

No. 1-18-0400

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

ANDREA RAILA,)	Appeal from the
)	Circuit Court of
Petitioner-Appellant,)	Cook County
)	
v.)	
)	
THE COOK COUNTY OFFICERS ELECTORAL)	
BOARD and its members, DAVID ORR, Chairman, by)	
and through his designee DANIEL P. MADDEN;)	Nos. 18 COEL 19 &
DOROTHY BROWN, by and through her designee,)	18 COEL 21
LAUREN RAYMOND; KIMBERLY FOXX, by and)	(cons.)
through her designees KENT S. RAY and JAMES)	
BELIGRATIS; DAVID ORR, in his official capacity as)	
Cook County Clerk; THE CHICAGO BOARD)	
ELECTION COMMISSIONERS; SHANA RENEE)	
EAST; and DAVID W. TEMKIN,)	The Honorable
)	Robert W. Bertucci,
Respondents-Appellees.)	Judge Presiding.

PRESIDING JUSTICE PIERCE delivered the judgment of the court.
Justices Harris and Simon concurred in the judgment.

ORDER

- ¶ 1 *Held:* The decision of the electoral board finding a pattern of fraud is reversed.
- ¶ 2 Andrea Raila filed nomination papers seeking nomination on the Democratic primary ballot for the office of Cook County Assessor, to be voted upon in the March 20, 2018, General

Primary Election. Shana East and David Temkin (Objectors) filed objections to Raila's nomination papers. After a records examination, a hearing officer concluded that Raila submitted a total of 14,138 valid signatures, which was more than the required statutory minimum of 8236 valid signatures. The matter then proceeded to a nine-day evidentiary hearing on a number of remaining objections, including claims that certain circulators and notaries engaged in a pattern of fraud.

¶ 3 Following the evidentiary hearing, the hearing officer concluded that 11 notaries engaged in notary misconduct and ten of those notaries, including Raila, engaged in a pattern of fraud. The hearing officer recommended that all the signature sheets notarized by those notaries, which contained a total of 7833 signatures, should be stricken due to the notaries' pattern of fraud. The hearing officer further concluded that an additional 638 signatures should be stricken because they were notarized by a notary that did not engage in a pattern of fraud, but where the circulators did not sign the signature sheets before that particular notary. The Cook County Officers Electoral Board (Board) adopted all of the hearing officer's recommendations and sustained the Objectors' pattern of fraud allegations. Raila's total number of valid signatures was reduced to 5667, fewer than the minimum number of valid signatures required for her name to appear on the ballot. Raila appeals. We allowed Raila's motion to expedite this appeal, set an expedited briefing schedule, and permitted the parties to file memoranda in lieu of formal briefs. For the following reasons, we reverse.

¶ 4 **BACKGROUND**

¶ 5 At the outset, we acknowledge that due to the short period of time between the decision of the circuit court and the upcoming March 20, 2018, primary election, this matter was briefed on an expedited schedule and that we did not require formal briefs, and we further acknowledge

the challenges faced by both counsel in marshalling the facts and arguments in such a short amount of time. Raila's 50-page initial memorandum identifies the issues for review and sets forth the pertinent facts in a somewhat disorganized and illogical manner. Her statement regarding the standard of review is both argumentative and incomplete, and she fails to set forth the proper standard of review for each discrete issue raised on appeal. She frequently fails to cite to the record (which consists of over 29,000 pages and for which there is no index), or to relevant authority to support many of her contentions on appeal. As the party that sought expedited briefing on this matter, we expected that Raila was prepared to present her appeal in a more coherent and structured manner. Objectors' submission also is greatly lacking in appropriate citations to the record to support their conclusory arguments. These deficiencies have made it challenging for us to understand the facts of the dispute and the nature of the proceedings before the hearing officer and Board, and to meaningfully review the issues and arguments raised. In any event, our understanding of the proceedings is sufficient to consider this expedited appeal.

