

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  
DEC 05 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

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

Reply to Respondents' Motion to Consolidate and  
Reply to Respondents' Reply to Complainant's Response to Respondent's 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  
Kyle Nash  
Pro Se

Dated: December 5, 2008  
1630 W. 33rd Place  
Chicago, Illinois 60608-6202  
773.744.1954

**CERTIFICATE OF SERVICE**

I, the undersigned, an oath or affirmation, state that on (month, day, year)  
December 5, 2008 . I served the attached notice and

Reply to Respondents' Motion to Consolidate and  
Reply to Respondents' Reply to Complainant's Response to Respondent's 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 \_\_\_\_\_

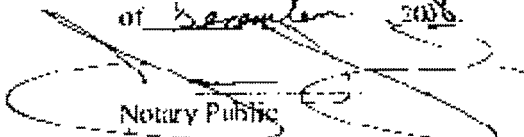
City, state, zip code Chicago, Illinois 60608-6202 \_\_\_\_\_  
(list each respondent's name and address if multiple respondents)

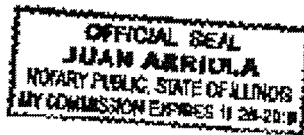
Complainant's signature \_\_\_\_\_

Street 1630 W. 33rd Place \_\_\_\_\_

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

Subscribed to and sworn before me  
this 7<sup>th</sup> day  
of December 2008.

  
Notary Public



My commission expires: 11-28-2010 \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath or affirmation, state that on (month, day, year)  
December 5, 2008 I served the attached notice and  
Reply to Respondents' Motion to Consolidate and  
Reply to Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss  
to the Respondents' 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. Knorr, Attorney for the Respondent

Street Chestnut Tower, 121 W. Chestnut, # 101

City, state, zip code Chicago, Illinois 60610  
(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 5<sup>th</sup> day

of December 2008

*[Handwritten Signature]*  
Notary Public



My commission expires: 11-28-2010


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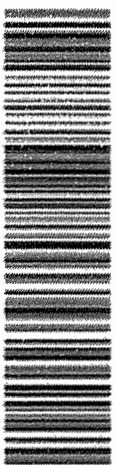
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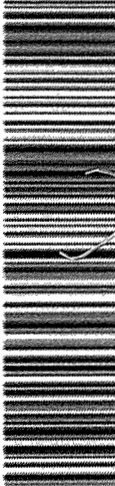
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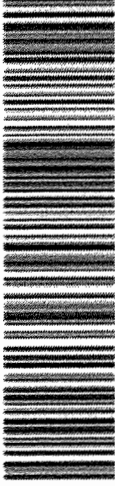
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Now comes Complainant, KYLE NASH, pro se, replying to the Respondents' Motion to Consolidate.



I respectfully request that the Board deny this Motion. The reasons for my request include, but are not limited to reasons outlined below:

1. Each of the original and amended Complaints were intentionally filed by me as separate and distinct cases at the initial date of filing. Each Respondent has been served individually for that and all further matters, even after jointly retaining an attorney.
2. New developments in each Complaint have arisen even since I filed my Reply to Respondent's Motion to Dismiss. These developments are specific to each Respondent and are related to each case, separate and distinct from one another. (These developments are fully outlined in my Reply to the Respondents' Reply to the Complainant's Reply to the Respondent's Motion to Dismiss, which is being simultaneously filed with this Reply to the Respondents' Motion to Consolidate.)

3. Paragraph 2 of the Respondents' Motion to Consolidate claims that the Complaints are identical with respect to the issues involved. In fact, two (2) completely separate and distinct sets of details relating to wind chime pollution were stated in the original and the amended Complaints that were filed against each Respondent.

4. Paragraph 1 of the Respondent's Motion to Consolidate claims that all the homes and properties more than similar, if not identical. . My house is a single-family home, the Respondents' are two-flats. There also exist differences in the front yards, backyards, and gangways on the properties regarding access, enclosures, vegetation, and the existence or not of air-conditioning units, garages, and assorted paraphernalia, both small and large, on the properties.

5. Two (2) separate and distinct time lengths exist during which each Respondent has lived in this neighborhood. (I have lived here the longest and have a consistent history of investment in this neighborhood, especially in keeping the neighborhood as quiet and safe as possible. I have addressed these issues and more, both individually and in cooperation with the local CAPS community police program.

