BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

BARBARA STUART
RONALD STUART
Complainants)
v.) PCB 02-164
FRANKLIN FISHER)
PHYLLIS FISHER)
Respondents)

July 29, 2002

COMPLAINANTS RESPONSE TO RESPONDENTS MOTION TO COMPEL COMPLIANCE WITH DISCOVERY

Complainants Barbara Stuart and Ronald Stuart are hereby complying to respondents request to compliance with discovery, pursuant to 35 Ill. Adm. Cod 101.610 and in support thereof, states as follows:

RESPONDENTS INTERROGATORY REQUEST FOR PRODUCTION

Please note: It was an oversight on the part of Complainant, Barbara Stuart who did not have the previous sent responses, sworn under oath or notarized. Not being an attorney and trying the best to follow all regulations, I simply failed to complete that requirement of the IPCB. However, I will be willing to sign an affadavit that all previous filed responses to Mr. Harding were the truth, and were mailed on the dates as stated on the certificates of service. I apologize to the board for my lack of thoroughness.

1. On October 10, 2002, Complainants responded to Respondent's Interrogatory 23, providing the name, address and telephone number of Gregory Zak, as an expert/opinion witness, but failed to provide, as requested, the expert's report, stating that is was still being prepared.

Response: Production of Information Section 101.614.c. All discovery must be completed at least 10 days prior to the scheduled hearing in the proceeding unless the hearing officer orders otherwise. After to speaking to Mr. Zak about typing up his report for the board, he wishes to inform Mr. Halloran and Mr. Harding that there is no report as of yet. Mr. Zak knows that no hearing date is set, although the one in January 2003 was cancelled. He is very much involved in this case. Because I am in a financial situation Mr. Zak wanted to hold off making the report, hoping that the respondent Mr. Fisher would agree to offer a type of settlement and a hearing would not be necessary. The report is costly and Mr. Zak wanted to save me the expense. However, he will comply with Mr. Halloran's request if he decides to set a deadline. Mr. Halloran if you need to speak with Mr. Zak please feel free to contact him. 217-483-3507. He is quite busy now due to other pending noise pollution cases in courts in Illinois. I am sure he will be able to settle on a final date of a report.

3-05

1. Contacting the expert directly in early April of 2003, Respondent's attorney was told that no report had been prepared, but that Mr. Zak had been retained.

Response: Mr. Zak stated to me, Barbara Stuart, that Mr. Harding never once asked him about a report.

2. On April 25, 2003 Complainants broadcast to Dorothy Gunn, Bradley Halloran, Bobby Petrungarro and Greg Zak a libelous letter misrepresenting the content of that conversation and alleging unethical conduct against Respondent's counsel, including violation of an inapplicable rule which some of the recipients may not have know was applicable.

Response: This letter sent to the above was not libelous. Mr. Harding's conduct was unethical, and the rule mentioned is applicable. Mr. Zak was contacted about the above matter and he has offered to sign an affadavit regarding the conversation between he and Mr. Harding on that day in April. Mr. Zak is a man of high standards, and takes his job seriously and always obeys the rules.

3. Given Respondent's inability to obtain Mr. Zak's report without running the risk of further such conduct by Complainants and the damage to an otherwise exemplary reputation for ethical conduct which would naturally result from further informal, although legitimate, attempts to obtain the report, an order compelling production of the report seems the only appropriate alternative.

Response: We cannot produce a report which Mr. Zak has not yet written. Although he has the necessary information and readings regarding this case. Again it is solely up to the our hearing officer Mr. Halloran to make this decision on a deadline for Mr. Zaks report. It is the right of the Illinois pollution control board and our hearing officer to delegate what type of action should be sought. Again Mr. Zak has been holding off typing up the report hoping a settlement would be reached by the respondents, saving us money, if this case was not to go to a hearing.

