

ILLINOIS POLLUTION CONTROL BOARD
August 5, 2010

KYLE NASH,)
)
Complainant,)
)
v.) PCB 07-96
) (Citizens Enforcement - Noise)
KAREN SOKOLOWSKI,)
)
Respondent.)

ORDER OF THE BOARD (by C.K. Zalewski):

This is a citizen's enforcement action brought by Kyle Nash (Nash) against her neighbor, Karen Sokolowski (Sokolowski). In her amended complaint, Nash alleges nuisance noise violations resulting from wind chimes at Sokolowski's residence. The matter comes before the Board today on several motions and recent news from Nash that Sokolowski no longer resides at the house by Nash's house, which are respectively located at 1634 and 1630 W. 33rd Place in Chicago, Cook County.

As the remedy for the alleged violations, Nash seeks an order requiring that Sokolowski cease and desist from the claimed noise pollution. With Sokolowski's departure from her home, however, the Board no longer has authority to grant the only relief requested by Nash, rendering Nash's amended complaint frivolous. The Board therefore dismisses the case on its own motion, denies all pending motions as moot, and closes the docket. Below, the Board briefly describes the procedural history and legal framework of this case before discussing the grounds for dismissal.

PROCEDURAL HISTORY

On March 7, 2008, Nash filed a *pro se* amended complaint alleging that wind chimes at Sokolowski's house violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2008)) and Section 900.102 of the Board's regulations (35 Ill. Adm. Code 900.102).¹ On July 10, 2008, the Board accepted Nash's amended complaint for hearing, finding it neither duplicative nor frivolous.

On July 30, 2008, Nash filed an amended motion for summary judgment. On August 14, 2008, Sokolowski filed a motion to dismiss, alleging that Nash's amended complaint had become frivolous because Sokolowski removed the chimes. Following Nash's October 7, 2008 response to the dismissal motion, Sokolowski, on November 21, 2008, filed a motion for leave to

¹ On the same date, Nash filed a *pro se* amended complaint concerning alleged nuisance noise from another neighbor's wind chimes located at 1628 W. 33rd Place in Chicago, Cook County. That case, Kyle Nash v. Louis Jimenez, PCB 07-97, is still pending.

reply, accompanied by a reply, and a motion to consolidate PCB 07-96 and PCB 07-97.² On December 5, 2008, Nash submitted an apparent surreply without a motion for leave to file. The Board has not ruled upon Nash's amended motion for summary judgment or Sokolowski's motions for dismissal, leave to file, and consolidation.

After numerous telephonic status conferences with the parties, the hearing officer, on July 12, 2010, issued an order stating that Nash had informed the hearing officer by voicemail that Sokolowski had moved from the site of the alleged nuisance noise. PCB 07-96, Hearing Officer Order at 1 (July 12, 2010).

LEGAL FRAMEWORK

Under the Act (415 ILCS 5 (2008)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2008); 35 Ill. Adm. Code 103. For enforcement actions not initiated by the State, Section 31(d)(1) of the Act provides that "[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing." 415 ILCS 5/31(d)(1) (2008); *see also* 35 Ill. Adm. Code 103.212(a). A complaint is "frivolous" if it requests "relief that the Board does not have the authority to grant" or "fails to state a cause of action upon which the Board can grant relief." 35 Ill. Adm. Code 101.202.

Section 24 of the Act provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2008).

Section 900.102 of the Board's regulations states:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. Code 900.102.

"Noise pollution" is defined as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Adm. Code 900.101.

DISCUSSION

A complaint should not be dismissed unless, when taking all well-pled allegations as true and drawing all reasonable inferences from them in favor of the complainant, it is clear that no set of facts could be proven that would entitle the complainant to relief. United City of Yorkville v. Hamman Farms, PCB 08-96, slip op. at 14 (Oct. 16, 2008); People v. Pattison Associates

² *See* footnote 1.

