

ILLINOIS POLLUTION CONTROL BOARD
March 11, 1993

DANIEL LORDEN & HELEN LORDEN,)
)
Complainants,)
)
v.) PCB 92-169
) (Enforcement)
SHERIDAN SOUTH CONDOMINIUM)
ASSOCIATION, JAMES A. HANSEN,)
CHARLES J. LEBRUN, ANDREA J.)
HROVATIN, JOAN LEE, IVAN and)
CATALINA HORAK and STEVEN.)
RICHARDS, CHARLES E. ALEXANDER,)
and RE/MAX DEERFIELD,)
)
Respondents.)

ORDER OF THE BOARD (by J.C. Marlin):

This matter is before the Board on a March 10, 1993 letter filed by complainants Daniel and Helen Lorden (Lordens). The Board construes the letter as a motion for reconsideration of the Board's December 3, 1992 order.

In its December 3, 1992 order, the Board granted respondent's motion to dismiss the Lordens' noise pollution complaint on the basis of res judicata and the Lorden's failure to provide proof of service of the complaint. On that same day, but after the Board had entered its order dismissing the complaint, the Lordens filed a motion to file response instanter and response. The Lordens' state in their letter that they have contacted the Clerk of the Board about the Board's December 3, 1992 order and would like to discuss why they have not been able to obtain a hearing on their complaint.

Once the Board entered its order of December 3, 1992 granting respondent's motion to dismiss, the Lordens had two avenues available for obtaining relief from that order. Both of these avenues for relief are set forth in the Board's procedural rules and neither have been complied with by the Lordens. First, §100.300 of the Board's procedural rules provide that a motion for reconsideration of a final Board order shall be filed within 35 days of the date of that order. Therefore, if the Lordens' disagreed with the Board's December 3, 1993 order, a motion for reconsideration should have been filed no later than January 7, 1993. Even construing the Lorden's letter of March 10, 1993 as a motion for reconsideration, it is clearly not timely filed. The Lorden's filing of December 3, 1992 seeking to file their response instanter did not relieve them of the obligation to file

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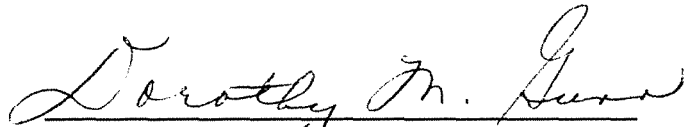
a motion for reconsideration. By filing their motion to file instanter and response approximately two weeks late, the Lordens took the chance that the motion to dismiss would already be ruled upon by the Board. The Board declines to reconsider its decision of December 3, 1992 because the Lordens' motion for reconsideration is untimely filed.

The second avenue available to the Lordens is §100.301 of the Board's procedural rules which provides for relief from final Board orders if a motion for such relief is filed within one year of the date of the order. The Lordens filing of March 10, 1993 does not request relief pursuant to §100.301 nor can it be so construed.

The Board declines to reconsider its order of December 3, 1992 dismissing the Lordens' complaint.

IT IS DO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 11th day of March, 1993 by a vote of 6-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board