

ILLINOIS POLLUTION CONTROL BOARD
September 21, 1995

DENNIS MANARCHY, MARY BETH)	
MANARCHY, CHRIS MANDOLINE,)	
and BEVERLY KAGY-MANDOLINE,)	
)	
Complai nants,)	
)	
v.)	PCB 95- 73
)	(Enforcement - Noi se)
THE GOTHAM NIGHTCLUB and)	
JJJ & ASSOCIATE, INC. ,)	
)	
Respondents.)	

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board pursuant to a motion to dismiss and vacate filed by the respondents on April 21, 1995 to which the complainants filed a response on April 25, 1995. Gotham is requesting that we vacate our order of March 16, 1995 which accepted this case for hearing and found that the complaint is neither frivolous or duplicitous. Gotham believes the complaint is duplicitous based on actions pending in two other jurisdictions: one before the 1st Municipal District, City of Chicago and the second before the City of Chicago Local Liquor Control Commission. On May 18, 1995 we entered a stay in this matter and directed that the parties file status reports regarding these two actions, which they did on June 30, 1995 and on September 1, 1995.

In the September 1, 1995 status report, the respondents state that the case before the 1st Municipal District was nonsuited by the City of Chicago on August 17, 1995, and is no longer pending. The second case remains before the Chicago Local Liquor Control Commission with a final decision being due by September 31, 1995 on whether the Gotham Night Club's liquor license until 4:00 a.m. should be revoked in favor of a license until 2:00 a.m.

Based on the September 1st status reports, we will lift the stay in this matter and decide the respondents' motion to dismiss. Regarding the 1st Municipal District case, as that case is no longer pending, there is no concern that it is duplicitous with the citizens' enforcement action at issue before the Board. We note that the city's withdrawal of the citation against the respondents would not prohibit our hearing the merits of the complaint in this action. Regarding the action pending before the Commission, that case may ultimately only resolve any alleged noise pollution concerns occurring from the hour of 2:00 a.m. to 4:00 a.m. whereas the complaint pending before the Board raises allegations of other nighttime hour violations. Accordingly, respondents' motion to dismiss the case and vacate our March 16, 1995 order is hereby denied. This case shall return to the hearing process to be scheduled for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the ____ day of _____, 1995, by a vote of _____.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board