

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1989

DANIEL LORDEN AND HELEN LORDEN,)
)
 Complainants,)
)
 v.) PCB 89-19
) (Enforcement)
SHERIDAN SOUTH CONDOMINIUM)
ASSOCIATION,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Anderson):

This matter comes before the Board upon Complainants' motion to compel respondent to turn on the five air conditioning units which are the subject of the noise enforcement complaint in this matter. Complainants, Daniel Lorden and Helen Lorden ("Lordens"), moved the hearing officer to compel the respondent, Sheridan South Condominium Association (Sheridan South), to turn on the five air conditioners on June 30, 1989.

In response to the Complainants' motion to compel, the respondent filed a motion for continuance on July 14, 1989. The respondent's motion for continuance requested until August 14, 1989 to obtain an attorney and respond to the Complainants' motion to compel. The hearing officer granted respondent's motion for continuance and directed that respondent's attorney file an appearance with the Board by August 14, 1989. The hearing officer also allowed the respondent until September 8, 1989 to respond to the Complainants' motion to compel. On September 5, 1989, the hearing officer referred this matter to the Board since the respondent's attorney had not yet filed an appearance nor had the respondent responded to the motion to compel. On September 13, 1989 the Board allowed the respondent 10 days to file an appearance and respond to the motion to compel. The respondent did not respond to the Board's September 13 Order and the Board subsequently ruled on the motion to compel on September 28, 1989.

On October 2, 1989, the respondent filed a motion to vacate the Board's Order of September 28, 1989 stating that it had not received the Board's September 13 Order until after September 28. The respondent also filed a motion to dismiss the complaint. Upon adequate proof, on November 2, 1989, the Board granted the respondent's motion to vacate the Board's September 28, 1989 Order. The Board denied respondent's motion to

dismiss. On November 13, 1989, the respondent filed an answer to Complainants' motion to compel. On December 4, 1989, the Complainants filed a reply to the respondent's answer.

The Board will now address the motion to compel. In support of their motion to compel the Complainants state that:

All the air conditioning units in question have not been in operation long enough during the day to allow for a correct decibel reading of the noise level which is the subject of the complaint.

The noise expert retained by Petitioners has stated that in order to take or compute a correct noise reading the units must be in operation for at least one hour. The units in question have not been in use, even in warm weather, to satisfy the above stated requirements of the noise expert. And the level of noise generated by these units is the subject of the matter in this case.

In response to the Complainants' motion to compel, the respondent states that Sheridan South is not the proper party before the Board. Respondent further states that "the individual unit owners have stated that [Sheridan South] cannot order them to turn their respective air conditioners on since they are the property of the individual unit owners." Thus, if ordered to turn on the air conditioners, the respondent states that "the Board will place [Sheridan South] in a position of being forced to enter the five subject units without the unit owners' permission." Additionally, respondent states that if ordered to turn on the air conditioners for the requested period of time at the present time of year, damage may result to the subject unit.

The Complainants' reply to the respondent's response in essence denies that Sheridan South is not the proper party. The Complainants also point out that respondent's evidence in regard to damage to the units stated that damage may result and that any damage may or may not be permanent.

The Board hereby denies Complainants' motion to compel. This Board notes that this is a rather unique situation presented. Among our concerns are the following: The Board is apparently being asked to require the respondent to perform an act which is alleged to be a violation of the Act so that evidence can be obtained to prove that alleged violation. The Board is not persuaded that even if the air conditioners were turned on and a violation is demonstrated at that particular point in time that such information would prove that a violation occurred in the past. In other words, noise readings are time

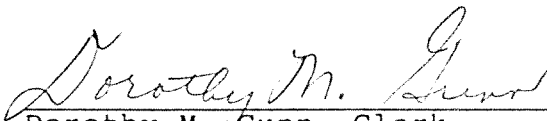
specific; they can be used to demonstrate a violation at the time taken, but not at other times, especially times long past. The Board notes that the motion requests that all air conditioning units be turned on at the same time. The Board is not persuaded that a reading taken at such a time would reflect normal circumstances. Also, the Board notes that it is now December 20, the beginning of winter. It would seem somewhat absurd to require the Respondents to turn their air conditioners on for at least one hour at this time. Further, the Board notes that because it is winter not only may damage result to the air conditioners but also the noise readings may be different because the sound is travelling through cold temperatures.

The Board notes that, on December 13, 1989, the Complainants have filed a motion to join the individual air conditioner owners as parties. The Board will rule on this motion following an opportunity for timely response.

The Complainants' motion to compel is hereby denied.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 20th day of December, 1989, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board