

FOR THE ILLINOIS POLLUTION CONTROL

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

MOTION TO STRIKE AFFIRMATIVE DEFENSES

Complainant, SUSAN M. BRUCE, by her attorney, Lawrence A. Stein of ARONBERG GOLDGEHN DAVIS & GARMISA, moves to strike the affirmative defenses of respondent, HIGHLAND HILLS SANITARY DISTRICT, because they are insufficient in law. In support of her motion, complainant states as follows:

1. Respondent filed eight Affirmative Defenses.
2. On March 17, 2016, the Board granted complainant leave to file an amended reply to the those defenses, noting deficiencies in them. The Board wrote:

However, Ms. Bruce's Amended Reply does not need to specifically address every statement in the defenses, many of which are not factual allegations. For instance, the defenses make statements of law when discussing Board regulations, Board orders or cases. The Board will not deem these legal arguments admitted if not addressed in an amended reply. Neither will the Board require the reply to address allegations that dispute fact asserted in the Amended Complaint. Lastly, conclusory characterizations of fact in the defenses may not be addressed in the Amended reply.

3. The respondent's first affirmative defense is denoted "act of God." However, the facts alleged in the affirmative defense do not support that defense. The Respondent's allege a

significant rain event while only held more emergency type events constitute acts of God, such as events like a 250- or 500-year flood or a heavy rainfall, combined with rapid snow melt, causing extreme stress and requiring emergency discharges to avoid structural failures.

4. In its second defense, the respondent alleges that the violation was caused by a third party, another sanitary district that the respondent contracted with to help it provide service. The respondent's contractor is not the type of third party who would give rise to such a defense. Rather, the district with which the respondent contracted with is in essence an extension or agent of the respondent and not a third party. The respondent chose to contract with the other district, and is responsible for that choice.

5. The third d alleges that the complainant failed to maintain the structures on her property related to drainage and sewage. Respondent supports its defense with numerous statements made "information and belief." Allegations made simply on information and belief are not a specific factual allegation to support a defense.

6. The fourth defense improperly interprets the Board's decision in *Travieso*, improperly interpreting the phrase "Complainant's residence" where Mr. Travieso is living from time to time, when it is obviously that the reference in *Travieso* to "Complainant's residence" is a reference to the house that the complainant in this case now owns and where the alleged violations occurred.

7. The fifth defense is entitled "General Equity." The complainant is not aware of any defense for "general equity" and the allegations of the defense are not sufficient to support the defense.

8. The sixth defense makes an argument of law regarding whether an amendment to the act should be applied retroactively. This legal argument is not an affirmative defense but rather denial of the allegations of the amended complaint should be stricken.

9. The seventh defense is entitled "Impossibility." Complainant submits that the defense of "impossibility" is essentially the same as the defense of "act of God" and ought to be stricken for the same reasons.

10. The eighth and final defense relies on the statute of limitations but makes no specific or actual allegations but rather alleges that a violation may have occurred more than five years before the filing of the complaint. An allegations that some fact "may be" true if not the specific type of allegation that is required in a pleading, rendering the eighth and final defense insufficient in law and subject stricken.

WHEREFORE, complainant, SUSAN M. BRUCE, requests an order striking and dismissing the eight affirmative defenses of the respondent and for all other relief deemed appropriate under the circumstances.

Respectfully submitted,

ARONBERG GOLDGEHN
DAVIS & GARMISA, LLC


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CERTIFICATE OF FILING AND SERVICE

I, LAWRENCE A. STEIN, certify under penalty of perjury on this thirty first day of March 2016, as follows:

1. I served this *Motion to Strike Affirmative Defenses* by placing it an envelope with proper first class postage prepaid, certified mail, return receipt requested, 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 at Chicago, Illinois on March 31, 2016 at approximately 4:30 pm.

A handwritten signature in blue ink, appearing to read 'L.A. Stein', is written over a horizontal line.