

ILLINOIS POLLUTION CONTROL BOARD
October 2, 2003

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
v.) PCB 02-77
) (Enforcement - Land)
MILLENIUM RECYCLING & SOLID)
WASTE CONSULTANTS, INC., SHERRI)
CLEMENTI, individually and as president of)
MILLENIUM RECYCLING & SOLID WASTE)
CONSULTANTS, INC., and MICHAEL)
LORENCE, individually,)
)
Respondents.)

ORDER OF THE BOARD (by M.E. Tristano):

This matter comes before the Board on its own motion. There are three respondents in this case: the original respondent Millenium Recycling and Solid Waste Consultants, Inc. (Millenium), and two recently added individual respondents Sherri Clementi and Michael Lorence. The Board notes that the individual respondents have failed to file answers, and that the corporate respondent and one of the individual respondents (Clementi) has just been discharged in bankruptcy.

The Board today

1. enters a default order against only the corporate respondent Millenium for repeated failure to comply with Board and hearing officer orders to appear and proceed with this case. 35 Ill. Adm. Code 103.220;
2. orders complainant to provide proof of service of the April 10, 2003 amended complaint by November 1, 2003;
3. remedies any deficiency in service on Lorence of the Board's May 15, 2003 order and subsequent Board and hearing officer orders by allowing Lorence 60 days from the date of this order, until December 1, 2003, to answer the complaint; and
4. directs complainant to file, on or before December 15, 2003, a motion or other appropriate pleading suggesting what, if any, additional proceedings are appropriate in this matter as to each respondent, including any suggestions concerning appropriate remedy or penalty. Respondents may file any response they may have on or before January 2, 2004.

THE COMPLAINT AND PARTIES

On December 12, 2001, the Office of the Attorney General, on behalf of the People of the State of Illinois (People), filed a complaint against Millenium Recycling and Solid Waste Consultants, Inc. (Millenium). *See* 415 ILCS 5/31(c)(1) (2002); 35 Ill. Adm. Code 103.204. The People allege that Millenium violated Sections 21(a), 21 (d)(1), 21(e), and 21(p)(1) of the Environmental Protection Act (Act) (415 ILCS 5/21(a), (d)(1), (e), and (p)(1) (2002)). The People further allege that Millenium violated these provisions by conducting a waste disposal operation without a permit, and causing or allowing litter. The complaint concerns Millenium's facility at 31W620 Spaulding Road, Elgin, Cook County.

In an April 10, 2003 amended complaint, the People added two individuals as respondents: Sherri Clementi and Michael Lorence. According to the amended complaint, Sherri Clementi is the President and Registered Agent for Millenium Recycling & Solid Waste Consultants, Inc. The People allege that she had decision-making authority and communicated directly with the Illinois Environmental Protection Agency (Agency) regarding the environmental issues alleged in the complaint. The amended complaint further alleges that Michael Lorence is the Operations Manager responsible for the day-to-day operations of Millenium and was present for an Agency open dump inspection. The Board accepted the amended complaint May 15, 2003.

PROCEDURAL HISTORY

The nature of the issues before the Board today requires a thorough review of the record and chronology of the various events in this case. This detailed chronology follows.

The Board accepted the People's original complaint for hearing in December 2001. An attorney entered an appearance for respondent in February 2002. Respondent, by its attorney, participated in telephonic status conferences held by the hearing officer with the parties in March, June, August, and November 2002. During that time, the parties reported that they were attempting to reach a settlement, and respondent reported that it might file for bankruptcy.

On December 2, 2002, respondent's attorney moved to withdraw his appearance, stating that professional differences between attorney and client prevented continued representation. The People objected, on the grounds that the withdrawal would unduly delay resolution of the action. On January 23, 2003, the Board granted the attorney's motion to withdraw. But, to avoid any undue delay in the resolution of this case, the Board ordered the respondent to retain an attorney who was directed to file an appearance on or before February 24, 2003, and to file respondent's answer to the complaint on or before March 24, 2003.

At a telephonic status conference held on March 4, 2003, Sherri Clementi, who is not a licensed attorney, attempted to appear on behalf of respondent Millenium in her capacity as its registered agent. Clementi represented that the respondent corporation is dissolved and bankrupt and has no funds to retain an attorney. By order dated April 4, 2003, the hearing officer gave Clementi until March 19, 2003, to respond to the January 23, 2003 Board order. She did not do so.

On April 10, 2003, the People filed a motion to amend their complaint to include additional respondents: Sheri Clementi and Michael Lorence. The People served the complaint by certified mail on both individuals at the same address: 1133 Hillcrest Drive, Carol Stream, Illinois 60188. Neither Millenium nor the individuals responded to the motion.

In his order of April 28, 2003, the hearing officer stated that a telephonic status conference was held on April 23, 2003, but that Millenium or its representative did not appear. Ms. Clementi telephoned to explain why she did not appear, and then stated that she would call again. She did not do so. Since there had been no contact from Clementi in spite of the January 23, 2003 Board order, the hearing officer referred the matter to the Board for appropriate sanctions.

