

ILLINOIS POLLUTION CONTROL BOARD
September 30, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 75-436
)
DELIO VALLERA d/b/a THE LIE-BRARY)
LOUNGE and CORNELIUS P. MOERBECK,)
)
Respondents.)

Ms. Helga Huber, Assistant Attorney General, appeared for Complainant; Messrs Cornelius P. Moerbeck and Delio Vallera, Respondents, appeared pro se.

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

The Complaint in this matter was filed by the Environmental Protection Agency (Agency) on November 10, 1975. That Complaint alleged that Respondent Vallera owned and operated a dram shop known as The Lie-Brary Lounge, located in a building owned by Respondent Moerbeck at 5626 West 95th Street in Oak Lawn, Illinois, and that an air conditioner atop that building was operated, from August 10, 1974 until the filing of the Complaint, in violation of the noise limitations of Rule 202 of Chapter 8: Noise Pollution, of this Board's Rules and Regulations, and therefore in violation of Section 24 of the Environmental Protection Act (Act). Ill. Rev. Stat., Ch. 111-1/2, §1024 (1975); Ill. PCB Regs., Ch. 8, Rule 202.

On January 21, 1976 Respondent Moerbeck filed a motion to continue the hearing in this matter until "Spring," 1976. A hearing previously scheduled for February 6, 1976 was consequently reclassified as a pre-hearing conference, at which the Hearing Officer advised Respondents of their responsibilities under the Board's Procedural Rules, and made allowance for further noise surveys to be conducted by Complainant Agency. A hearing was subsequently held on August 11, 1976. In addition to testimony presented at that hearing by both Complainant and Respondents, the parties there submitted a Stipulation of Facts which provides the primary basis for this Opinion and Order.

From approximately 1970 through May 1, 1975, Respondent Moerbeck leased the building in question from prior owners and, after May 1, 1975, owned the building; during the entire period in issue here, Respondent Moerbeck either subleased or leased the premises of The Lie-Brary Lounge to Respondent Vallera. Respondent Moerbeck admits that as owner of the premises, he was responsible for all operation and maintenance of the air conditioning unit in question, and that Respondent Vallera had no such responsibility, (see, e.g., Ex. D to Joint Ex.1 [lease covering premises]). Inasmuch as Complainant did not object to Respondents' statements to that effect and did not object to Respondent Vallera's request that he be "relieved immediately of any further responsibility," which we interpret as a Motion for Dismissal, Respondent Vallera shall be dismissed.

As to Respondent Moerbeck, the Stipulation of Facts (Joint Ex. 1) shows that the air conditioner in question did in fact exceed the noise limits of Rule 202 during the period in question, (§8). Although the Stipulation of Facts and matters presented by Mr. Moerbeck do approach the issue of mitigation, the record shows no evidence to excuse the violation so admitted. We shall accordingly find that the violations occurred as alleged in the Complaint, and that the responsibilities for such violations lie with Respondent Moerbeck.

By way of mitigation and aggravation, Respondent Moerbeck admitted that the Agency notified him of those violations as early as September, 1974, (R. 6). Mr. Moerbeck also admits that, although shielding was installed around the air conditioner, which did result in compliance (see, Ex. L to Joint Ex. 1), those improvements were not made until 1976. Respondent's failure to abate those violations during the 1975 air conditioning season is, however, somewhat mitigated by other circumstances. On approximately July 4, 1975, the air conditioning unit in question was rendered inoperative by several shotgun blasts through the rooftop condensing unit, (Resp. Ex. 1 [photograph]). Moerbeck concluded that the shotgun blasts in question originated from the premises of a neighbor whose complaints had originally led to the Agency's investigation of The Lie-Brary Lounge air conditioner, and he declined to make further improvements in the air conditioning system until after that neighbor fulfilled a previously announced intention to move away from the site. When that neighbor moved, noise barriers were erected.

In light of the fact that Respondent has subsequently corrected the admitted noise violations, and of the facts stated above, we do not feel that a penalty is appropriate in this case.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

ORDER


IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent Cornelius P. Moerbeck is found to have operated an air conditioning unit atop a building at 5626 West 95th Street, Oak Lawn, Illinois, in violation of Rule 202 of Chapter 8: Noise Pollution, of the Board's Rules and Regulations, and Section 24 of the Illinois Environmental Protection Act.

2. Respondent Delio Vallera d/b/a The Lie-Brary Lounge is dismissed.

3. Respondent Moerbeck shall henceforth operate said air conditioning unit such that said violations do not recur.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 30th day of September 1976, by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board