

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

In Re: Nomination Petition of Amen :
Brown, Candidate for Representative :
in the General Assembly-10th :
Legislative District : No. 152 M.D. 2022
: Heard: April 5, 2022
Objection of: Audra Traynham, :
Thomas Smith, and Rikeyah :
Lindsay :

BEFORE: HONORABLE STACY WALLACE, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE WALLACE

FILED: April 11, 2022

Audra Traynham, Thomas Smith, and Rikeyah Lindsay (Objectors) have filed a Petition to Set Aside the Nomination Petition of Amen Brown (Candidate) for the Democratic Nomination for Representative in the Pennsylvania General Assembly for the 10th Legislative District. The issues raised are whether Candidate has resided in the 10th Legislative District for long enough to be eligible for office and whether he failed to disclose adverse financial information in his 2021 Statement of Financial Interests (SOFI). To the extent he failed to disclose adverse financial information, the Court must consider if he did so with bad faith to deceive the electorate.

Objectors' Petition alleges that Candidate is currently a Representative in the 190th Legislative District and a candidate for Representative in the 10th Legislative District. Candidate listed his address on the Candidate's Affidavit accompanying his Nomination Petition and his 2021 SOFI as 33 S. Ruby St., Philadelphia, in the

10th Legislative District. Objectors' Petition also alleges, however, that Candidate relocated to 33 S. Ruby St. relatively recently, in or after December 2021, when Pennsylvania's Legislative Reapportionment Commission released new legislative maps for the General Assembly. Objectors' Petition maintains that Candidate's prior address, 3600 Conshohocken Ave., Philadelphia, is in the 190th Legislative District and not the 10th.¹ Because a member of the General Assembly must have resided in his or her district for one year by the time of election, Objectors assert Candidate's Affidavit falsely states he is eligible to run for Office in the 10th Legislative District.

In addition, Objectors' Petition alleges there have been numerous judgments and tax liens entered against Candidate and his businesses. Despite this, Candidate failed to disclose any creditors on his 2021 SOFI. Objectors' Petition further alleges Candidate failed to disclose any of his business interests or other sources of income. The Petition asserts that Candidate included these types of disclosures on a previous SOFI, but that he knowingly failed to disclose this information on his 2021 SOFI in bad faith to deceive the electorate.

I. Testimony and Evidence Presented²

The Court held a hearing on April 5, 2022, at which Candidate was the first witness to testify and the only witness called by Objectors. Candidate confirmed he currently serves as a Representative in the 190th Legislative District, that he lives at 33 S. Ruby St., and that he lived previously at 3600 Conshohocken Ave. Candidate's testimony as to when he moved was somewhat inconsistent. Candidate indicated

¹ Because this case occurs against the backdrop of recent reapportionment, the Court notes Candidate's current address is in the old 190th Legislative District and the new 10th Legislative District. His prior address is in the old 190th Legislative District and the new 190th Legislative District.

² The facts are based on notes taken by the Court. Due to the expedited nature of this case, the Court has not received a hearing transcript.

initially that he did not live anywhere but the two properties in question and moved from one to the other in August 2021. Candidate then explained that a lapse occurred during which he lived with his girlfriend for a few weeks. He testified he signed a lease for 33 S. Ruby St. at the end of September 2021 and did not move in until the second week of October 2021.³

Objectors' counsel sought to undermine this testimony, posing questions about Candidate's failure to update his voter registration address until December 17, 2021, his failure to update his address with the General Assembly until March 15, 2022, and his failure to update his mailing address with the United States Postal Service at any point. Objectors' counsel pressed Candidate on whether he moved to 33 S. Ruby St. because of new the legislative maps resulting from the reapportionment process, which were adopted on the same day he changed his voter registration. Candidate denied that this was the case, insisting he was looking for a new residence as early as July 2021, and that the purpose of his move was to pursue a position as a Ward Leader.

Objectors' counsel also questioned Candidate regarding his ongoing financial troubles. Candidate conceded that there had been numerous judgments and tax liens entered against him totaling \$144,331.87. Candidate further conceded his Cadillac Escalade was repossessed. Candidate's testimony indicated he only recently learned the full extent of his debts. He explained, for example, that he discovered a few days before the hearing that a judgment was entered against him related to the Cadillac. Candidate added that he learned of some of his judgments not from his own research but from the media or his counsel in response to Objectors' Petition.