The Board, by order of May 15, 2003, granted the People's motion to amend the complaint, and advised Sherri Clementi and Michael Lorence that their time to file any answer or responsive motion to the complaint would begin to run from their respective receipt of the order. The Board reserved ruling on the motion for sanctions against Millenium.

On May 16, 2003, the Board received a Notice of Creditor's Meeting issued by U. S. Bankruptcy Court (N.D. Ill.) regarding Millenium Recycling and Sherri Clementi.

On July 2, 2003, the hearing officer issued an order setting a telephonic status conference on July 30, 2003. In his August 5, 2003 order following the status conference, the hearing officer noted that respondents did not appear. The motion for sanctions against Millenium was again forwarded to the Board for action.

In an order dated August 21, 2003, the Board noted Millenium Recycling and Solid Waste Consultants' failure to attend the telephonic status conference on July 30, 2003. The Board ordered respondent Millenium to show cause why a default order in this case should not be entered, citing 35 Ill. Adm. Code 103.220. The Board allowed Millenium until September 4, 2003, to respond to this order.

Finally, on September 17, 2003, the Board received a Discharge of Debtor Order dated September 8, 2003 issued by the U. S. Bankruptcy Court (N.D. Ill.) regarding "Sherri Lynn Clementi AKA: Millenium Recycling." *In re Sherri Lynn Clementi*, No. 03-20318 (Bankr. N.D. Ill. Sept. 8, 2003).

Neither Sherri Clementi nor Michael Lorence has filed an answer to the amended complaint.

DISCUSSION

Effect of Discharge in Bankruptcy of Respondents Millenium and Clementi Presently Unexplored in This Record

The record presently before the Board indicates only that a bankruptcy discharge order has been entered against respondents Millenium and Clementi. None of the parties have specifically addressed what, if any effect, this may have on this action. At this time, the Board can only address issues of whether respondents can be found liable for the violations alleged in the complaint.

Default Order Against Respondent Millenium

Section 103.220 of the Board's procedural rules states:

Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the Board shall constitute a default. 35 Ill. Adm. Code 103.220.

On August 21, 2003, the Board ordered the corporate respondent Millenium to show cause why a default order should not be entered against it, directing that any response be filed on or before September 4, 2003. No response has been filed. As demonstrated in detail in the foregoing procedural history, Millenium was first directed to retain an attorney by the Board's order of January 23, 2003 and subsequently by the hearing officer's orders of April 4 and 28, 2003 and August 5, 2003. Respondent Millenium has not done so.

The Board finds that respondent has violated Section 21(a), 21(d)(1), 21(e), and 21(p)(1) of the Act as alleged. Respondent violated these provisions by conducting a waste disposal operation without a permit, and causing or allowing litter.

Status of Respondents Clementi and Lorence

Having found Millenium in default, the Board now turns to the status of the remaining respondents. Clementi has clearly not defaulted in this case. As an individual, she has represented herself by participating in status conferences. She has not, however, filed an answer to the complaint. *See* 35 Ill. Adm. Code 103.204 (d).

Respondent Lorence has not answered the complaint or participated in status conferences. But, based on the record before the Board, the Board cannot determine whether Lorence was adequately notified of his status as party respondent in this case. First, the Board's records do not contain the actual proof of service of the April 10, 2003 amended complaint on Lorence by the People, although the certificate of service indicates that it was sent by certified mail. To complete its records, the Board directs the People to file the "green card" proof of service of the amended complaint on or before November 1, 2003.

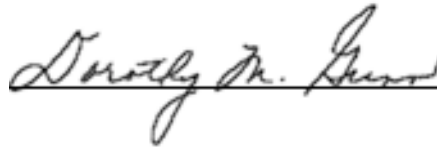
Second, the Board's order of May 15, 2003, accepting the amended complaint adding Lorence as a respondent may not have been properly served. The Board notes that the service address provided by the People for Lorence is the same as that for Clementi, so that Lorence may in fact have received actual notice of his status as respondent in this action. But, since that cannot be proven on this record, in fairness the Board will allow Lorence until December 1, 2003 (60 days from the date of this order), to answer the complaint or otherwise plead. *See* 35 Ill. Adm. Code 103.204 (d).

Additional Proceedings and Remedy Issues

Once the time for Lorence to answer has run, the People as prosecutor of the complaint will be in a position to suggest what additional proceedings may be appropriate in this case as to any and all respondents. The Board directs complainant to file, on or before December 15, 2003, a motion or other appropriate pleading suggesting what, if any, additional proceedings are appropriate in this matter as to each respondent, including any suggestions concerning appropriate remedy or penalty. Respondents may file any response they may have on or before January 2, 2004.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 2, 2003, by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board