

ILLINOIS POLLUTION CONTROL BOARD
November 19, 1992

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):

On August 20, 1992, Yolanda Price (Ms. Price) filed a complaint alleging a noise nuisance in violation of Section 24 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 900.102. (Ill. Rev. Stat. 1991, ch. 111 1/2 par. 1024.) On October 3, 1992, the Board, on its own motion, ordered the parties to brief the issue of whether or not this case is properly before the Board in light of the Board's holding in Bruce Nesbitt v. The 100 Bellevue Place Condominium Association (May 21, 1992) PCB 92-48, appeal voluntarily dismissed, No. 1-92-2128, (1st Dist., September 10, 1992). On September 25, 1992, Ms. Price filed her response (Resp.) to the Board's order. On the same day, South Shore Villa Condominiums, and Quality Management Service, Inc. (collectively Respondents) filed a motion for extension of time in which to respond. The Board granted their motion in an October 1, 1992, order. On October 14, 1992, Respondents filed their brief (Brief) on the issue of jurisdiction with the Board.

BACKGROUND

Ms. Price owns a condominium in a building located at 6844 South Shore Drive, Chicago, Illinois. Ms. Price has lived in the building for almost four years. Ms. Price's condominium unit is located on the first floor over the boiler room for the building. The boiler was installed in 1988 or 1989 and runs from approximately October through May of each year. Ms. Price has complained to the Respondents about the noise generated by the boiler and the fact that it causes her family to lose sleep and interferes with hearing the radio or television. Respondents allegedly have not taken any action to reduce the noise emissions from the boiler. On August 20, 1992, Ms. Price filed this complaint with the Board.

0137-0185

ISSUE

The issue before the Board is whether or not Ms. Price's claim is duplicitous or frivolous in light of the Board's decision in Nesbitt. In Nesbitt, the petitioner, Bruce Nesbitt brought a complaint against the Bellevue Place Condominium Association (Bellevue) alleging noise pollution. (Nesbitt, at 1.) Mr. Nesbitt alleged that the noise pollution was emanating from the common elements of the condominium. (Id.) Section 24 of the Act prohibits any person from emitting noise beyond his property which interferes with the enjoyment of life or lawful business activity. The Board in Nesbitt held that noise emanating from the common areas of a condominium complex to an individual unit does not "emit beyond the boundaries" of one property to another. (Id., at 4.)

In her response, Ms. Price asks the Board to reconsider Nesbitt. Ms. Price argues that interpreting the Act to prevent condominium owners from seeking relief from excessive noise emitted from the common areas would be contrary to the General Assembly's determination in Section 23 of the Act that excessive noise endangers health and reduces the quality of the environment. (Resp. at 2.) In addition, Ms. Price argues that it is inconsistent with the Condominium Property Act, Ill. Rev. Stat. 1991, ch. 30 par. 301 et. seq., to prevent Ms. Price from seeking relief from noise being emitted in the common area of her condominium building. (Resp. at 2.)

Ms. Price argues that Nesbitt turned on the idea that the individual owners owned the common elements and areas of the condominium in fee simple, rather than as tenants in common. Ms. Price states that if this were true, she would have the right to correct or abate the noise herself. (Resp. at 5.) Ms. Price argues that instead of owning the common areas in fee simple, individual owners are in fact tenants in common. (Resp. at 5.) Ms. Price argues that, as a tenant in common, she cannot exercise exclusive ownership/control over the boiler or abate the noise herself without being held responsible for any diminution in value of the common element. (Resp. at 5 quoting Ill. Rev. Stat. 1991, ch. 76 par. 4.)

The Respondents, in their brief, argue that Ms. Price owns not only her unit in fee simple absolute but also, the common areas and elements of the building. The Respondents go on to argue that because Ms. Price owns the property from which the noise she is complaining of emanates, she is not entitled to relief. (Brief at 4.) In support of their argument, Respondents point to Section 24 of the Act which prohibits the emission of noise by a person "beyond the boundaries of his property." (Brief at 4.) In addition, the Respondents point out that in Nesbitt the Board held that it did not have jurisdiction over a

condominium association when a unit owner complained of noise coming from the common areas of the building. (Brief at 4-5.)

DISCUSSION

Title VI of the Act contains the standards and procedures for noise control. Section 23 of Title VI sets forth the legislature's purpose for preventing noise and Section 24 prohibits any person from emitting noise beyond his property which interferes with the enjoyment of life or lawful business activity. The Board holds that its decision in Nesbitt is controlling in deciding whether or not an individual unit owner may take action against noise emanating from the common area of a condominium complex. In Nesbitt, the Board found that individual unit owners owned not only their unit but also the common areas of the complex. (Id. at 4.) Thus, the Board held,

noise that emanates from one unit to another or from a common element to a unit remains within the confines of a single property unit, and does not "emit beyond the boundaries" of one property to another. (Id.)

Section 31(b) of the Act and 35 Ill. Adm. Code 103.240 allow the Board to dismiss a complaint if the Board determines that it is duplicitous or frivolous. In a resolution on June 9, 1989, the Board determined that an action is duplicitous if it is substantially similar to one brought in another forum. (In re Duplicitous or Frivolous Determination (June 9, 1989), RES 89-21.) In the same resolution, the Board determined that a complaint is frivolous if it fails to state a cause of action upon which relief can be granted. (Id.)

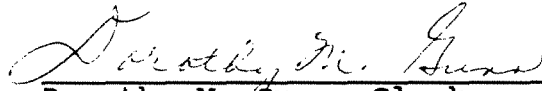
In the instant case, the Board finds that Ms. Price's claim is frivolous because it does not state a claim upon which relief can be granted. Therefore, the Board does not have jurisdiction over the matter at hand and will not accept the matter for hearing. Accordingly, the Board dismisses this case. The result of this ruling is that this docket is closed.

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.)

0137-0187

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 19th day of November, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0137-0188