

IN THE MATTER BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

RECEIVED
CLERK'S OFFICE

OCT 07 2008

STATE OF ILLINOIS
Pollution Control Board

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

NOTICE

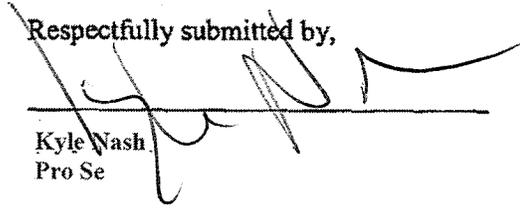
To: Clerk
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, Illinois 60601

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

Attorney for Respondent
James M. Knox
121 W. Chestnut, #3104
Chicago, Illinois 60610

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board a RESPONSE to Motion to Dismiss and AFFIDAVIT OF SERVICE, a copy of which is herewith served upon the assigned Hearing Officer, the Respondent, and the Respondent's Attorney.

Respectfully submitted by,



Kyle Nash
Pro Se

Dated: October 7, 2008
1630 W. 33rd Place
Chicago, Illinois 60608-6202
773.744.1954

RECEIVED
CLERK'S OFFICE

OCT 07 2008

STATE OF ILLINOIS
Pollution Control Board

PARAGRAPH 1 of the Respondent's Motion to Dismiss, by and through his attorney, James M. Knox, in part, states: ... *this matter has a long history...*

In fact, this matter has a far lengthier history than any of the dates relating to the IPCB Complaint itself indicate. For almost a year or more, before filing the Complaint, I made innumerable attempts to resolve this matter privately. All were unsuccessful.

My initial attempts included courteous and respectful - informal, as well as more formal - verbal and written communication with the Respondent. When I eventually became aware of an Illinois law that I thought pertained to the problem, I called the IPCB Attorney-of-the-Day to make certain and was told that it did. At that point, I provided the Respondent with a printed copy of that law, along with yet another respectful request to remove the wind chimes. They were not removed.

At that time, the Respondent was (and to the best of knowledge still is) employed by the City of Chicago as a Law Enforcement Officer. Having been presented with a printed copy of that law, I assumed that he would immediately comply with it. He did not.

Furthermore, at that time, I overheard the Respondent outside, telling the long-term live-in boyfriend of the Respondent in concurrent Complaint PCB 07-96, that no one had to do anything about their wind chimes; everyone could leave them up. This subsequently prompted the boyfriend to tell me that if a "cop" thought it was OK to leave the wind chimes up on his property, then it was OK for them to leave theirs up, too.

Since concurrent Complaints were filed with the IPCB, the Respondents in both of them and the live-in boyfriend of 07-96 have even more frequently, publicly, and sometimes loudly and profanely conferred with one another on this matter, frequently in front of my home where the windows are open. Further indication of just how closely these neighbors/Respondents have been involved together on these matters is their recently retaining the same attorney, James M. Knox.

Having provided the Respondent with a written copy of the Illinois state law that addressed this problem, yet without success regarding the removal of the wind chimes, I made one final attempt to resolve the matter privately. I requested that the problem be mediated between us (at no cost to either party) through the Center for Conflict Resolution (CCR) located in Chicago's Loop.

CCR's policy is to mail a printed copy of the initial request to the Respondent, followed-up by two (2) phone calls. Having received no response from the Respondent after those three contacts, CCR documented their unsuccessful attempts and sent me a copy. (That document was filed as an attachment to the initial Motion for Summary Judgment and referenced in the Amended Motion for Summary Judgment.)

In summary, before filing my initial Complaint with the IPCB, I tried everything within my power to resolve the matter reasonably, constructively, and privately with the Respondent, all to no avail.

PARAGRAPH 2 of the Respondent's Motion to Dismiss, by and through his attorney, James M. Knox, in part, states:

... the relief sought by the complainant is that the Board "order that the Respondent stop polluting."

This wording for the relief sought is intentional; it seeks the broadest possible remedy. I do not feel that the Respondent has acted appropriately in this matter or in good faith. Respondent replaced the huge wind chimes on his front porch with smaller ones. The huge wind chimes were then relocated to the Respondent's back yard. (Photographs of those wind chimes were filed as an attachment to the initial Motion for Summary Judgment and referenced in the Amended Motion for Summary Judgment.) At some point after the second, third, or maybe even fourth Phone Hearing, I saw that the Respondent had finally removed the smaller wind chimes from the front.