³ Candidate presented bank records, which show that Candidate changed his address to 33 S. Ruby St. with his bank by at least November 7, 2021.

Candidate admitted he did not include any of the judgments or liens against him on his 2021 SOFI. Candidate testified that he failed to include this information because he did not understand the meaning of the word “creditor” on the SOFI form when he filled it out. According to Candidate, he believed “creditor” referred solely to credit cards and mortgages, neither of which he has. He explained that the terms “judgment” and “lien” did not appear on the form. Candidate also maintained that he spoke with a government “employee who was there” when he filled out his 2021 SOFI, who confirmed this interpretation was correct.

Candidate acknowledged he included the loan for his Cadillac on a SOFI from a prior year but did not include the judgment associated with that loan on his 2021 SOFI after the Cadillac was repossessed. Candidate asserted this was consistent with his understanding of the word “creditor,” in that the loan for the Cadillac was a loan and, thus, a “creditor,” while the judgment associated with the loan is a judgment and not a “creditor.” Put simply, because he no longer had the loan, he did not list the debt. At first, Candidate testified that he had only filed one previous SOFI for 2020. He then conceded he filed two previous SOFIs, one for 2020 and another for 2019, but contended he had help from “volunteers” to fill out the SOFI for 2019.⁴

Finally, Objectors’ counsel asked Candidate about alleged business interests he also failed to disclose. Candidate testified he had several past business dealings with which he is no longer involved. Candidate testified he continues to own a company, Brown Property Group, LLC, which he did not disclose on his 2021 SOFI.

⁴ Candidate’s counsel endeavored to rehabilitate Candidate regarding his failure to disclose by presenting testimony that Candidate’s financial troubles are already public knowledge and the subject of embarrassing news reports. Thus, according to Candidate, there would be no reason to conceal these troubles on his 2021 SOFI. Candidate’s counsel also argued Candidate is relatively uneducated and a “representative of the people.” To support this contention, Candidate testified that he began, but did not complete, community college.

Candidate explained he failed to disclose the company because he was not receiving any income from it. Candidate acknowledged, nonetheless, that he had included the company on a prior year's SOFI despite not receiving any income then either. He explained that he included the company previously because it was his first time completing a SOFI. In retrospect, he did not think he should have included the company the first time since it earned no income.

After Candidate's testimony and the conclusion of Objectors' case in chief,⁵ Candidate presented several witnesses in support of his contention that he has lived at 33 S. Ruby St. since September or October 2021. While some of the witnesses travelled together (with Candidate) from Philadelphia to the hearing in Harrisburg, the Court notes the witnesses were sequestered during the hearing. Additionally, all the witnesses testified that they were not paid to be at the hearing.

The first witness Candidate called was Stephanie Hudgins (Hudgins) of 38 S. Ruby St., who resides across the street from 33 S. Ruby St. Hudgins did not know Candidate previously. The Court finds Hudgins extremely credible. In relevant part, Hudgins testified that she remembered first seeing Candidate at 33 S. Ruby St. in late September or early October 2021. She was able to correlate the time frame to the start of her daughter's school year. She also remembered noticing his vehicle parked near 33 S. Ruby St. because it had a distinctive license plate. She testified it looked like an "official" plate, or something to that effect. She did not see Candidate move larger items into the apartment in September or October 2021 but did see him coming in and out regularly. She testified that she saw him "frequently." The Court asked Hudgins if she only saw Candidate frequently in September or October 2021.

⁵ At the conclusion of Objectors' case in chief, Candidate's counsel made a motion for a directed verdict. The Court denied the motion.

She testified that she has seen him consistently, with no gaps, at 33 S. Ruby St. from September or October 2021 to date.

Next, Candidate called Sameerah Shabazz (Shabazz). Shabazz, who resides at 122 S. Ruby St. and is a committeewoman for the Pennsylvania Democratic Party, has known Candidate for a few years. The Court finds this witness credible. She has lived on Ruby St. for around 20 years. She explained that, when Candidate ran for his current seat in the General Assembly, she supported his opponent. Shabazz explained that Candidate approached her in September 2021 and stated he was now her neighbor. In or near September 2021, Candidate explained he was moving to Ruby St. with the goal of becoming a Ward Leader. Shabazz testified that she did not actually see him move his belongings into his apartment. This Court finds that her admissions to not seeing Candidate move in coupled with her past support of his opponent make it more credible that she had a conversation with him in September 2021, when he explained that he is “now her neighbor.”

