

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SUSAN M. BRUCE,)
Complainant,) PCB # 2015-139
v.) (Citizens - Water Enforcement)
HIGHLAND HILLS SANITARY)
DISTRICT,)
Respondent.)

NOTICE OF FILING

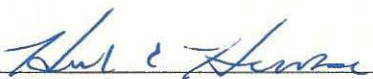
To: Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

PLEASE TAKE NOTICE that I have today filed with the Pollution Control Board the following documents:

HIGHLAND HILLS SANITARY DISTRICT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE LATE RESPONSE TO MOTION TO DISMISS OR STRIKE
And
HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO STRIKE OR IN THE ALTERNATIVE REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO STRIKE

copies of which are hereby served upon you.

Respectfully submitted,



Heidi E. Hanson

Dated: February 29, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

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Complainant,)	PCB # 2015-139
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HIGHLAND HILLS SANITARY)	
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)	
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**HIGHLAND HILLS SANITARY DISTRICT'S RESPONSE TO
COMPLAINANT'S MOTION FOR LEAVE TO FILE LATE
RESPONSE TO MOTION TO DISMISS OR STRIKE**

Respondent, HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., hereby responds to Complainant's MOTION FOR LEAVE TO FILE her response to the District's MOTION TO DISMISS AMENDED FORMAL COMPLAINT, OR IN THE ALTERNATIVE MOTION TO STRIKE COMPLAINANT'S REPLY TO AFFIRMATIVE DEFENSES ("Motion to Dismiss or Strike").

As its Response, the District states as follows:

1. The District filed its Motion to Dismiss or Strike on January 12, 2016.
2. Pursuant to Board Procedural Rule 101.500(d) (35 Ill Adm. Code 101.500(d)), a party has 14 days to respond to a motion. Assuming four days for U. S. Mail service to be deemed complete pursuant to Board Rule 35 Ill Adm. Code 101.300(c)(4), any response to the motion would have been due on or before February 1, 2016.
3. Complainant's Motion for Leave to File was filed with the Board on February 24, 2016, twenty three (23) days after the time for Complainant to respond to the District's Motion to Dismiss or Strike had expired.

4. A copy of the Motion for Leave to File was sent by email to the District's counsel on February 24. However the District had not agreed to be served by email. The District received the service by U. S. Mail on February 26, 2016.

5. The Board's Procedural Rule 101.522 (35 Ill Adm. Code 101.522) provides that an extension can be granted "for good cause shown." Complainant has not shown good cause here.

6. Attorney for Complainant, Mr. Stein, stated at the December 21, 2015 telephonic hearing officer status conference in this matter that he was planning to leave his law firm on December 23, 2015 and that he would file an appearance for his new firm, Aronberg Goldgehn. His new firm did not file an appearance until February 22, 2016.

7. The District's Motion to Dismiss or Strike was required by Board Procedural Rule 101.506 (35 Ill Adm. Code 101.506) to be filed within 30 days of receipt of Complainant's Reply to Affirmative Defenses. That date fell within the 61 day period between the time Mr. Stein left Huck Bouma and the time he finally filed an appearance on behalf of Aronberg Goldgehn. As a courtesy, the Motion to Dismiss or Strike was served on Mr. Stein at Aronberg Goldgehn in addition to the attorney of record, Huck Bouma.

8. Mr. Stein was not attorney of record in this matter for a period of approximately two months, during which time the firm he left, Huck Bouma, was the only attorney of record.

9. Mr. Stein complains of the disruption caused by his decision to move to Aronberg Goldgehn. However, he leaves out two important considerations.

A. First, after December 23rd of 2015 he was no longer at the firm that was of record in this matter so the responsibility for pursuing this case rested with Huck Bouma rather than with him. No reason is given for why none of the other attorneys at

Huck Bouma could not have responded to the District's motion or at least timely requested an extension.

B. Second, Mr. Stein had resources he does not mention. Both the firm he left and the firm he joined have, according to their websites, at least 30 other attorneys he could have turned to for assistance.

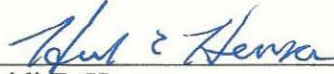
10. Complainant's Motion for Leave to File also states that none of the earlier motions to dismiss were "granted on the merits." It is not clear how this serves as an argument for an extension of time, but nonetheless the statement should be addressed because it is misleading. The Board granted the District's Motion to Dismiss Complaint for Failure to Comply with Board Rules and to Dismiss in Part for Being Frivolous, and permitted Complainant to cure the defects by filing an amended complaint, and the Board never ruled on the merits of Respondent's Motion to Dismiss for Lack of Personal Jurisdiction because Respondent agreed to allow Complainant to re-serve its complaint (Hearing Officer Order March 17, 2015).