To summarize the documents which were sent along with the "Interrogatories and Request for Production to Complainants", the following is a list given to Mr. Harding.
Exhibit A: Sgt. Nudera, Evidence tech Will County Sheriff Office no. 2001-013853
Exhibit B: Officer Spiegel, Will County Sheriff Dept. Incident report 7-26-02
This was the day Mr. Fisher made threatening remarks to me and a neighbor.
Exhibit C: Petition of neighbors wanting respondent to stop using cannon.
Exhibit D: Tape from the Will County dept.Land Use and recording of the cannon noise from my property. **Note: Mailing tape to Mr. Harding before August 20, 2003.**
Exhibit E : Letters written by Dr. Battista, on behalf of my son Michael Are actually two letters. One from Dec. 2002 requesting Mr. Fisher to stop Using the cannons requested by Dr. Battista to the Will County States Attorney office in Joliet, Illinois. Michael's hearing ability decreased over the summer of

Exhibit E : (cont) 2002 when the cannons were operating. His hearing loss is Sensorneural. Letter was sent to the Will County States attorneys office.

Exhibit F: Letter from Veterinarian stating sedation has been prescribed for two healthy Golden retrievers who are terrified of the gunshot like sound from cannons.

Exhibit G: Copy of C.T. head report to rule out patholology from Dr. Battista. Also Were 2 Audiograms from Ingalls Calumet City Audiology department. And there are 3 audiograms and consultation reports regarding Michael's hearing loss from Dr. Battista to Dr. Lofchy. Dating up to 9-27-02.

Exhibit H: A letter from Dr. Marquis who treats my sons for problems. He was also treating me for anxiety and problems related to the cannon noise.

Exhibit I: Letter from Dr. Trudeau (veterinarian) who treated dog Samantha who died Due to compressed discs in the back. She died the very same day that Mr. Fisher started the cannons. The purpose of this letter is to show how petrified My dogs are of the propane cans. It is not being used to compensation reasons Because nothing can ever replace her.

Exhibit J: Another letter from Dr. Battista to the States Attorney Office requesting Stopping of the cannons for Michael. Michael was complaining of ringing In the ears in October. At the visit with Dr. Battista in December of 2001. Michael has not been able to go outdoors during the summer when the Cannons are running. It is painful for him as well as damaging to his hearing.

Exhibit K: Unfortunately I was not able to correlate my cam corder recording of the Decibel levels of the cannons and transfer them on a tape for this exhibit Will Probably have to be eliminated. Although Mr. Zak can prove sound Decibel levels from Propane Cannons.

Comment: I will be sending a copy of the Will County Sheriff office with the decibel levels of the cannons. The copy of the tape will be sent to Mr. Harding before the August 20, 2003 teleconference.

As far as Greg Zak and his report, Mr. Halloran please notify him and establish a cut off time for obtaining a report. I really don't know his schedule. Thank you for your help in this situation.

This should complete all my obligations to establish proof and documents for discovery. However, I will be submitting data which I have obtained from reliable sources including Universities of Agriculture, IDNS, the Dept. of Agriculture, Orinthologists, and the Institute for hearing disorders. Along with studies and documented findings related to hearing problems. I will be requesting to use this information to present actual facts to the board. Copies will be sent to Mr. Harding, Mr. Halloran, the IPCB, as well as the States Attorney's office. I will have this information out to everyone before our next tele conference on August 20th.

Certificate of Service

We the complainants, Barbara Stuart and Ronald Stuart, certify that on July 29, 2003 we served the attached responses for request to compel compliance to certain discovery, to the attorney David Harding, representing the respondents Frank Fisher and Phyllis Fisher. All responses were sent to Mr. Harding, Mr. Halloran, Dorothy Gunn, Greg Zak, and Bobby Petrungarro of the Will County States Attorney's office in Joliet, Illinois. All documents were mailed via U.S. mail at the Beecher Post Office in Beecher, Ill 60401 on July 29, 2003. Names and addresses of recipients are listed below.