¶ 6 On December 4, 2017, Raila submitted nomination papers seeking a place on the ballot in the Democratic primary for the office of Cook County Assessor. Her nomination papers included 2454 petition pages containing a total of 23,327 signatures. Objectors filed an Objectors Petition asserting that Raila's nomination papers contained fewer than 8236 valid signatures. Objectors asserted that the nomination papers contained myriad deficiencies, including the signatures and names of persons who did not personally sign the nomination papers, signatures and names of persons with residency, registration, or qualification problems, duplicate signatures, incomplete or deficient signature lines, various technical problems regarding circulators and notaries, and other technical objections. Objectors also asserted that there was clear and convincing evidence of a pattern of circulator and notarial fraud. These fraud objections alleged that there were

numerous instances of Raila's circulators having mailed in petition sheets to the campaign that were either unsigned or signed but unnotarized, and that those petition sheets were subsequently signed by someone other than the original circulator, or were notarized outside the presence of the circulator. Additional allegations included claims that numerous petition sheets mailed in to the campaign by circulators (including sheets that were signed and notarized before being mailed in) had signatures added that were not gathered by the original circulator.

¶ 7 The Board voted to adopt rules of procedure governing the proceedings and appointed a hearing officer to preside over the objections. Raila unsuccessfully moved to strike the Objectors' petition. The matter then proceeded before the hearing officer on two fronts: first, the parties began preparation for a records examination to address Objectors' technical challenges to the nomination papers; and second, the parties began preparing for an evidentiary hearing on Objectors' pattern of fraud objections. The records examination took place over a two-week period, during which time Objectors sought and were granted leave to issue over 70 subpoenas in connection with the anticipated evidentiary hearing. The parties engaged in document and witness list exchanges ahead of the evidentiary hearing, which was scheduled for January 23, 2018. The records examination concluded on January 13, 2018, after which the hearing officer struck 9219 signatures from Raila's nomination papers, leaving her with 14,138 valid signatures. Raila does not raise any argument on appeal as to the records examination.

¶ 8 The matter then proceeded to a nine-day evidentiary hearing on Objectors' fraud objections. The only issues before us relate to the Objectors' allegations of a pattern of fraud, and therefore we focus solely on the facts relevant to those objections.

¶ 9 Central to the Objectors' pattern of fraud objections were witness testimony and affidavits from circulators who worked for Raila's campaign. Objectors introduced 23 affidavits

in which the affiant was a circulator for Raila. These affidavits were preprinted and contained blank spaces in which the circulator could write in their name and other pertinent details. These affidavits stated that the circulator mailed in petition sheets that were neither signed nor notarized, that the sheets they mailed in were signed by someone other than them, and that the sheets had been notarized without the affiants' knowledge. Objectors introduced another 20 affidavits, which were also preprinted and contained blank spaces in which the circulator could write in their name and other pertinent details, from circulators who mailed in petition sheets that had been signed by the circulator but were not notarized. These affiants later learned that the sheets they submitted had been notarized, and the affiants stated that they never appeared before a notary. Objectors introduced another 11 affidavits, which were also preprinted and contained blank spaces in which the circulator could write in their name and other pertinent details, from circulators who mailed in petition sheets that the circulator signed before a notary. These affiants later learned that additional signatures were added to their sheets after the circulator mailed in the signed and notarized sheets. Finally, some of the affiants who mailed in either unsigned or signed but unnotarized affidavits also stated that additional signatures were added to their petition sheets after they mailed in their petition sheets.

¶ 10 Objectors also introduced two affidavits from Douglas Martin, a circulator for the campaign. Objectors did not call Martin as a witness at the evidentiary hearing, although Objectors had previously disclosed him on their witness list and been given leave to serve Martin with a subpoena. These affidavits were also preprinted and contained blank spaces in which Martin could write his name and other pertinent details, and were prepared and obtained by investigators working for Objectors. Both of Martin's affidavits were signed and notarized on December 6, 2017. The hearing officer heard testimony from Jiles McCloud, the investigator

who presented Martin with the affidavits on December 6. McCloud stated that he presented Martin with the affidavits, that they were fully reviewed and discussed, that no threats or offers for anything of value were made, and that Martin filled in the affidavits and executed them before a notary. McCloud also testified that both he and Martin previously worked for Fritz Kaegi's campaign, that Martin had been terminated for low quality and his petition circulation efforts, and that McCloud was involved in the termination decision. Because Martin's affidavits and involvement in the proceedings are central to the issues on appeal, we discuss them in some detail.