6. Two (2) separate and distinct time lengths exist during which each Respondent has lived in their respective homes next to mine.

7. Two (2) separate and distinct personalities define each Respondent. These major differences have come to bear on each situation in different ways.

8. Two (2) separate and distinct relationships and interactions existed in the past between each Respondent and me, prior to my filing an original Complaint against each.

9. Two (2) separate and distinct relationships and interactions currently exist between each Respondent and me.

10. Two (2) separate and distinct relationships and interactions will exist in the future between each Respondent and me following an IPCB ruling.

11. Two (2) separate and distinct family constellations occupy each Respondent's home. These have directly and indirectly impacted each situation before, during, and also will following the Board's ruling.

12. Two (2) separate and distinct past histories exist regarding the presence or absence of noise pollution emanating from each Respondent's property prior to my filing the original Complaint against each.

13. Two (2) separate and distinct past histories exist regarding types and levels of noise pollution emanating from each Respondent's property prior to my filing the original Complaint against each.

14. Two (2) separate and distinct past histories exist regarding attempts to resolve the noise pollution emanating from each Respondent's property prior to my filing the original Complaint against each.

15. Paragraph 2 of the Respondents' Motion to Consolidate claims that the time frame in each case, which necessitated my filing each Complaint are identical. In fact, these two (2) cases are not identical with respect to time frame as clearly stated in the documents related to each case.

16. Two (2) separate and distinct lengths of time existed following the filing of each Complaint after which each Respondent finally removed her and his wind chimes from sight, not sound.



17. Two (2) separate and distinct personal reactions have existed toward me by each Respondent since the initial Complaint was filed.

18. Only one (1) Respondent, JIMENEZ, has been trained in the law through Law Enforcement. To the best of my knowledge, SOKOLWSKI has not.

19. Only one (1) Respondent, JIMENEZ, has been employed (for many years) by the City of Chicago as a professional Law Enforcement Officer. To the best of my knowledge, SOKOLWSKI has not.

20. Only one (1) Respondent, JIMENEZ, has engaged in formally documented retaliatory behavior toward me following the initial filing of the Complaint against him. (See City of Chicago attachments to Complainant's Reply to the Respondents' Motion to Dismiss). SOKOLWSKI has not.

21. Paragraph 2 of the Respondents' Motion to Consolidate requests that "...in the interest of judicial economy..." the two cases be consolidated. As stated before in previous documents, I tried in every way possible over a very extensive period of time to resolve these separate matters with each Respondent individually prior to filing a Complaint.

If each Respondent were concerned about judicial economy, during that time, each would have chosen to resolve their matter individually with me personally or through mediation (each individually declined to participate). Even after each Complaint was filed, each Respondent on their own could have chosen to initiate attempts to resolve the matter with me privately or through mediation. Each did not.

Furthermore, if SOKOLOWSKI was seriously interested in judicial economy and seriously interested in resolving the matter at all, she would have responded in some manner to my recent letter of November 12, 2008, suggesting that a meeting take place to discuss these matters. (See Paragraph 3 and Attachment 1 to Complainant's Reply to the Respondents' Reply to the Complainant's Reply to the Respondent's Motion to Dismiss: SOKOLOWSKI.)

Furthermore, JIMENEZ, as a Chicago Law Enforcement officer, has "... sworn to follow and uphold the law and of whom it is expected that " of whom it is expected that his "...on and off-duty conduct reflects both the highest standards of police service and personal responsibility" (12/5/08 City of Chicago Police website)

If he was seriously interested in judicial economy and seriously interested in resolving the matter at all, he would not simply offer assurance that he is a "... law abiding citizen" who could be fully trusted not to pollute any longer, his actions would support that.

In fact, as recently as November 14 and 15, 2008, he again blatantly disregarded the law. (See Paragraph 6 and Attachments 1-4 to Complainant's Reply to the Respondents' Reply to the Complainant's Reply to the Respondent's Motion to Dismiss: JIMENEZ.)