Barbara B. Stuart 7-28-03
Barbara Stuart date

Ronald H. Stuart 7-28-03
Ronald Stuart date

Barbara and Ronald Stuart
213 E. Corning Rd.
Beecher, Illinois 60401
798-946-9546

Case no.
PCB 02-164

Mailed to:

Bradley P. Halloran
Illinois Pollution Control Bd.
James R. Thompson Ctr.
Suite 11-500
100 W. Randolph St.
Chicago, Illinois 60601

David Harding
Lopez and Harding
Attorney for respondent
100 N. La Salle St.
Chicago, Illinois 60602

Dorothy Gunn
Clerk of the IPCB
J. Thompson Ctr.
Suite 11-500
100 W. Randolph
Chicago, Il. 60601

Will County States Attorney Office
Bobby Petrungarro
Assistant States Attorney
Will County States Attorney Office Courthouse
14 W. Jefferson Room 200
Joliet, Il. 60432

Gregory Zak
Noise Solutions
1-217-483-3507

All information provided on recycled paper

PROOF OF SERVICE

I, the undersigned, on oath (or affirmation) state that I have served on the date of July 29, 2003, the attached response to compel compliance with certain discovery, by U.S. Mail at the Beecher post office, Beecher, Illinois 60401 having proper postage, upon the following persons:

David Harding
Attorney for:
Franklin Fisher and Phyliss Fisher
100 N. LaSalle St.
Chicago, Illinois 60602

Bradley P. Halloran
Hearing officer
Illinois Pollution Control Bd.
James R. Thompson Ctr.
100 W. Randolph St.
Chicago, Illinois 60601

Dorothy Gunn
Clerk of IPCB
Suite 11-500
100 W. Randolph
J. Thomspson Ctr
Chicago, Illinois
60601

Will County States Attorney Office
Bobby Petrungarro
Assistant State's Attorney
14 W. Jeffereson,
Joliet, Illinois 60432

Gregory Zak
Noise Solutions
Chatham, Illinois
1-217-483-3507

Case no.
PCB 02-164

Barbara Stuart 7-28-03
Barbara Stuart (Complainant) date

Ronald Stuart 7/29/03
Ronald Stuart (Complainant) date

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this 28th day of July 2003

Notary Public

"OFFICIAL SEAL"
JENNIE M. GRAY
Notary Public, State
My Commission

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Barbara Stuart and Ronald Stuart,	)	
Complainants	)	
v.	)	No. PCB 02-164
	)	Citizen Enforcement
Franklin Fisher and Phylliss Fisher, Respondents	)	

RESPONSE FOR REQUEST FOR ADMISSION

In compliance with provision of 35 Ill.Adm.Code 101.618, A thru F. the complainants, Ronald Stuart and Barbara Stuart are responding with the respondents second request for admission. Previous responses sent on or before April 30, 2003.

1. Complainant, Barbara Stuart, was the only person to contact Mark Schneidewiak of the Will County Agriculture Department regarding Franklin Fisher prior to Franklin Fisher's receipt of an anonymous letter, a copy of which is attached here to as Exhibit A.

Answer:
Yes, at one time over a year ago, I did contact Mark Schneiderwiak, however, I have no idea if I made that contact prior to the receiving of an anonymous letter (Exhibit A) written to Franklin Fisher. This is a rather broad assumption of the respondent.

2. Complainant, Barbara Stuart, authored and or instigated the authorship of an anonymous letter , a copy of which is attached hereto as Exhibit A.

Final Answer
Denial : No I did not author or instigate the authorship of this alleged letter labeled exhibit A. This is clearly an assumption of the respondent. I have no idea who wrote this alleged letter to Mr. Fisher.

3. Complainant Barbara Stuart, sent or instigated the sending of an anonymous letter to Franklin Fisher, a copy of which is attached hereto as Exhibit A.

Final Answer
Denial
I did not instigate the authorship, author, or send this letter to Franklin Fisher. Again this is clearly an assumption made by the respondent.

4. The letter to the editor, a copy of which is attached hereto as Exhibit B, was authored by Complainant, Barbara Stuart, on or After September 5, 2002.

