

ILLINOIS POLLUTION CONTROL BOARD  
November 2, 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 a motion to vacate the Board's September 28, 1989 Order and motion to dismiss filed by the respondent, Sheridan South Condominium Association ("Association") on October 3, 1989. The complainants, Daniel Lorden and Helen Lorden ("Lordens"), filed an answer to the Association's motions on October 17, 1989.

The Board's September 28, 1989 Order in this noise enforcement case imposed sanctions on the Association for its "willful refusal to respond to the Lordens' June 30 legitimate discovery request, the July 10 Order of the Hearing Officer [granting the Association a continuance to respond to the Lordens' June 30 motion to compel] and the September 13 Order of the Board [allowing the Association 10 more days in which to obtain an attorney and respond to the June 30 motion to compel]." The sanction imposed by the Board on September 28 barred the Association from "filing any pleading, making any claim, and presenting any testimony or other proof going to the issue of whether it has caused or allowed violation of Section 900.102" of the Board's noise regulations. The September 28 Order also denied the Lordens' motion to compel.

The Association states, in support of its motion to vacate, that it did not receive notice of the Board's September 13, 1989 Order until September 29, 1989, thus, after the Board had imposed sanctions on September 28. The September 13 Order had allowed the Association to obtain an attorney, file an appearance and respond to the motion to compel by September 25.

The record indicates that, although the September 13 Order was sent certified mail on September 13, the Association did not receive the Board's September 13 Order until after September 28. The Board notes that the Association was still in violation of the Hearing Officer's July 19 Order regardless of any lack of

notification of the Board's September 13 Order. Nonetheless, due to the Association's failure to receive the September 13 Order before September 28, the Board will grant the Association's motion to vacate. The Board's September 28, 1989 Order in this proceeding is hereby vacated, including the Board's ruling on the Lordens' motion to compel.

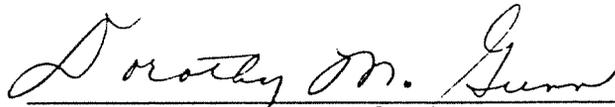
In regard to the Association's motion to dismiss, the Board is not persuaded by the Association's argument that it is not a proper party and that this case should be dismissed at this time. The Lordens' have presented counter arguments to the Association's motion to dismiss that further convince the Board that this proceeding should not be dismissed today. The Association's motion to dismiss is hereby denied.

Finally, since the Board's ruling on the Lordens' motion to compel is being vacated today, that leaves the motion to compel still outstanding. The Association has not responded to that motion to compel to date.

Therefore, the Board orders the Association to respond to the motion to compel by November 13, 1989. If the Board does not receive the Association's response by that date, sanctions will result. The Board will also allow the Lordens three weeks, until December 4, 1989 to file any reply to the Association's response; the response will be received by the Board on that 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 30<sup>th</sup> day of November, 1989, by a vote of 6-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board