¶ 11 In the first affidavit, marked as "#62," Martin stated that he was hired by the campaign and wrote his name and address as a circulator of 121 petition sheets for Raila, which were identified by number and were attached to the affidavit. Martin stated that he reviewed each of the sheets and verified and confirmed that he signed each of those sheets. He stated that, "When I signed the petition sheets ***, a notary was not present and nobody asked me to show a state ID or driver's license to prove who I was." He further stated that he never met or talked to any notaries that were shown on the 121 identified sheets, and that he did not personally know any of the notaries. He stated, "The first time I saw the notary signature and stamp on the sheets *** was when I was shown the petition sheets on December 12/6 [*sic*], 2017." He stated,

"The procedure I and other circulators used for the Raila petition sheets was that I and others would sign as circulators at the bottom of each petition sheet on our own, and I and others turned in a stack of petition sheets that were *not* notarized to [illegible] (name of person) and then he/she would get the notary signature and stamp on the sheets at a later date and time." (Emphasis in original.)

He further averred that he and others were under pressure because of the short time before the petitions had to be turned in, that he and others did not “have to waste time finding or paying a notary for each sheet (and we didn’t) when someone else would do that for me, and I saw many other people who were paid to turn in sheets without a notary signature or stamp on them when they were turned in.” The final line of the affidavit stated, “I was not around the notary when the notary signed and stamped the sheets, and cannot say what date the notary would’ve signed” the 121 identified sheets.

¶ 12 In the second affidavit, marked as “#63,” Martin averred that he “wrote his name and address as the circulator of petition sheets” for Raila. He identified the same 121 sheets identified in his first affidavit. He stated that he signed each of the 121 sheets and further stated that he

“did not actually walk around with petition sheets, or talk to any of the voters listed on those pages, or see any of the voters listed on those pages actually sign the petition sheets, and relied upon other people to walk around with petition sheets. In fact, I do not know when or how the signatures were written on the sheets, or who wrote the signatures.”

He then identified four people (by first name only) who actually collected the signatures. Martin stated that his only involvement with the sheets “was to collect the petition sheets (after they were filled out) from the [four people,] and then I would fill out the bottom portion with my information, and then sign them with my name.” The final line of this affidavit stated, “The notarization happened as follows: would meet at McDonalds on 95st [sic], give them to him [sic].”

¶ 13 Of the 121 sheets that Martin identified, Tammy Miller-Watson notarized 34 of those sheets, Jane Kienstra notarized 21, Martha Bulmer notarized 21, Andrea Raila notarized 16,

Byron Raila notarized 15, Xiao Fei Wang notarized nine, and Paul Pusateri notarized five. Additionally, a small number of the petition sheets that Martin identified in his affidavits were sheets to which additional signatures were allegedly added after the circulator mailed the sheets in to the campaign.

¶ 14 Raila introduced a third affidavit executed by Martin, identified as “Cand. Group Ex. 10,” which was signed and notarized on January 18, 2018. Martin stated that he

“personally circulated all Andrea Raila petitions (see attached sheet numbers and copies of said petitions attached) submitted to [the Board]. I circulated each petition and did not give the petition to anyone else to circulate on my behalf. All of my petitions were started and completed by me. I did not receive petitions that were started or signed by any other person.”

He further stated, “When I signed all said petitions and presented an identification card and all said petitions were notarized before the following notaries: Byron Raila, Martha Bulmer, Jane Kienstra, Tammy Watson, Paul Pusateri, Xiao Wang and Andrea Raila.” Martin stated, “On December 6, 2017[,] a person named Jiles McCloud came to my residence and alleged that I had improperly circulated petitions and that if I wanted to clear my name I needed to sign a December 6, 2017 Affidavit (see attached). I did not read nor understand the December 6, 2017 Affidavit when I sign [*sic*] the December 6 2017 Affidavit and I was under duress. Jiles McCloud is a paid campaign petitioner of Frederick “Friz” [*sic*] Kaegi, candidate for Cook County Assessor and I have identified Jiles McCloud with the attached photo(s).” Martin’s two previous affidavits were attached to his third affidavit. We could not locate a photo of Jiles McCloud in the record, and the hearing officer’s written recommendation observed that no photo of McCloud was included with Martin’s affidavit.

