

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS**

Ben Foshager,	)	
Complainant	)	Administrative Hearing
	)	No. 14-10
	)	
v.	)	Re: Nominating Petition
	)	Challenge, for the office of
	)	Mayor of the District of Columbia
Nestor Djonkam,	)	
Respondent.	)	

**MEMORANDUM OPINION AND ORDER**

**I. Introduction**

This matter came before the District of Columbia Board of Elections (“the Board”) on August 28, 2014 pursuant to a challenge filed by Ben Foshager (“Mr. Foshager”) to the nominating petition submitted by Mr. Nestor Djonkam (“Mr. Djonkam”) in support of his candidacy for the office of the Mayor of the District of Columbia. Mr. Foshager appeared *pro se*, and the Respondent was represented by Rhonda Hamilton, Chief of Staff of Mr. Djonkam’s campaign (“Ms. Hamilton”). Chairman Deborah K. Nichols presided over the hearing as a one-member Board panel pursuant to D.C. Code § 1-1001.05 (g).<sup>1</sup>

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<sup>1</sup> D.C. Code § 1-0001.05(g) (2013) states in relevant part:

[T]he Board may hear any case brought before it under this subchapter [...] by 1 member panels. An appeal from a decision of any 1 member panel may be taken to either the full Board or to the District of Columbia Court of Appeals, at the option of any adversely affected party.

## **II. Statement of Facts**

On August 6, 2014, Mr. Djonkam timely submitted a nominating petition in support of his candidacy for the office of the Mayor of the District of Columbia (“the Petition”). The Petition contained a total of 3,213 signatures. The minimum signature requirement for this office is 3,000 signatures of duly registered voters pursuant to D.C. Code§1-1008.08(j)(1) (2014).

On August 16, 2014, Mr. Foshager, a duly registered voter in the District of Columbia, timely filed a challenge to the Petition in which he alleged that 229 of the 3,213 signatures were invalid. Each signature was challenged on a specific ground or grounds as required by the Board’s regulations. Specifically, Mr. Foshager challenged signatures on the grounds that: (1) the signer’s voter registration was designated as inactive on the voter roll at the time the petition was signed;(2) the signer is not a duly registered voter; (3) the petition does not include the address of the signer; (4) the petition does not contain the printed or typed name of the signer where the signature is not sufficiently legible for identification; and (5) the signature on the petition shall be made by the person whose signature it purports to be, and not by any other person.

Pursuant to Title 3 District of Columbia Municipal Regulation (“DCMR”)§415.1, the Board’s Office of the General Counsel conducted a pre-hearing conference in this matter on Friday, August 22, 2014. Mr. Foshager appeared *pro se*, and Mr. Djonkam was represented by Ms. Hamilton. During the pre-hearing conference, Karen Brooks, the Registrar of Voters (“the Registrar”) rendered a preliminary determination report which indicated that 213 of the 229 challenges were valid, leaving the Petition with 3,000 signatures, the minimum number required for ballot access.

Pursuant to D.C. Official Code§ 1-1001.08(o)(3),

[“f]or the purpose of verifying a signature on any petition filed pursuant to this section, the Board shall first determine if the address on the petition is the same as the address shown on the signer's voter registration record. If the address is different than the address which appears on the signer's registration record, the address shall be deemed valid if: [t]he signer's current address is within the District of Columbia for an at large election; and [t]he signer files a change of address form with the Board during the first 10 days of the period designated for resolving challenges to petitions.

The Registrar's preliminary determination also indicated that the Petition contained 73 signatures with addresses that are different than the addresses which appear on the signers' registration records. Mr. Djonkam was given until the close of business (4:45 p.m.) on Tuesday, August 26, 2014 to provide change of address forms for, and thereby cure, the affected signatures. Mr. Djonkam submitted 12 change of address forms. The Registrar validated 6 of the address changes, and gave credit for one that had initially been determined invalid, bringing the total number of valid signatures on the Petition to 3,007.

During the prehearing conference, the Mr. Foshager took issue with the Registrar's findings with respect to ten signatures that were challenged on the grounds that they were not made by the person whose signature it purports to be pursuant to 3 DCMR §1607.1(i). These signatures were that of Raven Brooks (page 4, line 20), Tyrone Bruner (page 5, line 7), Lena Tucker (page 6, line 15), Dominique Shepard (page 6, line 14), Sadie Boldman (page 51, line 5), Eldora Wager (page 55, line 11), Jean Williamson (page 55, 18), Joseph Proctor (page 59, 14), Yan Apori (page 74, line 18), Theresa Delaceton (page 140, line 7), Jesse Parker (page 140, line 20), Bryan Austen (page Supp. 6, line 14), Kenny Nero (Supp. page 7, line 15), Dodge Spurgar (Supp. page 9, line 2), William Byrd (Supp. page 11, line 9), and Cathleen Byrnes (page 3, line 9). Mr. Foshager also argued that only one of the change of address forms submitted by the candidate should be accepted, because in only one instance had the signatory checked the box

that indicated that the person is a District resident. As a result of these concerns, Mr. Foshager indicated that he wished to go before the Board for a hearing on the challenge.

### **III. Discussion**

Upon reviewing the challenge, the Board has determined that the Registrar's findings with respect to 9 of the 10 signatures that were challenged on the grounds that they were not made by the person whose signature it purports to be should be upheld, as it found that only one of signatures was likely not made by the person whose signature it purports to be, and that signature is Bryan Austen. This finding brought the total number of valid signatures on the Petition to 3,006. The Board also notes that the failure to check the residency box on a change of address form does not render either the form or the signature invalid, and does not serve as a basis for a challenge to a nominating petition.

### **IV. Conclusion**

Accordingly, the Board finds that the Petition contains 3,006 valid signatures, 6 over the minimum required in order to allow Mr. Djonkam to appear on the ballot. Therefore, it is hereby, **ORDERED** that the candidate, Mr. Djonkam, be granted ballot access as a candidate for the office of Mayor of the District of Columbia in the November 4, 2014 General Election.

September 5, 2014  
Date

  
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Deborah K. Nichols, Esq.  
Chairman,  
Board of Elections