The third witness Candidate called was Carolyn Walker (Walker), who resides “two doors down,” at 29 S. Ruby St. Walker did not know Candidate previously. The Court did not find Walker credible. She either offered incompetent testimony based on poor memory or she chose to have a selective memory. Other than a few details, the only substance Walker was able to recall was that she was sure Candidate moved in during September 2021, and that he had shoveled snow off her sidewalk. She could not recall when any other people moved into Candidate’s building, but she vaguely remembered a tall black man and a white woman had moved in at some point. She assumed that they lived there because she saw them punch a key code to enter the building. In addition to Walker’s lack of memory, the Court admonished the witness for being short-tempered and argumentative with Objectors’ counsel.

The witness tapped her fingernails with frustration on the witness stand. The Court also noticed the affinity between Walker and Candidate. Candidate smiled with adoration when Walker approached the witness stand. For all these reasons, the Court determines this witness's memory is so foggy that her testimony is incompetent or, alternatively, that she wants to help the neighbor who shovels her sidewalk. Therefore, none of this witness's testimony was utilized in rendering this decision.

The fourth witness was Violeta Nazario (Nazario), of 31 S. Ruby St. Nazario did not know Candidate previously. She testified Candidate moved into 33 S. Ruby St. at the end of September or early October 2021. The Court finds Nazario credible. She was able to put the time she met Candidate into context because she remembered working on "petitions" of some nature. She recalled that Candidate had a little girl with him. During cross-examination, Objectors' counsel asked if Nazario would be shocked to learn that the rental license for Candidate's apartment building was not issued until February 2022. Nazario explained that would surprise her. She asserted unequivocally that people were living in the apartment building in 2021.

The fifth witness, Joseph Hill (Hill), testified Candidate paid him and another individual to move couches and two beds in a U-Haul from Conshohocken Ave. to Ruby St. in October 2021. Hill knew Candidate previously, as evidenced by Hill's testimony that Candidate called him and asked for assistance in moving. The Court finds Hill's testimony credible. Hill recalled that he moved Candidate's furniture after his (Hill's) grandmother died on October 13, 2021. Hill further explained he was confident Candidate continued to live on Ruby St. because Hill regularly visited

his cousin who lived nearby to play basketball. When visiting his cousin, he would see Candidate's vehicle.⁶

II. Analysis

As explained above, Objectors contend that Candidate (1) is not eligible to run as a Representative in 10th the Legislative District because he has not lived there as long as he claims, and that he (2) failed to disclose adverse financial information in his SOFI. Objectors further argue that Candidate (3) failed to disclose adverse financial information with bad faith to deceive the electorate. The Court addresses each of these issues in turn.

A. Candidate's Residence

Section 910 of the Election Code requires that a candidate include an affidavit with his or her nomination petition indicating, among other things, the candidate's residence, and that the candidate is eligible for the office being sought. Act of June 3, 1937, P.L. 1333, *as amended*, 25 P.S. § 2870. In addition, the Public Official and Employee Ethics Act provides that a candidate for state-level office must file a SOFI with the State Ethics Commission on or before the last day for filing a nomination petition to appear on the ballot. 65 Pa.C.S. § 1104(b)(1). The candidate must append a copy of the SOFI to his or her nomination petition. *Id.* The SOFI must include the candidate's address. 65 Pa.C.S. § 1105(b)(1). Importantly, nomination petitions are presumed valid, and the party objecting to the petition bears the "heavy burden"

⁶ The Court took several evidentiary questions under advisement at the hearing stemming from hearsay objections to certain documents. The Court ultimately rules on the parties' exhibits as follows. Exhibits P-1, P-2, and P-3 are admitted. The objection to page one of Exhibit P-4 is sustained, and that page is excluded as hearsay. Candidate's counsel did not object to page two of Exhibit P-4, and that page is admitted. Exhibits C-1 and C-4 are admitted. Candidate's counsel indicated he did not intend to move Exhibit C-7 into evidence. The objections to Exhibits C-2, C-3, C-5, and C-6 are sustained, and those exhibits are excluded as hearsay.