¶ 15 During the evidentiary hearing, Raila’s counsel attempted to call Martin as a witness. Objectors’ counsel informed the hearing officer that Raila had not identified Martin on her witness list. Raila’s counsel asserted that Martin had been present on the first day of the hearing and that another of Raila’s attorneys previously stated that he expected to call Martin. The hearing officer observed that Martin was not listed on Raila’s witness list, and concluded that Martin was barred from testifying. In the record, there is an email from one of Raila’s attorneys to Objectors’ attorney containing Raila’s witness list, stating in part, “We adopt the witness list of the Objector.” Although Martin had been listed on Objectors’ witness list, the hearing officer stated that Raila could not rely on the Objectors’ witness list in her case. The hearing officer therefore only considered Martin’s competing affidavits, and concluded that the third affidavit “did not overcome or diminish the impact of [his two December 6, 2017, affidavits] and supporting testimony of *** McCloud and [Lauren] Welsh [the notary of Martin’s December 6, 2017, affidavits].”

¶ 16 Objectors also introduced into evidence an affidavit from Carl Blair, a paid circulator who circulated five sheets that he identified in his affidavit. He averred that he signed the circulator’s affidavit outside of the presence of a notary, and gave the unnotarized sheets to the person who hired him, whom Blair identified as “Derrick.” Blair stated, “The first time I saw the notary signature and stamp on the sheets [he identified] was when I was shown the petition sheets on December Nov 7 [sic], 2017.” The affidavit was signed and notarized on December 7, 2017. The person who notarized the sheets identified by Blair was Gustavo Ocampo.

¶ 17 Niki Brown was a circulator hired by the campaign. She executed an affidavit in which she identified five sheets. Like Blair, Brown averred that she signed the circulator’s affidavit outside of the presence of a notary, and gave the unnotarized sheets to a person whom she

identified as “Andreana ‘Adreinne.’ ” Brown’s affidavit stated, “The first time I saw the notary signature and stamp on the sheets [she identified] was when I was shown the petition sheets on December 10, 2017.” The affidavit was signed and notarized on December 10, 2017. Objectors called Brown as a witness at the evidentiary hearing. She acknowledged signing the affidavit, but denied that she wrote anything in the body of the affidavit other than her signature, particularly the sheet numbers identified in the affidavit. She asserted under cross-examination that she properly executed the circulator’s affidavit at a currency exchange, but on re-direct examination, became defensive and had difficulty remembering or articulating any details regarding the notarization. The hearing officer concluded that Brown’s live testimony was not credible if not outright false, and determined that her affidavit should be believed.

¶ 18 The hearing officer concluded that the affidavits introduced by Objectors “in combination with supporting testimony and circumstantial facts, to be detailed, credible, and entitled to significant weight.”

¶ 19 Jennifer Zuniga testified that she was a notary and branch manager at a bank. She stated that she notarized a stack of petition sheets for Andrea Raila on November 28, 2017, and that no other person appeared before her to have petition sheets notarized. She acknowledged that six of the petition sheets bearing her notary stamp and signature had circulator affidavits bearing the signature of someone other than Raila. The hearing officer determined that Zuniga inadvertently notarized petition sheets that were presented to her by Raila.

¶ 20 Carole Zucco testified that she circulated a single petition sheet for the campaign and gathered only three signatures. She mailed in her sheet unnotarized. She was later presented with her petition sheet, which had an additional six signatures on it that she did not collect. Her sheet was notarized by Andrea Raila on November 25, 2017, although Zucco presented evidence to

show that she was in Florida on that date, and she testified that she never personally appeared before Raila.

