

ILLINOIS POLLUTION CONTROL BOARD
January 21, 1993

YOLANDA PRICE,)
)
 Complainant,)
)
 v.) PCB 92-119
) (Enforcement)
 SOUTH SHORE VILLA)
 CONDOMINIUMS, AND QUALITY)
 MANAGEMENT SERVICE, INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a December 22, 1992, motion to reconsider the Board's November 19, 1992 decision in this matter. On January 5, 1993, the respondents filed a response in opposition to complainant's motion for reconsideration. Additionally, in their response, respondents ask that the Board to find that complainants motion for reconsideration does not stay the time for appeal as provided by 35 Ill. Adm. Code 101.246(c).

The Board will first address complainant's motion for reconsideration. Complainant's motion asks the Board to reconsider its November 19, 1992, decision in this case finding that complainant's claim is frivolous because it does not state a claim upon which relief can be granted. Complainant's motion raises no new issues of fact or law. In fact, complainant's motion specifically references the brief she filed on September 25, 1992. Therefore, the Board finds no reason for reconsideration. The motion for reconsideration is denied and the Board reaffirms its order of November 19, 1992.

Next the Board will address the respondents' motion asking the Board to deny the complainant a stay of appeal time. 35 Ill. Adm. Code 101.246 (c) states:

A timely-filed motion for reconsideration or modification stays the effect of the final order until final disposition of any motion. The time for appeal of the Board order runs anew after the Board rules upon the motion unless otherwise provided. (35 Ill. Adm. Code 101.246 (c).)

Complainant may be required to exhaust all administrative remedies before appealing her case to the Appellate Court. Castenada v. Illinois Human Rights Commission, 132 Ill. 2d 304,

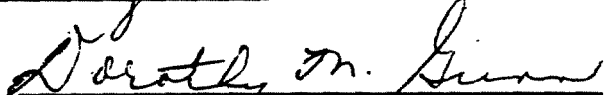
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547 N.E.2d 437 (1989). Thus, the Board does not believe it would be equitable to deny a stay of appeal time to the complainant since, under the current law, she may be required to ask the Board to reconsider her case in order to exhaust all administrative remedies. A denial of the stay of appeal time when the complainant is forced under current law to make the motion for reconsideration, essentially denies the complainant her right to an appeal. It is because of this paradox that the Board denies the respondent's motion. The time for complainant to file an appeal runs from the date of today's decision.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, Ch 111 1/2, par. 1041) provides for appeal of final orders of the Board within 35 days. The rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill. Adm. Code 101.246, Motions for Reconsideration, and Castenada v. Illinois Human Rights Commission (1989), 132 Ill. 2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21st day of January, 1993, by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

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