

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

Objections of: Elias Espindola)
)
)
To the Nomination) No.: 12-EB-RGA-04
Papers of: Edward J. Acevedo)
)
Candidate for the nomination of the)
Democratic Party for the office of)
Representative in the General Assembly for the)
2nd Representative District, State of Illinois)

FINDINGS AND DECISION

The duly constituted Electoral Board, consisting of Board of Election Commissioners for 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 Elias Espindola (“Objector”) to the nomination papers (“Nomination Papers”) of Edward J. Acevedo, candidate for the nomination of the Democratic Party for the office of Representative in the General Assembly for the 2nd Representative District of the State of Illinois (“Candidate”) at the General Primary Election to be held on March 20, 2012, having convened on December 19, 2011, at 8:30 AM, 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 19, 2011 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Joseph Morris 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 Candidate, Edward J. Acevedo, by attorney Dan Johnson. The Objector, Elias Espindola, was not present. Because there was no evidence in the file that service of the Board's Call upon the Objector had been completed, the hearing was continued to December 23, 2011.

7. At the continued hearing on December 23, 2011, both the Objector and the Candidate were present.

8. 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.

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

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

11. The Objector and/or his duly authorized representative 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 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.

13. 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 500.

B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidate total 1,465.

C. The number of signatures deemed invalid because of objections sustained as a result of the records examination total 292.

D. The remaining number of signatures deemed valid as a result of the records examination total 1,173.

14. 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 the nomination of Democratic Party to the office of Representative in the General Assembly for the 2nd Representative District of the State of Illinois.

15. The Hearing Officer scheduled a hearing and a timetable for production, filing and exchange of documents and exhibits to allow the Objector an opportunity to present

evidence in support of his Rule 8 motion objecting to the Board's clerk's findings during the records examination. The Objector failed to comply with said schedule and failed to appear at the hearing.

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 1,173 valid signatures, which exceeds the minimum number of valid signatures required by law to be placed upon the ballot as a candidate of the Democratic Party for the office of Representative in the General Assembly for the 2nd Representative District of the State of Illinois. The Hearing Officer has also recommended that the Objections be dismissed for want of prosecution and that the Candidate's Nomination Papers be declared 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 is attached hereto and is incorporated herein and made 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 Edward J. Acevedo are, therefore, valid.

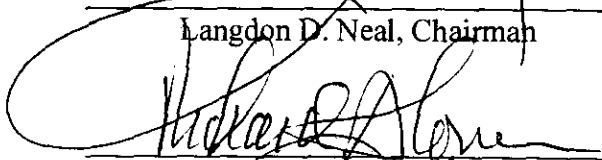
IT IS THEREFORE ORDERED that the Objections of Elias Espindola to the Nomination Papers of Edward J. Acevedo, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 2nd Representative District of the City of State of Illinois, are hereby DISMISSED and said Nomination Papers are hereby declared VALID and

the name of Edward J. Acevedo, candidate for nomination of the Democratic Party for the office of Representative in the General Assembly for the 2nd Representative District of the City of State of Illinois, SHALL be printed on the official ballot for the General Primary Election to be held on March 20, 2012.

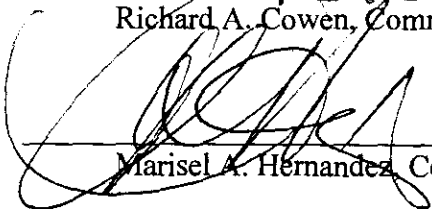
Dated: Chicago, Illinois, on January 20, 2012.



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 BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OBJECTIONS
TO NOMINATION PAPERS OF CANDIDATES
FOR THE MARCH 20, 2012, GENERAL PRIMARY ELECTION
FOR THE NOMINATION OF THE DEMOCRATIC PARTY
FOR THE OFFICE OF
REPRESENTATIVE IN THE ILLINOIS GENERAL ASSEMBLY
FOR THE 2ND REPRESENTATIVE DISTRICT

ELIAS ESPINDOLA,)	
)	
<i>Petitioner-Objector,</i>)	
)	No. 12-EB-RGA-04
vs.)	
)	Hearing Officer Morris
EDWARD J. ACEVEDO,)	
)	
<i>Respondent-Candidate.</i>)	

