

ILLINOIS POLLUTION CONTROL BOARD

December 3, 1992

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 L.)
RICHARDS, CHARLES E. ALEXANDER,)
and RE/MAX DEERFIELD,)
)
Respondents.)

ORDER OF THE BOARD (by M. Nardulli):

This matter comes before the Board on a motion to dismiss filed on November 10, 1992 by respondents Sheridan South Condominium Association and Charles E. Alexander. On September 27, 1990, the Board dismissed Daniel and Helen Lorden's (Lorden) noise pollution complaint with prejudice. (PCB 89-19) On November 29, 1990, the Board denied the Lorden's motion for reconsideration. (PCB 89-19) By the instant motion, respondents ask that the Lorden's complaint alleging noise pollution be dismissed on the basis that the instant complaint is barred by the doctrine of res judicata. The Lorden's have not filed a response to the motion to dismiss.

35 Ill. Adm. Code 101.241(b) provides that the failure to file a response to a motion results in waiver of objection to the motion. Consequently, the Lorden's have waived any objection to respondents' motion to dismiss. Moreover, the record contains no proof of service of the complaint upon respondents as required by 35 Ill. Adm. Code 143.

For the foregoing reasons, the Board dismisses the Lorden's complaint.

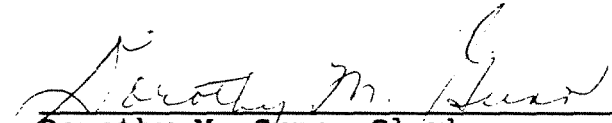
IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements. (But see also, 35 Ill.

0137-0571

Adm. Code 101.246, Motions for Reconsideration, and Casteneda 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 3rd day of December, 1992 by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

0137-0572