Answer

Yes I did write this "letter to the editor", however, the above request for admission is irrelevant to the case at hand which is the propane cannons being a noise nuisance and taking away our enjoyment of property rights, and the cannons being a threat to our sons sensorneural hearing loss increase.

5. The letter to the editor, a copy of which is attached hereto as Exhibit C, was authored by Complainant, Barbara Stuart, on or after September 5, 2002.

Answer

Yes, I did write this letter, however the above request for admission is irrelevant to the case at hand which is regarding the impulse noise coming from the propane cannons.

6. The letter to the editor, a copy of which is attached hereto as Exhibit D, was authored by Complainant, Barbara Stuart, on or after September 5, 2002.

Answer

Yes, I did write this letter, again the above request for admission is irrelevant to this pending case before the Illinois Pollution Control Board.

7. The letter to the editor, a copy of which is attached hereto as Exhibit E, was authored by Complainant, Barbara Stuart, on or after September 5, 2002

Answer

Yes, I did write this letter to the editor, however it is irrelevant to the case at hand with the IPCB regarding the nuisance of noise. **Which is due to the possible violation of Title VI (415 ILCS 5-23, 5-24. The above letter to the editor had no relevancy to the issue at hand in this case.**

8. On July 21, 2002,Complainant, Barbara , distributed copies of a two page letter, a copy of which is attached hereto as Exhibit F, to each person occupying property, either as residence or business, abutting the land which is the home of Franklin Fisher and to various other persons in the immediate vicinity.

Answer

Yes,I did distribute a two page letter to certain nearby residents affected by the noise. Some of these people signed a petition complaining of the noise. According to the "First Amendment in the Constitution of the U.S.", I have the right to freedom of speech. My intentions were for the benefit of my neighbors. I consider myself a"good" neighbor. Many people were unaware of where the source of noise was coming from.

9.On various dates since August 8, 2001 and continuing through the present, Complainant, Barbara Stuart has solicited various persons to take legal action against Franklin Fisher for various causes.

Answer:
Objection. What does Mr. Harding mean by "various persons". I contacted some governmental officals regarding the noise, because that is my right to do so. It was the Will County States Attorneys office that decided to become involved in this case for reasons I do not even know.

10. Prior to appearing on the "Judge Mathis" television program, Complainants, Ronald Stuart and Barbara Stuart, signed a document in substance identical to that attached hereto as Exhibit G.

Answer
Denial. As stated before we have no such document/s in our possession and do not recall signing it. After the "small claims" case was dismissed we felt these documents no longer were needed. We do not feel comfortable stating we signed the above documents if we do not have them in our possession. Again the small claims case was given over to the Judge Mathis Show for a request for damages which our dog sustained on 8-8-01 the first morning Frank Fisher used his propane cannons. Our dog sustained fatal back injuries when she heard the cannons go off. Note: the laws of the "Judge Mathis Show", are laws constructed and followed by the State of California. The case is closed.

PROOF OF SERVICE

I, the undersigned, on oath (or affirmation) state that I have served on the date of July 29, 2003, the attached response for request for admission, by U.S. Mail at the Beecher post office, Beecher, Illinois 60401 having proper postage, upon the following persons:

David Harding
Attorney for:
Franklin Fisher and Phyliss Fisher
100 N. LaSalle St.
Chicago, Illinois 60602

Bradley P. Halloran
Hearing officer
Illinois Pollution Control Bd.
James R. Thompson Ctr.
100 W. Randolph St.
Chicago, Illinois 60601

Dorothy Gunn
Clerk of IPCB
Suite 11-500
100 W. Randolph
J. Thomspson Ctr
Chicago, Illinois
60601

Will County States Attorney Office
Bobby Petrungarro
Assistant State's Attorney
14 W. Jeffereson,
Joliet, Illinois 60432