of proving it is invalid. *In re Nomination Petition of Shimkus*, 946 A.2d 139, 141 (Pa. Cmwlth. 2008).⁷

The Court's focus is on the factual determination of whether Candidate's Affidavit contains false information in violation of the Election Code. Objectors allege that Candidate has made false statements regarding his residence or, more specifically, when his residence changed from 3600 Conshohocken Ave. in the 190th Legislative District to 33 S. Ruby St. in the 10th Legislative District. To be eligible for office as a Representative in the 10th Legislative District, Candidate must be able to reside in the District for one year by the general election in November 2022. Pa. Const. art. II, § 5; *see In re Nomination Petition of Prendergast*, 673 A.2d 324, 327 (Pa. 1996). In other words, Candidate must have resided in the 10th Legislative District since at least November 8, 2021, one year before the general election scheduled for November 8, 2022.

Our law provides that "one's residence . . . must be a habitation where one has put down roots, not a place where one has hoisted a flag of convenience." *Shimkus*, 946 A.2d at 148. The Court considers various factors to determine if a particular location is a candidate's residence, including whether the candidate pays rent or has a lease there, where the candidate sleeps, what belongings and personal effects the candidate keeps there, and whether the candidate also lives at another location to which he or she appears more attached. *Id.* at 149 (citing *In re Nomination Petition of Hacker*, 728 A.2d 1033, 1033 (Pa. Cmwlth. 1999); *In re Nomination Petitions of McIntyre*, 778 A.2d 746, 753 (Pa. Cmwlth. 2001)). Stated another way, a residence is where the candidate's "habitation is fixed, and to which, whenever he is absent,

⁷ Because *Shimkus* is a single-judge election opinion filed before October 1, 2013, it may be cited only for its persuasive value. 210 Pa. Code § 69.414(d)

he has the intention of returning.” *Id.* at 149 (quoting Section 704 of the Election Code, 25 P.S. § 2814).

In this matter, the Court finds that Candidate “put down roots” by moving his belongings, including transferring beds for sleeping, and living permanently at 33 S. Ruby St. by no later than October 2021. The Court finds that Candidate is no more attached to any other location. Candidate testified he signed a lease agreement in September 2021 and moved into 33 S. Ruby St. in October 2021.⁸ The Court did not credit Candidate’s testimony in its entirety but found him generally credible in this regard. Further, Candidate presented five witnesses, four of whom the Court finds credible, who testified he began living 33 S. Ruby St. in September or October 2021. The Court finds from the collective testimony that Candidate started living at 33 S. Ruby St. in September 2021 and moved in his larger furniture in October 2021. The documentary evidence also supports this finding. Bank records, which the Court admitted into evidence after Objectors’ counsel withdrew his objection, indicate that Candidate changed his address to 33 S. Ruby St. with his bank by at least November 7, 2021, one day before the deadline to meet the eligibility requirement on November 8, 2021. As a result, the Court concludes Candidate’s Affidavit did not misrepresent his eligibility for office regarding his residence in the 10th Legislative District.

B. Whether Candidate’s SOFI is Defective

As explained above, the Public Official and Employee Ethics Act directs that a candidate for state-level office must file a SOFI with the State Ethics Commission on or before the last day for filing a nomination petition, and that the candidate must append a copy of the SOFI to the petition. 65 Pa.C.S. § 1104(b)(1). In addition to the candidate’s address and other items, a SOFI must include:

⁸ The Court finds it noteworthy that, at the time Candidate signed the lease for 33 S. Ruby St., the address was in the 190th Legislative District.

(4) The name and address of each creditor to whom is owed in excess of \$6,500 and the interest rate thereon. However, loans or credit extended between members of the immediate family and mortgages securing real property which is the principal or secondary residence of the person filing shall not be included.

(8) Any office, directorship or employment of any nature whatsoever in any business entity.

(9) Any financial interest in any legal entity engaged in business for profit.