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BOARD OF ELECTIONS
COMMISSIONER

REPORT OF THE HEARING OFFICER

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

Hearing Officer JOSEPH A. MORRIS reports as follows:

Preliminary Matters

1. This matter came before the Hearing Officer, pursuant to notice, for hearing on December 19, 2011. The Candidate was present by counsel, Daniel Johnson, who identified Michael J. Kasper, absent, as lead counsel for the Candidate in the proceeding. The Objector was not present, either by counsel or in his proper person. It appeared from the Sheriff's returns of service that service had not yet been had upon the Objector. Further efforts at service of process upon the Objector were directed and the case was continued for return of service and the initial hearing on December 23, 2011.

2. The matter came again before the Hearing Officer for a rescheduled initial hearing on December 23, 2011. The Objector was present in his proper person and stated that he intended to represent himself, *pro se*. The Candidate was present by counsel, Michael J. Kasper. The parties acknowledged that they had both received copies of the Rules of Procedure of the Electoral Board. The Hearing Officer pointed out to the Objector that, even though the Objector was electing to act as his own counsel, he would be bound by the Rules of Procedure, whether or not they seemed technical, just the same as would be a party represented by a lawyer. The Objector acknowledged that he was bound by the rules. The Hearing Officer called particular attention to various time limits set forth in the rules, and to the provisions and requirements of Rule 8.

3. It appeared from the Sheriff's returns of service that there had been regular service of process upon both the Objector (on the second attempt by the Sheriff) and the Candidate. This was confirmed by the parties, who acknowledged timely receipt of the Call and of notice of the proceeding, and who orally waived any objections to such notice. The parties filed, and exchanged with each other, their written appearances.

4. Without objection, the Candidate's nomination papers for the office of Representative in the General Assembly for the 2nd State Representative District were admitted into the record as Board Group Exhibit A; the Objector's Petition and attachments were admitted into the record as Board Group Exhibit B; the returns of service of process by the Sheriff of Cook County, Illinois, were admitted into the record as Board Group Exhibit C; and the parties' written appearances were admitted into the record as Board Group Exhibit D.

5. The parties agreed that there was only one issue in the case: Whether or not the Candidate's nomination papers are supported by a numerically sufficient number of valid signatures

of qualified registered voters. The parties agreed that the issues should be resolved by a Record Examination. The parties further agreed that the minimum number of valid signatures of qualified registered voters required for the sufficiency of the nomination papers is 500. A Record Examination was directed.

6. A Record Examination was conducted and its results reported. The Report of Record Examination showed that the Record Examiners determined that the Candidate's nomination papers were supported by significantly more than the minimum number of signatures required. The Objector and the Candidate, in their proper persons or by watchers, both took part in the Record Examination and preserved objections to rulings of the Record Examiners. Both parties filed Rule 8 motions and it appeared from the faces of the Rule 8 motions that enough signatures were still being contested to require evidentiary proceedings before the Hearing Officer to resolve them. Following a series of case management conferences, all attended by the Objector, *pro se*, and the Candidate, by counsel, an evidentiary hearing was scheduled to be held on January 6, 2012.

7. An evidentiary hearing for the purpose of hearing and deciding the matters raised in the parties Rule 8 motions was convened on January 6, 2012. The Objector, Elias Espindola, was present, *pro se*. The Candidate was present by counsel, Mr. Kasper, and his associates, Kevin Morphew and John Keigher. The Objector stated that he was unprepared at that time to present evidence, and requested time in which to procure evidence and to prepare and present his case. The Objector stated that most of the evidence that he needed to procure consisted of voter registration records maintained by the Chicago Board of Election Commissioners. The request of the Objector for a continuance was granted and an evidentiary hearing was scheduled for January 11, 2012, to commence at 3:00 p.m. in the same hearing room. The Objector participated in the selection of the

hearing day and time, setting the evidentiary hearing for January 11, 2012, at 3:00 p.m.; assented thereto; and had actual knowledge thereof.

