

Commissioner, Indiana Department Of Environmental Management: Complainant

v.

Robert C. Leiter d/b/a Leiter Real Estate, Inc.: Respondent

2008 OEA 26 (05-W-E-3557)

OFFICIAL SHORT CITATION NAME: When referring to 2008 OEA 26, cite this case as
Leiter Real Estate, Inc., 2008 OEA 26.

TOPICS:

dismissal

moot

death

PRESIDING JUDGE:

Gibbs

PARTY REPRESENTATIVES:

Complainant/IDEM: Timothy Junk, Esq.

Respondent: Mark Shere, Esq.

ORDER ISSUED:

April 1, 2008

INDEX CATEGORY:

Water

FURTHER CASE ACTIVITY:

[none]

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STATE OF INDIANA)
)
COUNTY OF MARION)

BEFORE THE INDIANA OFFICE OF
ENVIRONMENTAL ADJUDICATION

IN THE MATTER OF:)

COMMISSIONER, INDIANA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT)

Complainant)

v.)

CAUSE NO. 05-W-E-3557

ROBERT C. LEITER d/b/a LEITER
REAL ESTATE, INC.)

Respondent.)

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND FINAL ORDER**

This matter having come before the Court on the Respondent’s Notice and Motion to Dismiss as Moot, filed March 17, 2008; the Department’s Consent to Dismissal of Leiter’s Request for Administrative Review, filed March 20, 2008; and the Respondent’s Reply in Support of Robert Leiter’s Notice and Motion to Dismiss Order, filed March 27, 2008; and the Court, being duly advised and having read and considered the pleadings, motions, and briefs now enters the following findings of fact, conclusions of law and final order:

Findings of Fact

1. On June 1, 2005, the Commissioner of the Indiana Department of Environmental Management (the “IDEM”) issued a Notice and Order of the Commissioner of the Indiana Department of Environmental Management (the “CO”) to Robert C. Leiter d/b/a Leiter Real Estate, Inc. (the “Respondent”).
2. The Respondent filed his petition for administrative review on June 17, 2005.
3. On December 5, 2005, the IDEM filed the Commissioner’s Stipulation of Dismissal with Prejudice of IDEM’s Claim for the Civil Penalty Set Forth in the CO.

Commissioner, Indiana Department Of Environmental Management: Complainant

v.

**Robert C. Leiter d/b/a Leiter Real Estate, Inc.: Respondent
2008 OEA 26 (05-W-E-3557)**

4. Based on the contention that the issuance of the CO was in contempt of the Respondent's bankruptcy discharge, the Respondent filed a "Complaint for Violation of Bankruptcy Discharge" in the United States Bankruptcy Court, Northern District of Indiana, South Bend Division. On March 6, 2006, the Respondent informed the court of this. On March 7, 2006, the presiding Environmental Law Judge (the "ELJ") issued an Order Suspending and Holding in Abeyance All Activity in This Matter until such time as a ruling on the Respondent's Complaint for Violation of Bankruptcy Discharge was issued from the Bankruptcy Court.
5. The Respondent filed a Motion for Summary Judgment on January 19, 2006. This motion was held in abeyance until the bankruptcy court issued its decision. The IDEM filed the Department's Motion to Lift Stay and Proceed with Summary Judgment on April 9, 2007. A copy of Judge Dees' order denying Leiter's Motion for Partial Summary Judgment was attached. Judge Dees determined that IDEM, by issuing the CO, was not in contempt of the bankruptcy discharge.
6. Thereafter, briefing on the motion for summary judgment concluded on June 27, 2007. On August 16, 2007, the presiding ELJ issued Findings of Fact, Conclusions of Law and Order denying the Respondent's Motion for Summary Judgment.
7. On March 17, 2008, counsel for Respondent informed the Court in the Notice and Motion to Dismiss Order as Moot that the Respondent, Robert C. Leiter, died on December 21, 2007. Counsel seeks to have the CO vacated.
8. The IDEM agrees that Mr. Leiter's death makes this matter moot as there is no one against whom the IDEM can enforce this CO. The IDEM seeks to have Respondent's Petition for Administrative Review dismissed.
9. There is no evidence from either party that any responsible corporate entity survives Mr. Leiter.

