

PROCEDURAL HISTORY

Ms. Martineau filed her Notice of Contest by 4:30 p.m. on April 12, 2016. Her notice contained the exhibits as noted above. On April 13th this Court entered a Notice and Order Setting Election Contest Hearing Date for April 18th, 2016 at 2:00 p.m.

On April 15th Attorney Henry M. Buffalo Jr. filed a Notice of Appearance and the Response of the General Reservation Election Board. Attorney Buffalo's response contained the following attachments: Affidavit of Chairperson Jason Ojibway; Announcement of Election; Certified Election Results; the April 1, 2014 Primary Election Contest final decision, Bruce M. Savage, Contestor, Case # EC-14.

Contestor Martineau and Attorney Buffalo appeared at the April 18th hearing.

At the commencement of the hearing the Court inquired of Ms. Martineau whether she was going to be calling any witnesses during the presentation of her case because the court clerk's Persons Appearing for a Case form listed several individuals as "Party." After some discussion, it was determined by Ms. Martineau that no witnesses were going to be called during her presentation.

Ms. Martineau presented no witnesses or evidence to support her allegation that Candidate Dupuis' alleged use of Band resources violated Article IV Section 1 of the Minnesota Chippewa Tribal Constitution. She stated that four (4) candidates were not allowed to use a Tribal vendor as was done by Candidate Dupuis. Yet she offered no witnesses to support that proposition.

Her exhibits were allowed to be entered mainly because there were no objections and they essentially speak for themselves as to the information contained therein. The issue of whether Candidate Dupuis used Band resources appears not to be in dispute. In support of her allegation that Candidate Dupuis did in fact use a Tribal vendor to mail his campaign literature, Ms. Martineau proffered to enter into evidence an audio tape recording of employees of the Tribal vendor allegedly confirming her allegation. Attorney Buffalo objected to the introduction of the audio recording. Ms. Martineau stated that she was a party to the conversation on the recording but the Court determined she would not be able to substantiate the identity of the other person/persons even though they identified themselves on the recording. The admission of the recording was denied for lack of a sufficient offer of proof as to its reliability by Ms. Martineau.

The basis for Ms. Martineau's contest was further discussed, that Candidate Dupuis' use of Band resources violated the Tribal Constitution. The Tribal Election Ordinance prohibits the Election Judge from ruling on questions relating to the interpretation of the Constitution and Bylaws. Ms. Martineau agreed with that statement of the law. Further Attorney Buffalo argued that the reference to "uniformity" in Article IV is a reference to a "uniform" election ordinance to be adopted by the Tribal Executive Committee for all elections on the six (6) Reservations.

At the close of Ms. Martineau's presentation, Attorney Buffalo moved for dismissal of her Contest for failure to carry her burden of proof as set forth in the Election Ordinance. For reasons which are set out below the Court granted Attorney Buffalo's motion to dismiss and the proceedings were closed.

FINDINGS OF FACT

1. Danielle Martineau was a candidate in the April 5, 2016 FDL Primary Election for District I.
2. Danielle Martineau timely filed her Notice of Contest on April 12, 2016.
3. Ms. Martineau complained to the Fond du Lac Business Committee on March 9, 2016 that the 2016 Elections have been jeopardized by Interim Chairman Wally Dupuis by utilizing The Printer Inc. printing company which created non-uniformity in the election process. See Martineau Exhibit # 1.
4. The FDA Reservation Business Committee conducted an investigation and found that the evidence does not support a finding that Wally Dupuis knew about any improper use of a Band vendor. See Martineau Exhibit # 2.
5. Candidate Wally Dupuis mailed election literature using a return address of 1656 Jarvi Road. See Martineau Exhibit # 3.
6. Candidate Wally Dupuis' Absentee Ballot Request showed a date of April 6, 2016 as the date for the Primary Election. See Martineau Exhibit # 3.

THE APPLICABLE LAW

Chapter III of the Minnesota Chippewa Tribe's Election Ordinance sets out the process for recounts, contests, and appeals. Section 3.2 covers the Contest of a Primary, Regular or Special Election. Only a candidate on the ballot in an election may contest that election, and the contest may only involve the position for which he/she was a candidate. A candidate contesting an election will prepare a written Notice of Contest stating specific reasons for his/her contest.

The burden of proof rests with the contester who must show by clear and convincing evidence the alleged violations of the Ordinance. There shall be a presumption of correctness in favor of the General Election Board and the election results until the contestor has met his or her burden of proof. See Section 3.2(B)(1) of the Ordinance.

The contestor must present relevant and material evidence demonstrating how any violations of the Ordinance, alleged and proven, **affected the outcome of the election** (emphasis added). Evidence may be received on violations of the Ordinance alleged to have taken place in the contested election. See 3.2(B)(2) of the Ordinance.

The judge will not have jurisdiction to rule on questions relating to interpretation of the Revised Constitution and Bylaws of the Minnesota Chippewa Tribe. See 3.2(B)(10) of the Ordinance.

DISCUSSION

There was no evidence presented by the Contestor that Candidate Dupuis' use of Band resources occurred in violation of the Tribal Election Ordinance. This Court has limited jurisdiction for purposes of deciding contests of the Primary Election results. There is nothing in the record to show that the

alleged use of Band resources by Candidate Dupuis for mailing his campaign literature affected the outcome of the election.

The meaning of clear and convincing evidence was addressed by this Court in the Bruce Savage contest. There it was stated that "Clear and convincing evidence" is a higher standard of proof than a mere preponderance, and is generally understood to mean evidence "that the thing to be proved is highly probative or reasonably certain". See Final Decision of Primary Election Contest of District II, Bruce M. Savage, Case # EC-002-14.

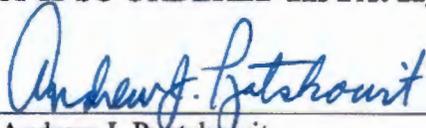
Ms. Martineau has not met the burden of proof required by Tribal Law to show that her allegations affected the outcome of the Primary Election.

CONCLUSIONS OF LAW

For the reasons set out above, Contestor Martineau has failed to meet her burden of proof as required by the Tribal Election Ordinance that a violation of the election ordinance occurred and that the violation affected the outcome of the election.

NOW THEREFORE, the results of the April 5, 2016 primary election in District I are **AFFIRMED**.

IT IS SO ORDERED this 21st day of April 2016.



Andrew J. Pyatskowitz
Fond du Lac Election Contest Judge