¶ 21 Objectors called Andrea Raila to testify, and she was confronted with specific petition sheets that she had notarized that had been mailed in by circulators unnotarized. Raila had no specific recollection of notarizing those sheets, and had no information to refute the original circulators' claims that the petition sheets were returned unnotarized or otherwise incomplete. She asserted that she did not believe that she had any other petition sheets with her other than her own when she appeared before Zuniga at the bank. Raila further gave conflicting statements as to whether she was accompanied by anyone when she went to the bank to get the petition sheets notarized.

¶ 22 Raila called Martha Bulmer, a notary employed by Raila & Associates. She testified that she notarized petition sheets for the campaign. She stated that she always asked to see a circulator's identification. She had no specific recollection of notarization of any particular sheet, and did not recall ever meeting Martin. Lawrence Svoboda testified that he circulated six or seven petition sheets for the campaign, and that Raila notarized his petition sheets. He stated that she asked for his ID before notarizing his signature. Tammy Miller-Watson testified that she performed notarial functions for the campaign, and that no one ever asked her to notarize petition sheets without the circulator present. She was confronted with petition sheets that she notarized that circulators alleged were mailed in unnotarized. She could not provide an explanation as to how she would have notarized those sheets without the circulator present, and had no facts to contradict the allegations in the circulators' affidavits.

¶ 23 Jammie Brokenborough testified that she was a circulator for the campaign. She testified that either Andrea Raila or Miller-Watson would notarize her sheets, and that she always signed

the circulator affidavit in front of a notary and the notary always signed in front of her. Nicolas Galloway testified that he circulated nine or ten petition sheets, and that he presented himself one time to a notary at the campaign office where he presented his ID to a notary who notarized all of his sheets.

¶ 24 April Williams-Luster testified that she was the campaign manager. She acknowledged that she did not have any of the petition sheets she circulated notarized at the bank. She testified that only 15-20 sheets were ever returned to the circulator identified on the sheets. She acknowledged that near the end of the petition drive, the campaign began accepting any petitions that they could get. She stated that she always personally appeared before a notary to sign her circulator's affidavit.

¶ 25 In total, the hearing officer heard testimony from over 25 witnesses and the parties introduced over 150 documents and a short video clip. Following the hearing, the hearing officer issued a 68-page written recommendation that contained his summary of the testimony and documentary evidence presented. The hearing officer found that there was clear and convincing evidence that ten notaries and 12 circulators engaged in an intentional pattern of fraud, and recommended striking all of the signature sheets notarized by the ten notaries and all of the signature sheets circulated by the 12 circulators. He also determined that Zuniga did not engage in a pattern of fraud, but that certain signatures should be stricken because she mistakenly notarized certain circulator sheets where the circulator did not personally appear before her. The hearing officer recommended striking 8471 signatures from Raila's nomination papers (7833 due to notary fraud and 638 due to circulator fraud).

¶ 26 The Board received and considered the hearing officer's recommendations. Raila requested review of the hearing officer's recommendation and the Board heard additional oral

argument. The Board then issued its decision in which it adopted the hearing officer's recommendations as the findings and rulings of the Board and sustained Objectors' pattern of fraud allegations against Raila.

¶ 27 Raila sought review of the Board's decision in the circuit court, which affirmed the Board's decision. Raila timely appeals.

¶ 28 ANALYSIS

¶ 29 On appeal, Raila essentially argues that the hearing officer and Board should not have stricken all of the signature sheets notarized by the ten notaries because there is no authority for such a remedy. She contends that there is no authority for striking the sheets of a circulator whose sheets were properly notarized by a particular notary based on a finding that the notary improperly notarized other sheets. She argues that under the Illinois Election Code (10 ILCS 5/10-10 (West 2016)), all petition signatures are presumptively valid, and the Board's decision here struck all of the petition signatures on sheets notarized by certain notaries without determining by clear and convincing evidence that all of the sheets were improperly notarized. She contends that our case law generally considers the conduct of the circulator, and that if we determine that a circulator engaged in a pattern of fraud, the proper remedy is to strike all of that circulator's petition sheets.

