

IN THE MATTER BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

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

RECEIVED
CLERK'S OFFICE
JUL 30 2008
STATE OF ILLINOIS
Pollution Control Board

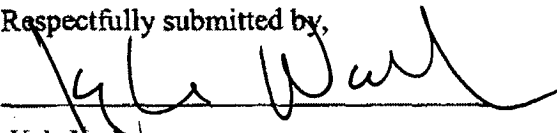
NOTICE

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 an *AMENDED* 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: July 29, 2008
1630 W. 33rd Place
Chicago, Illinois 60608-6202
773.744.1954

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 she would be submitting a letter to the IPCB 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.

Writing my motions pro se led to an error which required me to submit an amended motion within 30 days of the Board's ruling. I did that within the time allotted. I am now filing this Amended Motion for Summary Judgement.

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.

As best I can recall, the wind chimes first became audible in the spring of 2006. They then remained up 24/7 until shortly before the winter holidays of 2006. They were put back up again 24/7 in late February - early March 2007. A second wind chime was put up 24/7 in their back yard in mid-March, 2007. The second (backyard) windchime was removed several weeks after the Respondent was served. The Respondent removed the front porch chime after the initial status hearing on August 9, 2007, indicating that she would be sending a letter to the IPCB post haste. As of the September 20, 2007, status hearing no Motion of Leave to File an Answer nor any Answer to the Complaint were on file nor had I been served in any way. 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

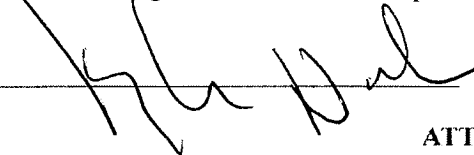
Section 24. Acts Prohibited.

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.

Section 900.102 Prohibition of Noise Pollution

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.

I am seeking an order that the respondent stop polluting.



(Complainant's signature)


ATTACHMENTS / ENCLOSURES

NOTE: Please use the attachments submitted with original Motion for Summary Judgement

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 exact same clarity but simply somewhat muted. They can be distinctly heard in many rooms on both the first and second floors of my home.

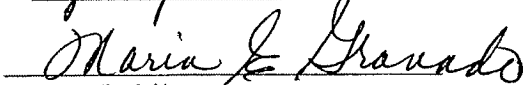
CERTIFICATION

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.



(Complainant's signature)

Subscribed to and sworn before me
this 28th day
of July, 2008.



Notary Public

My commission expires: 2-10-10



CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year)
July 28, 2008, I served the attached notice and

AMENDED motion for summary judgement to the respondent by:

_____ certified mail (attach copy of receipt if available, otherwise you must
file receipt later with Clerk) **X USPS PRIORITY MAIL SIGNATURE CONFIRMATION**
_____ registered mail (attach copy of receipt if available, otherwise
you must file receipt later with Clerk) **Requires**

_____ messenger service (attach copy of receipt if available, otherwise you
must file receipt later with Clerk)

_____ personal service (attach affidavit if available, otherwise you
must file affidavit later with Clerk)

Receipt + ON BACK →

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)

[Signature]
Complainant's Signature

Street 1630 W. 33rd Place

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

Subscribed to and sworn before me

this 28th day

of July, 2008

[Signature]
Notary Public

My commission expires: 2-10-10

