

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

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Objections of: JUAN JOSE VALENTIN,	)	
BARBARA BERONSKI	)	
	)	
To the Nomination	)	No.: 15-EB-ALD-004
Papers of: EDGAR ESPARZA	)	
	)	
Candidate for the office of	)	
Alderman of the 30th 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 JUAN JOSE VALENTIN and BARBARA BERONSKI ("Objectors") to the nomination papers ("Nomination Papers") of EDGAR ESPARZA, candidate for the office of Alderman of the 30th Ward of the City of Chicago ("Candidate") to be elected at the Municipal General Election to be held on February 24, 2015, having convened on December 8, 2014, 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 Objectors 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 8, 2014, and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Officer Linda R. Crane for further hearings and proceedings.

6. The Objectors 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 Objectors, JUAN JOSE VALENTIN and BARBARA BERONSKI, by their attorney, Thomas A. Jaconetty; and the Candidate, EDGAR ESPARZA, pro se.

7. The Hearing Officer has tendered to the Electoral Board a report and recommended decision. Based upon the evidence presented, the Hearing Officer found the Candidate's Nomination Papers were not securely fastened together as required by Section 10-4 of the Election Code (10 ILCS 5/10-4).

8. Section 10-4 provide that petition sheets shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. Section 10-4 further provides that noncompliance with its provisions "shall" invalidate the signatures on a nominating petition. Specifically, the Code states: "No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this Section are complied with." Based upon that language, which imposes sanctions in the event the provisions of the

Code are not complied with, coupled with the use of the word "shall," the requirements of section 10-4 are mandatory rather than directory. *Bendell v. Education Officers Electoral Board for School Dist. 148*, 338 Ill.App.3d 458, 463, 788 N.E.2d 173 (2003); *Jakstas v. Koske*, 352 Ill.App.3d 861, 817 N.E.2d 200 (2004).

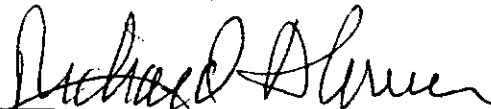
9. The Electoral Board, having considered the evidence and arguments tendered by the parties and the Hearing Officer's report of recommended findings and conclusions of law, hereby adopts the Hearing Officer's recommended findings and conclusions of law. A copy of the Hearing Officer's report is attached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

10. For the reasons stated above, the Electoral Board finds that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of JUAN JOSE VALENTIN and BARBARA BERONSKI to the Nomination Papers of EDGAR ESPARZA, candidate for election to the office of Alderman of the 30th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of EDGAR ESPARZA, candidate for election to the office of Alderman of the 30th Ward of the City of Chicago, SHALL NOT be printed on the official ballot for the Municipal General Election to be held on February 24, 2015.

Dated: Chicago, Illinois, on January 5, 2015.

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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 CHICAGO BOARD OF ELECTION COMMISSIONERS**  
**SITTING AS THE DULY CONSTITUTED MUNICIPAL OFFICERS**  
**ELECTORAL BOARD FOR THE CITY OF CHICAGO**

**JUAN JOSE VALENTIN, and  
BARBARA BERONSKI**

### Petitioners-Objectors

**Vs.**

**No. 15 - EB - ALD - 004**

**EDGAR ESPARZA**

### Respondent-Candidate

### HEARING EXAMINER'S RECOMMENDED DECISION

The Respondent-Candidate, **EDGAR ESPARZA**, filed Nomination Papers in support of his nomination to the office of Alderman of the 30<sup>th</sup> Ward in the City of Chicago to be voted upon at the election on February 24, 2015 (election). The Petitioners-Objectors, **JUAN JOSE VALENTIN** and **BARBARA BERONSKI**, filed a Verified Objector's Petition objecting to the sufficiency of the Candidate's nomination papers for various reasons stated in Paragraphs 3 through 10 of her Petition. Objectors mainly object, in paragraph 3, to the sufficiency of the Candidate's nomination papers, especially the petition sheets, alleging that the sheets "...are not bound nor securely fastened as required by law."

This matter was set for an initial call on December 10, 2014, at which time the parties appeared: the Candidate, pro se and the Objectors, through their attorney, Thomas Jaconetty. The Hearing Examiner urged the Candidate to retain legal counsel and advice. During the initial trial call, the Candidate attempted to file an “oral” Motion to Strike and Dismiss. Subsequently, the Candidate filed a written motion in a timely fashion, but

failed to notify opposing counsel. A second hearing was scheduled for December 19, 2014 to give the parties an opportunity to file/respond to the Motion to Strike and Dismiss and to allow for a record exam if needed. During the second hearing, the objectors were satisfied with their ability to review the Candidates written Motion to Strike and did not object to the fact that they were never properly served with the written Motion to Strike.

