

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

Objections of: ERIC M. GLATSTEIN)	
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To the Nomination)	No.: 15-EB-ALD-029
Papers of: JOHN BEACHAM)	
)	
Candidate for the office of)	
Alderman of the 49th 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 ERIC M. GLATSTEIN ("Objector") to the nomination papers ("Nomination Papers") of JOHN BEACHAM, candidate for the office of Alderman of the 49th 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 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 8, 2014 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 Hearing Schedule. On such date and time, the Hearing Officer called the case by calling aloud the case number, the name of the Objector and the name of the Candidate. The following persons, among others, answered and were present at such hearing: the Objector, ERIC M. GLATSTEIN, by his attorney, Michael C. Dorf.

7. The Candidate, JOHN BEACHAM, did not answer to the call nor did he appear at the hearing. The case was called again at least two more times at least 15 minutes apart and at no time did the Candidate or any person purporting to represent the Candidate appear.

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

9. 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.

10. The Electoral Board finds that the Cook County Sheriff attempted to serve the Candidate with a copy of the Objector's Petition and with a copy of the Call to the hearing in this cause. The Candidate was also sent a copy of the Call by certified mail, but a signed receipt acknowledging receipt of the certified mail item has never been returned by the Postal Service.

11. The Electoral Board finds that the Candidate, JOHN BEACHAM, did not appear at the duly called meeting and hearing conducted in this matter after attempts to serve the Candidate with a copy of the Call and the Objector's Petition by the means of service specified in the statute.

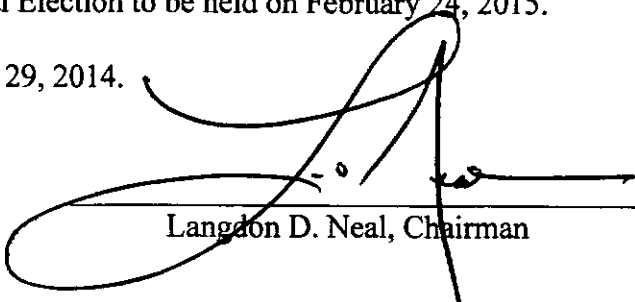
12. A candidate cannot evade the effects of a duly filed objection to his or her nomination papers by simply being unavailable for service of papers nor should the objections be rendered moot by virtue of the fact that a candidate cannot be found by the statutory methods of service. If this were permitted, candidates would simply go into "hiding" until the objection process had run its course, thereby frustrating the statutory scheme for testing whether the candidate is eligible to be on the ballot. *See, e.g., Ho v. Donovan*, 569 F.3d 677, 680 (7th Cir. 2009).

13. The Electoral Board further finds that the Objector's petition, on its face, contains sufficient allegations, if accepted as true, to invalidate the Candidate's Nomination Papers.

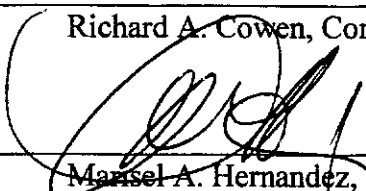
14. Therefore, the Electoral Board finds that the Candidate, JOHN BEACHAM, is in default, that the Objections are sustained, and that the Candidate's Nomination Papers are invalid.

IT IS THEREFORE ORDERED that the Objections of ERIC M. GLATSTEIN to the Nomination Papers of JOHN BEACHAM, candidate for election to the office of Alderman of the 49th Ward of the City of Chicago, are hereby SUSTAINED and said Nomination Papers are hereby declared INVALID and the name of JOHN BEACHAM, candidate for election to the office of Alderman of the 49th 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.

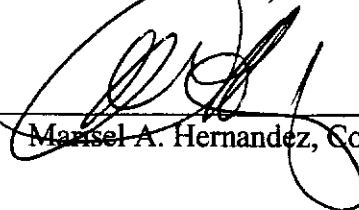
Dated: Chicago, Illinois, on December 29, 2014.



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.

**BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO
AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE
HEARING AND PASSING UPON OF OBJECTIONS TO NOMINATION
PAPERS OF CANDIDATES FOR THE FEBRUARY 24, 2015 MUNICIPAL GENERAL
ELECTION IN THE CITY OF CHICAGO**

ERIC M. GLATSTEIN,

Objector,

vs.

JOHN BEACHAM,

Candidate.

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No. 15-EB-ALD-029

Hearing Officer William J. Kresse

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 9, 2014. The Objector was present by counsel. The case was called three times with 15 minute intervals between calls. The Candidate did not respond. An examination of the file showed that the Sheriff was unsuccessful in serving the Candidate.
2. The Hearing Officer directed the Clerk's Office to attempt service on the Candidate again, and continued this matter until Tuesday December 16, 2014 at 12:00 Noon.

