

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

MILTON C. and VIRGINIA L. KAMHOLZ,)
)
Complainants,)
)
v.) PCB 02-41
) (Citizens Enforcement - Air, Noise)
LAWRENCE and MARIANE SPORLEDER,)
)
Respondents.)
)

ORDER OF THE BOARD (C.A. Manning)

On September 26, 2001, Milton and Virginia Kamholz (complainants) filed a complaint against Lawrence and Mariane Sporleder (respondents). Complainants allege, among other things, that respondents caused or allowed the continuous riding of dirt bikes, all-terrain vehicles (ATVs), and go-carts, resulting in noise and air pollution. On January 10, 2002, the Board accepted this case for hearing, finding that two of the allegations were frivolous, but that the remaining allegations were neither duplicitous nor frivolous.

On March 5, 2002, complainants filed a motion for summary judgment (motion). On March 14, 2002, respondents filed an answer to the complaint (answer).¹ Respondents did not file a response to the motion. For the reasons stated below, the Board denies complainants' motion for summary judgment and orders the case to hearing.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings and depositions, together with any affidavits and other items in the record, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. See Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 693 N.E.2d 358 (1998). In ruling on a motion for summary judgment, the Board "must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370.

Summary judgment "is a drastic means of disposing of litigation," and therefore it should only be granted when the movant's right to the relief "is clear and free from doubt." Dowd, 181 Ill. 2d at 483, 693 N.E.2d at 370, citing Purtill v. Hess, 111 Ill. 2d 229, 240, 489 N.E.2d 867, 871 (1986). However, the non-movant must "present a factual basis, which

¹ On March 7, 2002, the hearing officer granted respondents' motion for extension of time to file an answer. Respondents had until March 19, 2002, to file an answer.

would arguably entitle [it] to a judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2d Dist. 1994).

BACKGROUND

Complainants have lived at 1316 Sullivan Road in Woodstock for 31 years. Comp. at 1, 4. Their home is allegedly 50 feet north of respondents’ property, which is located at 1306 Sullivan Road. Comp. at 3. Complainants contend that respondents continually ride and “rev” the motors of dirt bikes, ATVs, and go-carts in a manner which creates “excessive, intolerable noise, offensive, sickening, [and] smelly exhaust fumes, and in dry weather, annoying dust.” Complaint (Comp.) at 3. Complainants allege that respondents’ activities cause noise and air pollution in violation of Section 9(a) of the Environmental Protection Act (Act) (415 ILCS 5/9(a) (2000)) and Sections 900.102 and 901.102(a) of the Board’s regulations (35 Ill. Adm. Code 900.102, 901.102(a)). *Id.* at 2.

Complainants allege that respondents’ riding prevents them from enjoying their home, has depreciated the value of their property, and has negatively impacted their physical and mental health. Complainants state that the noise from respondents’ bikes, ATVs, and go-carts prevents them from conversing on the phone, hearing their television, opening their windows, or using their patio, deck, yard, or screened-in porch. Comp. at 3-4. Complainants contend that the noise is so severe that they cannot go outside when respondents are riding. *Id.* at 3.

The fumes also allegedly irritate complainants to the extent that they have developed sore throats and headaches, and complainants state that the odor has infiltrated their home. Complainants allege that their “entire living area is consumed with noise and fumes.” Comp. at 3. Complainants state that respondents’ activities have also caused complainants to have emotional problems. *Id.* at 4. Complainants relate that they become extremely frustrated and angry because they cannot escape the intrusiveness of the noise and fumes. *Id.*

According to complainants, the extent of the problem with respondents has worsened over the last decade. Comp. at 3. Complainants state that respondents began operating an ATV in the early 1990’s. At that time, complainants found the noise tolerable and the dust was not as severe. *Id.* The dust allegedly increased when respondents installed a dirt track and began operating go-carts. According to complainants, the noise level increased again in 1995, when respondents started to ride dirt bikes. Complainants also contend that respondents and their friends drag raced a truck and car, adding to the noise and fumes. *Id.* Complainants allege that “[s]chool hours were the only quiet hours during the week, and weekends were horrible.” *Id.* Complainants state that respondents generally rode daily, morning until night. *Id.*

APPLICABLE STATUTES AND BOARD REGULATIONS

Section 9(a) of the Act, states:

No person shall . . . cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois 415 ILCS 5/9(a) (2000).

