

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)
)
CASEYVILLE SPORT CHOICE, LLC,)
an Illinois Limited Liability Company)
)
Complainant,)
)
v.) **PCB 2008-030**
)
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.)

**RESPONDENT FAIRMOUNT PARK, INC'S RESPONSE TO COMPLAINANT
CASEYVILLE SPORT CHOICE, LLC'S MOTION TO DISMISS FAIRMOUNT PARK'S
COUNTERCLAIM**

NOW COMES Respondent (and Counter-Claimant) FAIRMOUNT PARK, INC. ("Fairmount") by and through its attorneys, Charles Hamilton and Penni S. Livingston, and responds to Complainant Caseyville Sport Choice, LLC's ("CSC") Motion to Dismiss Fairmount's Counterclaim.

1. The fact that neither the Illinois Pollution Control Board's Procedural Rules (35 Ill. Adm. Code Part 103, Subtitle A) nor the Illinois Environmental Protection Act (415 ILCS 5/) provides for the award of attorneys' fees is well-taken. However, such relief is a fair and proportionate approximation of damages incurred by Fairmount in an action wherein its participation is both unnecessary and improper.

2. Indeed, Fairmount relies on its numerous affirmative defenses as the basis of its counterclaim against CSC. These affirmative defenses show that CSC brought forth an action against Fairmount without legal merit. Fairmount did not cause or allow the dumping of horse manure and “municipal trash” onto land in St. Clair County, Illinois, as alleged by CSC. Fairmount had no authority or control over the individuals responsible for the open dumping alleged by CSC. To the extent that CSC should not have involved Fairmount in this action to begin with, it naturally follows that Fairmount should be made whole for the expenses it needlessly incurred and any negative publicity associated with CSC’s complaint.

WHEREFORE for all these reasons, Respondent Fairmount Park respectfully requests that the Illinois Pollution Control Board DENY Complainant CSC’s Motion to Dismiss Fairmount’s Counterclaim.

Respectfully submitted this 18th day of February, 2009:

Fairmount Park, Inc.

By: /s/ Penni S. Livingston
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