



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
2890 WOODBRIDGE AVE  
EDISON, NEW JERSEY 08837

**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

**Article Number: 7001 0320 0004 7790 5524**

Mr. Charles Kaplan  
Kaplan Real Estate  
1300 Floyd Avenue  
Rome, New York 13440

Re: In the Matter of **Kaplan Real Estate**  
Docket No. TSCA-02-2011-9269

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG.11  
2011 OCT -6 P 3:04  
REGIONAL HEARING  
CLERK

Dear Mr. Kaplan:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Judicial Officer of the United States Environmental Protection Agency, Region 2 (EPA).

Please note that the forty-five (45) day period for payment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Judicial Officer. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the payment check is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Mr. James Crossmon of my staff at (732) 452-6409 or [crossmon.james@epa.gov](mailto:crossmon.james@epa.gov) if you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "John Gorman", is written over a horizontal line.

John Gorman, Chief  
Pesticides and Toxic Substances Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2

-----X  
: :  
In the Matter of : :  
: :  
**Kaplan Real Estate** : : CONSENT AGREEMENT  
: : AND  
: : FINAL ORDER  
: :  
Respondent. : :  
: :  
Proceeding under Section 16(a) of : : Docket No.  
the Toxic Substances Control Act. : : TSCA-02-2011-9269  
-----X

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REG. II  
2011 OCT -6 P 3:04  
REGIONAL HEARING  
CLERK

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22 (July 1, 2000) (hereinafter "Consolidated Rules"), provide in 40 C.F.R. Part 22.13(b) that when the parties agree to settle one or more causes of action before the filing of an Administrative Complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order ("CAFO") pursuant to 40 C.F.R. Part 22.18(b)(2) and (3). The Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 (hereinafter "EPA" or "Complainant"), alleges that Kaplan Real Estate (hereinafter "Respondent") violated 42 U.S.C Section 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689, and the regulations promulgated pursuant to that Section, set forth at 40 C.F.R. Part 745, relating to lead-based paint.

EPA and Respondent agree that settling this matter by entering into this CAFO pursuant to 40 C.F.R. Part 22.13(b) and 40 C.F.R. Part 22.18(b)(2) and (3), is an appropriate means of resolving this case without further litigation. This CAFO is being issued pursuant to said provisions of 40 C.F.R. Part 22. No formal or adjudicated findings of fact or conclusions of law have been made. The following constitute Complainant's findings of fact and conclusions of law.

#### FINDINGS OF FACT

1. Respondent is Kaplan Real Estate.
2. Respondent owned, operated, and/or leased target housing in and around Rome, New York (hereinafter "Respondent's facilities") during at least the years 2007 through 2009.
3. On or about May 13, 2009, duly designated representatives of the EPA conducted an inspection of and at Respondent's facility.
4. The inspection referenced in the above paragraphs is hereinafter referred to as "the inspection".
5. As a result of the inspection, EPA determined that Respondent had failed to perform Lead-Based Paint (LBP) Disclosure in accordance with the specifications and requirements of 40 C.F.R. Part 745, 42 U.S.C. § 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.
6. On December 16, 2010, EPA issued Respondent an "Opportunity to Show Cause for Violations of the Residential Lead-Based Hazard Reduction Act of 1992, Section 1018" alleging violations of 40 C.F.R. Part 745.
7. On January 25, 2011, February 10, 2011, July 12, 2011, and July 13, 2011, the parties held informal settlement discussions via telephone.

### CONCLUSIONS OF LAW

1. Respondent, as the "lessor", is subject to the regulations and requirements pertaining to LBP Disclosure promulgated pursuant to Section 409 of TSCA, 15 U.S.C. § 2689, and set forth at 40 C.F.R. Part 745.
2. Respondent is a "lessor" within the meaning of 40 C.F.R. Part 745.
3. Failure to perform LBP Disclosure is a violation of 40 C.F.R. Part 745, 42 U.S.C. § 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.