¶ 30 Raila also contends that the Objectors failed to affirmatively establish through clear and convincing evidence that any of the notaries actually engaged in a pattern of fraud. She first argues that the hearing officer found a pattern of fraud after improperly relying on a number of the Objectors' affidavits, including Martin's affidavits, which were hearsay. She repeatedly characterizes a number of these affidavits as "perjurious." She further contends that the hearing

officer improperly refused to allow Martin to testify, despite Martin's conflicting affidavits, thereby depriving Raila of due process.

¶ 31 The Board is considered an administrative agency. *Mitchell v. Cook County Officers Electoral Board*, 399 Ill. App. 3d 18, 22 (2010). On appeals from the circuit court's decision in administrative review cases, we review the decision of the Board, not the circuit court. *Id.* Our standard of review depends on whether the question presented is one of fact, a mixed question of law and fact, or a pure question of law. *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, ¶ 19. The Board's findings and conclusions on questions of fact are *prima facie* true and correct, and will be overturned if those conclusions are against the manifest weight of the evidence. *Id.* Where the facts are admitted or established and the controlling rule of law is undisputed, and the issue is whether the facts satisfy statutory standards, the case presents a mixed question of law and fact, which we review under the clearly erroneous standard. *Id.* The *de novo* standard applies where the facts are undisputed but where there is a question of whether the governing law was correctly interpreted by the Board, which presents a pure question of law. *Id.* We have applied the clearly erroneous standard to board decisions finding that a person engaged in a pattern of fraud because the decision involved the legal effect of a given set of facts. *Crossman v. Board of Election Comm'rs of the City of Chicago*, 2012 IL App (1st) 120291 ¶ 9 (citing *City of Belvidere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998)). "A decision is clearly erroneous where the entire record leaves the reviewing court with the definite and firm conviction that a mistake has been made." *Crossman*, 2012 IL App (1st) 120291, ¶ 9.

¶ 32 Finally, "an administrative agency's decision regarding the conduct of its hearing and the admission of evidence is governed by an abuse of discretion standard and is subject to reversal only if there is demonstrable prejudice to the complaining party. *Matos v. Cook County Sheriff's*

Merit Board, 401 Ill. App. 3d 536, 541 (2010) (citing *Wilson v. Department of Professional Regulation*, 344 Ill. App. 3d 897, 907 (2003)).

¶ 33 We first conclude that the hearing officer abused his discretion in barring Martin from testifying. It is undisputed that the Board expressly adopted rules that allowed it to consider affidavits in connection with the evidentiary hearing. In reaching his conclusions, however, the hearing officer made credibility determinations with respect to Martin's three affidavits. Martin's affidavits were critically contradictory, and his first two affidavits conflicted with his third affidavit. The hearing officer found that Martin's January 18, 2018, affidavit "did not overcome or diminish the impact of [his two December 6, 2017, affidavits] and supporting testimony of *** McCloud and Welsh." The hearing officer determined that the January 18, 2018, affidavit, which could have been explained or clarified by Martin's testimony, was incredible based on the hearing officer's credibility determinations as to McCloud and Welsh, who testified that the manner in which they obtained Martin's December 6, 2017, affidavits was appropriate.

¶ 34 The hearing officer's reliance on McCloud and Welsh's testimony in making his credibility determinations as to Martin's affidavits was improper. Martin's January 18, 2018, affidavit clearly and directly contradicted his first two affidavits. It is inescapable that the fair way to resolve the contradictions between Martin's affidavits was to allow Martin to testify. All of his affidavits were signed and sworn to under penalties of perjury and, based on the clear contradictions between his sworn statements, Martin's testimony was critical in reconciling, if possible, whether Martin was credible when he stated in his third affidavit that he "did not read nor understand the December 6, 2017," affidavits and that he was under duress when he did so. Had Martin been permitted to testify he could have clarified or explained the conflicting affidavits, or he could have been impeached with either his December 6, 2017, affidavits or his

January 18, 2018, affidavit. Either way, the hearing officer could then make an acceptable credibility determination with respect to Martin. But without Martin's testimony, there is no way to reconcile his three affidavits.

