

ILLINOIS POLLUTION CONTROL BOARD  
September 3, 1992

JOSEPH B. STRATTON and )  
PAMELA J. STRATTON, )  
 )  
Complainants, )  
 )  
v. ) PCB 90-108  
 ) (Enforcement)  
CHARLES M. ROCK and )  
LITTLE CAESARS PIZZA, )  
 )  
Respondents. )

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

This matter is before the Board on two motions. On August 3, 1992, respondent Little Caesars Pizza (Little Caesars) filed a motion for summary judgment. On August 4, 1992, complainants Joseph and Pamela Stratton filed a motion to withdraw their complaint against Little Caesars. On August 17, 1992, at the request of the hearing officer, the Strattons filed a corrected motion to withdraw, clarifying that they also seek to withdraw their complaint against Charles M. Rock. Also on August 17, Little Caesars filed an objection to the Strattons' request to withdraw their complaint.<sup>1</sup>

The Board grants the Strattons' motion to withdraw their complaint against both respondents. The Board notes that Little Caesars objects to granting the motion to withdraw, arguing that the Strattons should not be allowed to avoid the effect of prior admissions, which Little Caesars contends entitle it to a judgment as a matter of law, by withdrawing the complaint. However, the Board does not find that the Strattons' request to withdraw their complaint is an attempt to avoid a ruling on the motion for summary judgment. The Strattons' motion to withdraw is dated July 29, 1992 (there is no separate proof of service), while the proof of service for Little Caesars' motion for summary judgment states that the motion was mailed on July 31, 1992. The Strattons have chosen to withdraw their complaint, and the Board finds nothing improper about the request. The motion to withdraw the complaint is granted, and this case is dismissed.

Because the complaint has been withdrawn and the case dismissed, Little Caesars' motion for summary judgment is moot. However, the Board feels compelled to address several assertions

---

<sup>1</sup> Little Caesars' August 17 filing also included a motion to continue the September 10 hearing scheduled in this case. The hearing officer granted that motion to continue on August 18.

0135-0481

in that motion. Little Caesars' motion is premised upon its contention that the Strattons, by failing to respond to Little Caesars' request for admission of facts, have admitted facts which entitle Little Caesars to summary judgment. The motion then goes on to state:

5. LITTLE CAESARS PIZZA, to avoid incurring unnecessary costs, has taken steps to discontinue preparations for the September 10, 1992 hearing, and to release the witnesses that were to be called to provide testimony at that time. The undersigned counsel for LITTLE CAESARS PIZZA has also taken vacation, beginning August 1, 1992, and for the ten (10) days that follow.

6. It will be a violation of LITTLE CAESARS PIZZA'S due process rights, and a charge against the integrity of the Pollution Control Board's proceedings, if summary judgment is not, under the circumstances, granted to the Respondents.

(Motion at 3.)

It is, of course, within Little Caesars' counsel's discretion to take the risk, on July 31, to discontinue preparations for a September 10 hearing, based upon a motion for summary judgment which had not yet been filed, much less ruled upon. However, any implication that a denial of summary judgment would deny Little Caesars due process because of the discontinuation of hearing preparations, is erroneous. If the Board had reached the issue of summary judgment, its decision would have been based on whether there was any genuine issue of material fact entitling Little Caesars to judgment as a matter of law, not based upon attacks on the integrity of Board proceedings.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill.Rev.Stat. 1991, ch. 111½, par. 1041) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also 35 Ill.Adm.Code 101.246 "Motions for Reconsideration" and Castenada v. Illinois Human Rights Commission (1989), 132 Ill.2d 304, 547 N.E.2d 437.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3<sup>rd</sup> day of September, 1992, by a vote of 7-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board