Throughout both the initial and the second hearing, the Candidate, who is 18 years of age, presented himself with the utmost of sincerity and respect for the process. Despite my strident urgings, he did not hire an attorney. Consequently, his grasp of the details that must be satisfied when filing nomination papers for governmental elections in Chicago was minimal despite his sincerity and best efforts; and despite accommodations that were made to compensate for his inexperience and lack of good counsel.

(Citing 10 ILCS 5/10-4). The applicable statutory provision is 10 ILCS 5/10-4, and it states, in pertinent part that:

**"Such sheets, before being presented to the electoral board or filed with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, ... The sheets shall not be fastened by pasting them together end to end, so as to form a continuous strip or roll."**

The Candidate admitted that his nomination papers were filed without any fasteners whatsoever. He confirmed that the papers were filed in the same form as they were when the Hearing Examiner examined them during the hearing, which was that they were inside of a green, three-sided, accordion folder. They were not inside of a binder clip or a rubber band, nor were they stapled. The pages showed no sign of ever having been prepared for binding (e.g. binder clip holes, staple holes, etc.)

Candidate's primary basis for his Motion to Strike was that the intake clerks at the Board of Elections had "accepted" his nomination papers despite the fact that they were not fastened. The Candidate argued that the receipt he received when filing his nomination papers had the "yes" box checked for the question "are the nominating papers bound?" He further states that under the section "if yes, describe how they are bound," the clerk described the binding as "a green folder." The Candidate goes on to say that he was going to bind the petitions once he filed them, but there were other people behind him and the attendant of the Election Board told him that his petitions were in compliance with the Illinois Election Code, and they were fine as they were. The Candidate concludes this argument by citing the case *Breman v. Tankersley*. The Candidate admits the case has little relevance in his case, except for the fact that the petition sheets were in a much smaller folder when the clerk checked the "yes" box indicating the petitions were bound.

Objectors then cite *Henning & Lewis v. Parsons* 07EB-ALD-50, on the issue of whether the clerks have apparent or actual authority to bind the Board. The Board in that case ruled that the clerk's role is ministerial, that clerks are obligated to take things that are filed, and cannot bind the board by fulfilling their duties. Objectors conclude their argument by stating there are two or three reasons why binding is important. The first is to secure the integrity of the filing. The second is to facilitate the orderly presentation of the nomination papers to the election authority. The last reason is to protect the integrity of the process and make it tamper-resistant and available to the public.

At the end of all of the testimony regarding the binding of the petition papers the parties rested and made closing remarks.

The Election code states that petition sheets need to be bound securely and numbered consecutively before being filed with the proper officer. *Jakstas v. Koske*, 352 Ill.App.3d 861, 863 (2004). Although the Courts have held that strict compliance with the statute is not necessary, substantial compliance is still required. *Id.* It has been ruled

that the "[u]se of ACCO brand brass fasteners is sufficient to meet the Election Code's mandatory fastening requirement." *Anderson v. Levi*, 07-EB-ALD-035, CBEC, January 19, 2007. Furthermore, in *Jakstas*, the Court ruled that a petition in which 20% of the pages were not bound in any manner could not be in substantial compliance with the statute's requirement that the petition be securely bound. The language and intent of the statute is clearly to require that:

*"Such sheets, before being presented to the electoral board or filed (emphasis added) with the proper officer of the electoral district or division of the state or municipality, as the case may be, shall be neatly fastened together in book form, by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, ..."*

Finally, in the absence of an official definition of the word, we are free to assume that fastening here has the ordinary meaning and would include tying with a sturdy string. The statute takes no position on the method of fastening that it deems most appropriate, stating only that the sheets should be presented in book form and should not be pasted together. From all of the evidence it is well-established that the Candidate's nomination papers were not attached by paper clips, binder clips, nor fastened with ACCO brand brass fasteners. The total absence of fastening as well as any attempt to do so leads unavoidably to my conclusion that the petitions were not being presented in compliance with 10 ILCS 5/10-4.

The Candidate admitted that he made no attempt to fasten the nomination papers beyond placing the loose sheets inside of the open-ended green folder. This effort is not a reasonable attempt to comply either with the language of the governing statute or under even the most lenient case law. Candidate's 138 petition sheets were not securely bound at the time they were filed, which is the relevant requirement under the statute. .

It is my recommendation, based on all of the foregoing, that the Board of Election Commissioners should deny the Candidate's Motion to Strike and Dismiss, thus

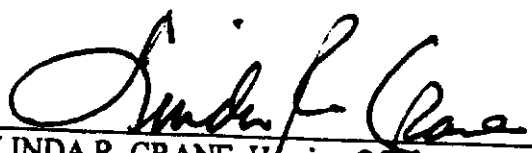


sustaining the objection against the Candidate and not allowing his name to appear on the ballot for the February 24, 2015 election, at least to the extent that this objection would otherwise be the only impediment to same.

RESPECTFULLY SUBMITTED

Dated: January 2, 2015

By:

  
LINDA R. CRANE, Hearing Officer