SIXTH DIVISION
Order filed: March 11, 2016

No. 1-16-0535

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

JESUS "JESSE" INIGUEZ, Petitioner-Appellant, v. CITY OF CHICAGO BOARD OF ELECTION COMMISIONERS and RAYMOND A. LOPEZ, Respondents-Appellees.	))))))))))	Appeal from the Circuit Court of Cook County No. 16 COEL 04 Honorable Laguina Clay-Herron, Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Rochford and Justice Delort concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed the circuit court's order confirming the decision of the City of Chicago Board of Election Commissioners refusing to place Jesus "Jesse" Iniguez's name on the ballot as a candidate for the office of Democratic Committeeman for the 15th Ward of the City of Chicago for the March 15, 2016, general primary election.

¶ 2 The petitioner, Jesus "Jesse" Iniguez, appeals from an order of the circuit court which confirmed a decision of the City of Chicago Board of Election Commissioners (Board) refusing to place his name on the ballot as a candidate for the office of Democratic Committeeman for the

15th Ward of the City of Chicago (City) for the March 15, 2016, general primary election. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The petitioner filed nominating petitions with the Board, seeking to be placed on the ballot for the March 15, 2016, general primary election as a candidate for the office of Democratic Committeeman for the City's 15th Ward. His nominating petitions contained 566 signatures of individuals purporting to be registered voters residing in the City's 15th Ward. Raymond A. Lopez filed 473 line-by-line objections to signatures contained on the petitioner's nominating petitions.

¶ 4 Following the filing of the objections, the Board assigned the matter to a hearing officer. Pursuant to Rule 6 of the Board's Rules of Procedure (Rules), a records examination was conducted by employees of the Board and a handwriting expert. As a result of that examination, objections to 385 of the signatures were sustained, leaving the petitioner 81 signatures short of the requisite 262 signatures necessary to be placed on the ballot.

¶ 5 The petitioner filed a motion with the Board pursuant to Rule 8 of the Board's Rules, seeking a hearing relating to the findings made during the records examination and to rehabilitate 105 of the signatures to which objections had been sustained. An evidentiary hearing was held on January 16, 2016, before the hearing officer. The petitioner submitted 106 affidavits purporting to have been signed by the voters for whom objections to their signatures had been sustained, attesting to the fact that they signed the petitions at issue. The hearing officer compared the signatures of the individuals on the petitions which the petitioner was attempting to rehabilitate with the signatures on the affidavits which the petitioner submitted and the Board's voter registration records. Following the hearing, the hearing officer issued his recommended

findings and proposed decision in which he recommended reversal of the sustained objections to 68 of the signatures, leaving the petitioner 13 signatures short of the requisite 262 signatures necessary to be placed on the ballot.

¶ 6 The petitioner filed a motion pursuant to Rule 20 of the Board's Rules, seeking a review of the hearing officer's proposed decision and requesting that the Board hear additional argument from the parties. Following the hearing held on January 15, 2016, the Board adopted the decision of the hearing officer and refused to place the petitioner's name on the ballot for the March 15, 2016, general primary election. Thereafter, the petitioner sought judicial review of the Board's decision in the circuit court of Cook County. On February 25, 2016, the circuit court confirmed the decision of the Board, and this appeal followed. On March 4, 2016, this court granted the petitioner's motion brought pursuant to Illinois Supreme Court Rule 311(b) (eff. Feb. 26, 2010) for an accelerated docket.

¶ 7 In urging reversal of the circuit court's order confirming the Board's decision, the petitioner argues that the Board erred in adopting the hearing officer's recommendation that only 68 of the sustained objections be overturned. He contends that the sustained objections to all 105 signatures that he sought to rehabilitate should have been overruled based upon the affidavits he submitted at the Rule 8 hearing. The thrust of the petitioner's argument seems to be that, since the 106 affidavits which he submitted attesting to the affiants' status as registered voters residing in the 15th ward and the genuineness of their signatures on the nomination petitions were notarized, they must be accepted as true in the absence of documentary evidence contradicting their contents. We disagree.

¶ 8 On appeal from an order of the circuit court confirming a decision of the Board, we review the Board's decision, not the decision of the circuit court. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 11. Our standards of review of the Board's decision mirror those applicable to review of an administrative agency decision (*Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209-10 (2008)) and, therefore, depend upon whether the determination at issue is one of law, one of fact, or a mixed question of law and fact (*AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 390 (2001)). The Board's decisions on questions of law are not binding on a reviewing court which reviews such questions *de novo*. *Cinkus*, 228 Ill. 2d at 210-11. The Board's findings of fact, however, are deemed *prima facie* true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence. *Id.* at 210. The Board's rulings on mixed questions of law and fact will not be disturbed on review unless they are clearly erroneous. *Id*. at 211.

