

ILLINOIS POLLUTION CONTROL BOARD

January 6, 2000

COLONY OF LONGMEADOW HOA,)
)
 Complainant,)
)
 v.) PCB 00-92
) (Enforcement - Noise, Citizens)
 DOMINICK'S,)
)
 Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On December 1, 1999, complainant filed a formal complaint alleging that respondent has violated several statutes and regulations concerning noise pollution. This case is before the Board today pursuant to 35 Ill. Adm. Code 103.124. Under Section 103.124, each enforcement case filed by citizens is placed on the Board's agenda for a determination of whether the case is frivolous or duplicitous.

An action before the Board is frivolous if it requests relief which the Board could not grant. Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80. The complaint alleges violations of Sections 23 and 24 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/23, 24 (1998), and 35 Ill. Adm. Code 900.102 and 901.102. Section 23 of the Act sets forth the General Assembly's findings and the purpose of Title VI of the Act, concerning noise pollution. There can be no violation of Section 23. Thus, to the extent the complaint seeks relief for an alleged violation of Section 23, that claim is frivolous. Section 24 of the Act and Sections 900.102 and 901.102 of the Administrative Code, however, contain prohibitions of various activities. Section 24 provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

Section 900.102 prohibits emitting noise beyond the boundaries of property so as to cause noise pollution, *i.e.*, noise that unreasonably interferes with enjoyment of life or any lawful business or activity. See 35 Ill. Adm. Code 900.101. Section 901.102 prohibits emitting sound above specific decibel levels at different times of the day. These provisions could be violated by respondent's activities, as alleged in the complaint. We therefore conclude that these claims are not frivolous.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or another forum. Walsh v. Kolpas (September 23, 1999), PCB 00-35, slip op. at 2. Paragraph 10 of the complaint, which was certified by Stephen M. Lardner, states that no other action

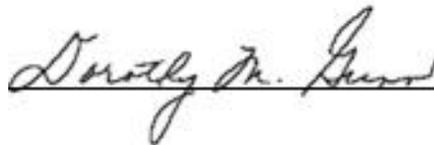
is known to complainant. Comp. at 4. Respondent has not brought any other action to our attention. We cannot, therefore, find that this action is duplicitous.

One other issue must be addressed before the Board accepts this case for hearing. This complaint was filed on complainant's behalf by Stephen M. Lardner, the director of the Colony of Longmeadow HOA. As far as we have been able to determine, Lardner is not an attorney. Although the Board's current procedural rules would allow the complainant to be represented by a non-attorney (see 35 Ill. Adm. Code 101.107(a)(3)), the Board has held that these rules violate the provisions of the Attorney Act (705 ILCS 205 (1998)). See In re Petition of Recycle Technologies, Inc. (July 10, 1997), AS 97-9. In that case, the Board concluded that a non-attorney could not represent a corporation in an adjusted standard proceeding without violating both the Attorney Act and the Corporation Practice of Law Prohibition Act (705 ILCS 220 (1998)). The Board has also held that a non-attorney could not represent a not-for-profit corporation in a landfill siting appeal pursuant to Section 40.1(b) of the Act (415 ILCS 5/40.1(b) (1998)). Sierra Club v. Bensman (October 2, 1997), PCB 98-43. The Board believes that the rationale employed to find that a non-attorney was prohibited from representing a corporation in an adjusted standard proceeding or in a landfill siting appeal applies equally to the situation presented in this matter. The Board notes that to allow this matter to go forward with complainant represented by a non-attorney could result in any action by the Board being rendered void. Janiczek v. Dover Mgmt. Co., 134 Ill. App. 3d 543, 481 N.E.2d 25 (1st Dist. 1985).

Accordingly, complainant must be represented by an attorney. Alternatively, the members of the Colony of Longmeadow HOA could bring this action as individuals (who may represent themselves), rather than as an association. The Board grants complainant 30 days in which to file an amended complaint, either through an attorney or by the members as individuals. If no amended complaint is filed within this time period, this case will be dismissed and the docket closed.

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 6th day of January 2000 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board