I am the only person in this matter who has had any interest in judicial economy. I have tried in every conceivable way to resolve each matter before having to file and for the entire time after filing. Representing my case pro se, I have nevertheless tried to engage in these proceedings correctly and as best I can. I have completed all documents, submitted evidence verifying allegations, met every, participated in all Status Hearings except one, and have addressed every matter in each Complaint in a thorough and serious manner.

22. Paragraph 2 of the Respondents' Motion to Consolidate states that the Complaints "... should be consolidated to ensure fairness to all." There is nothing about any thing that has happened over the past four (4) years (both informally and then formally after each Complaint was filed) related to this issue that has been fair to me. The amount of stress, time, energy, effort, monetary outlay, and lost wages that I have had to endure in this matter have been extensive and serious.

Throughout almost all of the past four (4) years, each Respondent individually has failed to take the matter seriously, either informally or formally.

Each Respondent, although having unlimited time and opportunity to resolve their matter with me prior to the Complaint being filed against them, chose not to. Each Respondent, although having unlimited time and opportunity to resolve their matter with me since the Complaint being filed against them, chose not to. Each Respondent individually chose not to submit Responses/Replies required of them by the IPCB nor followed all IPCB deadlines. Each Respondent individually did not participate in all IPCB phone hearings.

The only choice showing some seriousness was their decision to jointly retain an attorney and was exercised only near the end of the proceedings. It was not an option either chose individually or together during the extensive period of time that passed before. At no point during the extensive time period that has passed since the Complaints were filed did either Respondent file any Motion to Consolidate. Had that actually been important to them in any way, they would have taken it seriously and chosen to do so before now.

Based upon the aforementioned, I request that the Board deny the Respondents' Motion to Consolidate.

Respectfully,

Kyle Nash  
Pro Se

Now comes Complainant, KYLE NASH, pro se, filing a Reply to Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss.

I respectfully request that the Board rule in my favor.

Because I am engaged in these legal proceedings, pro se, I may be completely wrong about this, but I question the validity of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss because it was filed as consolidated reply. At the time it was filed, there had not yet been any ruling by the Board on the Respondents' Motion to Consolidate. Therefore, I would expect that until the Board has made a decision, that nothing would change. This is especially true given that my Reply to Respondents' Motion to Consolidate requests that the Board deny the Motion.

As a result, I am filing Complainant's Reply to Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss in the previous way. Please note that many, if not most, of the points raised in the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss have already been fully addressed in my Complainant's Response to Respondent's Motion to Dismiss and other documents I have previously filed.

**Paragraph 1** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

1. Both above captioned proceedings were filed by complainant, Kyle Nash, seeking relief from environmental noise pollution said to emanate from adjacent two flat residential apartment buildings, or from the respective yards or porch areas thereto, which are owned by the respective respondents herein, and are located on either side of complainant's own nearly identical two flat apartment building, each of the three located mid-block, in a City of Chicago near-Southside residential neighborhood; the three architecturally nearly identical buildings were constructed so as to stand some six feet apart, allowing only narrow passageways between buildings on either side of complainant's own building, with small open yards at the rear of each.

The homes and properties are not similar or not identical, relative to the Complaint. My house is a single-family home; the Respondent's is a two-flat. There also exist differences in the front yards, backyards, and gangways on the properties regarding access, enclosures, vegetation, and the existence or not of air-conditioning units, garages, and assorted paraphernalia, both small and large, on the properties. These facts are relevant to issues cited in my response to Paragraph 2 below.

**Paragraph 2** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

2. In response to complainant's initial pleadings herein, Respondents filed separate Motions to Dismiss which were filed on or about August, 2008, asserting that the noise making devices identified by complainant, viz wind chimes, have been removed from both of their respective properties more than one year ago, facts which are readily admitted by complainant; further, both respondents have advised their attorney that they do not intend nor will either of them ever install similar devices on their respective properties, front or back, in the future, and this fact has been made known to the complainant at Status conferences held herein by Bradley P. Halloran, Hearing Officer, with an offer by respondents through their attorney to enter into an agreed order to memorialize this agreement to preserve the status quo between the parties hereto and purchase peace.

