

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

Objections of: JAMES W. PHELAN)
)
To the Nomination) **No.: 07-EB-ALD-069**
Papers of: CHARLES MAIDA)
)
Candidate for the office of)
Alderman of the Twenty-third 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 and Richard A. Cowen, 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 JAMES W. PHELAN (“Objector”) to the nomination papers (“Nomination Papers”) of CHARLES MAIDA, candidate for the office of Alderman of the Twenty-third Ward of the City of Chicago (“Candidate”) to be elected at the Municipal General Election to be held on February 27, 2007, having convened on January 2, 2007, at 10:00 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 January 2, 2007 and was continued from time to time.

5. The Electoral Board assigned this matter to Hearing Examiner Gerald Mullin 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 Examiner on the date and at the time designated in the Call. The following persons, among others, were present at such hearing; the Objector, JAMES W. PHELAN, by counsel, Michael J. Kasper, the Candidate, CHARLES MAIDA, by counsel, Richard K. Means.

7. The Objector alleged that the Candidate's nominating petitions were so infected with a pattern of fraud that all of the petition sheets should be invalid.

8. Based upon the evidence presented, the Hearing Examiner found that no pattern of fraud was demonstrated by Objector.

9. The Hearing Examiner has tendered to the Electoral Board his report and recommended decision. The Hearing Examiner recommends that the Objections to the Candidate's Nomination Papers be overruled and that the Nomination Papers be found valid.

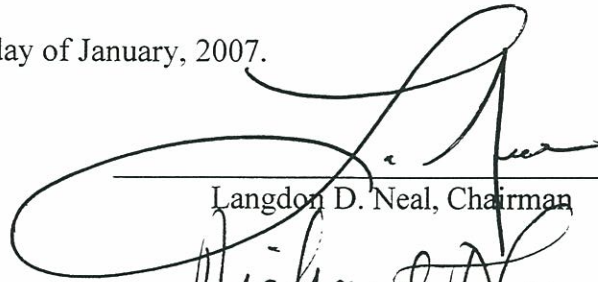
10. The Electoral Board, having reviewed the record of proceedings in this matter and having considered the report and recommendations of the Hearing Examiner, as well as all argument and evidence submitted by the parties, hereby adopts the Hearing Examiner's recommended findings and conclusions of law. 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.

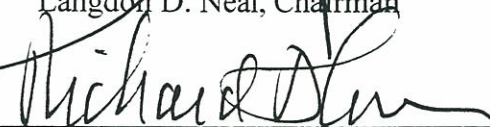
11. For the reasons stated above, the Electoral Board overrules the Objections to the Candidate's Nomination Papers and finds that the Candidate's Nomination Papers are valid.

IT IS THEREFORE ORDERED that the Objections of JAMES W. PHELAN to the Nomination Papers of CHARLES MAIDA, candidate for election to the office of Alderman of the Twenty-third Ward of the City of Chicago, are hereby OVERRULED and said Nomination Papers are hereby declared VALID and the name of CHARLES MAIDA, candidate for election to the office of Alderman of the Twenty-third Ward of the City of Chicago, SHALL be printed on the official ballot for the Municipal General Election to be held on February 27, 2007.

Dated: Chicago, Illinois, this 23rd day of January, 2007.



Langdon D. Neal, Chairman



Richard A. Cowen, 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 10 days after the decision of the Electoral Board.

SERVICE ATTACHED

BOARD OF ELECTION COMMISSIONERS OF THE CITY OF CHICAGO AS THE DULY CONSTITUTED ELECTORAL BOARD FOR THE HEARING OF OBJECTIONS TO NOMINATIONS PAPERS OF CANDIDATES FOR THE FEBRUARY 27, 2007 MUNICIPAL ELECTION FOR MAYOR, CLERK TREASURER AND ALDERMAN IN THE CITY OF CHICAGO

James V. Phelan)
Petitioner-Objector)
v.)
Charles Maida)
Respondent-Candidate)

07-EB-ALD-084
Hearing Examiner: Gerald B. Mullin

X-069

2007 JAN 20 A 1:49

HEARING EXAMINER'S DECISION AND RECOMMENDATION

This matter was heard on January 19, 2007 commencing at 1:30PM Present were the candidate, Charles Maida, his counsel Richard K. Means, and counsel for the objector, Michael J. Kasper. The hearing was scheduled for the introduction of evidence by petitioner-objector and respondent-candidate.

At the commencement of the hearing, counsel for the petitioner-objector and respondent-candidate stipulated that the determinative issue in the hearing would be whether or not the nominating papers were so infected with a pattern of fraud requiring that all of the nominating papers be deemed to be invalid. Accordingly, it was agreed by both counsel at the outset that the issue of whether there were a sufficient number of signatures (absent a determination of a pattern of fraud) that would disqualify the candidate would not be an issue in the hearing, and that absent a determination of a pattern of fraud the petition should be overruled.

The objector's counsel called the candidate Charles Maida as an adverse witness for the purposes of cross examination. Insofar as relevant to the issues here, the candidate testified that there were four sheets of nominating papers, numbers 1, 2, 3 and 21 that were defective in that candidate signed the affidavit as the circulator, although he was not present when certain of the names on those nominating papers were affixed. He further testified that none of the names on nominating paper number 21 were obtained by him, although he signed the affidavit. He testified that his signature as circulator was affixed in error, when in the cases of nominating papers numbered 1, 2, and 3 were delivered to the mail box at his home, and were intermixed with other nominating papers that he had used to solicit signatures. He testified that he had affixed his signature on nominating paper number 21 in error because it had been confused with other papers at his home.

The candidate testified as to his personal solicitation of the signatures on the remaining nominating papers, and that his signature as circulator was properly affixed.

After the foregoing examination by counsel for the objector, and re-direct examination by the candidate's counsel, the objector rested without introduction of further evidence as to any defect in any of the nominating papers.

In the candidate's case in chief, the candidate generally reiterated his testimony as to the errors that were the source of his signature appearing as circulator on nominating papers numbers 1, 2, 3, and 21. Counsel for the candidate sought to introduce a series of affidavits of persons who signed the nominating papers seeking to establish by those affidavits that it was the candidate that solicited. The hearsay objection and lack of foundation objection to the introduction was sustained, but the affidavits were admitted over objection to establish only that the candidate contacted them as he testified, but not for the truth or falsity of the statements contained in the affidavits.

The candidate called two other witnesses who solicited nominating papers supported his testimony as to the delivery of the petitions to his mail box at home. The candidate rested after the testimony of the two circulators.

Objector contended that the holding in *Fortas v. Dixon*, 122 Ill. App. 3d 697 should be persuasive in this hearing establish that the evidence here establishes a pattern of fraud. However, in *Fortas*, the court found that fifty sheets of circulated clearly evidenced a pattern of fraud, in addition to false swearing and "total disregard for the mandatory requirements of the Election Code". No such pattern was demonstrated by the objector here, and after striking out nominating papers numbers 1, 2, 3 and 21, there remain a sufficient number of valid signatures required to place the candidate well above the minimum for having his name placed on the ballot. The demeanor of the candidate and his witnesses led the hearing examiner to conclude it was more likely than not that the events as described in the candidate's and his witnesses' testimony probably occurred as described. No direct evidence or circumstantial evidence of an intent to deceive. The research by the hearing examiner revealed no cases that hold the negligent affixing of a signature as circulator on the limited number of nominating papers such as occurred here requires a finding of a pattern of fraud invalidating all of the nominating papers.

The hearing officer recommends to the Board that the objections be **OVERRULED**

Dated January 20, 2007


Gerald B. Mullin