

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

Paul Christian Pratapas	)	
	)	
Complainant,	)	PCB No. 2023-014
	)	(Enforcement)
v.	)	
	)	
Horizon Construction Group, Inc.	)	
	)	
Respondent.	)	

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**MOTION TO DISMISS WITH PREJUDICE**

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Respondent Horizon Construction Group, by its undersigned counsel, moves the Board to dismiss the above-captioned case, Case (PCB No. 2023-014), brought by Paul Christian Pratapas, for want of prosecution pursuant to 735 ILCS 5/2-619.

In support of this Motion, Respondent respectfully states as follows.

**INTRODUCTION**

Rule 219(c)(v) gives the Board the authority to dismiss a Complaint with prejudice. The Petitioner ceased contact over a sustained period of time, missed two mandatory scheduling conferences without explanation or request for rescheduling, and failed to do any of the things necessary to meet his burden of proof.

After the second failure to appear at a scheduling conference, the Hearing Officer attempted to make contact, and even that had no effect on the Petitioner. Based on the Petitioner's unreasonable and sustained failure to comply with the Scheduling Order, dismissal with prejudice is the appropriate remedy and should be applied here.

**FACTS AND ARGUMENT**

1. On July 15, 2022, Paul Christian Pratapas, the Complainant appearing *pro se*, filed his initial Complaint.
2. On August 15, 2022, Horizon Construction Group, Inc., the Respondent, filed a Motion to Dismiss and a Request that the Board Not Accept the Complaint for Hearing.

3. On August 26, 2022, the Complainant filed a revised Motion to Modify his first Complaint.
4. On October 10, 2022, the Board granted the Respondent's Request that the Board Not Accept the Complaint for Hearing and granted Complainant's Motion to Modify the Complaint.
5. On December 16, 2022, the Respondent filed its Answer and Affirmative Defenses to Complainant's Complaint.
6. On January 27, 2023, Respondent filed a Proposed Schedule and Discovery Order.
7. Complainant never filed his own proposed Scheduling Order or commented or objected to Respondent's proposed Order.
8. On February 24, 2023, the Board Hearing Officer accepted the Respondent's Proposed Discovery Schedule.
9. On April 28, 2023, the Respondent served Complainant with Requests for Admission, Interrogatories, and Request for Production of Documents ("Respondent's Discovery Requests").
10. Complainant failed to file timely responses to Respondent's Discovery Requests and in fact still has not filed any kind of response to them.
11. The Complainant has ignored and failed to meet numerous filing deadlines established by the Board in the Discovery Schedule and failed to appear at multiple status conferences, including the following instances:
  - a. On February 9, 2023, Complainant failed to appear at a duly noticed telephonic status conference.
  - b. Complainant failed to meet his March 27, 2023, deadline to disclose fact witnesses, expert witnesses and provide expert reports, as established in the Discovery Order. No such disclosures have been made to date.
  - c. On April 20, 2023, Complainant failed to appear at another duly noticed telephonic status conference. Complainant never requested that the status conference be rescheduled or explained why he failed to appear.

- d. Complainant failed to serve his own Discovery Requests by the May 15, 2023, deadline for response, as established in the Discovery Order, and has not done so to date. As of the date of this Motion, Complainant has not sought leave to do so after the deadline.
  - e. Complaint failed to respond to the Respondent's Requests for Admission, Interrogatories, and Requests for Production of Documents, within 28 days of service (May 26, 2023), as established by 35 Ill. Admin. Code 101.620.
12. Complainant's last involvement in the case was on January 12, 2023, when he filed a copy of the Complainant's communication from the Illinois Attorney General's office. Complainant had unilaterally reached out to an Illinois Assistant Attorney General requesting her assistance in this case. The Attorney General's Office replied, explaining that it does not and cannot represent citizens in their individual capacities and is refusing to give legal advice as to whether Complainant should obtain an attorney.
13. A complainant in a proceeding such as the above-captioned matter has the burden of proving its allegations and showing that it is entitled to the relief requested in the Complaint. By refusing and failing to disclose lay and expert witnesses, this Complainant is barred from calling anyone – including himself – as a witness to support his allegations. By failing and refusing to disclose documents that he would offer at hearing he also has no documentary evidence supporting his allegations.
14. As consequence of these missed deadlines, failures to appear at status conferences, and to make the disclosures mandated by the Schedule and Discovery Order, the Complainant cannot possibly meet his burden of proof. He has therefore defaulted on his burdens as Complainant, burdens that he voluntarily assumed by virtue of filing his Complaint.
15. By failing to reply or timely object to the Respondent's Requests for Admission, those requested statements can now be used as admissions against his positions, further reinforcing the lack of any factual basis for any of the claims he made in the Complaint.

WHEREFORE, Respondent, respectfully requests the Board to enter an Order for Dismissal With Prejudice for want of prosecution and for Complainant's repeated and sustained failures to comply with the Schedule and Discovery Order.

Dated this 21st day of June, 2023.

Respectfully submitted,

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