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January 27, 2016

Office of the Civil Clerk
Plymouth County Superior Court
52 Obery Street
Plymouth, MA 02360

Re: Kingston Wind Independence, LLC v. Kingston Board of Health, et al
Docket No. PLCV2015-01199

Dear Sir/Madam:

Enclosed herewith, please find the Defendants' Answer and Counterclaim. The Administrative Record will be filed separately, in compliance with Standing Order 1-96.

Thank you.

Sincerely,


Jason R. Talerman

Enc.

cc: R. Sinsheimer, Esq.
Clients

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT
NO. PLCV2015-01199

KINGSTON WIND INDEPENDENCE, LLC,

Plaintiff

v.

KINGSTON BOARD OF HEALTH and
TOWN OF KINGSTON,

Defendants

ANSWER TO COMPLAINT
AND
COUNTERCLAIM

ANSWER

Now come the Defendants and hereby respond to the correspondingly number paragraphs of the Plaintiff's Complaint, as follows:

1. The Defendants are without sufficient information to admit or deny the allegations of this paragraph although they admit to the existence of KWI.
2. The Defendants admit that the Defendant Board of Health (BOH) is a duly constituted Board of Health, with powers enumerated in its enabling regulations, bylaws and regulations.
3. Admit.
4. In response to the allegations, the Defendants assert that the contract with KWI speaks for itself.
5. Deny. KWI has breached the Contract.

6. In response to the allegations of this paragraph, the Defendants assert that the BOH's order speaks for itself.
7. The Defendants admit that some compliance with the original order was achieved and deny the remaining allegations of the paragraph.
8. In response to the allegations of this paragraph, the Defendants assert that the BOH's order speaks for itself.
9. Deny.
10. Deny.
11. Deny.
12. No response required.
13. No response required, per Standing Order 1-96.
14. No response required, per Standing Order 1-96.
15. No response required.
16. No response required, per Standing Order 1-96.
17. No response required, per Standing Order 1-96.
18. No response required.
19. In response to the allegations in this paragraph, the Defendants assert that the contract speaks for itself.
20. Deny.
21. Deny.

AFFIRMATIVE DEFENSES

1. The Complaint must be dismissed for failure to state a claim upon which relief may be granted.

2. The Complaint must be dismissed, in whole or in part, due to lack of subject matter jurisdiction.
3. The Complaint must be dismissed for insufficient service of process.
4. The Complaint must be dismissed, in whole or in part on the grounds of estoppel or claim preclusion.

COUNTERCLAIM

1. KWI's wind turbine is located on Town-owned land.
2. Under its Lease and Contract with the Town, KWI is required to pay monthly rent to the Town for the land on which the turbine is located.
3. KWI has failed, without legal justification, to make several rent payments to the Town.
4. Under its Contract with the Town, KWI is required to comply with all governmental regulations, standard and orders relative to the operation of the turbine.
5. KWI's present turbine operations are not in compliance with standards implemented by the Massachusetts Department of Environmental Protection.
6. KWI did not appeal the BOH's original Abatement Order and is therefore bound by the same.
7. KWI is not in full compliance with either the BOH's original Abatement Order or the BOH's second Abatement Order.

COUNT ONE – BREACH OF CONTRACT

8. The Defendants/Plaintiffs-in-Counterclaim hereby restate each and every prior paragraph of this Counterclaim.
9. Based upon the foregoing, KWI has breached its Contract with the Town, with respect to non-payment of rent.

10. Based upon the foregoing, KWI has breached its Contract with the Town, with respect to the requirement for compliance with governmental standards for the operation of the turbine
11. As a direct and proximate result of such breach of contract, the Town and its residents have suffered severe injury and damage while KWI has continued to be unjustly enriched by the operation of the turbine.

COUNT TWO – PRAYER FOR INJUNCTIVE RELIEF

12. The Defendants/Plaintiffs-in-Counterclaim hereby restate each and every prior paragraph of this Counterclaim.
13. Based upon the foregoing, injunctive relief must be entered, compelling KWI to comply with its Contract with the Town.
14. Based upon the foregoing, injunctive relief must be entered, compelling KWI to comply with the BOH's initial Abatement Order.
15. Based upon the foregoing, injunctive relief must be entered compelling KWI to comply with the BOH's second Abatement Order.
16. Entry of an injunction is in the public interest.

WHEREFORE, for the foregoing reasons, the Defendants/Plaintiffs-in-Counterclaim respectfully request that this honorable Court:

1. Enter Judgment in favor of the Defendants, dismissing each and every one of the Counts of the Plaintiff's Complaint.
2. Enter Judgment in favor of the Town's Counterclaim for Breach of Contract.
3. Enter an injunction against Plaintiff, requiring it to comply with each and every requirement of its lease and contract with the Town.

4. Enter an injunction against the Plaintiff, requiring it to comply with each of the Abatement Orders issued by the Board of Health.
5. Award the Town its damages as a result of the Plaintiff's breach of contract.
6. Award the Defendants their costs associated with this matter, including their attorneys' fees.
7. Award the Defendants such other relief as is deemed just and equitable.

The Defendants/Plaintiffs-in-Counterclaim:
Town of Kingston and Kingston Board of Health,
By their attorneys,

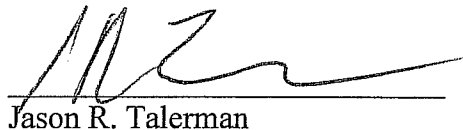


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January 27, 2016

CERTIFICATE OF SERVICE

I, Jason R. Talerman, Esq., hereby certify that I have caused a copy of the foregoing to be served upon each other party to this matter, by mail, this 27th day of January, 2017



Jason R. Talerman