came before the Hearing Officer, pursuant to notice, for hearing on December 6, 2010. Both the candidate and the Objector were present by counsel. 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.

The Claims of the Objector's Petition

3. The Objector's Petition, filed on November 29, 2010, asserted in substance as follows:
- a. That as the Candidate owes the City of Chicago money because of a \$50 ticket issued on October 22, 2010 for a vehicle license plate violation, the Candidate's Statement of Candidacy is invalid, rendering the Candidate's nomination papers invalid; and
 - b. That the Candidate's nomination papers contained fewer than the necessary 240 signatures of duly qualified, registered and legal voters of the 7th Ward.

Partial Motion to Strike and Dismiss

4. At the December 6, 2010 status hearing, the Candidate requested leave to file a partial motion to strike and dismiss that portion of the Objector's Petition involving moneys owed the City of Chicago (Paragraphs 13 and 14). The Hearing Officer set a briefing schedule and set a hearing on the motion for December 15, 2010.

Proceedings on the Candidate's Partial Motion to Strike and Dismiss

5. At the December 15, 2010 hearing, the Hearing Officer, having considered the parties' briefs, allowed the parties to orally argue their positions on the Candidate's Motion.

Question Presented by the Candidate's Partial Motion to Strike and Dismiss

6. As thus submitted to the Board, this Motion presents one question: Did the Objector sufficiently plead that the Candidate's nominating papers should be rendered invalid due to an alleged debt owed to the City of Chicago?

**Recommended Conclusions on the Candidate's Partial Motion
to Strike and Dismiss**

7. On the bases of the Objector's Petition and attachments; and of the briefs and statements of the parties; the Hearing Officer recommends that the Electoral Board enter the following findings and conclusions of law:

- a. That Section 3.1-10-5(b) of the Illinois Municipal Code makes a person ineligible for elective municipal office if that person is in "*arrears* in the payment of a tax or other indebtedness due to the municipality". ILCS 5/3.1-10-5(b) (emphasis added).
- b. That in *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, the Illinois Supreme Court, reading the above provision of the Illinois Municipal Code along with Section 10-5 of the Illinois Election Code (10 ILCS § 5/10-5), found that the "right to candidacy" may be denied to a person who was "in *arrears* of a debt owed" to a municipality at the time that person filed nominating papers for a municipal office. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200 (2008) (emphasis added). *See also, Maksym v. Board of Election Commissioners of the City of Chicago*, No. 2010 COEL 020 (Cir.Ct. Cook County, Jan. 4, 2011).
- c. That the Objector in the Cinkus case specifically alleged that candidate Cinkus was "in *arrears* in the payment of indebtedness in the amount of \$100.00 to the Village of Stickney". *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200 (2008) (emphasis added).

- d. That Section 10-8 of the Illinois Election Code states that “[t]he objector’s petition shall ... state fully the nature of the objections to the ... nomination papers.” 10 ILCS § 5/10-8. And that this section has been interpreted to require specificity in pleading objector petitions. *See, e.g., Kopec v. Sims*, 07-EB-MUN-002, CBEC, January 19, 2007; *Elysee v. Patterson*, 04-EB-RGA-14, CBEC, January 20, 2004.
 - e. That owing a debt “in arrears” is substantially and legally different than merely owing a debt, insofar as a debt in arrears requires that the debt be past due. *See, Barron’s Dictionary of Accounting Terms* at 26 (defining “arrears” as “past due payments or other liabilities”).
 - f. That as Section 3.1-10-5(b) of the Illinois Municipal Code is only applicable to municipal candidates with indebtedness in *arrears* to the municipality, and as the Objector’s Petition merely alleges that the Candidate “is a debtor” who “owes the City money”, the Objector’s petition is legally insufficient with regards to the Objector’s contention that the Candidate’s nominating papers should be rendered invalid due to an alleged debt owed to the City of Chicago.
 - g. That with regards to Paragraphs 13 and 14 of the Objector’s Petition which contend that the Candidate’s nominating papers should be rendered invalid due to an alleged debt owed to the City of Chicago, the Candidate’s Partial Motion to Dismiss is well founded, and the relief sought therein should be granted.
 - h. That Paragraphs 13 and 14 of the Objector’s Petition are dismissed and stricken.
-

Proceedings on the Remainder of the Objector's Petition

8. At the December 15, 2010 hearing, the Hearing Officer, having ruled on the objections contained in Paragraph 14 and 15 of the Objector's petition, considered the remaining objections in the Objector's Petition. As the remaining objections in the Objector's Petition centered on whether the Candidate's nomination papers contained fewer than the necessary 240 signatures of duly qualified, registered and legal voters of the 7th Ward, the Hearing Officer directed that a Records Examination be conducted. There were no objections from the parties. The Hearing Officer thereupon directed that a Records Examination be conducted and set a status hearing set for December 22, 2010.

9. At the December 22, 2010 hearing, the Hearing Officer served upon the parties, represented by counsel, copies of the report of the Records Examination Results. The Hearing Officer read the results of the Records Examination into the record.

10. The report of the Records Examination Results showed that the Candidate's nomination papers included a total of 1,148 petition signatures; that the Objector objected to a total of 1,039 of those signatures; that 226 of the Objector's objections were overruled; that 813 of the Objector's objections were sustained; and that the nomination papers contained a total of 335 valid signatures.

11. For inclusion on the ballot for the election to the office of Alderman of the 7th Ward, a total of 240 valid signatures are required. The report of the Records Examination Results showed that the Candidate's nomination papers included 95 petition signatures more than the required minimum.

12. Following the Hearing Officer's reading of the report of the Records Examination Result into the record, the Hearing Officer set a new status hearing for December 24, 2010.

13. On December 23, 2010, counsel for the Objector notified the Hearing Officer and counsel for the Candidate that as the statutory deadline for filing a motion for a Rule 8 hearing would be 5:00 PM that evening, and that if no such motion is filed by that time, the Objector will stipulate to the report of the Records Examination Results, will not object to the Hearing Officer entering a recommended decision based in the report of the Records Examination Results, and would not object to the Hearing Officer canceling the status hearing set for December 24, 2010.

14. The Objector did not file a motion for a Rule 8 hearing by 5:00 PM on December 23, 2010. Additionally, counsel for the Candidate notified the Hearing Officer and counsel for the Objector that the Candidate does not object to canceling the status hearing set for December 24, 2010. Whereupon the Hearing Officer canceled the status hearing set for December 24, 2010, and notified the parties and the Board of the same.

Recommended Findings, Conclusions, and Decision With Regard to the Objections Raised in the Remainder of the Objector's Petition

15. Accordingly, on the bases of an examination of the nomination papers, the Objector's Petition and attachments, the report of Records Examination Results, and the Candidate's filings, the Hearing Examiner recommends that the Board enter the following finding of fact: The Candidate's nomination papers set forth 335 valid signatures.

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

- a. That it is administratively noticed that the minimum number of valid petition signatures required by law for inclusion on the ballot for the 2011 election for the office of Alderman of the 7th Ward of the City of Chicago is 240.

- b. That the Candidate's nomination papers set forth greater than the minimum number of valid petition signatures required by law for inclusion on the ballot for the 2011 election for the office of Alderman of the 7th Ward of the City of Chicago.
- c. That the Objector's Petition is not well founded, and the relief sought therein should not be granted.
- d. That the Candidate's nomination papers are sufficient in law and fact.


Recommended Decision With Regard to the Objector's Petition

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

The name of **LIONELL R. MARTIN** shall appear and shall 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 6, 2011.

Respectfully submitted,



William J. Kresse
Hearing Officer