Proceedings at the December 16, 2014 Hearing

3. The Objector appeared by counsel at the hearing set for 12:00 Noon on December 16, 2014. The Candidate did not appear at the Hearing. The Hearing Officer called the case at or about 12:00 Noon, at or about 12:15 PM, and at or about 12:30 PM; the Candidate did not respond.
4. The Hearing Officer took administrative notice and noted on the record that the Clerk's Office conducted service on the Candidate by mailing a package by Certified Mail (Tracking Number 9171082133393746220973) on December 5, 2014 to the Candidate's home address as listed on the Candidate's Nomination Papers. The Hearing Officer also took administrative notice that per the United States Postal Service tracking website, the USPS attempted delivery of the Certified Letter on December 6, 2014 at 1:33 PM, leaving notice at the address. (<https://tools.usps.com/go/TrackConfirmAction.action?tRef=fullpage&tLc=1&txt28777=&tLabels=9171082133393746220973>)
5. The Hearing Officer also took administrative notice and noted on the record that a published report available on both the Chicago *Sun-Times* website (<http://chicago.suntimes.com/chicago-politics-government/7/71/120414/moore-ally-objects-to-challengers-petitions-but-not-those-of-main-rival>) and the *DNAinfo* website (<http://www.dnainfo.com/chicago/20141205/rogers-park/moore-ally-objects-challengers-petitions-but-not-those-of-main-rival>) indicated that the Candidate had actual knowledge of the Objector's objections to the Candidate's petition.

6. Counsel for the Objector moved that the Candidate be found in default pursuant to Rule 12 of the Rules of Procedure for the Board of Election Commissioners of the City of Chicago as the Duly Constituted Electoral Board for Hearing and Passing Upon Objections to Nomination Papers and Petitions for Questions of Public Policy.
7. The Hearing Officer took administrative notice of the Clerk's Petition Summary Report in this case which shows that the Candidate's Nomination Petition Contained 613 signatures, to which the Candidate objected to 400 signatures; 213 signatures were unchallenged. After examining the Objection Petition, the Hearing Officer also found and noted on the record that the Objector's Petitions sufficiently stated grounds which, accepted as true, would invalidate the Candidate's Nomination Papers as a matter of law.
8. Accordingly, the Hearing Officer sustained the Objector's Rule 12 motion and found the Candidate in default.

Recommended Findings of Fact and Conclusions of Law

9. While it would have been preferable that service by the Sheriff was successful, it is clear from the records of the United States Postal Service that the USPS delivered to the address that the Candidate used on his Nomination Papers notice of the attempted delivery of the certified mail package from the Chicago Board of Election Commissioners, along with instructions for retrieving said package. Further, the documents in the certified mail package from the Election

Commission conveyed all of the salient information to enable the Candidate to protect his interests in light of the Objection Petition filed in this matter.

10. It is also clear from the record that in published reports, the Candidate had actual knowledge of the Objections to his Nomination Papers that had been filed with the Board of Election Commissioners. (Cf., *Cornett v. Sheldon*, 894 F.Supp. 715 S.D.N.Y., 1995)).
11. As the U.S. Court of Appeals for the 7th Circuit noted in *Ho v. Donovan*, "The Constitution requires 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objection.' *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).... [the Petitioner] received notices that conveyed all of the salient information and enabled her to protect her interests. The Constitution does not require that an effort to give notice succeed. See, e.g., *Dusenbery v. United States*, 534 U.S. 161, 122 S.Ct. 694, 151 L.Ed.2d 597 (2002). If it did, then people could evade knowledge, and avoid responsibility for their conduct, by burning notices on receipt—or just leaving them unopened, as ... [the Petitioner] did.... Conscious avoidance of information is a form of knowledge. That's the basis of the "ostrich instruction". See *United States v. Ramsey*, 785 F.2d 184 (7th Cir. 1986)." 569 F.3d 677, 680 (7th Cir., 2009).
12. Accordingly, the Hearing Officer recommends that the Electoral Board enter the following findings of fact:

- a. The Candidate received constitutionally and legally sufficient notice of the pendency of this matter.
- b. By failing to appear at either the December 9 or the December 16 hearings in this case, the Candidate placed himself in default.
- c. The Objector's Petitions sufficiently stated grounds which, accepted as true, would invalidate the Candidate's Nomination Papers as a matter of law.

Recommended Decision

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

That the Objector's motion for a Rule 12 default be sustained, and that the name of John Beacham shall not appear and shall not be printed on the ballot for election to the office of Alderman for the 49th Ward of the City of Chicago to be voted for at the Municipal General Election to be held on February 24, 2014.

Dated: December 23, 2014.

Respectfully submitted,

s/ William J. Kresse

William J. Kresse
Hearing Officer