

ILLINOIS POLLUTION CONTROL BOARD  
March 19, 1987

CONCERNED NEIGHBORS FOR A )  
BETTER ENVIRONMENT, )  
 )  
Complainant, )  
 )  
v. ) PCB 85-131  
 )  
WATTS TRUCKING SERVICE, INC., )  
 )  
Respondent. )

ORDER OF THE BOARD (by B. Forcade):

This matter comes before the Board on a May 7, 1985, complaint filed by Concerned Neighbors for a Better Environment ("CNBE") against Watts Trucking Services, Inc. ("Watts"). The twelve count complaint charged Watts with various violations of the Environmental Protection Act ("Act"), Board regulations and prior Board Orders [Environmental Protection Agency v. Watts Trucking Service, Inc., PCB 74-131 and People v. Watts Trucking Service, Inc., PCB 77-162]. The complaint sought, as relief, revocation of Watt's permit for a landfill, civil penalties and a cease and desist order. Hearing was held on November 5, 1986.

At the November 5, 1986, hearing, Respondent Watts was present by counsel. Counsel for Complainant, James Yoho, did not attend the hearing. Several members of Complainants' organization moved for continuance (R. 8), but that motion was denied (R. 20). Respondent moved for default judgment and dismissal with prejudice (R. 19). The hearing officer referred that motion to the Board (R. 20-21). The hearing officer advised the members of complainants' organization of the opportunity to oppose the motion for default judgment by filing appropriate documents with the Board (R. 21). The hearing officer admonished the members of CNBE that they must immediately find counsel willing and able to represent them and they must contact the Board regarding the default (R. 9-10, 15-16, 20-21). CNBE made no efforts to communicate with the Board or hearing officer regarding the pending motion.

On January 22, 1987, the Board ordered the Complainant CNBE to show cause why this matter should not be dismissed. CNBE was given until February 6, 1987, to file a verified response to this Order. On March 2, 1987, CNBE filed a Motion to Substitute Counsel, Appearance, Motion to Modify Order of January 22, 1987, Complainants' Verified Response to January 22, 1987, Order and Motion to Set Pre-Hearing and Hearing Schedule. The Board, on March 5, 1987, granted CNBE's motion to substitute counsel and

CNBE's request to file its response to the January 22, 1987, Order out of time, thus modifying the schedule established in that Order. The Board deferred ruling on the balance of CNBE's motions until Watts was afforded an opportunity to respond. Watts filed consolidated Objections to Modification of January 22, 1987, Order and to the Verified Response, with a supporting memorandum.

35 Ill. Adm. Code 103.220 of the Board procedural rules which govern enforcement cases provides as follows:

Failure of a party to appear on the date set for hearing or failure to proceed by the Board shall constitute a default. The Board shall thereafter enter such order as appropriate, as limited by the pleadings and based on the evidence introduced at the hearing.

By failing to proceed with its enforcement case on November 5, 1986, CNBE clearly subjected its case to a default judgment and dismissal. Such dismissal is not automatic but, under Section 103.220, is to be executed by Board order. This scheme implies some degree of Board discretion where there is special justification for the default. It also provides a mechanism for limiting the impact of a default judgment to the facts in the record. Consequently, the Board allowed CNBE a final opportunity to explain why its cause should not be dismissed. CNBE failed to respond in a timely manner. However, the Board did allow CNBE to file a response out of time.

The issue before the Board is whether CNBE has shown good cause as to why this proceeding should not be dismissed for want of prosecution. CNBE, in its response, gives four reasons why it deliberately decided not to contact the Board regarding this case. First, CNBE claims that it was their understanding that a default had been entered on November 5, 1986, and that they could not obtain a continuance or oppose any default without the assistance of legal counsel. As Watts points out in its objection, this assertion is totally refuted by the record of November 5, 1986. The CNBE president was told by the hearing officer, on the record, that the Board would have to enter the default order, not the hearing officer, and that CNBE ought to contact the Board immediately. CNBE was also told, on the record, to get in touch with a lawyer immediately and to have that person get in touch with the hearing officer. CNBE did nothing. Instead, they had a telephone conversation with Mr. Yoho, their attorney, and relied on an assurance that he would check into the matter further. This was not a reasonable action in light of Mr. Yoho's recent pattern of behavior as their counsel. Beyond this effort, CNBE did nothing until February 23, 1987, when CNBE's president generally inquired, by letter, as to the status of the case.

CNBE's second assertion is that they relied on Mr. Yoho's assurance that he would check with the Board and take steps to have the matter reinstated or achieve settlement. As noted above, this was not a reasonable action in light of Mr. Yoho's behavior prior to and on November 5, 1987.

The third reason justifying CNBE's conduct of this case is that they believed that they could not pursue their cause without an attorney, under Illinois law. The Board need not rule on the applicability of the statute to Board proceedings as the real issue is the reasonableness of CNBE's conduct in failing to prosecute its case. Regardless of the statute, CNBE should have at least made reasonable inquiries to the Board or hearing officer regarding the status of its case. CNBE also should have taken expeditious steps to obtain new counsel. Instead, they continued to rely on Mr. Yoho and finally, in February of 1987, took steps to obtain new counsel. This was clearly not a reasonable course of action, especially in light of the hearing officer's clear admonitions at hearing on November 5, 1986.

Finally, CNBE states that they decided not to contact the Board or further pursue the matter because it was "too complex to conduct without legal counsel." Once again, if this was indeed their view, CNBE should have taken affirmative steps to quickly find new counsel.


CNBE has not shown good cause why it failed to prosecute its case. While the initial default on November 5, 1986, was caused primarily by CNBE's attorney, the burden to follow the progress of litigation still falls upon the litigant, who cannot rely blindly on his counsel. See In re: Marriage of Kopec, 106 Ill. App. 3d 1060, 62 Ill. Dec. 658 (1982). A litigant is not relieved of the consequences of his own mistakes or negligence of his trial counsel and it is the duty of every litigant to follow the progress of the case, rather than merely assume counsel is doing all that is necessary. De Met v. De Met, 74 Ill. App. 3d 680, 31 Ill. Dec. 87 (1979). Additionally, Watts has made claims of prejudice if the case is allowed to proceed. It is uncontroverted that Watts has suffered fees and expenses related to the November 5, 1986, hearing and the subsequent failure of CNBE to prosecute its claim.

CNBE has not shown cause why this case should not be dismissed. CNBE defaulted on November 5, 1986, by failing to proceed with its cause. CNBE subsequent inaction and continued reliance on the services of Mr. Yoho were unreasonable in these circumstances. Litigants are responsible for the conduct of the litigation and must take reasonable steps to prosecute their claims. Watts would suffer prejudice if this matter were placed on a pre-hearing and hearing schedule. CNBE's motion is therefore denied. Default judgment is entered and this matter is dismissed.

IT IS SO ORDERED.

Board Member R. Flemal dissented and Board Member J. Marlin concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 19<sup>th</sup> day of March, 1987, by a vote of 5-1.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board