

ILLINOIS POLLUTION CONTROL BOARD
June 1, 2023

PAUL CHRISTIAN PRATAPAS,)
)
Complainant,)
)
v.) PCB 23-57
) (Citizens Enforcement - Water)
CHELSEA MANOR BY M/I HOMES,)
)
Respondent.)

ORDER OF THE BOARD (by B.F. Currie):

On November 15, 2023, Paul Christian Pratapas (Mr. Pratapas) filed a citizen’s complaint (Comp.) against Chelsea Manor Homes by M/I Homes (M/I). The complaint concerns M/I’s residential construction located at Commons Drive in Aurora, DuPage County.

ORDER TO FILE AMENDED COMPLAINT

On December 16, 2022, M/I filed a motion to dismiss on the grounds that the complaint is frivolous, and a motion to dismiss the complaint by other affirmative matter avoiding the legal effect of or defeating the claim. On April 6, 2023, the Board struck one of Mr. Pratapas’ requests for relief; denied M/I’s motion to dismiss the complaint on the grounds of other affirmative matter; granted M/I’s motion to dismiss for frivolousness; but directed Mr. Pratapas to file an amended complaint no later than May 8, 2023, or face dismissal of the complaint. *See* 415 ILCS 5/31(d)(1)(2020), 35 Ill. Adm. Code 101.202(b).

MOTION TO DISMISS WITH PREJUDICE

On May 17, 2023, M/I filed a motion to dismiss with prejudice and for sanctions against Mr. Pratapas (Mot.) as well as memorandum in support of its motion (Memo.). M/I argues that because Mr. Pratapas failed to amend his complaint per the Board’s April 6, 2023, order, the Board should dismiss the complaint with prejudice. Memo at 3-4. “Because the operative pleading before the Board is frivolous and Pratapas failed to comply with the Board’s order to amend the Complaint for specificity, this proceeding should be dismissed with prejudice.” *Id.* at 4.

MOTION FOR SANCTIONS

Legal Background

Section 101.202 Definitions for Board's Procedural Rules

“Sanction” means a penalty or other mechanism used by the Board to provide incentives for compliance with the Board's procedural rules, Board orders or hearing officer orders. 35 Ill. Adm. Code 101.202.

The Board’s rules on sanctions are found at 35 Ill. Adm. Code Section 101.800.

Sanctions for Failure to Comply with Procedural Rules, Board Orders, or Hearing Officer Orders

- a) If any person unreasonably fails to comply with any provision of 35 Ill. Adm. Code 101 through 130 or any order entered by the Board or the hearing officer, including any subpoena issued by the Board, the Board may order sanctions. The Board may order sanctions on its own motion, or in response to a motion by a party.

- b) Sanctions include the following:

- 4) As to claims or defenses asserted in any pleading or other document to which that issue is material, a judgment by default may be entered against the offending person or the proceeding may be dismissed with or without prejudice;

- c) In deciding what sanction to impose, the Board will consider factors including: the relative severity of the refusal or failure to comply; the history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith by the offending party or person.

35 Ill. Adm. Code 101.800

Board Discussion and Findings

M/I argues that the Board should sanction Mr. Pratapas for his “abuse of the Board’s docket wasting both the Board’s and Respondent’s time and resources.” Memo. at 1. M/I asks that the Board, “consider other sanctions, including a monetary fine to allow the Board to recoup its costs related to Pratapas’ misconduct, as well as setting up a protocol that Pratapas must follow in the event he files additional cases, *i.e.*, respondents are not required to respond to future complaints until Pratapas has received leave from the Board to file additional complaints.” *Id.* at 5-6.

The Board’s procedural rules allow it to issue sanctions in cases where parties have unreasonably failed to comply with a Board order, a hearing officer order, or the Board’s procedural rules. *See* 35 Ill. Adm. Code 101.800.

The Board has on rare occasions issued sanctions. For repeated failure to timely file an initial brief, the Board granted an IEPA motion for sanctions that requested to dismiss the proceeding with prejudice. Modine Manufacturing Company v. IEPA, PCB 87-124, slip op. at 3 (November 17, 1988) aff'd, 192 Ill. App. 3d 511. On remand from the Fourth District Appellate Court, the Court directed the Board to issue sanctions in the form of awarding attorney fees in an air permit appeal. The Grigoleit Company v. IEPA, PCB 89-184, slip op. at 4 (March 17, 1994).

The Board has broad discretion in determining the imposition of sanctions. *See IEPA v. Celotex Corp.*, 168 Ill. App. 3d 592, 597 (3d Dist. 1988); Modine Manufacturing Co. v. PCB, 192 Ill. App. 3d 511, 519 (2d Dist. 1989). In exercising this discretion, the Board considers such factors as “the relative severity of the refusal or failure to comply; the past history of the proceeding; the degree to which the proceeding has been delayed or prejudiced; and the existence or absence of bad faith on the part of the offending party or person.” 35 Ill. Adm. Code 101.800(c).

In this matter, the Board does not find that Mr. Pratapas' failure to amend the complaint is a pattern of bad faith or deliberate noncompliance with its rules. The remedy for the failure to amend is dismissal of the complaint. The Board denies M/I's motion for sanctions and motion to dismiss with prejudice. Because Mr. Pratapas failed to timely file an amended complaint, the Board dismisses this case and closes the docket.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on June 1, 2023, by a vote of 3-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board