

ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

IN THE MATTER OF:)
)
J & R Landfill, Inc.,) AC 89-78
an Illinois Corporation,) (St. Clair County
) Docket No. 89-8SC)
)
Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On May 18, 1989 J & R Landfill, Inc., (J & R) filed a Petition for Review and Motion to Dismiss. In the filing, J & R simultaneously petitions for review and moves for the dismissal of this citation for jurisdictional reasons. St. Clair County filed a Motion to Dismiss Respondent's Petition for Review and Motion to Dismiss on June 5, 1989. Although St. Clair County requests that the Board dismiss J & R's May 18th filing, the Board construes St. Clair County's filing as a response to J & R's May 18, 1989 motion to dismiss. In its response, St. Clair County moves the Board to "deny respondent's motion to dismiss...for jurisdictional reasons". On June 8, 1989, J & R filed an Objection To Motion To Dismiss Respondent's Petition For Review And Motion To Dismiss. Since St. Clair County's June 5th filing is a response to J & R's May 18th filing, J & R's June 8th filing amounts to a reply. The Board generally does not allow the moving party an opportunity to reply. As a result, the Board has not considered J & R's June 8th filing. Neither has the Board considered St. Clair County's Opposition to Respondent's Motion To Dismiss which was filed on June 14, 1989 and is evidently filed in response to J & R's June 8th filing.

Notwithstanding this barrage of filings, the matter at hand turns on one issue: whether J & R was served with the citation. J & R claims that it was not served with the citation and that as a result, the Board lacks jurisdiction. Specifically, J & R asserts that the citation was mailed, by certified mail, to James Quirin who was neither the registered agent of J & R nor an officer of J & R at the time of the attempted service. Attached to J & R's filing is a copy of J & R's 1989 Annual Report which indicates that Avis K. Quirin is the registered agent.

St. Clair County asserts that the certified mail receipt was signed by Dennis Blevins. St. Clair County concludes that Dennis Blevins is an agent of J & R and that his signature, indicating receipt of the administrative citation, proves service on J & R.

The Board confronted a similar situation in Waste Management of Illinois, Inc., AC 88-31 (August 4, 1988). In that case, the citation issued to Waste Management of Illinois, Inc., was sent to a person who was an agent of the respondent for purposes of operating the site. Yet, he was not the registered agent for the

corporation. Neither was it contended that the addressee was an "authorized agent" for the purposes of receiving service of process. As a result, the Board found that the citation was not properly served on Waste Management of Illinois, Inc. Id. at 3. Cf. Waste Management of Illinois, Inc. AC 88-54 (August 4, 1988). (the Board found proper service when the administrative citation was sent to an address which the respondent had previously indicated as the appropriate place to mail administrative citations).

Section 31.1(b) of the Act states in part:

Each such citation issued shall be served upon the person named therein or such person's authorized agent for service of process....

Ill. Rev. Stat. 1987, ch.
111½, par. 1031.1(b).

Section 103.123 of the Board's procedural rules states¹:

A copy of the notice and complaint shall either be served personally on the respondent or his authorized agent, or shall be served by registered or certified mail with return receipt signed by the respondent or his authorized agent. Proof shall be made by affidavit of the person making personal service, or by properly executed registered or certified mail receipt. Proof of service of the notice and complaint shall be filed with the Clerk immediately upon completion of service. (emphasis added)

35 Ill. Adm. Code
103.123.

¹ The Board notes that on June 8, 1989 it adopted Section 101.141, Service of Initial Filings, which became effective on July 10, 1989. (R88-5A). That Section requires that initial filings be served upon the person required to be served or that person's registered agent. Registered agent is defined by Section 101.101 as "a person registered with the Secretary of State for the purpose of accepting service of notices for any entity, or a person otherwise authorized in writing as an agent for the purpose of accepting service of notices for that entity in Board proceedings". Since these Sections were not in effect during the relevant time frame for this case, the Board has not applied these rules in this matter.

Certainly a registered agent of a corporation respondent would be considered an "authorized agent". However, conceivably some person other than the registered agent could be an "authorized agent" for the purposes of receiving an administrative citation. eg: Waste Management, AC 88-54.

Here, the citation was sent to James Quirin who, for the relevant time period, was neither the registered agent nor an officer of J & R. It is not contended that he was an "authorized agent" for J & R in terms of receiving administrative citations.

Apparently Dennis Blevins signed the certified mail receipt. Although St. Clair County states that Dennis Blevins is an agent of J & R, it is not argued that Mr. Blevins is an "authorized agent" in terms of receiving administrative citations for J & R. Moreover, St. Clair County does not indicate a factual basis for its conclusion that Mr. Blevins is an agent of any kind for J & R. Mr. Blevins' signature is by itself no evidence of agency: it is well settled that agency cannot be imputed solely on the basis of representations by the putative agent. See Schoenberger v. Chicago Transit Authority, 84 Ill. App. 3rd 1132, 405 N. E. 2d. 1076 (1980). In addition, for service of process, even apparent authority is insufficient. See Slates v. International House of Pancakes, 90 Ill. App. 3rd 716, 413 N.E. 2d 457 (1980).

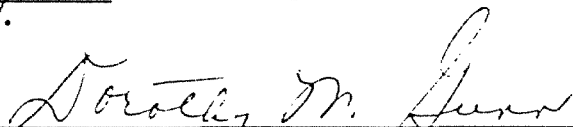
The Board notes that J & R raised its jurisdictional objection concerning service of the citation at the time J & R filed its initial pleading in this matter. Thus, J & R has timely raised its objection pursuant to 35 Ill. Adm. Code 103.140(i). The Board finds that J & R was not served with the administrative citation. J & R's motion is granted, and this matter is dismissed.

Section 41 of the Environmental Protection Act, Ill. Rev. Stat. 1987 ch. 111 $\frac{1}{2}$ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

Board Member B. Forcade dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 13th day of July, 1989, by a vote of 6-1.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board