12. On four occasions throughout this proceeding Respondent has requested extensions of time to file. Respondent did not object to the first two requested extensions (Hearing Officer Order May 6, 2015 and Complainant's Motion for Extension of Time to Respond filed August 6, 2015) as they were well supported and reasonable. The instant request however is weakly supported, self-imposed, and extremely late.

WHEREFORE Respondent respectfully request that Complainant's Motion for Leave to File be denied.

Respectfully submitted,

Highland Hills Sanitary District
by its attorneys,
Podlewski & Hanson



Heidi E. Hanson

Dated: February 29, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
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HIGHLAND HILLS SANITARY)	
DISTRICT,)	
)	
Respondent.)	

HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO STRIKE OR IN THE ALTERNATIVE REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO STRIKE

Respondent, HIGHLAND HILLS SANITARY DISTRICT ("District"), by and through its attorneys PODLEWSKI & HANSON P.C., hereby moves to strike or, in the alternative moves to reply to Complainant's RESPONSE TO MOTION TO STRIKE.

In support of its Motion the District states as follows:

1. Complainant, on February 24, 2016 filed with the Board its Motion for Leave to File seeking leave to file a late response to the District's January 12, 2016 Motion to Dismiss Amended Formal Complaint, or In the Alternative Motion to Strike Complainant's Reply to Affirmative Defenses ("Motion to Dismiss or Strike") with an attached, unsigned Response to Motion to Strike as Exhibit A, which Complainant proposed to file if given leave to do so by the Hearing Officer.¹

2. On February 26, 2016 the District's counsel received a signed copy of the Response to Motion to Strike and attached a certificate of service showing service on District's

¹ The District objects to the late filing and has this day filed HIGHLAND HILLS SANITARY DISTRICT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE LATE RESPONSE TO MOTION TO DISMISS OR STRIKE.

counsel but not on the Board or the Hearing Officer (Attachment #1).

4. While it is unclear what Complainant is trying to do, it may be that her counsel is attempting to late file a Response to Motion to Strike without having received permission from either the Board or the Hearing Officer to do so. Furthermore, Complainant has failed to properly file it by serving it only on the District and not on the Board's Clerk or Hearing Officer.

5. Because attempted service was very late, without permission, and improper, the Response to Motion to Strike should itself be stricken or declared a nullity.

6. If the Board does consider the late-filed Response to Motion to Strike, Respondent requests approval to reply. Such approval is warranted because the crux of Complainant's argument appears to be a citation to an incorrect and irrelevant section of the Code of Civil Procedure.

7. Complainant quotes from 735 ILCS 5/2-602 but cites to 5/2-603. The quoted section of 5/2-602 provides that if an affirmative defense is pleaded "a reply shall be filed by the plaintiff, but the filing of a reply is not an admission of the legal sufficiency of the new matter." This stands in contrast to 735 ILCS 5/2-610 which provides that an allegation not explicitly denied is admitted. Thus, an allegation not denied is admitted but the filing of a reply does not admit the legal sufficiency of a defense. It is the factual allegations in the affirmative defenses that should be deemed admitted by Complainant's general and contradictory reply.

8. Complainant had the opportunity to challenge the legal sufficiency of the affirmative defenses pursuant to Board procedural rule 35 Ill Adm. Code 101.506 within 30 days of the filing of the affirmative defenses but Complainant did not do so. The Hearing Officer allowed Complainant an additional week (Hearing Officer Order December 3, 2015) and it still did not do so. The argument that it did not waive its opportunity to challenge the legal

sufficiency of the affirmative defenses by filing its reply is of no consequence. Complainant waived its opportunity simply by not filing a timely challenge.

WHEREFORE Respondent respectfully request that Complainant's Response to Motion to Strike be stricken, declared a nullity or, in the alternative, that the District be permitted to file a reply.

Respectfully submitted,

Highland Hills Sanitary District
by its attorneys,
Podlewski & Hanson


Heidi E. Hanson

Dated: February 29, 2016

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
(708) 784-0624

Attachment #1

FOR THE ILLINOIS POLLUTION CONTROL

SUSAN M. BRUCE,)	
)	
Complainant,)	
)	
v.)	No. PCB 15-139
)	
HIGHLAND HILLS SANITARY DISTRICT,)	
)	
Respondent.)	

