

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

| | | |
|-----------------------------|---|-----------------------|
| PAUL CHRISTIAN PRATAPAS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | No. PCB 2023-057 |
| |) | |
| CHELSEA MANOR BY M/I HOMES, |) | (Enforcement – Water) |
| |) | |
| Respondent. |) | |

RESPONDENT CHELSEA MANOR BY M/I HOMES' MOTION TO DISMISS THIS PROCEEDING WITH PREJUDICE AND FOR AN AWARD OF SANCTIONS AGAINST COMPLAINANT PAUL CHRISTIAN PRATAPAS

NOW COMES the Respondent, CHELSEA MANOR BY M/I HOMES (“M/I”), by and through its attorneys, Corporate Law Partners, PLLC and Peckar & Abramson, P.C., and for its Motion that the Board Dismiss this Proceeding with Prejudice and for an Award of Sanctions Against the Complainant, PAUL CHRISTIAN PRATAPAS (“Pratapas”), does hereby state as follows:

1. On April 6, 2023, the Board held that Pratapas’ Complaint is frivolous and directed Pratapas to amend his Complaint for specificity no later than May 8, 2023.
2. Pratapas failed to amend the Complaint; therefore, the operative pleading in this proceeding is a frivolous complaint.
3. Consequently, the Board should dismiss this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Adm. Code 101.800(a) & (b)(4).
4. In addition to his misconduct in this case, Pratapas also filed similarly-frivolous complaints in two other cases against M/I as well as outrageous claims against respondents in other cases, such as the Illinois EPA, municipal entities, and public officials. The Board has expended

its short supply of time and resources to deal with these cases, and it appears that Pratapas may be positioning himself to file additional cases.

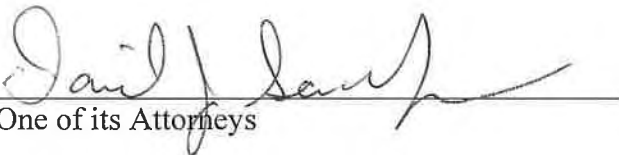
5. Therefore, the Board should also award sanctions against Pratapas using the Board's inherent authority to control its own docket.

6. This motion is supported by M/I's Memorandum of Law, which is being filed contemporaneously herewith.

WHEREFORE, Respondent CHELSEA MANOR BY M/I HOMES respectfully requests that the Board enter an order (a) dismissing this proceeding with prejudice under 415 ILCS 5/31(d)(1) and/or 35 Ill. Adm. Code 101.800(a) & (b)(4), (b) awarding sanctions against Pratapas by ordering him to pay M/I the attorney's fees that it was forced to spend to respond to his frivolous case, and (c) providing any other relief that this Board deems just.

Respectfully submitted,

CHELSEA MANOR BY M/I HOMES


One of its Attorneys

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Attorneys for Respondent Chelsea Manor by M/I Homes

Homes (including the respondent in this action, Chelsea Manor by M/I Homes (“M/I”). (See PCB Case Nos. 2023-057, 2023-075, and 2023-081.) Pratas’ *modus operandi* appears to be that he goes to construction sites on rainy days, takes a couple of photographs, and then files a template complaint before this Board against the developer and (sometimes) the municipal entities that own the sites. Many of the twenty-five complaints (including a complaint filed against former Naperville Mayor Steve Chirico in PCB Case No. 2023-077) also allege that the respondents “likely” committed “fraud” associated with “inspection reports and contractor certifications” as well as “[f]raudulent submission/approval of boiler plate [*sic*] SWPPP with no intent/ability to comply” Equally notable is Pratas’ complaint against the Illinois EPA in PCB Case No. 2023-085 that seeks to have the agency’s “NPDES Permitting Authority revoked”. In addition to asserting these outrageous, frivolous allegations, Pratas has in several cases flouted the Board’s procedural rules regarding service. For instance, in PCB Case No. 2023-058, Pratas filed a sworn affidavit stating that personal service of the complaint would be made; instead, he only sent the complaint via email (which does not comply with the Board’s service requirements).

In cases where the Board has found deficiencies with Pratas’ service of the complaint, the Board directed Pratas to correct those deficiencies; however, Pratas failed to comply with the Board’s directions. See PCB Case Nos. 2023-054 and 2023-055. Moreover, in the two cases where the Board allowed Pratas’ complaint to move past the pleading stage, the dockets reflect that Pratas has abandoned his cases by failing to appear for status hearings and to conduct discovery. See PCB Case Nos. 2023-013 and 2023-014. In spite of the fact that it appears that Pratas may have tired of being involved in these particular cases, it appears that he has not stopped “investigating” development sites. M/I has been informed that Pratas was recently at

another of M/I's developments taking pictures. Therefore, it is very possible that Pratapas intends to file additional cases in the coming days.