Because of his actions and his earlier advice to the Respondent in Complaint PCB 07-96 and her live-in boyfriend, I do not believe the problem will be decisively resolved without a judgment in my favor for the broadest remedy. Anything short of a broad judgment will, instead, very likely result in future noise being emitted from his property.

The exact nature of that future noise might take different forms than wind chimes – for example excessively loud music and/or noise from outdoor parties, early-morning banging, resumption of allowing their dog to bark non-stop, etc. Having learned a great deal from this case, I believe the Respondent would become more clever, perhaps hiding the source of the noise so it would not be easily detectable, if detectable at all. I further believe that without a broad Judgment in my favor, the Respondent's reaction will further escalate and his retaliation and harassment of me will continue.

My reasons for making these claims are as follow:

There have been noise issues involving the Respondent since he first moved into our previously quiet neighborhood any number of years ago. I have personally and directly addressed each issue with the Respondent as it has arisen in a courteous and respectful manner. While these previous issues have eventually been resolved, the interactions on the Respondent's end have been neither courteous nor respectful. I have been treated with ever-increasing disdain, by the Respondent and other members of his household, and the resolution of one noise problem is followed, at some point, by yet another noise problem.

Further, regarding this Complaint, which involves wind chimes, a direct, retaliatory connection is clear to me. Wind chimes first became an issue immediately following a protracted interaction over non-stop noise from their barking dog, which would continue literally unabated day-after-day for hours on end.

Within several days following the resolution of the barking was resolved, the Respondent purchased wind chimes that were approximately 2 1/2 feet in length and carried them from his car up his front steps. Unaware that such large wind chimes even existed, I curiously watched while they were immediately hung on his front porch. Our two houses are located only 6 feet apart and the Respondent has a very loud, resonant, and distinctive voice. I clearly overheard from my open window a discussion directed toward my home punctuated by s laughter, which included statements such as, "This will really get her now!"

Upon being served with her initial Complaint, the Respondent in concurrent case IPCB 07-96 (neighbors directly on the other side of my house) handed the Respondent in this case (as he sat outside on his front steps), a copy of her Complaint. As he looked over the document, I clearly heard through open windows the Respondent in this case, state loudly, emphatically, and repeatedly that it was “bullshit.”

Furthermore, for the first time in the 20 years that I've lived in my home, after the initial Complaint (IPCB 07-97) was filed with the IPCB, dog feces and assorted garbage have been tossed into my fenced back yard as well as in my front yard. In addition, I personally witnessed a large tree branch being intentionally thrown from the Respondent's section of the parkway onto my own.

More seriously, for the first time in the 35 years I have lived in Chicago, 20 years of that time in my current home, I began receiving unexpected calls, visits, and inspections from various Chicago City Departments and the Chicago Police, along with increased frequency of graffiti on my garage. Suspecting these occurrences may be directly related to my IPCB filing, I was able to determine from official 311/911 records that the Respondent, in fact, initiated some, if not all, of these actions. (See examples: Attachments 1 and 2)

PARAGRAPH 3 of the Respondent's Motion to Dismiss, by and through his attorney, James M. Knox, in part, states:

...the complainant refers to certain wind chimes allegedly located on the Respondent's residential two-flat property, adjacent to complainant's residence based upon her observations and recording that she obtained in 2007.

Nothing stated in Complaint PCB 07-97 or related to Complaint PCB 07-97 is alleged. Copies of photographs of both sets of wind chimes as well as a recording of the actual noise from those chimes (as heard from inside my home 6 feet away), were filed as attachments to the initial Motion for Summary Judgment and referenced in the Amended Motion for Summary Judgment.)

PARAGRAPH 4 of the Respondent's Motion to Dismiss, by and through his attorney, James M. Knox, in part, states that I [the Complainant] in my Amended Motion for Summary Judgment had acknowledged that the wind chimes had been removed.

In fact, after my complaint was filed the wind chimes from the front porch were taken down. However, before they were removed I made it clear to the Respondent in one or more phone hearings with the Hearing Officer "present," that the case would move forward regardless of if or when the chimes might be removed. The reasons are outlined in this Response.

In addition, I told the Respondent and Hearing Officer that I was still hearing chimes but could no longer determine exactly where they were located. I suggested that the original chimes had possibly been intentionally relocated and/or other chimes hung in a position that I would be unable to determine. The Respondent's back yard is covered by large vegetation, large patio umbrellas, and many other objects, and is fully enclosed by a high board fence. I can see almost none of the backyard.