8. Following the hearing held on January 6, 2012, and on the same day, the Hearing Officer issued an Order relating to the procurement of evidence and regulating various pre-hearing steps. The Hearing Officer prepared and entered a revised version of the Order, correcting only a typographical error in the numbering of the case, on January 8, 2012. The records of the Board show that, early on the morning of January 8, 2012, a copy of the revised version of the said Order was served upon the Objector by electronic means, conforming to the means of communication set forth by the Objector in his written Appearance. In pertinent part, the said Order:

a. Directed the parties, in the event that they sought to obtain the evidence of Board records for purposes of evidentiary hearing in this matter, to file on or before January 9, 2012, written requests for same with the clerks of the Board;

b. Directed the parties to exchange, on or before January 10, 2012, in advance of the evidentiary hearing scheduled for January 11, 2012, copies of the exhibits that they intended to offer at the evidentiary hearing;

c. Directed the parties to exchange, on or before January 10, 2012, in advance of the evidentiary hearing scheduled for January 11, 2012, lists of the witnesses that they intended to call at the evidentiary hearing; and

d. Reminded the parties that the evidentiary hearing was scheduled for January 11, 2012, at 3:00 p.m.

Abandonment by the Objector of the Prosecution of His Case

9. On January 11, 2012, at 3:00 p.m. the evidentiary hearing herein was convened. Counsel for the Respondent-Candidate were present at the appointed hour, but the Objector was not in attendance.

10. At the evidentiary hearing on January 11, 2012,

a. The Hearing Officer directed the Clerk, Darryll Bolling, to inspect the records of the Board and determine whether or not the Objector had filed, on or before January 9, 2012, or at any other time, any request for Board records to use as evidence in this proceeding. Clerk Bolling reported that no such request by the Objector was found in the records of this proceeding. (It appears that a request for records was filed by the Candidate herein, and was mislabeled as filed by the Objector. Upon inspection of the request the Hearing Officer found it reasonable to determine that the said request had, in fact, been filed by the Candidate and not by the Objector, as the records sought were manifestly aimed at supporting the Candidate's claims for the rehabilitation of petition signatures set forth in the Nominating Papers and not at supporting the Objector's objections. Michael J. Kasper, one of counsel for the Candidate identified the request, claimed authorship thereof, represented that he had caused the same to be filed, and admitted the mislabeling.) Counsel for the Candidate stated, upon inquiry by the Hearing Officer, that no copy of any request by the Objector for Board records was served at any time upon them.

b. Counsel for the Candidate stated, upon inquiry by the Hearing Officer, that no exhibits were served by the Objector upon counsel for the Candidate on or before January 10, 2012, or at any time.

c. Counsel for the Candidate stated, upon inquiry by the Hearing Officer, that no list of witnesses was served by the Objector upon counsel for the Candidate on or before January 10, 2012, or at any time.

d. The case was called, and the name of the Objector was called, by open outcry at approximately 3:20 p.m. Counsel for the Candidate were still in attendance. The Objector was not present, either in his proper person or by any representative.

e. At the direction of the Hearing Officer, Clerk Bolling placed a telephone call from the hearing room to the telephone number set forth by the Objector in his written appearance in this cause, and Clerk Bolling reported that the call was answered by a voicemail system and that he left a message thereon identifying himself and stating that the scheduled hearing had been convened and that the Objector was awaited.

f. The case was again called, and the name of the Objector was called, by open outcry at approximately 3:35 p.m. Counsel for the Candidate were still in attendance. The Objector was not present, either in his proper person or by any representative.

g. Counsel for the Candidate presented an offer of proof in which they submitted that, even if the Objector were to prevail on each and every issue raised on his Rule 8 motion, the Candidate possessed and was able to present credible evidence that, would rehabilitate more than enough signatures to permit the Hearing Officer and the Electoral Board to find that the Candidate's Nomination Papers were supported by more than the minimum number of signatures required in this case. The said offer of proof was completed at 3:58 p.m.

h. As of 3:58 p.m. the Objector still was not present and had not attended the evidentiary hearing. The hearing was thereupon adjourned and at or shortly after 4:00 p.m. the Hearing Officer left the hearing room.