Section 3.02 of the Act defines “air pollution” as:

[T]he presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 415 ILCS 5/3.02 (2000).

Section 24 of the Act provides that:

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 regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2000).

Section 900.102 of the Board regulations provides that:

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 [Act], so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. Code 900.102.

Section 900.101 of the Board regulations defines “noise pollution” as:

[T]he emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101.

Section 901.102(a) of the Board’s regulations prohibits emitting sound above numeric limits during daytime hours from a source on Class A, B, or C land to any receiving Class A land. *See* 35 Ill. Adm. Code 901.102(a).

Section 101.516 of the Board’s procedural rules provides that:

If the record, including pleadings, depositions and admissions on file, together with any affidavits, shows that there is no genuine issue of material fact, and that the moving party is entitled to judgment as a matter of law, the Board will enter summary judgment. 35 Ill. Adm. Code 101.516.

ARGUMENTS

In the motion, complainants allege that fumes and dust generated by respondents' vehicles "flow into complainants [sic] outside living area and also penetrate the interior of their home causing headaches, sore throats, a smelly house, and emotional distress." Motion (Mot.) at 3. Complainants argue that these actions constitute air pollution in violation of Section 9(a) of the Act. Complainants further argue that the sounds emitted by respondents' vehicles violate the nuisance noise prohibition and daytime numeric noise limits under 35 Ill. Adm. Code 900.102 and 901.102(a), respectively.² Complainants allege they are entitled to summary judgment because no genuine issues of material fact exist. Mot. at 1.

Respondents did not respond to the motion. Under Section 101.500(d) of the Board's procedural rules, if no response to a motion is filed within 14 days, the non-movant who fails to respond will be deemed to have waived any objection to the Board granting the motion. Respondents did, however, file an answer. In the answer, respondents admit that their grandchildren occasionally use the motorized vehicles, but claim that the vehicles have the standard factory-installed mufflers. Answer (Ans.) at 1. Respondents deny that the vehicles create excessive and intolerable noise, as complainants allege. Ans. at 1. Respondents agree that the riding began in the 1990s, but deny the allegations regarding the noise and discomfort the riding caused. Ans. at 2.

Respondents also raise three "affirmative defenses" in their answer. Respondents allege that: (1) complainants have not demonstrated a violation of the applicable statutes; (2) complainants have failed to show how the alleged pollution unreasonably interferes with the enjoyment of life or property; and (3) motorcycles should be regulated by the standards set forth in Section 902.122 (35 Ill. Adm. Code 902.122), not Section 901.102.

ANALYSIS

The Board cannot grant summary judgment to a party if a genuine issue of material fact exists. *See Dowd*, 181 Ill. 2d at 483, 693 N.E.2d at 370. Complainants allege that respondents' riding prevents them from enjoying their home, has depreciated the value of their property, and has had a negative impact on their physical and mental health. Complainants state that the emissions from respondents' bikes, ATVs, and go-carts prevents them from conversing on the phone, hearing their television, opening their windows, or using their patio, deck, yard, or screened-in porch. Respondents deny these allegations. Because the parties dispute the nature and extent of any noise and air emissions from respondents' vehicles, as well as any resulting impact on complainants, genuine issues of material fact exist. The Board accordingly denies complainants' motion for summary judgment.

The Board also finds that respondents' three purported affirmative defenses are not, by definition, affirmative defenses because even if proven at hearing, they would not impact the

² Although complainants also cite Section 24 of the Act, their original complaint did not allege violations of Section 24. Any allegation of violating Section 24 is not part of the Board's deliberation today.

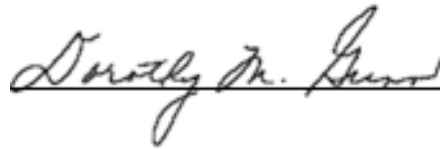
complainant's legal right to bring the action. *See People v. Crane*, PCB 01-76 (May 17, 2001). Therefore, the Board on its own motion strikes these assertions as affirmative defenses. Additionally, the Board has previously determined that complainants' Section 901.102 allegation is not frivolous. *See Kamholz v. Sporleder*, PCB 02-41 (Jan. 10, 2002). However, any facts asserted within these purported affirmative defenses may be considered by the Board, if established at hearing.

CONCLUSION

The Board denies complainants' motion for summary judgment and strikes respondents' affirmative defenses. The Board orders the case to hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 6, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board