

ILLINOIS POLLUTION CONTROL BOARD
June 4, 1992

KENNETH F. METIVIER)	
AND CYNTHIA METIVIER,)	
)	
Complainant,)	
)	
v.)	PCB 92-74
)	(Enforcement)
)	
DOUGLAS KENYON d/b/a DOUGLAS)	
KENYON, INC.)	
)	
Respondent.)	

ORDER OF THE BOARD (by J. Anderson):

On May 12, 1992, Kenneth and Cynthia Metivier (Metivier) filed a complaint against Douglas Kenyon, doing business as Douglas Kenyon, Inc., (Kenyon). Kenyon operates an art gallery located in Chicago, Cook County. The complaint alleges violation of the noise nuisance provisions contained in Sections 23 and 24 of the Act and 35 Ill. Adm. Code 900.102.


On May 18, 1992, Kenyon filed a motion to dismiss the action on the grounds that it is "unfounded and frivolous". In support thereof, Kenyon states that inspectors of the City of Chicago's Department of Zoning and Environmental Department had investigated numerous noise complaints made by the Metiviers, and that Kenyon had hired a structural engineer "to perform testing which substantiates the fact that no excessive noise is being generated by our operation". Kenyon also submitted a copy of a certification of conformance with the Municipal Code of Chicago.

On June 1, 1992, Metivier filed a response in opposition to the motion. The response asserts that the complaint is not duplicitous because "no similar case is pending in another court or in another action before the Board", and that the complaint is not frivolous because "the requested relief [a cease and desist order and payment of a fine] is within the Board's authority to grant".

Kenyon's motion to dismiss is denied. As Metivier correctly argues, the complaint is not duplicitous or frivolous within the meaning of Section 31(b) of the Act. In so finding, the Board makes no ruling on the merits of the case (that is whether noise pollution has occurred); the Board finds only that this case is properly before it pursuant to Section 31(b). The matter is accepted for hearing, at which the parties may present their cases. A Hearing Officer will be assigned who will contact the parties to schedule a hearing date.

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 4th day of June, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board