11. On January 11, 2012, the Hearing Officer found that the Objector had made no effort to gather evidence; had made no effort to disclose evidence as required by Order; had made no effort to present evidence; did not attend the evidentiary hearing that was scheduled, with his knowledge and consent, to permit him to present evidence; and had, in fact, abandoned the prosecution of this case; and on the basis of those findings the Hearing Officer that day entered an Order which provided:

- a. "This case shall be, and hereby is, dismissed for want of prosecution";
- b. "The Clerk shall promptly serve a copy of this Order upon the Objector"; and
- c. "Absent a prompt and timely filing by the Objector of an instrument showing good cause for his failure to prosecute this case, the Hearing Officer shall prepare and file with the Board a report and recommendation that the Board dismiss this case for want of prosecution; dismiss the Objector's Verified Objector's Petition; and direct that the name of the Candidate appear on the ballot for nomination by the Democratic Party for the office of Representative in the Illinois General Assembly at the general primary election to be held on March 20, 2012."

12. The said Order was entered and was promptly served upon the parties. Copies were served upon the Objector, at the telecopier number set forth in his written appearance, not later than January 12, 2012.

13. A full week has passed since the Objector failed to attend the evidentiary hearing scheduled on his Rule 8 motion, since the entry of the Hearing Officers admonitory order of dismissal for want of prosecution, and service of the same upon the parties, and, in this time, the Objector has filed no instrument of any kind justifying his absence from the evidentiary hearing, explaining his apparent abandonment of his case, or seeking relief of any kind.

Recommended Findings, Conclusions, and Decision

14. On the bases of a facial examination of the nomination papers, of the Objector's Petition and attachments, and the Report of Records Examination, and in the light of all the evidence and proceedings herein, the Hearing Examiner recommends that the Electoral Board enter the following findings of fact:

a. Two evidentiary hearings, the first on January 6, 2012, and the second on January 11, 2012, were convened to give the Objector an opportunity to present evidence and argument showing that the nomination papers of the Candidate were not supported by a sufficient number of petition signatures.

b. The Objector presented no evidence at the first evidentiary hearing, but sought, and was granted, time in which to obtain, assemble, and present evidence, and on his motion, a second evidentiary hearing was scheduled to be held on a day and hour acceptable to him.

c. Between the two evidentiary hearings the Objector failed to take any steps to obtain, assemble, and present evidence.

d. The Objector failed to attend the second evidentiary hearing.

e. An order of dismissal for want of prosecution was entered by the Hearing Officer on January 11, 2012, which contained within it an invitation to the Objector to move for relief and to seek to prosecute his case, but in the intervening week the Objector was silent and made no effort to prosecute his case.

f. The nomination papers submitted by the Candidate are supported by the signatures of more than 500 duly registered voters of the 2nd Representative District of the State of Illinois.

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

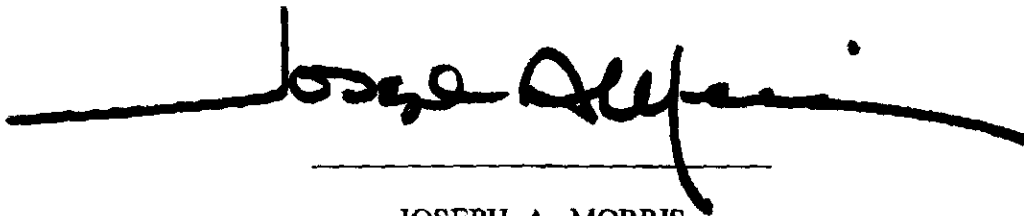
- a. The Objector has abandoned the prosecution of his Verified Objector's Petition, and the same should be dismissed for want of prosecution.
- b. The nomination papers of the Candidate are supported by more than the minimum number required by law of signatures of persons duly registered to vote in the 2nd Representative District of the State of Illinois.
- c. The Verified Objector's Petition is not well founded.
- d. The nomination papers filed by the Candidate substantially comply with the requirements of law.

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

The name of EDWARD J. ACEVEDO shall appear and shall be printed on the ballot for the nomination of the Democratic Party for the Office of Representative in the Illinois General Assembly for the 2nd Representative District to be voted for in the General Primary Election to be held on March 20, 2012.

Dated: January 18, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joseph A. Morris", written over a horizontal line.

JOSEPH A. MORRIS
Hearing Officer