

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

Alonzo Edmondson)	
Challenger)	Administrative Hearing
)	No. 15-002
)	
v.)	Re: Nominating Petition
)	Challenge for the Office of
)	Ward 4 Member of the
Brandon Todd,)	Council
Candidate.)	

This matter came before the District of Columbia Board of Elections (hereinafter referred to as “the Board”) on Thursday, February 26, 2015. It is a challenge to the nominating petition of Brandon Todd (hereinafter referred to as “Mr. Todd” or “Candidate”) for the office of Ward 4 Member of the Council of the District of Columbia. The challenge was filed by Alonzo Edmondson (hereinafter referred to as “Mr. Edmondson” or “Challenger”). Mr. Edmondson specifically challenged Mr. Todd’s Declaration of Candidacy and Affidavit of Qualifications (hereinafter collectively referred to as “Declaration”) by asserting that Mr. Todd did not reside at 5032 Fifth Street, N.W. Washington D.C. when he filed his Declaration. Mr. Edmondson further asserts that Mr. Todd actually resided at 210 Upshur Street, N.W. Washington D.C.¹ and failed to list that address on his Declaration for the office of Ward 4 Council Member. Moreover, Mr. Edmondson alleged that Mr. Todd has been voting outside of the precinct assigned to the address on Upshur Street. In sum, the Challenger asserts that his allegations should be grounds for Mr. Todd’s disqualification as a Candidate for Ward 4 Council Member.

¹ 210 Upshur Street N.W. is located in Ward 4, and the Challenger concedes that he is not challenging whether Mr. Todd is a resident of Ward 4; rather, that he is not currently residing at the address listed on the Board’s official voter registration records.

Pursuant to D.C. Code § 1-1001.05(g), Chairman Deborah K. Nichols presided over this case as a 1 member panel. The Challenger was represented by Dwayne M. Toliver, Esq. The Candidate was represented by Thorn Pozen, Esq. of Goldblatt Martin & Pozen, LLP.

PROCEDURAL BACKGROUND

Mr. Todd submitted a nominating petition for the office of Ward 4 Member of the Council on January 27, 2015 pursuant to D.C. CODE §§ 1-204.01(d)(1) and 1-1001.08(j)(1)(A). The nominating petition was posted for public inspection for a ten-day challenge period on Saturday, January 31, 2015, pursuant to D.C. CODE § 1-1001.08(o)(1) and 3 DCMR § 1606.1. Mr. Edmondson, a duly registered voter in the District of Columbia, challenged Mr. Todd's nominating petition on Monday, February 9, 2015. Mr. Todd submitted the maximum number of 1,000 signatures accepted by the Board. The statutory minimum signature requirement is 500 registered qualified electors who are duly registered in the ward from which the candidate seeks election pursuant to D.C. CODE § 1-1001.08(j)(1)(B). Mr. Edmondson submitted preliminary evidence in the form of an internet search result of Brandon Todd listing an address of 210 Upshur Street, N.W., and a D.C. Office of Tax and Revenue inquiry showing the property is owned by Delina 200 Inc.

Mr. Edmondson did not allege any defects in the petition with respect to the qualifications of the signatures garnered; rather, Mr. Edmondson relies solely on his allegation of a false statement on Mr. Todd's Declaration as the basis of his challenge to the Nominating Petition. Pursuant to 3 D.C.M.R. § 1606.3, "[w]ithin three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the candidate in-person, by first-class mail, or email." The Board's notice of the challenge was sent on Tuesday, February 10, 2015. Both parties received the Registrar's

preliminary determination with respect to the challenge during the pre-hearing conference on Thursday, February 19, 2015.

PRE-HEARING CONFERENCE

Pursuant to Title 3 DCMR §415.1, the Office of the General Counsel conducted a Pre-Hearing conference in this matter on Thursday, February 19, 2015. The Challenger appeared *pro se*, and the Candidate was represented by Thorn Pozen, Esq. of Goldblatt Martin & Pozen, LLP. During the pre-hearing conference, Mr. Edmondson submitted an additional photograph of a car alleged to be owned by Mr. Todd parked in the rear lot of 210 Upshur Street N.W. Mr. Edmondson also presented Mr. Todd's voting history record indicating a voting address in the year 2007 at 2913 Denver Street, S.E, whereas Mr. Todd's declaration of candidacy states he has lived at 5032 Fifth Street, N.W. since 1998. Mr. Pozen submitted evidence on behalf of Mr. Todd to support his residency in the form of a sworn statement. The statement executed by Mr. Todd under penalty of perjury attested to his address at 5032 Fifth Street N.W.; moreover, the statement incorporated by reference copies of his driver's license, bank and credit card statements, a financial investment statement, a phone bill and an IRS notification all signifying his address as 5032 Fifth Street N.W.

Based upon the evidence submitted on behalf of Mr. Todd, the Registrar determined that Mr. Todd's name should remain on the list of active voters in the District of Columbia.

