

ILLINOIS POLLUTION CONTROL BOARD

August 9, 2007

LAWRENCE REED,)
)
Complainant,)
)
v.) PCB 07-109
) (Citizens Enforcement - Noise)
MARK HOWARD,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

On May 8, 2007, Mr. Lawrence Reed filed a citizens noise complaint (Comp.) against Mr. Mark Howard. *See* 415 ILCS 5/31(d) (2006); 35 Ill. Adm. Code 103.204. Mr. Reed alleges that Mr. Howard violated Section 23¹ of the Environmental Protection Act (Act) (415 ILCS 5/23 (2006)). Mr. Reed further alleges that Mr. Howard violated this provision through home construction and landscaping noise. The complaint concerns Mr. Reed's property located at 211 North Winston Drive, Palatine, Cook County. For the reasons below, the Board finds that the alleged violation of Section 23 of the Act is frivolous and dismisses the complaint.

Under the Act (415 ILCS 5 (2006)), any person may bring an action before the Board to enforce Illinois' environmental requirements. *See* 415 ILCS 5/3.315, 31(d)(1) (2006); 35 Ill. Adm. Code 103. Reed alleges that Howard caused noise pollution in violation of Section 23 of the Act. According to Reed, Howard produces construction and landscaping noise "five feet from the back of my house and from front and back yards and from inside of house". Comp. para. 4,6. Reed states the noise continues from spring and summer "from 8 AM till 6:30 PM 8 weeks at a time and 3 to 4 days at a time". Comp. at para. 7. As a result, Reed states that he "feel[s] like I am being kicked out of my own house. Mentally draining (sic) and depressed". Comp. at para. 8. The complaint states that Reed is unaware of another identical or similar case.

Section 31(d)(1) of the Act provides that "unless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing." 415 ILCS 5/31(d)(1) (2006). Section 103.212(a) of the Board's procedural rules implements Section 31(d)(1) of the Act. 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is "identical or substantially similar to one brought before the Board or another forum." 35 Ill. Adm. Code 101.202. 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." *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). In response to the Board's order of June 21, 2007, Reed timely filed on July 2, 2007 an affidavit attesting to service on the respondent on June 29, 2007.

¹ The Board's order of June 21, 2007 erroneously refers to alleged violation of Section 24, rather than Section 23, as alleged in the complaint. *See* Comp. at para. 5.

The Board has not received a motion from Howard alleging that the complaint is duplicative or frivolous. No evidence before the Board indicates that the complaint is duplicative, but the complaint is frivolous as it “fails to state a cause of action upon which the Board can grant relief”. 35 Ill. Adm. Code 101.202. The Board has repeatedly held that any alleged violation of Section 23 of the Act is frivolous, pursuant to Section 103.124(a). Section 23 of the Act only contains legislative objectives as opposed to prohibitions on activities. *See* 415 ILCS 5/23 (2006). *See, e.g. Barbara and Ronald Stuart v. Franklin Fisher*, PCB 02-164 (May 16, 2002), slip op. at 2. Since the Section 23 violation is the only violation alleged, the complaint is dismissed. Nothing in this order prevents the filing of another complaint that meets the requirements of the Act or the Board rules.

Finally, the Board notes that, while Mr. Reed appears to be representing himself, he stated in paragraph 11 of the complaint that he would “prefer having attorney representation”. Comp. at para. 11. The Board reminds Mr. Reed that it is the responsibility of any person filing an enforcement case to either present the case himself, or to hire an attorney to represent him using his own funds. While the Board assigns hearing officers to manage cases on the Board’s behalf, the Board has no attorneys to assign persons appearing before the Board.

Again, this complaint is dismissed and the docket closed.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/31(a) (2006)); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board’s procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 9, 2007, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board