Gregory Zak
Noise Solutions
Chatham, Illinois
1-217-483-3507

Case no.
PCB 02-164

7/28/03
Barbara Stuart (Complainant) date

7/28/03
Ronald Stuart (Complainant) date

Notary Seal

SUBSCRIBED AND SWORN TO BEFORE ME this 28th day of July, 2003

Notary Public

"OFFICIAL SEAL"
JENNIE M. GRAY
Notary Public, State of Illinois
My Commission Expires 09/18/03

Copy for Dorothy Gunn

ORIGINAL

July 29, 2003

To: Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 W. Randolph St.
James R. Thompson Ctr.
Suite 11-500
Chicago, Illinois 60601

From:
Ronald and Barbara Stuart
PCB no. 02-164
213 E. Corning Rd.
Beecher, Illinois 60401
708-946-9546

Dear Mr. Halloran,

Per your request from our last teleconference in July, I am sending to you the answers to the request for admission, (second request), and the request for compliance for discovery regarding documents from Mr. Harding attorney for Frank and Phyllis Fisher.

I am relieved that you want to see these papers, because quite frankly I am not getting much cooperation from neither the Franklin Fisher or Mr. Harding. Not being an attorney and trying to represent one's self on a case to say the least is extremely difficult. I have no choice, I must do this due to financial situations.

Mr. Harding really did not answer many of my discovery requests. To date I still do not know the operator of the farm of Franklin Fisher. I also do not have any proof of records of better crop yields due to using the cannons. Or a site map of his property.

Mr. Fisher has not told the truth on a few of our discovery requests. One being: not knowing any neighbors in a 25 miles radius using the cannons. There are three produce growers Vos, and Bultema's (both less than 5-8 miles away) who have chosen not to use cannons out of respect of their neighbors. And these growers also feel the cannons are too loud and annoying near their homes. He (Mr. Fisher) has also denied not knowing the Barton Family who lives near his property some 200 feet away from his home. These people (the Barton's) are related to Mr. Fisher.

I am very distraught and disgusted by the way this discovery is going. Mr. Fisher is not being honest. The attorney Mr. Harding is either being lied to or just not cooperating. Quite honestly I don't know what or who to believe.

My husband and I have done our very best to honest, forthright, and cooperative. I truly believe that the respondent and his counsel need to give us the same courtesy and not evade questions pertaining to discovery.

We had no intentions of this ordeal lasting this long. Propane cannons being used in a mixed farming, but mostly residential area, is cruel to all residents. Too many bad circumstances have occurred to our family and other neighbors due to these devices. We want nothing more to expedite this hearing.

I would like to submit to the board all the substantial documents of important information regarding the effectiveness of propane cannons, noise, hearing damage from intermittent sound, bird control methods, and documented facts regarding the alternatives to using cannons. These are reliable studies conducted at well known Universities in the Midwest. I would also like to submit correspondence which I have with several governmental agencies such as the INDS, the Farm Bureau of Illinois, and the Biologist of the Will County Farm Bureau, Joseph Rogus. Joe Rogus has written an up to date explanation of how growers are controlling birds from their fields and how propane cannons are being used less and less as a deterrent source. Also I have written reports from Orinthologists regarding studies of crows habits, intelligence, and nature. This information in my opinion is of great value to this case at hand. It took me over a year to research propane cannons etc. It should undoubtedly show Proof of Burden of the many issues at hand regarding the farmer (Mr. Fisher) employing the propane cannons.

These cannons are a nuisance, they are taking away of enjoyment of being outdoors. I have one witness who is going to testify she sold her home last year due to the frightening sound. Her daughter age 5, stayed indoors for weeks thinking a man with a gun was outdoors waiting for her to shoot her. Imagine if you can what is was like for this little girl. I would like to send this important information to you before our next teleconference meeting on August 20th. I hope the board will feel it is pertinent to the case at hand. Please know I respect and admire farmers, it is the cannons I am totally against.

Thank you for your time. I look forward to this being resolved. This is no way to live.

Sincerely,

Barbara Stuart