¶ 35 The importance of Martin's testimony cannot be overstated. Our reading of the record leads us to conclude that the hearing officer's finding of a pattern of notary fraud was based primarily on his determination that Martin's December 6, 2017, affidavits were credible evidence of such fraud. The Board accepted the hearing officer's recommendation that Martin's first two affidavits were credible, even though that credibility determination was based merely on McCloud and Welsh's testimony that they did nothing improper in obtaining the December 6, 2017, affidavits. The Board then ascribed a pattern of fraud to ten notaries based primarily on Martin's affidavits. By refusing to hear Martin's testimony, the hearing officer and the Board deprived Raila of the opportunity to subject Martin to questioning about his involvement in and handling of the petition sheets the Objectors contend he did not circulate or have notarized. Furthermore, the hearing officer's proffered justification that Martin was not properly disclosed as a witness was arbitrary, as Objectors had disclosed him as a witness, Raila indicated that she adopted all of Objectors' witnesses as her own, and he was available to testify. Given the magnitude of Martin's affidavits and the Objectors' substantial reliance on those affidavits in framing their pattern of fraud allegations, the hearing officer abused his discretion in not permitting Martin to testify, resulting in prejudice to Raila through the striking of every non-Martin circulated petition notarized by the seven notaries that were identified on the Martin petition sheets.

¶ 36 Ordinarily, an abuse of discretion that is not harmless warrants reversal and a remand for further proceedings. However, even if the hearing officer did not abuse his discretion in refusing

to allow Martin to testify, given the conflicting nature of the affidavits, the hearing officer should have, at a minimum, afforded Martin's affidavits minimal weight. See *Moscardini v. County Officers Electoral Board of Du Page County*, 244 Ill. App. 3d 1059, 1063 (1992) (finding that controverted but unobjected to hearsay testimony in affidavits had minimal value). Giving minimal value to the Martin affidavits would result in insufficient evidence of a pattern of notary fraud resulting in those petitions being allowed.

¶ 37 Next, we find that the Board's determination that Objectors proved a pattern of notarial fraud by clear and convincing evidence was clearly erroneous, and our conclusion would be the same under *de novo* review. See *Cunningham*, 2012 IL App (1st) 120529, ¶ 37 (reviewing electoral board's decision to strike all of a circulator's petition sheets *de novo*).

¶ 38 In *Canter v. Cook County Officers Electoral Board*, we affirmed the electoral board's decision to strike certain signatures from a candidate's nomination papers. 170 Ill. App. 3d 364, 366 (1988). There, the objectors presented testimony from people who stated that certain signatures on the petition sheets were not theirs. *Id.* There was also testimony that the purported circulator of the petition sheets admitted that he did not personally circulate the petition sheets, but instead had others do it for him, and that he then signed the circulators affidavit. *Id.* at 366-67. The board further concluded that the circulator himself signed a large number of the signatures on the petition sheets. In affirming the board's decision, we explained that "when the sheets of a nominating petition submitted by a purported circulator evidence a pattern of fraud, false swearing and total disregard for the mandatory requirements of the Election Code, the sheets purportedly circulated by that individual should be stricken in their entirety." *Id.* at 368 (citing *Fortas v. Dixon*, 122 Ill. App. 3d 697 (1984), and *Huskey v. Municipal Officers Electoral Board*, 156 Ill. App. 3d 201 (1987)).

¶ 39 In *Cunningham*, we found that all of the petition sheets circulated by two circulators should be stricken because they regularly failed to sign the circulator’s affidavits before a notary. 2012 IL App (1st) 120529, ¶¶ 9-10. Furthermore, the notary that notarized the petition sheets admitted that she would sometimes notarize petitions of individuals who did not appear before her based on her familiarity with the circulator and the circulator’s signature. *Id.* ¶ 11. We agreed with the electoral board’s decision to strike all of the circulators’ sheets based on a pattern of fraud, false swearing, and total disregard for the requirements of the Election Code. *Id.* ¶ 39 (citing *Canter*, 170 Ill. App. 3d at 368). We found the swearing before a notary requirement “gives meaning to the circulator’s statement that he complied with the provisions of the Election Code when circulating his petitions” (*Cunningham*, 2012 IL App (1st) 120529, ¶ 40), and that the proper remedy for failure to do so is the invalidation of all of the signatures on the sheet (*id.* ¶ 41 (citing *Bowe v. Chicago Electoral Board*, 79 Ill. 2d 469, 470 (1980))). We further observed that the pattern of disregard of the mandatory swearing requirement by the notary “cast a cloud over all sheets notarized” by that notary. *Id.* ¶ 41. We did not, however, strike all of the sheets notarized by that notary.

