

ILLINOIS POLLUTION CONTROL BOARD
April 4, 2013

E.R. 1, LLC, assignee of CASEYVILLE)
SPORT CHOICE, LLC,)
)
Complainant,)
) PCB 08-30
v.) (Citizens Enforcement – Land)
)
JAMES A. SEIBER, JR., EXECUTOR OF)
THE ESTATE OF ERMA I. SEIBER AND)
JAMES A. SEIBER, DECEASED, and)
FAIRMONT PARK, INC.,)
)
Respondents.)
)

ORDER OF THE BOARD (by D. Glosser):

On February 26, 2013, E.R. 1, LLC, an assignee of complainant Caseyville Sport Choice, LLC (collectively, complainant), filed a motion for leave to file a second amended complaint and to add a respondent, James A. Seiber Jr as executor, to this proceeding. *See* 35 Ill. Adm. Code 103.206(a)(b). James A. Seiber, Jr. and Fairmont Park, Inc. (collectively, respondents) filed no objection to complainant’s motion. For the reasons discussed below, the Board grants the complainant’s request for leave to file a second amended complaint and to add a respondent.

The Board first outlines the procedural background. Next, the Board summarizes the motion and amended complaint. Finally, the Board discusses its findings before issuing the order.

PROCEDURAL HISTORY

On October 3, 2007, complainant filed a complaint before the Board naming the following respondents: Erma I. Seiber, Administratrix of the Estate of James A. Seiber, Deceased, and Erma I. Seiber, individually. Complainant alleges respondents violated Sections 21(a), (d) and (e) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), (d), (e) (2006)) and 35 Ill. Adm. Code 807.201 and 807.202 of the Board’s Rules.

On August 26, 2008, complainant filed a motion for leave to file a first amended complaint and add Fairmont Park, Inc. as an additional respondent. On October 16, 2008, the Board granted complainant’s motion and accepted the first amended complaint for hearing.

On February 26, 2013, complainant filed a motion for leave to file a second amended complaint and to add James A. Seiber, Jr. as an additional respondent (Mot). Concurrently with its motion, complainant filed a second amended formal complaint with the Board (Comp.).

The deadline for the respondents' answer to complainant's motion was set for March 28, 2013, which is thirty days after service of the complaint on the additional party: James A. Seiber, Jr. During a status conference on March 18, 2012, respondents indicated they would not file objections to the motion. *See* Hearing Officer Order (Mar. 18, 2013).

MOTION AND AMENDED COMPLAINT

Complainant seeks to amend the first amended complaint by adding James A. Seiber, Jr. to the proceeding as a respondent. Mot. at 2, ¶4. Complainant states that on or around July 25, 2012, Erma I. Seiber passed away. Mot. at 1, ¶2; Mot. Exhibit A. Complainant additionally asserts that James A. Seiber, Jr. is serving as the executor of the estate of Erma I. Seiber. Mot. at 2, ¶3.

In its second amended formal complaint filed with the Board, complainant provides an affidavit of service indicating that the second amended formal complaint was properly served on James A. Seiber, Jr. on February 26, 2013. Comp.

STATUTORY AND REGULATORY BACKGROUND

Section 31(d)(1) of the Act (415 ILCS 5/31(d)(1) (2006)) allows any person to file a complaint with the Board. Section 31(d)(1) further provides that “[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.” *Id.*; *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b).

DISCUSSION

Under Section 103.206(a) of the Board's rules, “the Board, on its own motion or the motion of a respondent, may order a person to be added as a respondent if a complete determination of a controversy cannot be had without the presence of the person who is not already party to the proceeding.” 35 Ill. Adm. Code 103.206. James A. Seiber Jr. is the executor of the estate of Erma I. Seiber, who was a party to this proceeding both individually and as an administratrix of the estate of James A. Seiber, deceased. The addition of James A. Seiber Jr. as an additional party respondent is thus required for the complete determination of this proceeding. Therefore, the Board finds that the addition of James A. Seiber Jr. is both necessary and proper, and accordingly grants complainant's motion for leave to amend the complaint.

Duplicative or Frivolous Finding

The Board finds that the second amended complaint does not state a cause of action identical or substantially similar to one brought before the Board or another forum. Furthermore, the Board finds that the amended complaint states a cause of action upon which the Board may

grant relief and requests relief that the Board has the authority to grant. Therefore, the Board finds that the amended complaint is neither duplicative nor frivolous.

Set for Hearing

The Board finds that the second amended complaint filed by complainant meets the content requirements of the Board's procedural rules. *See* 35 Ill. Adm. Code 103.206(b), 103.204(f). Therefore, the Board accepts the amended complaint for hearing. *See* 415 ILCS 5/31(d) (2006); 35 Ill. Adm. Code 103.212(a). A respondent's failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider respondent to have admitted the allegation. 35 Ill. Adm. Code 103.204(d). The Board directs the hearing officer to proceed expeditiously to hearing.

CONCLUSION

The Board grants complainant's motion for leave to add James A. Seiber, Jr. as a party to this proceeding and accepts the second amended complaint. The caption of this order reflects today's action.

IT IS SO ORDERED.

Chairman T.A. Holbrook abstains.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 4, 2013 by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board