

ILLINOIS POLLUTION CONTROL BOARD
May 5, 1994

JOHN ZARLENGA and	)	
JEAN ZARLENGA,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 92-178
	)	(Enforcement)
JOHN HANCOCK MUTUAL LIFE	)	
INSURANCE COMPANY AND	)	
LINCOLN EASTERN MANAGEMENT	)	
CORPORATION, ¹	)	
	)	
Respondents.	)	

ORDER OF THE BOARD (by M. McFawn):

Respondents Bloomingdale Partners, Howard Edison, Bruce McClaren, and Gary Laken filed a joint status report and stipulations agreement on April 1, 1994, and an "agreed" motion to dismiss on April 11, 1994. The motion to dismiss, filed only by respondents, seeks to have this action dismissed as to all named respondents. On April 6, 1994, complainants John and Jean Zarlenga filed a motion seeking to add Lincoln Eastern Management Corporation and John Hancock to this proceeding as indispensable parties and real parties in interest.

In their joint status report and stipulations agreement, the parties report that on January 28, 1994, the Bankruptcy Court in the proceeding captioned In Re Bloomingdale Partners, case no. 91 B 11678, issued an order striking Bloomingdale Partner's Modified Third Plan of Reorganization and dismissing the case. On February 7, 1994, the Circuit Court of DuPage County issued an order appointing Gregory O'Berry, Vice President of Finance for Lincoln Eastern Management Corporation, as receiver for One Bloomingdale Place in the foreclosure proceedings captioned John Hancock Mutual Life Insurance Company v. Bloomingdale Partners et al., 91 CH 280. Complainants assert that as receiver, Lincoln Eastern Management Corporation is the entity with the power and authority to initiate remedial action at One Bloomingdale Place.

On March 29, 1994, John Hancock obtained from the Bankruptcy Court a Judgment of Foreclosure and Order of Sale for the property known as One Bloomingdale Place. The foreclosure judgment divested respondents of any and all interests in One Bloomingdale Place. In their motion, complainants assert that the foreclosure judgment placed John Hancock in a position to

¹. This caption has been changed to reflect the Board's decision in this order.

exercise control and authority over One Bloomingdale Place by making advances to preserve and maintain the property in order to protect its lien interest.

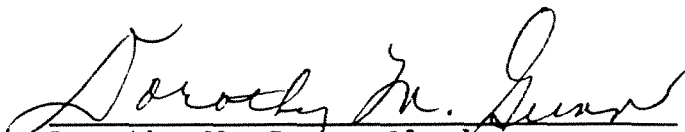
As a result of these events, the parties have stipulated to an agreement intended to resolve this matter as to the named respondents and allow complainants to add to the proceeding the real parties in interest. Respondents stipulate they will not directly or indirectly bid on or otherwise seek to acquire an ownership interest in One Bloomingdale Place at the judicial sale to be conducted on or after May 3, 1994, and agree not to oppose complainants' motion to join the court appointed receiver and John Hancock as real parties in interest. Complainants stipulate they will not seek to enforce the Board's order dated February 3, 1994, or otherwise seek to obtain or compel production of respondents' financial records. Complainants further stipulate they will not oppose respondents' motion seeking to dismiss the action as to each of them.

Complainants have attached as exhibits to their motion copies of the original notice and complaint, and the November 20, 1992 notice and motion to amend the complaint which was granted December 3, 1992. The certificate of service indicates that copies of complainants' motion were served on Lincoln Eastern Management Corporation and John Hancock. This satisfies the Board's procedural requirement that respondents be served with a copy of the complaint. (35 Ill. Adm. Code 103.123(a).) No response has been received from Lincoln Eastern Management or John Hancock.

Respondents Bloomingdale Partners, Howard Edison, Bruce McClaren, and Gary Laken's motion to have the action dismissed with prejudice as to each of them is hereby granted. Complainants' motion to add Lincoln Eastern Management Corporation and John Hancock Mutual Life Insurance Company as indispensable parties and real parties in interest is also granted. The Clerk of the Board is directed to add these two parties to the caption in this case as respondents, and any future pleadings and motions made on behalf of the Zarlengas must be served on them.

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 5th day of May, 1994, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board