Again, as stated during several Status hearings and other documents that have been filed, the wind chimes were removed from sight, however I have continued to hear chimes on and off ever since. In addition, the Respondent has continued to demonstrate the very reasons why I have no confidence that any such agreement would be followed. (See response to Paragraph 6 and Attachments 1-4)

**Paragraph 3** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

3. In spite of these voluntary efforts on the part of respondents to ameliorate this situation, complainant has now filed a RESPONSE to the Motion to Dismiss, introducing for the first time new extraneous matters, which are not referable to noise pollution, basing these matters on unsubstantiated hearsay statements which are unsupported, irrelevant and immaterial, with still no mention of noise standards purportedly violated.

The Respondent "voluntarily" removed the wind chimes only after several years during which it was fully known that a problem existed and was in violation of Illinois law. The wind chimes were removed from sight only after the Respondent was served with the Complaint and, even then, not immediately

Matters included in my Reply to Respondent's Motion to Dismiss were addressed in direct response to the suggestion that I acquiesce to an "...agreed order to memorialize this agreement to preserve the status quo between the parties hereto and purchase peace." My agreeing to anything like that would be solely founded upon my confidence in the honesty, character, and integrity of the Respondent in following through. I have not have any confidence and, as a result of recent further developments related to the case and cited in my response to Paragraph 6 and Attachments 1-4, I now have even less.



If the Respondent was seriously interested resolving the matter in any by agreement I would have expected, because he is a citizen or more importantly because he is a Law Enforcement Officer, that no additional examples of his disregarding the laws would ever have occurred again. In fact, the Respondent very recently disregarded the law again. Details are outlined in my response to Paragraph 6 and Attachments 1-4

I have fully met the burden of proof required by the applicable law in this case. All necessary evidence was submitted in the Original Motion for Summary Judgment and other documents I have filed in this case.

**Paragraph 4** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

4. Title VI, Noise 415 ILCS Section 24, provides that "...no person shall emit noise that unreasonably interferes so as to violate regulations or standards adopted by the Board;" while Section 24 also provides that "[T]he Board may adopt regulations, limitations, prescribe requirements, prescribe maximum permissible limits..." and, Sections 30-31 prescribe "...detailed explanation of violations alleged..." 31(a)(1)B, and C "actions that may resolve...;" and furthermore, Section 42 provides mitigation, duration and gravity considerations combined with "due diligence," considerations in such enforcement proceedings which we submit have been met in this case by the respondents who have - and this is not in issue, complainant freely admits this - by voluntarily removing the noise making devices, viz wind chimes, they have both mitigated the noise pollution by voluntary removal of the offending devices, and have been therefore duly diligent.

See previous response to Paragraph 2.

**Paragraph 5** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

5. Please keep in mind that the subject neighborhood in question where the three individual property owners reside, is a *reasonably* quiet, residential area, about a block from a busy thoroughfare, with Chicago Fire Department nearby and the usual ambulances, police and other emergency equipment moving up and down the nearby streets at all hours of the day and night, and with a playlot public park directly across the narrow street fronting the three properties where children of different ages are in evidence a good part of the day, with apartment buildings lining either side of the street on narrow lots with automobiles parked on either side, and with residents coming and going at all hours of the day and night, this is anything but a completely quiet, sleepy area by any stretch of the imagination.

The only noise that is relevant in this case is the Respondent's noise pollution about which the Complaint was filed. The issue of parking is relevant to the lack of available spaces on the block.

**Paragraph 6** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

6. Complainant would now, in her Response introduce for the first time extraneous and irrelevant matters, having no connection with the respondents, and is asking the Board to now consider "dog feces and assorted garbage" being tossed into her yard, tree branches and the like, unexpected telephone calls and graffiti mysteriously appearing, all of which the respondents, and each of them, denies having any involvement with, and categorically deny that they would ever institute, initiate or in anyway contribute to such goings on or occurrences which they abhor personally, and which as law abiding citizens would never condone and would jointly seek to prevent if it were within their power.

See previous response to Paragraph 2.

Also, the suggestion that the Respondent is a law-abiding citizen is false. In fact, it has now been formally documented with photos that he in continues to demonstrate blatant disregard for the law. As recently as November 14 and 15, 2008 the Respondent illegally parked his car in the critical Firehouse Swing out No Parking zone directly across from his house. (See ATTACHMENTS 1-4)

As a citizen, the law binds us all. As a Chicago Law Enforcement officer, the Respondent has further "...sworn to follow and uphold the law..." and of whom it is expected that "...on and off-duty conduct reflects both the highest standards of police service and personal responsibility." (City of Chicago Police website 12/5/08). In these documented cases, neither has occurred.

