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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

KYLE NASH, )  
Complainant, )  
v. ) PCB 07-96  
)  
KAREN SOKOLOWSKI, ) (Citizens Enforcement - Noise)  
Respondent. )

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KYLE NASH, )  
Complainant, )  
v. ) PCB 07-97  
)  
LOUIS JIMENEZ, ) (Citizens Enforcement - Noise)  
Respondent. )

**MOTION TO CONSOLIDATE AND TO FILE REPLY**

NOW COME respondents, KAREN SOKOLOWSKI and LOUIS JIMENEZ, by and through their mutual attorney, JAMES M. KNOX, and for their Motion to consolidate and for leave to file Reply, instanter, state:

1. Both above captioned proceedings were filed by complainant, Kyle Nash, seeking relief from environmental noise pollution said to emanate from adjacent two flat residential apartment buildings, or from the respective yards or porch areas thereto, which are owned by the respective respondents herein, and are located on either side of complainant's own nearly identical two flat apartment building, each of the three located mid-block, in a City of Chicago near-Southside residential neighborhood; the three architecturally nearly identical buildings were constructed so as to stand some six feet apart, allowing only narrow passageways between buildings on either side of complainant's own building, with small open yards at the rear of each.
2. These two proceedings are identical with respective to the issues involved, have the same time frame, both parties having retained attorney James M. Knox to represent them in the premises, requesting that these matters, having the same causation issues, and the like, and in the

interests of judicial economy, should be consolidated to ensure fairness to all involved.

3. In response to complainant's initial pleadings herein, Respondents filed separate but identical Motions to Dismiss, asserting that the noise making devices identified by complainant, viz wind chimes in both cases, have been removed from their respective properties more than one year ago, and the complainant has now filed a RESPONSE to the Motions to Dismiss, introducing new matters, not referable to noise pollution, and the parties request leave to consolidate these cases and for leave to file their joint Reply thereto..

WHEREFORE, based on the foregoing, respondents request that these matters be consolidated and that they be permitted to file their mutual Reply to the responses of complainant, instanter.

Respectfully submitted,

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Attorney for Respondents

James M. Knox  
Attorney for Respondents  
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312/587-1356

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**RESPONDENTS' REPLY TO COMPLAINANT'S RESPONSE  
TO MOTIONS TO DISMISS**

NOW COME respondents, KAREN SOKOLOWSKI and LOUIS JIMENEZ, by and through their attorney, JAMES M. KNOX, and for their Reply to Complainant's Response to Motion to dismiss, state:

1. Both above captioned proceedings were filed by complainant, Kyle Nash, seeking relief from environmental noise pollution said to emanate from adjacent two flat residential apartment buildings, or from the respective yards or porch areas thereto, which are owned by the respective respondents herein, and are located on either side of complainant's own nearly identical two flat apartment building, each of the three located mid-block, in a City of Chicago near-Southside residential neighborhood; the three architecturally nearly identical buildings were constructed so as to stand some six feet apart, allowing only narrow passageways between buildings on either side of complainant's own building, with small open yards at the rear of each.

2. In response to complainant's initial pleadings herein, Respondents filed separate Motions to Dismiss which were filed on or about August, 2008, asserting that the noise making devices identified by complainant, viz wind chimes, have been removed from both of their

respective properties more than one year ago, facts which are readily admitted by complainant; further, both respondents have advised their attorney that they do not intend nor will either of them ever install similar devices on their respective properties, front or back, in the future, and this fact has been made known to the complainant at Status conferences held herein by Bradley P. Halloran, Hearing Officer, with an offer by respondents through their attorney to enter into an agreed order to memorialize this agreement to preserve the status quo between the parties hereto and purchase peace.

3. In spite of these voluntary efforts on the part of respondents to ameliorate this situation, complainant has now filed a RESPONSE to the Motion to Dismiss, introducing for the first time new extraneous matters, which are not referable to noise pollution, basing these matters on unsubstantiated hearsay statements which are unsupported, irrelevant and immaterial, with still no mention of noise standards purportedly violated.

4. Title VI, Noise 415 ILCS Section 24, provides that "...no person shall emit noise that unreasonably interferes so as to violate regulations or standards adopted by the Board;" while Section 24 also provides that "[T]he Board may adopt regulations, limitations, prescribe requirements, prescribe maximum permissible limits..." and, Sections 30-31 prescribe "...detailed explanation of violations alleged..." 31(a)(1)B, and C "actions that may resolve..." and furthermore, Section 42 provides mitigation, duration and gravity considerations combined with "due diligence," considerations in such enforcement proceedings which we submit have been met in this case by the respondents who have - and this is not in issue, complainant freely admits this - by voluntarily removing the noise making devices, viz wind chimes, they have both mitigated the noise pollution by voluntary removal of the offending devices, and have been therefore duly diligent.

5. Please keep in mind that the subject neighborhood in question where the three individual property owners reside, is a *reasonably* quiet, residential area, about a block from a busy thoroughfare, with Chicago Fire Department nearby and the usual ambulances, police and other emergency equipment moving up and down the nearby streets at all hours of the day and

night, and with a playlot public park directly across the narrow street fronting the three properties where children of different ages are in evidence a good part of the day, with apartment buildings lining either side of the street on narrow lots with automobiles parked on either side, and with residents coming and going at all hours of the day and night, this is anything but a completely quiet, sleepy area by any stretch of the imagination.

6. Complainant would now, in her Response introduce for the first time extraneous and irrelevant matters, having no connection with the respondents, and is asking the Board to now consider “dog feces and assorted garbage” being tossed into her yard, tree branches and the like, unexpected telephone calls and graffiti mysteriously appearing, all of which the respondents, and each of them, denies having any involvement with, and categorically deny that they would ever institute, initiate or in anyway contribute to such goings on or occurrences which they abhor personally, and which as law abiding citizens would never condone and would jointly seek to prevent if it were within their power.

7. We take notice of the fact that the Board has numerous meetings on momentous matters involving commerce and industry operating on a large scale, and this matter while minor in the grand scheme of things, is very important to the respondents, as well as the complainant, and should be resolved expeditiously on the pleadings.

8. Frankly, neither respondent can afford to conduct this new “fishing expedition” proffered by the complainant, although as neighbors, they too are concerned about the conduct of the neighborhood, do not wish to have refuse deposited in their own yards, excessive noise or the like interfering with neighborhood peace and quiet, and both would simply like to go on existing as law abiding members of the community, without undue interference from neighboring properties or their immediate neighbors, including the complainant, or anybody else.

9. The chimes are down now and will stay down; both homeowner respondents go to work each day, Karen Sokolowski leaves between 6:30 and 6:45 a.m. each day and returns at 7:30 - 8:00 p.m., seven days a week, Mr. Jimenez similarly works long hours, and everyone wants this matter over with, concluded and resolved, so that they can go on with their lives.

WHEREFORE, based on the foregoing, respondents renew their request to expedite these proceedings and respectfully requests that the Board dismiss these proceedings, with prejudice.

Respectfully submitted,

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Attorney for Respondents

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