

IN THE MATTER BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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NOV 16 2007

STATE OF ILLINOIS
Pollution Control Board

KYLE NASH,)	
)	
Complainant,)	
)	
v.)	PCB 07-97
)	(Citizens Enforcement - Noise)
LOUIS JIMENEZ,)	
)	
Respondent.)	
)	
)	
)	

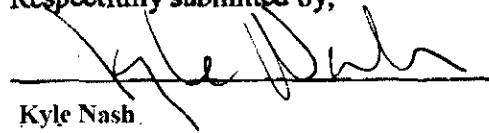
NOTICE

To: Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

Bradley P. Halloran
Hearing Officer
James R. Thompson Center,
Suite 11-500
100 West Randolph Street
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a MOTION FOR SUMMARY JUDGEMENT and AFFIDAVIT OF SERVICE , a copy of which is herewith served upon the assigned Hearing Officer and the Respondent.

Respectfully submitted by,



Kyle Nash
Pro Se

Dated: November 16, 2007
1630 W. 33rd Place
Chicago, Illinois 60608-6202
773.744.1954

AFFIDAVIT OF SERVICE

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STATE OF ILLINOIS
Pollution Control Board

I, the undersigned, on oath or affirmation, state that on (month, day, year)
November 16, 2007, I served the attached notice and motion for summary judgment on
the respondent by: (check appropriate line)

X 1st class mail

to the address below:

RESPONDENT'S ADDRESS:

Name Louis Jimenez

Street 1628 W. 33rd Place

City, state, zip code Chicago, Illinois 60608-6202

(list each respondent's name and address if multiple respondents)

[Handwritten Signature]
Complainant's signature

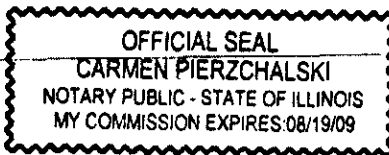
Street 1630 W. 33rd Place

City, state, zip code Chicago, Illinois 60608-6202

Subscribed to and sworn before me
this 16th day
of November, 2007

Carmen Pierzchalski
Notary Public

My commission expires: _____



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NOV 16 2007

STATE OF ILLINOIS
Pollution Control Board

State of Illinois
POLLUTION CONTROL BOARD
JAMES R. THOMPSON CENTER
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW

**BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD**

Kyle Nash _____)

_____)

_____)

_____)

(Insert your name(s) on lines
above.))

Complainant(s),)

_____)

PCB 07-97

(Citizens Enforcement - Noise)

Louis Jimenez _____)

_____)

_____)

_____)

(Insert name(s) of alleged polluter(s)
on lines above,))

Respondent(s).)

COMPLAINANT'S MOTION FOR SUMMARY JUDGMENT AS A MATTER OF LAW

Complainant, Kyle Nash, pro se requests that this Board rule, based upon the undisputed facts that Respondent made no filing to dispute any claims made by the Complainant within the first sixty (60) days following documented service to Respondent and 2) no Motion of Leave to File an Answer nor any Answer to the Complaint were on file as of the September 20, 2007, phone status hearing. Respondent stated on August 9, 2007, in the status hearing that his lawyer would be submitting appropriate documents post haste. Were I not acting pro se and therefore understood that I could at that point have done so, I would have filed a Motion for Summary Judgment as a Matter of Law on post-service day #61. It would have been submitted soon after the August 9, 2007, status hearing had I not been waiting for service from the Respondent and then been hospitalized for a number of weeks.

STATEMENT OF FACTS RELEVANT TO THIS MOTION

Describe the type of pollution that you allege and the location of the alleged pollution.
Describe the duration and frequency of the alleged pollution.

Wind chimes. They have been variably placed on the front porch and in the back yard.

Over the years, we have experienced any number of difficult 24/7 noise problems with these neighbors. The first documented incident was in 1997.

As best I can recall, the initial set of wind chimes was audible on their front porch in August of 2004. At some point (I don't recall the date), that set of wind chimes was moved 24/7 into their backyard. Another set of wind chimes was then hung 24/7 on their front porch.

Whenever there is any kind of breeze noise can be heard. At those times, the noise can be heard incessantly 24 hours a day often for days and days at a time. There may then be a break of a day or so when there is no breeze but soon the noise begins all over again. I wrote a number of letters respectfully requesting that the Respondent stop polluting and also requested that the Center for Conflict Resolution (CCR) contact Respondent so that we could avail ourselves of their free mediation services. CCR tried to contact the Respondent three (3) times. The Respondent did not reply.

Describe any bad effects that you believe the alleged pollution has or has had on human health, on plant or animal life, on the environment, on the enjoyment of life or property, or on any lawful business or activity:

The negative effects my two sons and I experience include, but are not limited to: pain and hearing fatigue; exacerbated hearing impairment problems including tinnitus; annoyance and interference with regular social behavior (e.g., increased irritation, agitation, anxiety, frustration, and helplessness); interference with speech communication; sleep disturbance and the attendant consequences of that on both long and short term bases; cardiovascular effects including heart palpitations and higher blood pressure; gastric, digestive, and nutrition problems, negative hormonal responses (i.e., increased stress hormones) and their consequences on metabolism and the immune system (e.g. headaches, nausea, increased illness); cognitive problems including loss of concentration and memory difficulties; increased sense of alienation and hopelessness; and decreased performance and loss of productivity at work and school. (My older son and I work out of our home; my younger son is a college student who studies at home.)

My sons and I have experienced a marked loss of enjoyment of our lives and enjoyment of our property. As a result of this noise pollution, we often don't want to come home anymore, we don't like being in our home when we are there, and we don't any longer enjoy the neighborhood we've lived in and loved for almost 20 years now.

LEGAL DISCUSSION

List specific sections of the Environmental Protection Act, Board regulations, Board order, or permit that you allege have been or are being violated:

TITLE VI. NOISE

Section 24. Acts Prohibited.

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 regulations or standard adopted by the Board under this Act.

I am seeking an order that the respondent stop polluting.

Kyle Nash

(Complainant's signature)



ATTACHMENTS / ENCLOSURES

- 1. Letter from The Center for Conflict Resolution regarding their failure to get a response from the Respondent.
- 2. One (1) CD for both PC and Mac which includes:
 - A. Two (2) .jpg photographs of the windchimes. (They may look small but they are extremely noisy.)
 - B. One (1) .mp3 audio file of the combined chiming created by the Respondents' windchimes. (I filed simultaneous complaints against both of my neighbors who live on either side of my home at a distance of only about six (6) feet on either side.) This recording was made on a mini hand recorder *without amplification* in the summer of 2007 while standing in my living room. I cannot afford air-conditioning, so the windows were wide open. During the winter months when my windows are closed, they chime with the sexact ame clarity but simply somewhat muted. They can be distinctly heard in many rooms on both the first and second floors of my home.

CERTIFICATION

I, Kyle Nash, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

[Handwritten Signature]
(Complainant's signature)

Subscribed to and sworn before me
this 16th day
of November, 2007

Carmen Pierzchalski

Notary Public

My commission expires: _____





Center for Conflict Resolution

4/12/2007

Kyle Nash
1630 W. 33rd Place
Chicago, IL 60608

Re: Case No. RDR 07-0374

Dear Ms. Nash:

Our efforts to schedule a mediation session for you have been unsuccessful. Therefore, our office cannot be of service in this case.

If you have further questions, please contact us. Our office hours are Monday through Friday, 9:00 a.m. to 5:00 p.m. Please refer to the case number listed above when calling. Any case manager will be able to assist you.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Pollard', is written over the printed name.

Burkman Pollard
Manager of Mediation Services