Since the time that he began filing cases before the Board, Pratapas has followed a frivolous course of conduct that has wasted the time and resources of the Board and the parties involved. For these reasons, the Board must award sanctions against Pratapas to end this harassment and allow the Board to get back to its traditional and legitimate functions.

ARGUMENT

I. **Because Pratapas Failed To Comply With The Board's Order Directing Him To Amend His Frivolous Complaint For Specificity, This Proceeding Should Be Dismissed With Prejudice**

On April 6, 2023, the Board adopted an Order that among other things granted M/I's motion to dismiss for frivolousness. (Ex. 1.) Specifically, the Board ruled in relevant part:

The Board's procedural rules require complaints to include "dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations." 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas' complaint alleges that the violation occurred on November 13, 2022, and at the general location of Commons Drive in Aurora, Illinois. Comp. at 3. However, the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations, such as toxic concrete washout. *Id.* Mr. Pratapas concedes in his response (Resp.) that his complaint lacks specificity and requests that the Board require "respondents [to] furnish complainant with SWPPP book access to determine with greater accuracy the length of violations [and] total of associated fines." Resp. at 1.

(*Id.* at pp. 1-2.) Thus, the Board granted M/I's motion to dismiss for frivolousness and directed Pratapas to amend his Complaint for specificity no later than May 8, 2023. (*Id.* at p. 3.)

Pratapas failed to amend the Complaint. Consequently, the Board should dismiss this proceeding with prejudice for two reasons. First, as the Board recognized in its Order, the Illinois Environmental Protection Act authorizes the Board to dismiss complaints that are frivolous. (*Id.* at p. 1 (citing 415 ILCS 5/31(d)(1)).) Second, the Board is authorized to dismiss a proceeding

with prejudice as a sanction for a person's failure to comply with an order entered by the Board as to claims asserted in a pleading to which that issue is material. 35 Ill. Adm. Code 101.800(a) & (b)(4). Because the operative pleading before the Board is frivolous and Pratapas failed to comply with the Board's order to amend the Complaint for specificity, this proceeding should be dismissed with prejudice.

II. The Board Should Award Sanctions Against Pratapas

It is well-established that courts possess the inherent authority to control their own dockets and the course of litigation, including the authority to prevent undue delays in the disposition of cases caused by abuses of the litigation process. *J.S.A. v. M.H.*, 224 Ill. 2d 182, 196 (2007). This inherent authority includes the ability to monetarily sanction serial litigants who file frivolous papers; the sanctions available to the court can include a fine and payment of the defendant's attorney's fees and costs. *Gillard v. Northwestern Mem. Hosp.*, 2019 IL App (1st) 182348, ¶ 68. This authority exists even in a situation where a statute or procedural rule does not contain a monetary sanction penalty for misconduct. *Id.* See also *Chambers v. NASCO, Inc.*, 501 U.S. 32, 50 (1991) (courts may as a matter of law resort to its inherent power to impose attorney's fees as a sanction for bad-faith conduct, no matter if the conduct at issue is covered by a sanctioning rule or statute); *Claiborne v. Wisdom*, 414 F.3d 715, 724 (7th Cir. 2005) ("the court retains inherent power to impose sanctions when the situation is grave enough to call for them and the misconduct has somehow slipped between the cracks of the statutes and rules covering the usual situations").

Courts also have the ability to establish protocols to prevent misuse of judicial resources. *Gillard*, 2019 IL App (1st) 182348 at ¶ 68. In *Gillard*, the First District Appellate Court dealt with a serial filer of frivolous appeals by setting a protocol mandating, among other things, that all future appeals are stayed (and without the necessity of the appellees having to file a responsive

brief) until the appellant filed a motion for leave to proceed with the appeal, and until that motion is granted by the court. *Id.* at ¶ 69.

When deciding an adjudicatory proceeding, such as the instant enforcement matter, the Board acts in a quasi-judicial nature. 35 Ill. Adm. Code 101.202. The Board has routinely recognized in enforcement proceedings that it has an inherent authority to control its own docket. *See, e.g., Rockford Prods. Corp. v. Ill. EPA*, PCB No. 91-31, 1992 Ill. ENV LEXIS 335, *1 (May 07, 1992) (rejecting argument that the Board lacks the authority to control its own docket); *Heico Inc. v. Ill. EPA*, PCB No. 90-196, 1992 Ill. ENV LEXIS 325, *1 (Apr. 23, 1992) (same); *Modine Mfg. v. Ill. EPA*, 1988 Ill. ENV LEXIS 120, *4 (Nov. 17, 1988) (“The Board needs to control its docket. . .”).