IN CONCLUSION, seeing this case through to a positive official outcome for me from the IPCB is crucial. The Respondent has never taken this matter seriously and has continually felt that it's been in his best interest to disregard every attempt I made to resolve this matter privately, before filing a formal Complaint with the IPCB. No resolution has ever been sought, even privately, by the Respondent during the innumerable months this case has continued and he has chosen only very recently to retain an attorney.

There is a long prior history with the Respondent of problems related to unrelenting noise. The Respondent has demonstrated that he is not open to mediation and, even as a Chicago Law Enforcement Officer, has utter disregard for the law (even when that law is presented to him in print). In addition, he advised my neighbors (in Concurrent Complaint IPCB 07-96) that the entire matter was "bullshit." Furthermore, documented evidence has been provided as Attachments, of the Respondent's retaliation and harassment toward me.

I do not expect the Respondent's attitude, actions, or behaviors to change. In addition, without knowing this neighbor was himself a Chicago Law Enforcement officer, I have been told at my Chicago Police District that my presenting an official judgment from the IPCB is the only document that Law Enforcement Officers would honor if called to my home in the future for noise problems with the Respondent.

Therefore, I respectfully request that the Board find in my favor with the broadest possible remedy, thus decisively ending this matter. Granting a judgment in my favor would be the *minimal* deterrent to the Respondent regarding continued, escalated, and/or more "creative" ways of emitting noise from his property in the future, as well as preventing acts of retaliation and harassment toward me in the future.

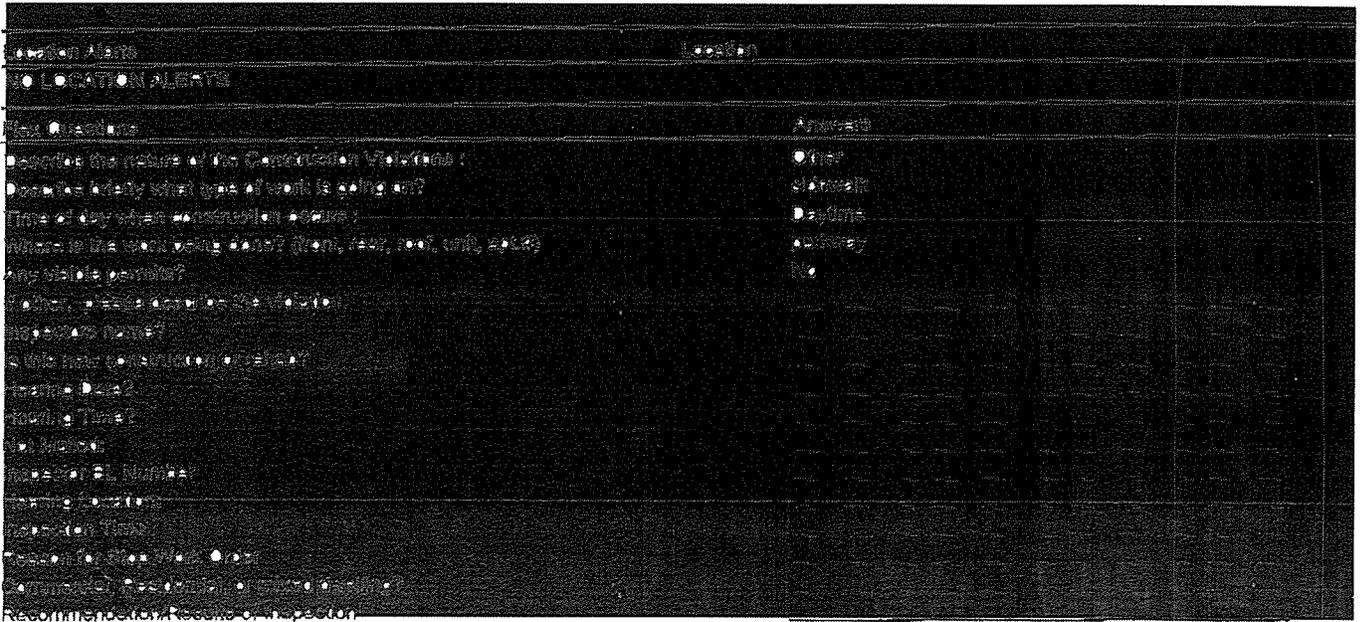
Service Request Summary Report

ATTACHMENT 1

Printed Date: Oct 05, 2007 09:31 AM

Type: Sanitation Code
 Area: Ward 11
 Group: Bureau of Sanitation - S/S
 Jurisdiction: City of Chicago
 Input By: XXXXXXXXXX
 CC Groups:
 Location: 1630 W 33rd Pl, Chicago, Il, 60608, Cook
 Location Details:

XXXXXXXXXX
 Priority: Standard
 Status: Completed
 Method Received: Phone call



Participants	Name	Address	Phone
BUILDING OWNER	NASH, KYLE	1630 W 33RD PL CHICAGO, IL, 60608	
BUILDING CONTACT CALLER / CONTACT RESPONDENT	JIMENEZ, LEWIS		773-847-3766

June, 2007

Personal Notes To Self:

Streets and Sanitation Superintendent Joe McMullin (11th Ward)

came out and spoke with us

He said neighbors frequently call in retaliatory complaints.

If the complaints are unfounded, they're unfounded.

Nothing happens. (Nothing did happen. He left; I never heard from him again.)

Service Request Summary Report

Printed Date: Sep 28, 2007 10:57 AM

Area: Ward 11

Jurisdiction: City of Chicago

Location: 1630 W 33rd Pl, Chicago, IL, 60608, Cook, Kyle Nash

Priority: Standard

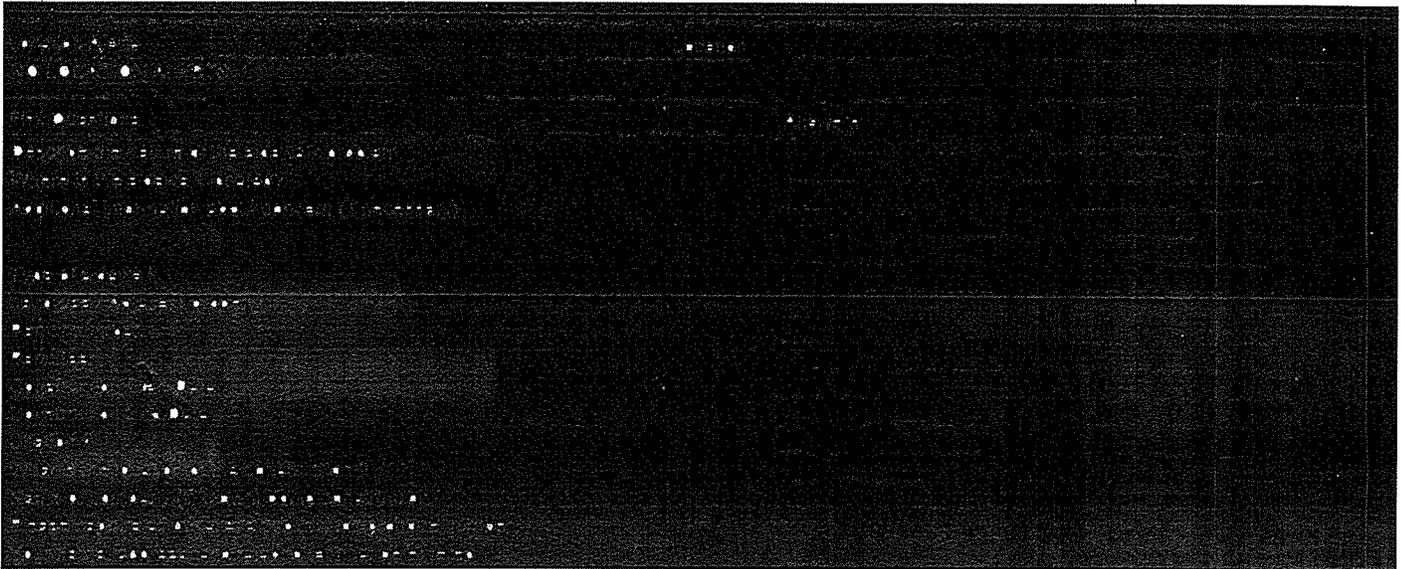
Status: Completed

Status Date: Sep 05, 2007 04:25 PM

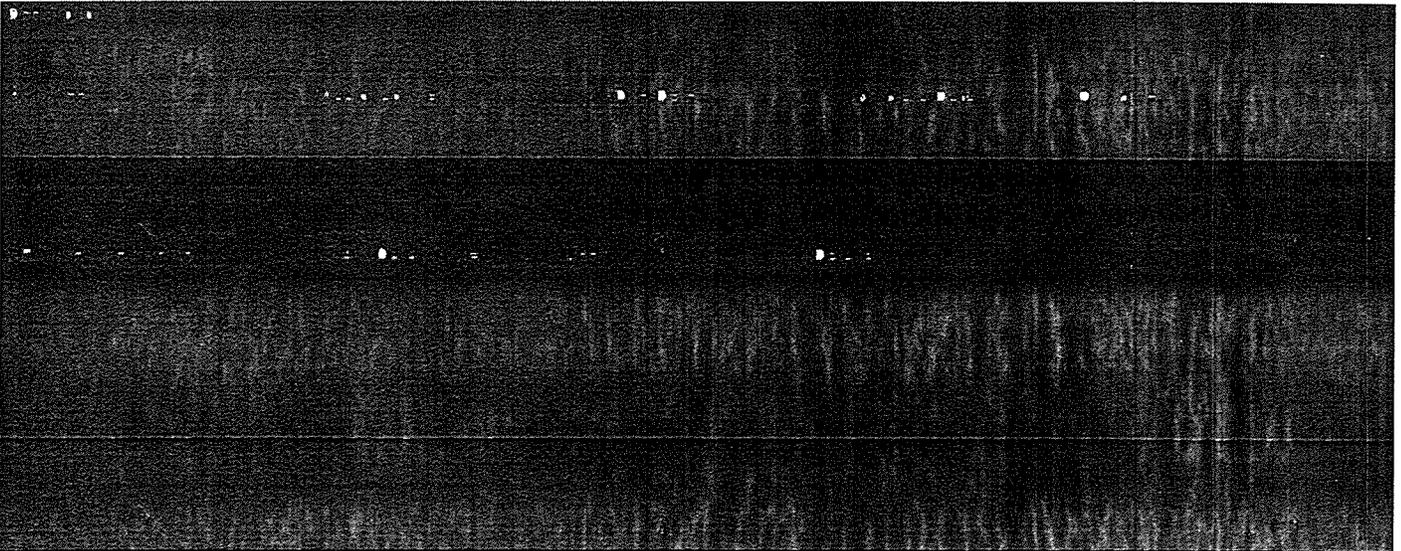
Created Date: Aug 16, 2007 11:27 AM

Created As: Original

Method Received: Internet



Participants	Name	Address	Phone
ALDERMAN	BALCER, JAMES	11TH WARD	773-254-6677
CALLER / CONTACT	JIMENEZ	E-Mail: jimenezlandl@comcast.net	773-847-3766



[Handwritten signature]

(Complainant's signature)

CERTIFICATION

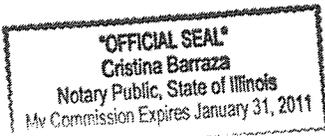
I, Kyle Nash, on oath or affirmation, state that I have read the foregoing and that it is accurate to the best of my knowledge.

[Handwritten signature]

(Complainant's signature)

Subscribed to and sworn before me this 7th day of October, 2008

Cristina Barraza
Notary Public



My commission expires: Jan 31, 2011

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year)
October 7, 2008, I served the attached notice and