During the prehearing conference, the parties raised a number of concerns that are hereby recited for the record. Pursuant to 3 D.C.M.R. § 415.2, the parties were informed that agreements made by the parties as to any of the matters considered would limit the issues for hearing before the Board to those not disposed of by admissions or agreements of counsel or

parties. The outstanding issues were memorialized in a Pre-Hearing Conference Order issued Friday February 20, 2015.

CHALLENGER'S ISSUES FOR REVIEW

Mr. Edmondson has challenged Mr. Todd's residency and, by extension, his registration status. Although Mr. Todd's counsel stipulated that he would not contest the possibility of Mr. Todd's leasehold interest in the property located at 210 Upshur Street, Mr. Edmondson disagrees with the legal theory that Mr. Todd may claim another property as his legal residence for the purposes of voting pursuant to D.C. Code § 1-1001.02(16). Mr. Edmondson prepared a brief addressing that singular issue on Wednesday, February 25, 2015. Mr. Edmondson also takes issue with the contradictory statements contained in Mr. Todd's Declaration that are at odds with his voting history in the District of Columbia with respect to the length of his residency at 5032 Fifth Street, NW.

CANDIDATE'S ISSUES FOR REVIEW

Mr. Todd, by and through his counsel Mr. Pozen, asserts that a registered voter may in fact have an interest in more than one property in the District of Columbia provided that the voter does not register to vote in any other state or territory and, during his or her absence from their voting residence, he or she has the present intention of returning after a departure or absence therefrom, regardless of the duration of the absence from their voting residence pursuant to D.C. Code § 1-1001.02(16)(E).

SUBSEQUENT SUBMISSIONS

As aforementioned, Mr. Edmondson filed a brief on Wednesday, February 25, 2015 outlining the crux of his position. Mr. Edmondson recounted the evidence submitted on Mr. Todd's behalf including a copy of his driver's license, a bank statement and other documents.

Moreover, he claimed that Mr. Pozen conceded that Mr. Todd had multiple addresses including 210 Upshur Street, N.W.² By omitting the Upshur Street property as his address on his Declaration, Mr. Edmondson asserts that Mr. Todd lied under oath, and that the Candidate's actions regarding the Upshur property are grounds for disqualification.

Mr. Pozen responded to Mr. Edmondson's brief by lodging three objections. First, the submission was filed after the close of business on February 25th and was thus untimely per the terms and conditions of the Pre-Hearing Conference Order. Second, Mr. Pozen took issue with Mr. Edmondson's characterization of his stipulation from the Pre-Hearing Conference as a misstatement of fact. Finally, Mr. Pozen asserts that the Challenger's brief goes beyond the limited scope of the issues articulated in the Pre-Hearing Conference Order.

HEARING BEFORE THE BOARD

The Board held a hearing in this matter on Thursday, February 26, 2015, at 11am at the Board's offices located at 441 4th Street N.W. Suite 280N, Washington, D.C. 20001.

Mr. Edmondson, by and through his legal counsel Mr. Toliver, argued that Mr. Todd may not claim the Fifth Street property as his residence for the purposes of voting because his habitation is fixed at the Upshur property. In support of the habitation claim, Mr. Toliver submitted for the record a sworn affidavit from Mr. Stuart Macpherson, a private investigator enlisted to substantiate Mr. Edmondson's claims. Mr. Macpherson affirmed that he spoke with tenants and the landlord of the Upshur property, and the tenants alleged that Mr. Todd lives there, and the landlord asserted that Mr. Todd continues to pay the rent on unit 2 of the property

² Mr. Pozen objected to this characterization of his stipulation in his response to Mr. Edmondson's submission and during the hearing before the Board. Specifically, Mr. Pozen stated that he would not contest the allegation that Mr. Todd may (or may not) have had interests in other properties beyond his primary and legal residence on Fifth Street.

on a timely basis. However, Mr. Toliver did not present a lease because he said the landlord was unwilling to provide one absent a subpoena.

Mr. Todd, by and through his legal counsel Mr. Pozen, submitted an affidavit affirming his legal residence at the Fifth Street property. He further attested that the Fifth Street property has been his residence for the past three years as indicated on his Declaration. Moreover, Mr. Todd asserted that while he has in fact had a relationship with the Fifth Street property since 1998, he was mistaken as to the date the Fifth Street property became his legal residence. Mr. Todd represents that the "10/98" date on his Declaration represents an inadvertent error on his part, and the Declaration should have read "10/07" as opposed to "10/98".

DISCUSSION

Pursuant to 3 DCMR 424.1: "[t]he party who asserts the claim bears the affirmative duty of establishing the truth of the assertion." The Board is not inclined to negate the intent of a voter to live where he or she so chooses for voting purposes without substantive relevant evidence that the voter does not live at his/her claimed principal or primary home or place of abode. Mr. Edmondson has alleged that Mr. Todd does not reside at the address listed on the voter registry, and he has submitted results of a cursory internet search and hearsay testimony elicited by a private investigator to support his assertion. Pursuant to D.C. Code § 1-1001.02 (16)(A):

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. (emphasis added)

D.C. Code § 1-1001.02(16)(B) goes on to provide:

In determining what is a principal or primary place of abode of a person the following circumstances relating to the person may be taken into account: (i) Business pursuits; (ii) Employment; (iii) Income sources; (iv) Residence for income or other tax purposes; (v) Residence of parents, spouse, and children; (vi) Leaseholds; (vii) Situs of personal and real property; and (viii) Motor vehicle registration.

