

**DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS AND ETHICS**

Kristen Barden

Petitioner

v.

Hamdy El-Berry

Respondent

Administrative Hearing  
No. 01-019

Re: Challenge to Residency  
of Hamdy El-Berry

**MEMORANDUM OPINION AND ORDER**

I. BACKGROUND.

This matter comes before the Board on the basis of an appeal of the Registrar's finding filed by Ms. Kristen Barden. She claims the Advisory Neighborhood commissioner, Mr. Hamdy El-Berry, does not reside at his claimed residence at 4130 Georgia Avenue, NW Washington D.C. Both parties participated in the scheduled pre-hearing on Tuesday December 11, 2001. The parties were unable to resolve the issues presented in this appeal, and the petitioner opted for a full hearing before the Board.

Prior to the Registrar's determination, Ms. Barden submitted a newspaper article detailing community concerns about an alleged illicit establishment owned by Mr. El-Berry located at 4132-34 Georgia Avenue. Although this article does raise a prior challenge filed by Mr. Louis Wassel, Mr. Hamdy El-Berry's address has always been listed as 4130 Georgia Avenue. Consequently, this article did nothing to rebut the legal presumption of residency in the case of Mr. El-Berry.

Mr. El-Berry presented a number of items that tended to bolster the presumption that he in fact lives where he says he does. He introduced photographs of the property, which is actually a partitioned commercial building with apartments in the upper portion of each listed address. He also presented a PEPCO utility bill, a Discover card solicitation, and a Declaration of Mixed Used for Real Property Taxation form. Further, Mr. El-Berry's driver's license is issued to his claimed address. In light of the scant evidence presented by Ms. Barden, the Registrar of Voters decided that her proffer was insufficient to rebut Mr. El-Berry's presumption of residency—coupled with the evidence he presented. Accordingly, she denied the challenge.

Ms. Barden submitted more evidence subsequent to the Registrar's determination. This evidence included a Notice of Occupancy for 4130 Georgia Avenue as a commercial property in the name of Alex Pawn Shop Inc., a DCRA ruling with respect to 4132-34

Georgia Avenue, a copy of a 1997 Tax Assessment Directory, and a news release from Councilmember Fenty commending the Mayor for revoking the certificate of occupancy of the Foxy Playground strip club. The evidence presented dealt mostly with 4132-34 Georgia Avenue; consequently, that evidence is irrelevant to the instant case. With respect to the certificate of occupancy for 4130 Georgia Avenue, Mr. El-Berry claims to be securing a mixed-use certificate of occupancy to reflect the current use of the property; however, nothing was presented to refute Mr. El-Berry's claim that he in fact lived at the address listed on the Board's records.

## II. ANALYSIS

D.C. CODE § 1-1001.02 defines residence as follows:

The term "residence" *for purposes of voting*, means the principal or primary home or place of abode of a person. Principal or primary home or place of abode is that home or place in which the person's habitation is fixed and to which a person, whenever he or she is absent, has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence.

In determining the principal place of abode of a person the following circumstance relating to the person may be taken into account:

Business pursuits; Employment; Income sources; Residence for income or other tax purposes; Residence of parents, spouse or children; leaseholds; situs of personal and real property; and motor vehicle registration. (emphasis added).

In the instant case, Ms. Barden presented nothing to rebut Mr. El-Berry's intention to call 4130 Georgia Avenue his home. She presented no evidence tending to show that he lived elsewhere. On the other hand, Mr. El-Berry presented utility bills, his driver's license, and photographs to illustrate the nature of his property—thereby explaining the inconsistency in the certificate of occupancy and his utility bill. Even if the respondent is living in his property illegally by virtue of not having a proper certificate of occupancy, that does not suggest that he does not in fact live where he says he does.

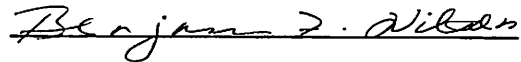
The Board is not prone to defeat the intent of a voter to live where he or she so chooses without substantive evidence that the person does not live at his claimed address. In light of ample evidence to support Mr. El-Berry's claim that he lives at 4130 Georgia Avenue and none to say he lives elsewhere, the Board is obligated to deny Ms. Barden's appeal.

II. CONCLUSION

Pursuant to D.C.Mun.Reg. tit. 3 §424.1, the party who asserts the claim bears the affirmative duty of establishing the truth of the assertion. Ms. Barden's submission of evidence en toto does not establish that Mr. El-Berry is not a bona fide resident of the single member district that he serves as an ANC Commissioner.

Accordingly, it is hereby **ORDERED**, that the petitioner's appeal be **DENIED**.

December 20, 2001



Benjamin F. Wilson, Chairman  
D.C. Board of Elections & Ethics