Response to Motion to Dismiss to the respondent by:

certified mail (attach copy of receipt if available, otherwise you must
file receipt later with Clerk)

registered mail (attach copy of receipt if available, otherwise
you must file receipt later with Clerk)

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)

to the address below:

RESPONDENT'S ADDRESS:

Name Luis Jimenez

Street 1628 W. 33rd Place

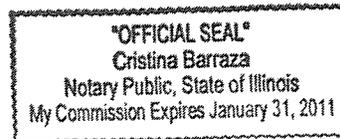
City, state, zip code Chicago, Illinois 60608-6202
(list each respondent's name and address if multiple respondents)

[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 7th day
of October, 2008
Cristina Barraza
Notary Public



My commission expires: Jan 31, 2011

CERTIFICATE OF SERVICE

I, the undersigned, on oath or affirmation, state that on (month, day, year)
October 7, 2008, I served the attached notice and
Response to Motion to Dismiss to Respondent's attorney by:

 certified mail (attach copy of receipt if available, otherwise you must
file receipt later with Clerk)

 registered mail (attach copy of receipt if available, otherwise
you must file receipt later with Clerk)

 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)

to the address below.

Name James M. Knox, Attorney for the Respondent

Street Chestnut Tower, 121 W. Chestnut, #3104

City, state, zip code Chicago, Illinois, 60610
(list each respondent's name and address if multiple respondents)


Complainant's signature

Street 1630 W. 33rd Place

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

Subscribed to and sworn before me
this 7th day
of October, 2008


Notary Public

My commission expires: Jan 31, 2011