In this case, Pratapas has filed a frivolous complaint, which caused M/I to expend time and resources to respond through its motion to dismiss. Pratapas failed to correct his errors even after directed to do so by the Board. He also filed similarly-frivolous complaints in two other cases against M/I as well as outrageous claims against respondents in other cases, such as the Illinois EPA, municipal entities, and public officials. The Board has expended its short supply of time and resources to deal with these cases, and it appears that Pratapas may be positioning himself to file additional cases.

Either Pratapas does not understand the seriousness of these proceedings or is intentionally harassing M/I (and the other respondents) and wasting the time and resources of the Board. Either way, the Board has the ability to control its docket and end harassing behavior by sanctioning Pratapas and ordering him to pay the attorney’s fees that M/I was forced to spend responding to his frivolous case. In addition, the Board should consider other sanctions, including a monetary fine to allow the Board to recoup its costs related to Pratapas’ misconduct, as well as setting up a

protocol that Pratapas must follow in the event that he files additional cases, *i.e.*, respondents are not required to respond to future complaints until Pratapas has received leave from the Board to file additional complaints.

CONCLUSION

For these reasons, M/I's Motion to Dismiss this Proceeding with Prejudice and for an Award of Sanctions Against Complainant should be granted.

Respectfully submitted,

CHELSEA MANOR BY M/I HOMES


One of its Attorneys

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Attorneys for Respondent Chelsea Manor by M/I Homes

ILLINOIS POLLUTION CONTROL BOARD

April 6, 2023

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|-----------------------------|---|--------------------------------|
| PAUL CHRISTIAN PRATAPAS, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | PCB 23-57 |
| |) | (Citizens Enforcement - Water) |
| CHELSEA MANOR BY M/I HOMES, |) | |
| |) | |
| Respondent. |) | |

ORDER OF THE BOARD (by M. Gibson):

On November 15, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Chelsea Manor by M/I Homes (M/I). The complaint concerns M/I’s residential construction located at Commons Drive in Aurora, DuPage County.¹ On December 16, 2022, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim.

The Board first addresses M/I’s motion to dismiss the complaint on the grounds of frivolousness and then the motion to dismiss the complaint on the grounds of other affirmative matter. The Board grants M/I’s motion to dismiss for frivolousness, but gives Mr. Pratapas time to amend his complaint; strikes one of Mr. Pratapas’ requests for relief; and denies M/I’s motion to dismiss the complaint on the grounds of other affirmative matter.

MOTION TO DISMISS: FRIVOLOUS

Under 415 ILCS 5/31(d)(1) (2020), the Board will dismiss complaints that are frivolous. “Frivolous” is defined in the Board’s rules as, “any request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202(b). M/I argues that the complaint is frivolous because it fails to state a cause of action and requests relief that the Board does not have the authority to grant. Mot. at 1-2.

The Board’s procedural rules require complaints to include “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations.” 35 Ill. Adm. Code 103.204(c)(2). Mr. Pratapas’ complaint alleges that the violation occurred on November 13, 2022, and at the general location of Commons Drive in

¹ The complaint does not cite the specific address of the alleged violation. Rather it states that the violation happened on Commons Drive in Aurora, Illinois because the signage was missing. Comp. at 2.

Aurora, Illinois. Comp. at 3. However, the complaint lacks any details describing the extent, duration or strength of the alleged violation and only cites general violations, such as toxic concrete washout. *Id.* Mr. Pratapas concedes in his response (Resp.) that his complaint lacks specificity and requests that the Board require “respondents [to] furnish complainant with SWPPP book access to determine with greater accuracy the length of violations [and] total of associated fines.” Resp. at 1.

Complaints must request relief that the Board has the ability to grant. 35 Ill. Adm. Code 101.202(b). In his complaint, Mr. Pratapas requests that the Board: 1) find that M/I violated its permit; 2) assess a civil penalty of \$50,000; 3) investigate fraudulent SWPPP inspection reports and contractor certifications; 4) void M/I’s permit for the site until the alleged violations are resolved; 5) state that SWPPP plans for phasing and concrete washout cannot be implemented unless documented otherwise in the Illinois Urban Manual; and 6) guarantee access to the SWPPP book for public review. Comp. at 3. The Board has broad statutory authority to grant relief; however, it does not have the authority to investigate fraudulent SWPPP inspection reports and contractor certifications. *See* 35 Ill. Adm. Code 101.106(b). Therefore, the Board strikes this request for relief and gives Mr. Pratapas 30 days to amend his complaint as to the specificity of the violations.