RESPONSE TO MOTION TO STRIKE

Complainant, Susan M. Bruce, by Lawrence A. Stein of ARONBERG GOLDGEHN DAVIS & GARMISA, responds to the motion of the respondent to dismiss her amended formal complaint or in the alternative to strike her reply to respondent's affirmative defenses. In opposition to the motion, complainant states as follows:

1. The respondent filed a complex set of affirmative defenses that contained within them allegations of some of the same facts complainant alleged in her amended formal complaint.
2. The complainant simply denied each of the respondent's affirmative defenses. She did not address the allegations within each affirmative defense.
3. The respondent's motion claims, in paragraph 4, that by denying each of the respondent's affirmative defenses, she has "denied the essential elements" her own case, including denying her own address that she alleged in her amended formal complaint.
4. In simply denying the convoluted affirmative defenses of the respondent, the complainant was simply denying that the affirmative defenses precluded her claim.
5. Section 2-603 of the Code of Civil Procedure provides in pertinent part as follows:

If new matter by way of defense is pleaded in the answer, a reply shall be filed by the plaintiff, but *the filing of a reply is not an admission of the legal sufficiency of the new matter.* (735 ILCS 5/2-603.)

6. The complainant did not deny the allegations of her own complaint. She simply denied that the defenses pled by the respondent precluded her claim.

7. Nor is there any merit to the respondent's claim that a reply to an affirmative defense must be pled with specificity.

8. The respondent's motion lacks merit.

WHEREFORE, complainant, SUSAN M. BRUCE, requests an order denying the motion of the respondent to dismiss complainant's amended formal complaint, and for all other relief deemed appropriate under the circumstances.

Respectfully submitted,

ARONBERG GOLDGEHN DAVIS & GARMISA



Lawrence A. Stein

Lawrence A. Stein
**ARONBERG GOLDGEHN
DAVIS & GARMISA**
330 North Wabash Avenue, Suite 1700
Chicago, Illinois 60611
Telephone (312) 755-3133
Facsimile (312) 222-6399
Email lstein@agdglaw.com
Firm No. 30375

CERTIFICATE OF FILING AND SERVICE

I, LAWRENCE A. STEIN, certify under penalty of perjury on this 24th day of February 2016, as follows:

1. I served this Response to Motion to Strike by placing it in an envelope with proper first class postage prepaid and plainly addressed to Joseph R. Podlewski, Jr., Esq. and Heidi Hanson, Esq., Podlewski & Hanson, P.C., 4721 Franklin Avenue, Suite 1500, Western Springs, IL 60558-1720.

2. I deposited the envelope in the United States mail in Chicago on February 24, 2016.



CERTIFICATE OF SERVICE

I, the undersigned attorney, certify that I have served on the date of February 29, 2016 the attached:

HIGHLAND HILLS SANITARY DISTRICT'S RESPONSE TO COMPLAINANT'S MOTION FOR LEAVE TO FILE LATE RESPONSE TO MOTION TO DISMISS OR STRIKE

And

HIGHLAND HILLS SANITARY DISTRICT'S MOTION TO STRIKE OR IN THE ALTERNATIVE REPLY TO COMPLAINANT'S RESPONSE TO MOTION TO STRIKE

Upon the following persons, by electronic filing before 4:30 this day:

Clerk's Office On-Line
Illinois Pollution Control Board
100 West Randolph Street
James R. Thompson Center, Suite 11-500
Chicago, Illinois 60601-3218

And by depositing same in the U. S. Postal Service mailbox at Western Springs, Illinois before 4:30 this day, with proper postage prepaid, upon the following persons:

One copy to:

Lawrence A. Stein
Aronberg Goldgehn Davis & Garmisa
330 N. Wabash Avenue
Suite 1700
Chicago, Illinois 60611

And pursuant to 35 Ill Adm. Code 101.1060(d), before 4:30 this day I served by email transmission twelve (12) pages (including this Certificate) upon

Bradley Halloran, Hearing Officer at the email address of Brad.Halloran@illinois.gov.
My email address is heh70@hotmail.com.

Dated: February 29, 2016


Heidi E. Hanson

Joseph R. Podlewski Jr.
Heidi E. Hanson
Podlewski & Hanson P.C.
4721 Franklin Ave, Suite 1500
Western Springs, IL 60558-1720
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