¶ 40 Here, in reaching his conclusion that there was a pattern of fraud, the hearing officer relied on Martin’s affidavits in which Martin asserted that he signed 121 petition sheets but that he never appeared before a notary. Tammy Miller-Watson notarized 34 of those sheets, Jane Kienstra notarized 21, Martha Bulmer notarized 21, Andrea Raila notarized 16, Byron Raila notarized 15, Xiao Fei Wang notarized nine, and Paul Pusateri notarized five. However, as we discussed above, the information in Martin’s December 6, 2017, affidavits was conflicting and unreliable and, absent any testimony from Martin, should have been given minimal weight. Additionally, the hearing officer relied on affidavits from mail-in circulators who stated that they

returned signed but unnotarized petition sheets by mail and that those petition sheets were later notarized. The hearing officer identified the notaries by name, and after five of those names, identified the number of petition sheets implicated by the circulator affidavits. In total, 27 petition sheets were affected, comprising a small number of the valid signatures that remained after the records examination. Additionally, Blair, Brown, and Zucco each stated that their petition sheets were notarized despite never appearing before a notary, affecting another 11 sheets. The number of signatures that fall into these categories is small, is not sufficient evidence of fraud, and a pattern of notary fraud is not clearly evident. Our review of the record shows that the hearing officer ascribed notary misconduct to approximately 38 petition sheets that were not connected to Martin's petition sheets. Raila initially submitted 2454 petition sheets containing 23,327 signatures and the records examination determined that 14,138 of those signatures were valid. Even assuming that the 121 petition sheets circulated by Martin and notarized by seven different notaries should have been stricken, the Board decided to strike petition sheets containing over 7800 valid signatures for notary misconduct evidencing a pattern of fraud that, absent additional credible evidence of misconduct directed at those petition sheets or those particular notaries, was clearly not evident.

¶ 41 Furthermore, there were no admissions by any of the notaries involved that they intentionally notarized sheets without the circulator present. There was no evidence from any witness who observed notaries notarizing petition sheets without the named circulator present. There was no evidence from any witness that anyone ever instructed a notary to notarize petition sheets without the named circulator present. While there was some evidence that certain notaries, including Raila herself, notarized sheets without the circulator present, that evidence simply does not rise to level of "clear and convincing" evidence of a pattern of fraud, and is certainly not

sufficient evidence to warrant striking each and every sheet notarized by ten of the notaries. Absent the evidence from Martin's inherently unreliable affidavits, the record reflects that the number of petition sheets that were circulated and returned signed but unnotarized were few in number. On their own, these sheets are clearly insufficient to establish by clear and convincing evidence a pattern of notarial fraud. The Board struck over 7800 valid signatures based on its finding of a pattern of fraud despite its acceptance of testimony from other notaries that they inadvertently or accidentally notarized petition sheets.

¶ 42 In his recommendations, the hearing officer set forth a table of the number of signatures that should be stricken based on a pattern of notarial fraud. He also set forth a table of the signatures to be removed without removing the signatures due to a pattern of notarial fraud. The second table indicates that 2971 signatures should be removed due to circulator fraud and due to petition sheets that were improperly recirculated after being mailed back to the campaign. We believe that only the signatures identified in the second column should be removed. Therefore, the total number of valid signatures gathered by Raila amounts to 11,167, which is above the statutory minimum signatures required for her name to appear on the ballot.

¶ 43 We therefore reverse the Board's decision. We remand solely for the purpose that the Board fashion an appropriate remedy to ensure that votes cast for Raila at the March 20, 2018, Democratic primary are counted.

¶ 44 **CONCLUSION**

¶ 45 For the foregoing reasons, the judgment of the Board is reversed and remanded with instructions. The clerk of court is instructed to issue the mandate immediately upon filing of this order.

¶ 46 Reversed and remanded with instructions.