LLC, PCB 05-181, slip op. at 4 (Sept. 15, 2005); People v. Peabody Coal Co., PCB 99-134, slip op. at 1-2 (June 20, 2002); People v. Stein Steel Mills Co., PCB 02-1, slip op. at 1 (Nov. 15, 2001), citing Import Sales, Inc. v. Continental Bearings Corp., 217 Ill. App. 3d 893, 577 N.E.2d 1205 (1st Dist. 1991).

The only relief that Nash seeks through her amended complaint is a Board order requiring Sokolowski to cease and desist from the nuisance noise violations allegedly resulting from wind chimes at Sokolowski's house. On July 10, 2008, when Sokolowski was still residing at the house by Nash's house, the Board issued an order finding that the amended complaint was not frivolous. As noted, the Board's procedural rules define "frivolous" to include "a request for relief that the Board does not have the authority to grant." 35 Ill. Adm. Code 101.202. It is well-settled that the Board has the authority to order a respondent to cease and desist from noise violations. Discovery South Group v. Pollution Control Board, 275 Ill. App. 3d 547, 656 N.E.2d 51 (1st Dist. 1995); Charter Hall Homeowner's Association v. Overland Transportation System, Inc., PCB 98-81 (May 6, 1999).

However, on or about June 19, 2010, Nash reported to the hearing officer that Sokolowski had moved away. PCB 07-96, Hearing Officer Order at 1 (July 12, 2010). With Sokolowski's departure, even if Nash proves the alleged nuisance noise violations, the only relief Nash requests is now beyond the Board's authority to grant. Maracic v. TNT Logistics North America Inc., PCB 05-212, slip op. at 7-8 (Mar. 15, 2007) (where complainant requested a cease and desist order and noise abatement measures to be carried out at respondent's facility, but respondent later vacated the premises, the Board, lacking authority to grant the requested relief, dismissed complaint as frivolous); Pearl v. Bicoastal Corp., PCB 96-265, slip op. at 2-3, 7 (Apr. 3, 1997) (denying motion to dismiss complaint as frivolous where respondent had vacated the site but complainant sought civil penalties); Tonne v. Leamington Foods, PCB 93-44, slip op. at 2 (Apr. 21, 1994) (where complainant requested a cease and desist order, but respondent later vacated the premises, the Board, "unable to effectively impose relief," dismissed the noise complaint as frivolous). Accordingly, "though the Board's remedial authority under the Act is in no way limited to the relief that a complainant requests," the Board finds that Nash's complaint is, by definition, frivolous under these new circumstances. Finley v. IFCO ICS-Chicago, Inc., PCB 02-208, slip op. at 11 (Aug. 8, 2002).

Taking all well-pled allegations as true and drawings all reasonable inferences from them in favor of Nash, the Board finds that it is clear that no set of facts could be proven that would entitle Nash to the relief she seeks from the Board against Sokolowski. Maracic, PCB 05-212, slip op. at 9. Accordingly, the Board, on its own motion, dismisses Nash's amended complaint as frivolous. Habeeb v. The Coach House Restaurant, PCB 07-114, slip op. at 1-2 (July 12, 2007) (Board on own motion dismissing citizen noise complaint as frivolous). Having so ruled, the Board denies as moot all pending motions.

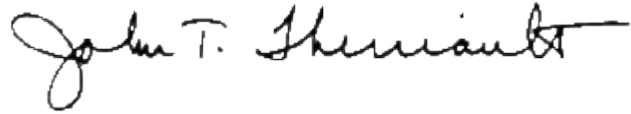
CONCLUSION

The sole relief requested by Nash in her amended complaint is that Sokolowski stop the noise pollution allegedly resulting from wind chimes at Sokolowski's house. Sokolowski has since moved away from her house. Because the Board is now without authority to grant the

requested cease and desist order, Nash's amended complaint has become frivolous. Therefore, the Board dismisses this case on its own motion, denies all pending motions as moot, and closes the docket.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 5, 2010, by a vote of 5-0.

A handwritten signature in black ink that reads "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board