**Paragraph 7** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

7. We take notice of the fact that the Board has numerous meetings on momentous matters involving commerce and industry operating on a large scale, and this matter while minor in the grand scheme of things, is very important to the respondents, as well as the complainant, and should be resolved expeditiously on the pleadings.

This paragraph reads as deliberate and not-so-veiled attempt to minimize the importance of my Complaint relative to other matters before the Board. As a citizen and taxpayer of the State of Illinois, of which the IPCB is part, my complaint is no more or less important than any other complaint filed with the Board. Simply because I have been patient in this matter and understanding of the numerous pressures faced by the Board in general, neither is indication by me or by the Board that my Complaint lacks importance.

**Paragraph 8** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

8. Frankly, neither respondent can afford to conduct this new "fishing expedition" proffered by the complainant, although as neighbors, they too are concerned about the conduct of the neighborhood, do not wish to have refuse deposited in their own yards, excessive noise or the like interfering with neighborhood peace and quiet, and both would simply like to go on existing as law abiding members of the community, without undue interference from neighboring properties or their immediate neighbors, including the complainant, or anybody else.

I consider the statement "fishing expedition" a far too casual phrase given the seriousness of this Complaint. All of the choices the Respondent has freely made to-date, have brought things to this point. Whatever choices are made by the Respondent prior to the Board's final ruling will decide next steps and whether discovery will be necessary.

That the Respondent cannot "afford" this, has been the result of the Respondent's choice not to resolve this matter privately or through medication before the Complaint was filed or since. Only very recently has the Respondent decided to hire an attorney, which charge for their services. This is a choice, not a requirement. There has never been anything stopping the Respondent from engaging in this process pro se, as I have had to do all along because I cannot "afford" the extensive stress, time, energy, effort, monetary outlay, and lost wages that I have had to face in this matter, let alone hiring an attorney.

Again, the Respondent is clearly not law abiding. If that were true, no complaint would ever have had to be filed, especially after I provided the Respondent with a written copy of the relevant Illinois Law

**Paragraph 9** of the Respondents' Reply to Complainant's Response to Respondent's Motion to Dismiss states:

9. The chimes are down now and will stay down; both homeowner respondents go to work each day, Karen Sokolowski leaves between 6:30 and 6:45 a.m. each day and returns at 7:30 - 8:00 p.m., seven days a week, Mr. Jimenez similarly works long hours, and everyone wants this matter over with, concluded and resolved, so that they can go on with their lives.

In fact, I have previously cited this very information in support of my Complaint. The Respondent does work outside the home, while I work from inside my home and am therefore subjected both personally and in terms of my livelihood 24/7 to unwanted noise pollution emanating from the Respondent's property.

I completely agree that this matter should be "...over with, concluded, and resolved, so that [all parties} can go on with their lives." However, I feel that it actually should have been "...over with, concluded, and resolved, so that [all parties could] go on with their lives..." long before my filing a Complaint was necessitated and resulted in my having to engage in such a generally "costly" and protracted process that it has been for me. Only the Respondents choices have brought things to this point.

In support of my agreement that this matter be "...over with, concluded, and resolved, so that [all parties} can go on with their lives," I request again that the Board rule in my favor. That's the only way to best assure an end to the noise pollution and will act as proof required by the police so that they can and will act upon the problem in the future.

Respectfully,

Kyle Nash

Pro Se

(Complainant's signature)

CERTIFICATION

I, [Signature], 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 5<sup>th</sup> day of December 2009.

Notary Public

My commission expires:

11-24-2010



ATTACHMENTS 1-4

1. Critical firehouse swing-out No Parking zone that's located directly across the street from the Respondent's house.





2. Respondent's green van clearly parked in violation of the law.



3. Close-up of Respondent's Illinois license plate (obscured # 129241) with his Fraternal Order of Police sticker prominently located just to the left of it.



4. Respondent's green van illegally parked with silver car that later parked in front of it.

