

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
CASEYVILLE SPORT CHOICE, LLC,)
an Illinois Limited Liability Company)
)
Complainant,)
) **PCB 2008-030**
v.)
)
ERMA I. SEIBER, ADMINISTRATRIX OF THE)
ESTATE OF JAMES A. SEIBER, DECEASED,)
and ERMA I. SEIBER, IN HER INDIVIDUAL)
CAPACITY and FAIRMOUNT PARK, INC.,)
a DELAWARE CORPORATION,)
)
Respondents)

MOTION TO STAY PROCEEDINGS
or, in the alternative,
MOTION FOR EXTENSION OF TIME

Respondent Fairmount Park, Inc., by its attorney, Charles E. Hamilton, moves the Board, pursuant to Section 101.514, to stay these proceedings for the following reasons:

1. Respondent has never owned the parcel or parcels of land described in the Complainant's pleadings.
2. Respondent has never had any relationship pertaining to the subject real estate parcels with any owner, occupier, tenant or lessee of the parcels of land described in the Complainant's pleadings.
3. Respondent did have a contract with one James A. Seiber, doing business as Seiber Hauling & Excavating, by the terms of which Seiber became an independent contractor charged with the contractual obligation, set out in Paragraph 4 to "dispose of all trash and manure collected at Fairmount Park in dumping places or landfills in strict compliance with all applicable laws."
4. Paragraph 8 of the contract, which has been incorporated into Complainant's Response

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to Fairmount Park's Motion to Dismiss Count I, provides that "Seiber agrees to indemnify and hold Ogden (Respondent Fairmount Park, Inc.'s predecessor) harmless from and against any and all damages, losses, costs, claims or expenses, including reasonable Attorneys' fees, resulting from or arising out of Seiber's services hereunder, including, without limitation, any claims of violations of laws or regulations relating to disposal of trash and manure;...".

5. Thereafter, on June 28, 1993, in Civil Action No. 85-CH-216, in the Circuit Court of St. Clair County, Illinois, entitled "People of the State of Illinois and People of St. Clair County, Plaintiffs, vs. James A. Seiber, Defendant", the Court entered a Permanent Injunction against defendant Seiber which provided that:

"Defendant shall properly dispose of all horse manure in accordance with the following provisions: Land application and soil incorporation of horse manure and straw for agricultural purposes is allowed as long as that application is at or below agronomic rates and with a growing crop (which may include grass) in accordance with Subtitle E of Title 35 Illinois Administration Code. Absolutely no horse manure is to be disposed of on land without applying it at agronomic rates with a growing crop.

"The defendant is to segregate out and remove all trash and general refuse from the horse manure and straw before using the horse manure and straw for beneficial uses.

"The defendant is allowed to tub grind the horse manure at the point of generation. The resulting material must be utilized in a lawful and beneficial manner and must be managed in accordance with the other provisions of this Order.

"The defendant may compost the horse manure and straw so long as the defendant first obtains an Illinois Environmental Protection Agency issued permit.

"The defendant may store straw and horse manure on the ground at the site where these materials are generated for a period of no longer than six months in accordance with Subtitle E of Title 35 of the Illinois Administrative Code. This storage must be conducted in a manner that does not result in any violations of the Environmental Protection Act or the regulations adopted thereunder.

"All refuse and trash (all waste other than horse manure and straw) must be taken to a permitted sanitary landfill. The defendant may dispose of this waste directly at a landfill or through a pick up service but all garbage and waste other than

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horse manure and straw must be disposed of at a permitted landfill.”

6. The civil action described above was prosecuted by the State of Illinois and the County of St. Clair, and the recognition by the State and County that the responsibility for maintenance of the site was Seiber’s and NOT the responsibility of Fairmount Park, Inc. is binding on the Board now.

7. Respondent and Seiber had been unable to agree to an extension of the aforementioned contract, and Seiber was ordered to:

“Cease his business operations on Fairmount Park property on Sunday, December 10, 1995, and that Fairmount park officials will make other arrangements for the services Seiber performed, effective Monday, December 11, 1995.”

Seiber has not performed any services for Fairmount Park, Inc. since December 10, 1995, and no other refuse or trash hauler has removed any substance of any kind to the property described in the complaint.

8. The litigation described in Paragraph 5 received substantial publicity in newspapers in St. Clair and Madison Counties, Illinois, and provided actual notice to residents of the area and to prospective purchasers of the condition of the property and the fact that horse manure and other trash has been delivered to the property.

9. Notwithstanding the publicity surrounding the civil litigation filed by the State of Illinois and St. Clair County, Complainant’s complaint alleges, in Paragraph 7, that:

“The complainant became aware of the huge amount of horse manure, in April, 2005, in the course of developing the land for a subdivision. Since obtaining title and possession to the parcels of land, the complainant has not allowed the dumping of any more horse manure or intermixed ‘municipal trash’ on the parcels of land.”

10. The highly implausible nature of Complainant’s allegation about its discovery of the condition of the property requires considerable discovery with respect to the identity of the principals

involved in Caseyville Sport Choice, LLC, its agents and employees, any inspections of the property at any time before the purchase, any negotiations between the seller and the buyer of the property, any relationship or knowledge the principals of Complainant had with Seiber or any of his employees.

11. Complainant has attached to its Response to Fairmount Park, Inc.'s Motion to Dismiss a deposition of the son of James A. Seiber, who testified against the interests of Fairmount Park, Inc., and was not subject to cross examination by Fairmount Park's attorneys about the litigation between his father and Fairmount park, Inc. and the bias he harbored toward Fairmount Park, Inc.

12. Respondent must obtain records of the public agencies which prosecuted Civil Action No. 85-CH-216 in order to defend against the allegations in the Complaint.

WHEREFORE, Respondent moves the Board to stay these proceedings until the parties have adequate opportunity to conduct discovery as aforesaid.

IN THE ALTERNATIVE, MOTION FOR EXTENSION OF TIME

In the event the Board denies the above Motion for Stay or Proceedings, Respondent repeats and re-alleges the allegations set forth in said Motion, and moves, pursuant to Section 101.522 for an extension of time, not less than 120 days and not to exceed 160 days, to accomplish the discovery proceedings suggested in said Motion.

Respectfully submitted this 3rd day of November, 2008

FAIRMOUNT PARK, INC., Respondent

By: /s/ Charles E. Hamilton

Charles E. Hamilton

Attorney for Respondent

ARDC No.: 1110586

87 Oak Hill Drive

P.O. Box 24240

Belleville, IL 62223

(618) 397-2002

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I caused to be mailed on the 3rd day of November, 2008, the foregoing Motion to Stay Proceedings or, in the alternative, Motion for Extension of Time to the attorneys of record by depositing the same with the Fairview Heights, Illinois branch of the United States Postal Service with first class postage in place.

Donald Urban
Sprague and Urban
Attorneys at Law
26 E. Washington Street
Belleville, IL 62220

John P. Long
Belsheim & Bruckert, L.L.C.
1002 E. Wesley Drive, Suite 100
O'Fallon, IL 62269

/s/ Charles E. Hamilton
Charles E. Hamilton
Attorney for Respondent
ARDC No.: 1110586
87 Oak Hill Drive
P.O. Box 24240
Belleville, IL 62223
(618) 397-2002