

ILLINOIS POLLUTION CONTROL BOARD

December 16, 1999

AUSTIN WALSH and LISA WALSH,)
)
Complainants,)
)
v.) PCB 00-35
) (Enforcement - Citizens, Noise)
MAX KOLPAS and BETTY KOLPAS,)
)
Respondents.)

ORDER OF THE BOARD (by E.Z. Kezelis):

On August 25, 1999, Austin and Lisa Walsh (Walshes) filed a complaint (Comp.) against Max and Betty Kolpas (Kolpases). On September 23, 1999, the Board accepted the case for hearing and found that the complaint, with one noted exception, was neither duplicitous nor frivolous. See Walsh v. Kolpas (September 23, 1999), PCB 00-35.

On October 5, 1999, an entry of appearance was filed on behalf of the Kolpases, along with a request for leave to file an answer and other appropriate motions. The Walshes did not respond to this request, and, on November 1, 1999, the hearing officer granted the Kolpases 15 days, until November 15, 1999, in which to file an answer or other appropriate motion. On November 12, 1999, the Kolpases filed a motion to dismiss based on lack of jurisdiction (motion). The Walshes have not responded.

In the motion, the Kolpases allege that the Board has no jurisdiction over them because they no longer live in the residence that is the subject of the Walshes' complaint. Furthermore, the Kolpases maintain that since they no longer have any control or possession of the subject property, there is no relief which can be had against them.

Section 101.241 of the Board's procedural rules provides:

If no response [to a motion] is filed, such participant or party shall be deemed to have waived objection to the granting of the motion, but such waiver of objection does not bind the Board or the hearing officer in the decision of the motion. 35 Ill. Adm. Code 101.241.

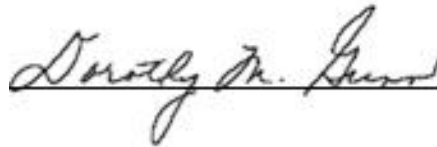
Accordingly, the Walshes' failure to file a response constitutes a waiver of any objection to the motion to dismiss.

While the Board is not bound by the Walshes' waiver, we find merit in the motion and, accordingly, grant dismissal of this complaint. In their complaint, the Walshes specify that the sole relief they are requesting is, "an order directing the Kolpas' [sic] to repair and/or replace the malfunctioning air conditioning unit and to move it to the rear of their residence." Comp. at p. 4. The Walshes do not seek a penalty or any other type of relief. Since the Kolpases no longer own or reside in the residence to which the air conditioning unit is attached, they are no longer capable of performing the specific relief requested by the Walshes. Because they can no longer provide the relief sought by the Walshes, the complaint should be dismissed.

Accordingly, the Kolpases' motion to dismiss is granted, without prejudice, and this docket is hereby closed.

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 16th day of December 1999 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board