

ILLINOIS POLLUTION CONTROL BOARD
September 15, 2005

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 02-77
) (Enforcement - Land)
MILLENIUM RECYCLING & SOLID)
WASTE CONSULTANTS, Inc., SHERRI)
CLEMENTI, individually and as president of)
MILLENIUM RECYCLING & SOLID)
WASTE CONSULTANTS, Inc., and)
MICHAEL LORENCE, individually,)
)
Respondents.)

ORDER OF THE BOARD (by T.E. Johnson):

This matter is before the Board on a motion for relief from a Board order issued on February 19, 2004, filed by Michael Lorence (Lorence). On August 5, 2005, the Office of the Attorney General, on behalf of the People of the State of Illinois (People) filed a response to the motion.

For the reasons more fully described in the body of the opinion, the Board denies Lorence's motion.

BACKGROUND

On December 12, 2001, the People filed a complaint against Millenium alleging violations of Sections 21(a), 21 (d)(1), 21(e), and 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2004)). The People alleged that Millenium violated these provisions by conducting a waste disposal operation without a permit, and causing or allowing litter. The complaint concerns Millenium's facility at 31W620 Spaulding Road, Elgin, Cook County.

On April 10, 2003, the People filed an amended complaint that added Sherri Clementi and Michael Lorence as respondents. The Board accepted the amended complaint on May 15, 2003, advising Sherri Clementi and Michael Lorence that their time to file any answer or responsive motion to the complaint would begin to run from their respective receipt of the order.

On October 2, 2003, the Board issued an order finding Millenium in default for repeated failure to comply with Board and hearing officer orders to appear and proceed with this case. The Board found Millenium had violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act, as alleged, by conducting a waste disposal operation without a permit, and causing or allowing

litter. The order also addressed an alleged deficiency in service by allowing Lorence until December 1, 2003, to answer the amended complaint; and directed the People to file a motion or other appropriate pleading regarding the appropriate remedy or penalty.

On November 3, 2003, the People filed proofs of service showing that service of the amended complaint on Clementi and Lorence was achieved on April 12, 2003. On February 19, 2004, the Board granted a motion for summary judgment in favor of the People as to all counts in the amended complaint. The Board found that all the respondents violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act. 415 ILCS 5/21(a), (d)(1), (e) and (p)(1) (2002), and ordered the respondents to pay a civil penalty of \$25,000 within 60 days of the date of the order. See People v. Millenium Recycling, et. al., PCB 02-77 (Feb. 19, 2004).

On July 22, 2005, respondent Michael Lorence (Lorence) filed the instant motion for relief from and review of the February 19, 2004 final opinion and order. The People filed a response to the motion on August 5, 2005.

MOTION

Lorence asserts that he did not reside at 1133 Hillcrest Drive in Carol Stream (the address to which the People claim a notice of filing and motion for leave to file an amended complaint was sent via certified mail) on April 10, 2003. Mot. at 2. Lorence contends that he was unaware of the proceedings against him on April 12, 2003, when an individual named Bianco Balasco signed the certified mail receipt. *Id.* Lorence asserts that he had no knowledge of the certified mail receipt. *Id.* Lorence argues that because notice of the amended complaint was not served upon him it was ineffective and void. Mot. at 3.

Lorence contends that at no time was he an officer or director of Millenium Recycling and Solid Waste Consultants, Inc., or a party to any equipment lease, real estate lease or other agreement entered into by Millenium. Mot. at 3. He asserts that at no time did he enter into any contractual service obligations on behalf of Millenium. *Id.* An affidavit by Lorence in support of his statements is attached to the motion.

RESPONSE TO MOTION

The People assert that Bianco Balaskovits (Balaskovits) is respondent Clementi's daughter who was 14 years old on April 12, 2003, when she signed the return receipt for and accepted the notice of filing and motion for leave to file an amended complaint. Resp. at 2. The People argue that by serving the amended complaint by certified mail, it complied with Section 103.204 of the Board's rules and the Board therefore has jurisdiction over Lorence. *Id.*

The People dispute Lorence's claims that he did not have knowledge of the amended complaint received and signed by Balaskovits, and did not reside at 1133 Hillcrest Drive in Carol Stream on April 12, 2003. Resp. at 2. The People contend that Lorence resided with Clementi and Balaskovits at 1133 Hillcrest Drive, Carol Stream from December 1997 through August 2002, and again from November 2002 through June 2003. Resp. at 3. The People assert that on or about April 12, 2003, Clementi gave Lorence the amended complaint and that Lorence

was unequivocally served in conformity with Section 103.204 of the Board' rules. Resp. at 3. The People attach an affidavit by Clementi to support these alleged facts. The People contend that Lorence clearly had notice of the lawsuit against him and simply choose to ignore it. Resp. at 4.

The People assert that on September 20, 2004, it sent a letter to Lorence by certified mail with the February 19, 2004 Board order attached. Resp. at 4. The People assert that on February 1, 2005, it filed a complaint in DuPage County Circuit Court to enforce the Board's February 19, 2004 order. *Id.* The People note that Lorences motion was filed more than two years after the amended complaint was served, more than one year and five months after the February 19, 2004 Board order was issued, and more than ten months after Lorence received a copy of the February 19, 2004 Board order. Resp. at 5. The People argue that ten months is surely an unreasonable amount of time. *Id.* The People argue that Lorence chose to ignore the lawsuit and did not participate in its litigation when he had the opportunity to do so. *Id.*

DISCUSSION

Section 101.904 of the Board's procedural rules provides in part:

- b) On written motion, the Board may relieve a party from a final order entered in a contested proceeding, for the following:
 - 1) Newly discovered evidence that existed at the time of hearing and that by due diligence could not have been timely discovered;
 - 2) Fraud (whether intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; or
 - 3) Void order, such as an order based upon jurisdictional defects.
- * * *
- d) A motion under subsection (b) of this Section must be filed with the Board within one year after entry of the order except that a motion pursuant to subsection (b)(3) of this Section must be filed within a reasonable time after entry of the order. 35 Ill. Adm. Code 101.904.

Lorence's motion seeks relief from a final Board order based not on newly discovered evidence or fraud, but on the alleged jurisdictional defect of ineffective service. According to Board rules, any such motion must be filed within a reasonable time after entry of the order. 35 Ill. Adm. Code 101.904(d). Lorence filed his motion on July 22, 2005, over seventeen months after the Board issued the February 19, 2004 order from which relief is sought.

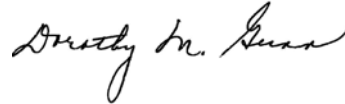
Although Lorence disputes service of the amended complaint in April 2003, he does not dispute service of the Board's February 19, 2004 order. Moreover, the People have submitted a

certified mail receipt that Lorence accepted a letter with the February 19, 2004 Board order on or about September 20, 2004. Thus, the evidence is incontrovertible that Lorence had knowledge of the February 19, 2004 Board order at a minimum of ten, and likely seventeen months prior to the filing of his motion for relief.

The Board has not previously considered the issue of what constitutes a “reasonable time after the entry of the order” pursuant to Section 101.904(d) within which a motion for relief must be filed. See 35 Ill. Adm. Code 101.904(d). A situation can be envisioned wherein such a determination of reasonableness would be difficult to make. This, however, is not that situation. The Board finds that neither ten nor seventeen months constitute a reasonable time under these circumstances. Accordingly, the motion for relief from and review of final order is denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on September 15, 2005, by a vote of 5-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board