65 Pa.C.S. § 1105(b)(4), (8), (9).

The parties do not dispute that numerous judgments and tax liens exist against Candidate, and that Candidate failed to include these judgments and tax liens on his 2021 SOFI. Moreover, Candidate failed to accurately report his business activities. The parties filed a Joint Stipulation listing the remaining omissions from Candidate's 2021 SOFI and amended 2021 SOFI.⁹ The omissions feature four business entities, including Brown Property Group, LLC, mentioned in our summary of the testimony. Candidate's 2021 SOFI was clearly defective.

C. Whether Candidate May Amend His SOFI

The failure to disclose information on a timely-filed SOFI is generally a defect subject to amendment. *In re Nomination of Paulmier*, 937 A.2d 364, 371 (Pa. 2007). This Court will not permit amendment, however, if it finds a candidate acted in bad faith to deceive the electorate. *Shimkus*, 946 A.2d at 155-56. A candidate does not

⁹ At the time of the hearing on April 5, 2022, Candidate's counsel indicated that Candidate had already filed an amended SOFI the previous day, on April 4, 2022. At the end of the hearing, the Court ordered the parties to file a joint stipulation regarding any remaining alleged deficiencies in Candidate's SOFI by noon on April 6, 2022. The parties timely complied.

display bad faith if he or she makes an honest mistake or an unintentional one. *Id.* at 157. Bad faith occurs when a candidate acts “with care and thought” and commits “purposeful misrepresentation.” *Id.* The Court is mindful to construe the Election Code “so as not to deprive an individual of his right to run for office or the voters of their right to elect the candidate of their choice.” *Id.* at 154 (citing *In re Nomination Papers of Creighton*, 899 A.2d 1166, 1168 (Pa. Cmwlth. 2006)). Further, the Court emphasizes once again that a party objecting to a nomination petition has the “heavy burden” of proving the petition’s invalidity. *Id.* at 141.

The Court appreciates the severity of Candidate’s failure to disclose adverse financial information in this case. Candidate testified that there were judgments and tax liens entered against him, and that he did not even realize the full extent of the judgments and tax liens until recently. Candidate’s testimony indicates not only that he failed to perform his due diligence in filling out the 2021 SOFI, but that it did not occur to him he should perform due diligence. Candidate has displayed, by his own admission, an ignorance and shocking lack of care of the law for a sitting member of Pennsylvania’s General Assembly.

Although Candidate’s failure to disclose is deeply troubling, the Court finds that failure consistent with Candidate’s general irresponsibility and poor handling of his affairs. The record establishes that Candidate often struggles in his personal and business dealings, as evidenced by frequent attempts at advancement that fall short, such as uncompleted community college education, broken contracts, failed business ventures, and unpaid debts. It was believable, therefore, that Candidate genuinely failed to complete his 2021 SOFI as required, and the Court credited Candidate’s testimony on this point. The Court finds Candidate was not acting with “care and thought” when he failed to disclose his adverse financial information but merely

committed a mistake resulting from the lackadaisical attitude he routinely displays toward serious matters. *Shimkus*, 946 A.2d at 157. Thus, the Court is constrained to conclude Candidate did not act with bad faith to deceive the electorate, and that his 2021 SOFI is subject to amendment.

III. Conclusion

Based on the above, the Court denies Objectors' Petition but directs Candidate to file an amended SOFI for calendar year 2021 in accordance with the Order that follows.



STACY WALLACE, Judge

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Thomas Smith, and Rikeyah :
Lindsay :

ORDER

AND NOW, this 11th day of April 2022, it is hereby ORDERED:

1. The Petition to set Aside the Nomination Petition of Amen Brown, Candidate for Representative in the General Assembly-10th Legislative District, is DENIED.

2. The Secretary of the Commonwealth is directed to certify the name of Amen Brown to the proper officials for inclusion on the ballot in the General Primary Election to be held on May 17, 2022, as a Candidate for Representative in the General Assembly for the 10th Legislative District.

3. Amen Brown is directed to file with the State Ethics Commission and the Secretary of the Commonwealth a second amended Statement of Financial Interests for calendar year 2021 in accordance with the parties' Joint Stipulation by

Tuesday, April 12, 2022 at 4:00 p.m. Amen Brown is further directed to promptly file proof of both filings with this Court.

4. The Prothonotary is directed to send copies of this Order to the State Ethics Commission and the Secretary of the Commonwealth.

5. Each party shall bear his or her own costs.

A handwritten signature in cursive script that reads "Wallace".

STACY WALLACE, Judge