

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Clayton Aristotle Rosenberg,)	
Challenger)	Administrative
)	Order #22-022
)	
v.)	Re: Challenge to Nominating
)	Petition Submitted for the
)	Office of Advisory
Edward Lee Daniels,)	Neighborhood Commissioner
Candidate.)	Single Member District 8F04

MEMORANDUM OPINION AND ORDER

Introduction

This matter came before the District of Columbia Board of Elections (“the Board”) on September 6, 2022. It is a challenge to the nominating petition of Edward Lee Daniels (“Mr. Daniels”) in support of his candidacy for the office of Advisory Neighborhood Commissioner (“ANC”), Single Member District (“SMD”) 8F04 in the November 8, 2022 General Election (“the General Election”). The challenge was filed by Clayton Aristotle Rosenberg (“Mr. Rosenberg”) pursuant to D.C. Official Code § 1-1001.08(o)(1). Chairman Gary Thompson and Board members Michael Gill and Karyn Greenfield presided over the hearing. Both parties appeared *pro se*.

Background

On August 10, 2022, Mr. Daniels submitted a nominating petition to appear on the ballot as a candidate in the General Election contest for the ANC nomination for SMD 8F04 (“the Petition”). The minimum number of signatures required to obtain ballot access for this office is 25 signatures of District voters who are duly registered in the same SMD as the candidate. The Petition contained twenty-six (26) signatures. Pursuant to Title 3, District of Columbia Municipal

Regulations (D.C.M.R.) § 1603.1, the Board of Elections' Registrar of Voters ("the Registrar"), accepted all twenty-six (26) signatures for review.

On August 13, 2022, the Petition was posted for public inspection for 10 days, as required by law. On August 22, 2022, the Petition was challenged by Mr. Rosenberg, a registered voter in the District of Columbia. Mr. Rosenberg filed challenges to a total of four (4) signatures. Mr. Rosenberg asserted the following reasons for his challenges: the signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed; the signature is a duplicate of a valid signature; the signature is not dated; the petition does not include the address of the signer; and the petition does not include the name of the signer where the signature is not sufficiently legible for identification.

Registrar's Preliminary Determination

The Registrar's review of the challenge indicated that three (3) of the four (4) signature challenges were valid. Specifically, the Registrar found that two (2) were valid because the signer was not a registered voter and one was valid because the signature was not sufficiently legible.

In response, Mr. Daniels pointed out that one of the signatures found invalid had a hatch, or ditto, mark in the field for entry of the signer's address that Mr. Daniels indicated was meant to signify the address associated with the immediately preceding signer entry on the form. With that information, the Registrar was able to match a voter in the Board's records to the printed name on the Petition. Because, however, the address at issue was for an apartment building and the hatch mark was meant to signify the same address as the immediately preceding entry, and that entry included an apartment number which did not match the voter, the Registrar continued to discount the entry.

Mr. Daniels also responded to the Registrar’s findings by timely submitting an updated address for one of the otherwise invalid signatures. The Registrar found that that submission cured one defective signature. After making that adjustment, the Registrar preliminarily determined the Petition contained twenty-four (24) presumptively valid signatures, which is one (1) signature below the number required for ballot access.

August 30, 2022 Pre-Hearing Conference

Pursuant to title 3 D.C.M.R. § 415.1, the Office of the General Counsel convened a pre-hearing conference with both parties on Tuesday, August 30, 2022. At the prehearing conference, the Registrar outlined her determinations with respect to the validity of each signature challenged.¹

Mr. Daniels urged the Registrar to accept the signature for which the address was a hatch mark. Mr. Rosenberg contested crediting that signature. At the conclusion of the prehearing conference, the parties were unable to reach a resolution with respect to the signature associated with a hatch mark in the address field. Since the number of signatures challenged would be sufficient if the Board overruled the Registrar’s decision to discount that signature, Board resolution of the matter was necessary.

September 6, 2022 Board Hearing

At the hearing, both parties appeared. Mr. Daniels urged that the signature associated with the hatch mark in the address field be accepted. He explained that he circulated the Petition and that he was gathering signatures at an event and that the signer was discussing an event-related matter with him when she signed. He explained that, at the time of the hearing, the signer was out

¹ Prior to convening, the parties had been provided with the Registrar’s written report, her mark-up of the challenge with codes for her findings, and a key code explaining the notations she used to indicate the basis for upholding or denying each challenge.

of town and unavailable but, if granted a continuance, he could provide documentation as to her having signed.

Mr. Rosenberg contested counting the signature. He noted that Mr. Daniels was an experienced candidate who should have known that the entry was deficient and who could have collected additional signatures, thereby avoiding the fatal nature of the one signature at issue.

Discussion

The Board's signature validity regulations require that the signer's address match the address in the Board's records. 3 D.C.M.R. § 1007.1(b). While the regulations do not cover the treatment of a hatch or ditto mark, there is precedence for accepting such an entry. *Convention Center Referendum Committee v. D.C. Board of Elections and Ethics*, 441 A.2d 889, 913, n. 40 (D.C. 1981) (citing *State ex rel. Freeze v. Taylor*, 4 P.2d 479, 481-82 (petition signers may use ditto mark to indicate address)).

There is no disagreement here that the hatch or ditto mark should be recognized as signifying the address entry associated with the prior petition signature entry. Although not the best practice, that is a reasonable means for a signer to designate their address.

After hearing from the parties, the Board members, however, disagreed as to how to treat the address associated with the signer at issue. Two members felt that, in the context of an apartment building, the hatch or ditto mark should be interpreted as signifying the address of the building alone and not construed as referring to the specific apartment number included in the preceding entry. If that were the interpretation given the hatch or ditto mark, the Registrar would have counted the signature.

One Board member found that the hatch or ditto mark should be applied literally and that therefore the apartment number included in the prior entry should apply to the signature at issue.

In that event, the Registrar would have found (as she, in fact, did) that the address for the voter did not match the Board's records and the Petition would be rendered insufficient.

Conclusion

As a result of this challenge, a majority of the Board finds that the Petition contains twenty-five (25) valid signatures, exactly the number required for ballot access. Accordingly, it is hereby:

ORDERED that the challenge to the nominating petition of Edward Lee Daniels for the office of ANC SMD 8F04 is hereby **DENIED**.

The Board issues this written order today, which is consistent with its oral ruling rendered on September 6, 2022.

Date: September 7, 2022



Gary Thompson
Chairman
Board of Elections