MOTION TO DISMISS: OTHER AFFIRMATIVE MATTER

A defendant may file a motion to dismiss on the grounds that the plaintiff’s claim is barred by other “affirmative matter avoiding the legal effect of or defeating the claim.” 735 ILCS 5/2-619(a)(9) (2020). Because the allegations of the complaint are taken as true, the “affirmative matter” presented by the defendant must do more than just refute a well-pleaded fact in the complaint. *Doe v. Univ. of Chi. Med. Ctr.*, 2015 IL App (1st) 133735, P39. Illinois courts describe the difference between proper and improper “affirmative matter” motions as the difference between “yes but” and “not true” motions. *Id.* at 40. A “yes but” motion admits that the complaint states a cause of action and that the allegations are true, but argues that a defense exists that defeats the claim. *Id.* In contrast, a “not true” motion only contradicts the allegations and is simply an answer to the complaint. *Id.* A “not true” motion is not a basis for dismissal and is better suited for the trial stage of litigation instead.

In *Smith v. Waukegan Park District*, the plaintiff sued for retaliatory discharge, alleging he was fired because he filed a worker's compensation claim against the defendant, a municipal park district. 231 Ill. 2d 111 (2008). The defendant moved to dismiss, asserting statutory tort immunity as an affirmative matter to defeat the plaintiff’s claim. *Id.* The court recognized that tort immunity could, under the proper circumstances, constitute an “affirmative matter”; however, it held that a question of fact remained because the defendant simply disputed the complaint’s allegation that plaintiff was fired out of retaliation for filing a worker's compensation claim. *Id.* Therefore, the motion to dismiss was improper because the defendant only contradicted a well-pleaded allegation. *Id.*

In this case, M/I argues that the complaint should be dismissed because the Chelsea Manor development project holds a General Permit to Discharge Storm Water Associated with Construction Activities, NPDES Permit No: ILR10ZBGE dated April 1, 2022. The NPDES


Permit states that “[t]he following non-storm water discharges are prohibited by this permit: concrete and wastewater from washout of concrete (unless managed by an appropriate control).” M/I also contends that it has controls in place for concrete washout compliance and provided testimony from Jason Polakow in support of its argument. Similarly to Smith, under the proper circumstances the NPDES permit could allow concrete washout with proper controls, but whether or not M/I complied with the controls is a question of fact that M/I is only refuting. Because M/I’s argument only contradicts the allegations in the complaint, the motion is improper and the Board denies the motion.

ORDER

1. The Board grants M/I’s motion to dismiss for frivolousness in part and directs Mr. Pratapas to amend his complaint for specificity no later than May 8, 2023.
2. The Board grants M/I’s motion to strike Mr. Pratapas’s requests to “investigate into fraudulent SWPPP inspection reports and contractor certifications.”
3. The Board denies M/I’s motion to dismiss for other affirmative matter.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 6, 2023, by a vote of 3-0.



Don A. Brown, Clerk
Illinois Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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| Paul Christian Pratapas, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | No: PCB 2023-057 |
| |) | |
| Chelsea Manor by M/I Homes, |) | (Enforcement – Water) |
| |) | |
| Respondent. |) | |

Notice of Electronic Filing

PLEASE TAKE NOTICE that I have electronically filed today with the Illinois Pollution Control Board, **RESPONDENT CHELSEA MANOR BY M/I HOMES’ MOTION TO DISMISS THIS PROCEEDING WITH PREJUDICE AND FOR AN AWARD OF SANCTIONS AGAINST COMPLAINANT PAUL CHRISTIAN PRATAPAS and RESPONDENT’S MEMORANDUM OF LAW IN SUPPORT** of same, copies of which are attached hereto and hereby served upon you.

Respectfully submitted,

By: */s/ David J. Scriven-Young*
David J. Scriven-Young

Date: May 17, 2023

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Certificate of Service

The undersigned, an attorney, hereby certifies that the above Notice and any attached documents were served via email transmission to the Clerk and all other parties listed below at the addresses indicated by 5:00 pm, on May 17, 2023.

Illinois Pollution Control Board
Don Brown – Clerk of the Board
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Respectfully submitted,

By: */s/ David J. Scriven-Young*
David J. Scriven-Young