### TERMS OF CONSENT AGREEMENT

Based on the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a) and in accordance with the Consolidated Rules of Practice at 40 C.F.R. Part 22, it is hereby agreed by and between the parties hereto, and accepted by Respondent, that Respondent voluntarily and knowingly agrees to, and shall, comply with the following terms:

1. Respondent shall hereinafter comply with all applicable provisions of TSCA and the regulations promulgated pursuant to it.
2. For the purposes of this Consent Agreement, Respondent (a) admits that EPA has jurisdiction pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), to commence a civil administrative proceeding for the violations alleged in the "Conclusions of Law" section, above; (b) neither admits nor denies the specific factual allegations contained in the "Findings of Fact" section, above; and (c) neither admits nor denies the assertions set forth in the "Conclusions of Law" section, above.
3. Respondent shall pay, by cashier's or certified check, a civil penalty in the amount

Of **FIVE THOUSAND ONE HUNDRED SIXTY-EIGHT DOLLARS (\$5,168)** to the "Treasurer of the United States of America". The check shall be identified with a notation of the name and docket number of this case, set forth in the caption on the first page of this document.

Such check shall be mailed to:

U.S. Environmental Protection Agency  
Fines and Penalties  
Cincinnati Finance Center  
PO Box 979077  
St. Louis, Missouri 63197-9000.

Alternatively, payment may be by Electronic Fund Transfer (EFT) directed to the Federal Reserve Bank of New York. Respondent shall provide the following information to its remitter bank:

- 1) Amount of Payment
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045
- 3) Account: 68010727
- 4) ABA number: 021030004
- 5) Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
- 6) Name of Respondent (Kaplan Real Estate)
- 7) Docket Number (TSCA-0202011-9269)

Payment must be received at the above address (or account of EPA) on or before **45 calendar days** after the date of the signature of the Final Order at the end of this document (the date by which payment must be received shall hereinafter be referred to as the "due date"). Promptly after payment has been made, Respondent shall send copies of said payment or furnish reasonable proof that such payment has been made, to both:

Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, New York 10007

and

Theresa Bourbon, Lead Team MS-225  
Pesticides and Toxic Substances Branch  
2890 Woodbridge Avenue, MS-105  
Edison, New Jersey 08837

a. Failure to pay the penalty in full according to the above provisions will result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for collection.

b. Further, if payment is not received on or before the due date, interest will be assessed, at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of \$15 will be assessed for each 30-day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liabilities under the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, and the regulations promulgated thereunder 40 C.F.R. Part 745, that attach or might have attached as a result of the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable, and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent hereby waives its right to seek or to obtain any hearing (pursuant to Subpart D of 40 C.F.R. Part 22) or other judicial proceeding on the assertions contained in the "Findings of Fact" section, above, and the allegations contained in the "Conclusions of Law" section, above, or on any allegations arising thereunder. Respondent further waives its right otherwise to contest all such assertions and/or allegations.

7. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator, the Deputy Regional Administrator, or the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

8. This Consent Agreement does not waive, extinguish, or otherwise affect Respondent's obligation to comply with all applicable federal, state, or local laws, rules, or regulations.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all terms and conditions set forth in this Consent Agreement.

10. Each party shall bear its own costs and fees in this matter.

11. Respondent consents to service upon Respondent of a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT: BY: *Charles Kaplan*  
(Authorized Signature)

NAME: Charles Kaplan  
(PLEASE PRINT)

TITLE: Owner

DATE: 9/29/2011

COMPLAINANT: *[Signature]*  
Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

DATE: SEPTEMBER 29, 2011



In the Matter of Kaplan Real Estate  
Docket Number TSCA-02-2011-9269

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, concurs in the foregoing Consent Agreement in the case of In the Matter of Kaplan Real Estate, bearing Docket Number TSCA-02-2011-9269. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified, incorporated into and issued, as this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2 (40 C.F.R. § 22.31(b)). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 409 of the Toxic Substances Control Act, 15 U.S.C. § 2689.

DATE: Sept 30, 2011

Helen Ferrara

Helen Ferrara  
Regional Judicial Officer  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, New York 10007

**In the Matter of Kaplan Real Estate  
Docket No. TSCA-02-2011-9269**

**CERTIFICATE OF SERVICE**

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by interoffice mail to:

Office of the Regional Hearing Clerk.  
U.S. EPA- Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Copy by Certified Mail Return Receipt Requested:

Mr. Andrew S. Kowalczyk, Jr., Esq.  
(Attorney for Kaplan Real Estate)  
Kowalczyk, Deery, Hilton & Broadbent, LLP  
185 Genesee Street, 12<sup>th</sup> Floor  
Utica, New York 13501

Dated: 10/4/2011  
Edison, New Jersey

James Crossmon