

ILLINOIS POLLUTION CONTROL BOARD  
May 21, 1992

BRUCE NESBITT, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 92-48  
 ) (Enforcement)  
 )  
 THE 100 BELLEVUE PLACE )  
 CONDOMINIUM ASSOCIATION, AN )  
 ILLINOIS NOT-FOR-PROFIT )  
 CORPORATION, )  
 )  
 Respondent. )

ORDER OF THE BOARD (by J. Theodore Meyer):

On March 26, 1992, complainant Bruce Nesbitt filed his complaint against The Bellevue Place Condominium Association (Bellevue) alleging noise pollution emanating from the common elements of 100 E. Bellevue. Thereafter, on April 9, 1992, Bellevue filed its motion to dismiss on the grounds that the complaint fails to state a cause of action and is frivolous. On April 22, 1992, complainant filed with the Board a memorandum in opposition to the motion to dismiss. On May 6, 1992, Bellevue filed with the Board a reply to complainant's response to Bellevue's motion to dismiss. For the reasons given below, Bellevue's motion is granted and this matter is dismissed.

The motion to strike or dismiss asserts several bases for striking or dismissing the complaint:

1. The complaint fails to allege a cause of action because the Act does not prohibit or seek to regulate noise pollution within one's property.
2. The Act does not allow an individual to file a complaint before the Board alleging noise pollution from common areas in a condominium association where the complainant himself has an ownership interest.
3. The Act does not provide for private nuisance actions.

The complaint specifically alleges that Bellevue violated Section 24 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1024) and the Board regulation prohibiting noise pollution (35 Ill. Adm. Code 900.102). (Compl. par. 16.) The complaint factually alleges the following: that the rumbling noise and vibration caused by the air handling equipment

occurs 24 hour a day; that the pumping and whining noises caused by the air conditioning equipment occurs from May through October and; that the thumping noises caused by the elevator operation disturb and interfere with complainant's sleep. (Compl. par. 5.) The complaint alleges that Bellevue is culpable because it was organized to maintain, operate and manage the condominium residential building and improvements situated at 100 E. Bellevue. (Compl. par. 4.)

Title VI of the Act contains the standards and procedures for noise control. Section 23 of Title VI sets forth the legislature's purpose of preventing noise that creates a public nuisance. Section 24 of Title VI prohibits any person from emitting beyond his property noise that interferes with the enjoyment of life or with any lawful business or activity. Section 25 of Title VI sets forth the Board's authority to adopt noise regulations.

Sections 23 and 24 of Title VI provide as follows:

#### Section 23

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisance, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

#### Section 24

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.

In determining whether noises that emanate within the confines of a condominium complex constitute a public nuisance, the definition of a public nuisance set forth in Shell Oil Company v. Illinois Pollution Control Board (1976), 37 Ill.App.3d 264, 346 N.E.2d 212, must be considered. "The term 'public nuisance' is said to comprehend 'a miscellaneous and diversified group of minor criminal offenses, based on some interference with the interests of the community, or the comfort and convenience of the general public.'" Id. at 268, 346 N.E.2d at 216. Shell Oil also explains that the Board is not limited to "one set of criteria" in its regulatory scheme. Id. The Board has used its discretion to implement Sections 23 and 24 of the Act in two ways. First, the

Board has adopted specific numerical limitations on the characteristics of sound that may be transmitted from source to receiver. The second method by which the Board has implemented the noise provisions is found at 35 Ill. Adm. Code 900.101 and 900.102 which provide as follows:

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

The Board, in applying its noise regulations, has emphasized that there is no need for a public versus private common law analysis when a specific violation of the Act allowing for citizen enforcement and granting the Board jurisdiction is alleged. Ronald E. Tex v. S. Scott Coggeshall (December 20, 1990), PCB 90-182, 117 PCB 149.

In determining whether noise emanating from the common elements of a condominium complex to an individual unit of the condominium complex satisfies the "beyond the boundaries" statutory requirement, the definition of a condominium must be considered. The Board notes that the Act does not grant the Board authority to regulate noises that emanate solely within the confines of a person's property. A condominium is defined in Black's Law Dictionary (Blacks), Fifth Edition, as follows:

"System of separate ownership of individual units in a multiple-unit building. A single real property parcel with all the unit owners having a right in common to use the common elements with separate ownership confined to the individual units which are serially designated..."<sup>1</sup>

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<sup>1</sup> In an effort to establish a property line separating complainant's condominium unit and the common elements of the building as two distinct properties, complainant characterized the condominium as personal property. (Compl. Exhibit A, pg. 2, par. 3.) The Board notes that a condominium must be characterized as real property. The Black's definition of personal property makes it clear that a condominium can not be classified as such: "In a

Condominiums are regulated pursuant to the Illinois Condominium Property Act. (Ill. Rev. Stat. 1989, ch. 30, pars. 301 et seq.) When property falls within the provisions of the Condominium Property Act, a declaration is executed by the owner of the parcel and is recorded in the office of the recorder. A parcel for purposes of this declaration is defined in par. 302 § 2(b) of the Condominium Act as the "lot or lots, tract or tracts of land".

Additionally, the Condominium Property Act makes it clear in its definitions that a parcel is regarded and recorded as a single unit of property, and that the single property unit includes the individually owned units as well as the common elements of the building. Property and common elements are defined in par. 302 §§ 2(c), (e) of the Condominium Property Act in the following manner:

"Property" means all the land, property and space comprising the parcel, all improvements and structures erected, constructed or contained therein or thereon, including the building and all easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the unit owners, submitted to the provisions of this Act.

"Common Elements" means all portions of the property except the units, including limited common elements unless otherwise specified.

Therefore, a parcel is composed of the entire condominium complex, and a condominium complex is regarded as a single unit of real property. For this reason, the Board finds that noise that emanates from one unit to another or from a common element to a unit remains within the confines of a single property unit, and does not "emit beyond the boundaries" of one property to another.

After consideration of the presented information, the Board finds that it does not have jurisdiction over the matter at hand and will not accept the matter for hearing. The Board accordingly grants Bellevue's motion to dismiss.

IT IS SO ORDERED.

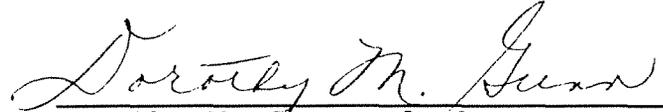
Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for the appeal of

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broad and general sense, everything that is the subject of ownership, not coming under denomination of real estate. A right or interest in things personal, or right or interest less than a freehold in realty, or any right or interest which one has in things movable. Generally, all property other than real estate...".

establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 21<sup>st</sup> day of May, 1992, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board