Conclusions of Law

1. The Office of Environmental Adjudication ("OEA") has jurisdiction over the decisions of the Commissioner of the Indiana Department of Environmental Management ("IDEM") and the parties to this controversy pursuant to Ind. Code § 4-21.5-7, *et seq.*
2. This is a Final Order issued pursuant to Ind. Code § 4-21.4-3-27. Findings of Fact that may be construed as Conclusions of Law and Conclusions of Law that may be construed as Findings of Fact are so deemed.

Commissioner, Indiana Department Of Environmental Management: Complainant

v.

Robert C. Leiter d/b/a Leiter Real Estate, Inc.: Respondent
2008 OEA 26 (05-W-E-3557)

3. “When a dispositive issue in a case has been resolved in such a way as to render it unnecessary to decide the question involved, the case will be dismissed.” *Travelers Indem. Co. v. P.R. Mallory & Co.*, 772 N.E.2d 479, 484 (Ind. App. 2002). A case is deemed moot when there is no effective relief that can be rendered to the parties by the Court. *A.D. v. State*, 736 N.E.2d 1274, 1276 (Ind. App. 2000). In this case, the IDEM has conceded that it cannot enforce the CO against Mr. Leiter. Nor is this Court aware of relief it is authorized to order for Mr. Leiter.
4. The parties in this matter insist that the Court determine whether the CO is effective or not. However, it is not necessary to do so, particularly as no evidence has been introduced as to the survival of any potentially culpable entity. This is, in essence, the very point of a determination that a matter is moot. The Indiana Supreme Court’s holding in *Dunn v. State*, 163 Ind. 317 (Ind. 1904) is particularly helpful. (This case is the basis for more recent rulings on the effect of mootness.) The Court states:

Certainly, under the circumstances, the subject of the controversy herein has been eliminated from the case; and if this appeal were sustained, and the cause remanded to the lower court, there would virtually be nothing in that tribunal over which the parties could litigate, except, perhaps, a question of cost.¹ Certainly the trial court would not attempt to compel that to be done which has already been performed. It has been the universal practice of this court to dismiss an appeal when it is made to appear that it is unnecessary to decide the question presented. In fact, it is an elementary principle that it is the province of a court to decide real questions or controversies between litigants, and *not to decide simply moot or abstract propositions*.

163 Ind. at 320. Emphasis added.

5. In this case no evidence or legal authority has been introduced which would allow the ELJ to decide one way or the other which party prevails.² The parties merely wish the Court to decide an abstract proposition.

¹ This is not an issue in this matter. The ELJ does not have the authority to assess costs.

² At the final prehearing conference held on March 25, 2008, the parties admit that the reason that they want this ELJ to determine the basis of the dismissal from this Court is to assist them in arguing their respective cases regarding attorney fees in front of the bankruptcy court. However, the ELJ can find no legal authority to authorize OEA to exceed its jurisdictional limits.

Commissioner, Indiana Department Of Environmental Management: Complainant

v.

**Robert C. Leiter d/b/a Leiter Real Estate, Inc.: Respondent
2008 OEA 26 (05-W-E-3557)**

6. Counsel for Respondent cites to no legal authority, either case law or statutes, to support his argument that the CO must be vacated. Rather he relies on broad appeals to emotion and respect for the dead. He also states that the ELJ seems “confused” about the OEA’s authority. Counsel believes that only decisions in his client’s favor constitute “fair” decision making. This ELJ is aware of the limits of OEA’s authority, which require OEA to base their decisions on the evidence, statutory authority and case law presented by the parties. When OEA fulfills its statutory duty to determine issues before it, this necessarily requires finding against one party or the other in contested cases. This does not convert OEA into a party’s advocate.

Final Order

THE COURT, being duly advised, **ORDERS** that this matter, pursuant to 315 IAC 1-3-7, is **DISMISSED with prejudice**.

You are hereby further notified that pursuant to provisions of Indiana Code § 4-21.5-7.5, the Office of Environmental Adjudication serves as the Ultimate Authority in the administrative review of decisions of the Commissioner of the Indiana Department of Environmental Management. This is a Final Order subject to Judicial Review consistent with applicable provisions of IC 4-21.5. Pursuant to IC 4-21.5-5-5, a Petition for Judicial Review of this Final Order is timely only if it is filed with a civil court of competent jurisdiction within thirty (30) days after the date this notice is served.

IT IS SO ORDERED this 1st day of April, 2008 in Indianapolis, IN.

Hon. Catherine Gibbs
Environmental Law Judge