Mr. Todd has submitted a statement under penalty of perjury that his address is 5032 Fifth Street N.W., and he also submitted corroborating documents including his driver's license, bills, and a document from the Internal Revenue Service all listing his address as 5032 Fifth Street N.W. Mr. Todd further attested to his inadvertent error of notating "10/98" as opposed to "10/07" on his Declaration to denote the length of his residence at the Fifth Street property. Although the contradiction in Mr. Todd's voting history and Declaration is curious at best, this information does not subvert Mr. Todd's intent with respect to his current status because his former address was changed over 7 years ago. Further, the request on the Declaration of Candidacy form to "list your residence address for the past three years" is administrative in nature and not legal grounds for disqualification. Mr. Todd need only be a resident of the District for 1 year immediately preceding the day on which the special election for such office is to be held pursuant to D.C. Code § 1-204.02(3). Accordingly, pursuant to 3 DCMR §1606.4, the Board hereby waives Mr. Todd's formal error.

This case rests squarely upon resolution of Mr. Todd's intent of residency. Nothing in District of Columbia law prohibits a registered voter from having an interest in more than one property in the District. The only residency requirement for the purposes of voting is that the voter may not register to vote in any other state or territory pursuant to D.C. Code § 1-1001.02(16)(E).³ Mr. Edmondson has taken issue with the fact that the Upshur Street and Fifth

³ D.C. Code § 1-1001.02(16)(E) states:

Street properties are in the District; thus, he asserts that §1-1001.02(16)(E) is a qualified exception that applies only when a voter takes up residence outside of the District. Assuming arguendo, that Mr. Todd does have a lease at 210 Upshur Street and that he has been living there for one or even six months, there has been no evidence submitted that Mr. Todd has abandoned the present intention of returning to 5032 Fifth Street after a departure or absence therefrom. For Mr. Edmondson to prevail he must establish that Mr. Todd has abandoned his residence at 5032 Fifth Street, NW and he no longer has the present intention of returning. Without any evidence presented about the circumstances of Mr. Todd's stay on Upshur Street, the Board must look to see whether there is evidence that Mr. Todd has severed his relationship with the 5th Street property. It would appear from the evidence submitted by Mr. Todd that he still views the 5th Street property as his principal or primary place of abode. The 5032 Fifth Street address is where he is registered to vote, it is the address on his driver's license, it is where his federal tax information is sent, and it is where his bills are sent. So regardless of where he may have taken up temporary residence, all indications are that he has not abandoned 5032 Fifth Street as his principal or primary residence. *See Amons v. McIntyre*, DCBOE order # 01-002, *Nowak v. Miscuk*, DCBOE order # 01-003, (Voter displaced by fire was found to have not lost his residence during displacement); *Barden v. El-Berry* DCBOE order # 01-019, (Even if the voter is living in his property illegally by virtue of not having the proper certificate of occupancy, that does not suggest that he does not live where he says he does); and *Seegars v. Crawford*, DCBOE order # 13-004, (Presumption of sworn representation of residence is not overcome by assertions

No person shall be deemed to have gained or lost a residence by reason of absence while employed in the service of the District or the United States governments, while a student at any institution of learning, while kept at any institution at public expense, or while absent from the District with the intent to have the District remain his or her residence. If a person is absent from the District, but intends to maintain residence in the District for voting purposes, he or she shall not register to vote in any other state or territory during his or her absence.

that voter's name is not on the lease of said residence as buttressed by hearsay testimony of the property manager). Moreover, the address that Mr. Edmondson asserts is Mr. Todd's actual residency is also within the boundary of Ward 4. Assuming arguendo that the Board was to find that Mr. Todd, in fact, resided at 210 Upshur NW for the purposes of voting, he would still be qualified to run for the office of Ward 4 member of the Council while registered at that address.

CONCLUSION

The Challenger's evidence does not establish that Mr. Todd is not a bona fide resident of Ward 4 in the District of Columbia. Both properties at issue in this proceeding are located in Ward 4. The Board, in determining what is the Candidate's primary place of abode took into account *inter alia* his residence for income and tax purposes pursuant to D.C. Code § 1-1001.02(16)(B)(iv); and his motor vehicle registration pursuant to D.C. Code § 1-1001.02(16)(B)(viii). The Board respects the residential intent of the voter notwithstanding that voters may have interests in multiple properties. In light of the ample evidence presented by Mr. Todd to substantiate that he lives at 5032 Fifth Street NW, and the scant evidence to rebut that specific intent, the Board is obligated to reject the challenge to his candidacy.

Accordingly, it is hereby **ORDERED** that the challenge to the nominating petition of Mr. Todd is denied.

March 2, 2015



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