¶ 9 The Board has the statutory authority to promulgate rules of procedure for the introduction of evidence at hearings held before it. 10 ILCS 5/10-10 (West 2014). In furtherance of that authority, the Board has, in fact, adopted rules of procedure. Generally, the Code of Civil Procedure (Code) (735 ILCS 5/1-101 *et seq.* (West 2014)) is inapplicable to administrative proceedings. *Desai v. Metropolitan Sanitary District of Greater Chicago*, 125 Ill. App. 3d 1031, 1033 (1984). However, Rule 10(a) of the Board's Rules provides that "[f]or matters not covered herein, the Electoral Board will generally follow rules of evidence and practice which prevail in the Circuit Court of Cook County, Illinois, including the Code of Civil Procedure and the Rules of the Illinois Supreme Court ***." Rule 10(c) provides that

"[a]ffidavits may be considered in determining whether signatures found not to be genuine during a records examination are, in fact, the genuine signatures of those signing the petition." The Board's Rules do not provide for the weight to be given to any affidavit submitted pursuant to Rule 10(c).

¶ 10 As noted earlier, the petitioner submitted 106 affidavits at the Rule 8 hearing in an effort to rehabilitate 105 signatures to which objections had been sustained at the records examination. He argues that the contents of those affidavits should have been taken as true in the absence of documentary evidence to the contrary, and as such, the sustained objections to all 105 signatures should have been overturned. We believe that the flaw in the petitioner's reasoning is his failure to recognize that there are other means by which an affidavit can be contradicted other than by counter affidavit. See *Webb v. Mount Sinai Hospital and Medical Center of Chicago, Inc.*, 347 Ill. App. 3d 817, 826 (2004). In this case, the hearing officer, whose findings the Board adopted, did, in fact, have evidence which contradicted the validity of 37 signatures for which the sustained objections were not overturned.

¶ 11 The record reflects that the hearing officer compared the signatures on the affidavits with the corresponding signatures on the petitions and the Board's voter registration records. Section 8-1501 of the Code provides that it is "lawful to prove handwriting by comparison made by the witness or jury with writings properly in the files or records of the case." 735 ILCS 5/8-1501 (West 2014). At the Rule 20 hearing held on January 15, 2016, the Board's chairwoman advised the parties that the Board followed section 8-1501 of the Code. And in its decision, the Board specifically found that it was proper for the hearing officer, as the trier of fact, to compare the signatures on a disputed document to the purportedly genuine signature of a person on another

document. To the extent that the Board's reliance upon section 8-1501 of the Code is based upon its interpretation of its own rules, and specifically Rule 10(a), we accord deference. *City of Washington, Illinois v. Illinois Labor Relations Board*, 383 Ill. App. 3d 1112, 1117-18 (2008). Furthermore, the admission of evidence before an administrative agency is committed to the agency's sound discretion and its resolution of the issue will not be disturbed on review absent an abuse of that discretion. *Aich v. City of Chicago*, 2013 IL App (1st) 120987, ¶ 12.

¶ 12 Based upon the Board's interpretation of its own rules and its adoption of section 8-1501 of the Code, we are unable to conclude that the Board abused its discretion in considering the hearing officer's signature comparison as evidence in this case. We are left then with the issue of the weight to be accorded the hearing officer's signature comparison and the petitioner's affidavits.

¶ 13 It was the function of the Board to determine the weight to be given to the evidence and resolve any conflicts (*Bergman v. Vachata*, 347 Ill. App. 3d 339, 347-48 (2004)), and we will not substitute our opinion for that of the Board on such matters (*King v. Justice Party*, 284 Ill. App. 3d 886, 888 (1996)). It is obvious from the Board's adoption of the hearing officer's recommended decision and the Board's own findings that the Board accorded greater weight to the hearing officer's signature comparison than it accorded to the affidavits submitted by the petitioner.

¶ 14 The question of whether the signatures on a nominating petition are valid is one of fact to be resolved by the Board, and its determination will not disturbed on review unless it is against the manifest weight of the evidence. *Bergman*, 347 Ill. App. 3d at 347. The decision of an administrative agency is against the manifest weight of the evidence only if an opposite

conclusion is clearly evident. *Abrahamson v. Illinois Department of Professional Regulation*, 153 Ill. 2d 76, 88 (1992). The fact that an opposite conclusion is reasonable will not justify reversal of the agency's findings of fact. *Id.* "If the record contains evidence to support the agency's decision, it should be affirmed." *Id.*

¶ 15 In this case, the Board adopted the hearing officer's recommended decision. In so doing, it adopted the factual finding that only 68 of the sustained objections to the signatures which the petitioner sought to rehabilitate should be overturned. Based upon the hearing officer's signature comparison and the Board's reliance thereon, we are unable to find that a conclusion opposite to Board's on this issue is clearly evident.

¶ 16 At the conclusion of the records examination, the petitioner was left with 181 valid signatures on his petitions. Adding to that number the 68 signatures which were rehabilitated following the Rule 8 hearing and the Board's adoption of the hearing officer's recommended decision, the petitioner had a total of 249 valid signatures on his nominating petitions. He was, as the Board found, 13 signatures short of the requisite 262 signatures necessary to be placed on the ballot.

¶ 17 Based upon the foregoing analysis, we find no error in the Board's decision to refuse to place the petitioner on the ballot as a candidate for Democratic Committeeman of the City's 15th Ward for the March 15, 2016, general primary election. And we, therefore, affirm the decision of the circuit court which confirmed the Board's decision.

¶ 18 Affirmed.