

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of: ) Docket No. TSCA-05-2006-0012  
)  
Willie P. Burrell ) Proceeding to Assess a Civil  
The Willie P. Burrell Trust, ) Penalty under section 16(a)  
Dudley B. Burrell, and The ) the Toxic Substances Control  
Dudley B. Burrell Trust ) Act, 15 U.S.C. § 2615(a)  
Kankakee, Illinois, )  
)  
Respondents. )  
\_\_\_\_\_ )

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AFFIDAVIT OF WILLIE P. BURRELL

I, the undersigned, am over the age of 18 and I am of sound mind.

1. Willie P. Burrell is the owner of The Willie P. Burrell Declaration of Trust (hereinafter, referred to collectively as "Burrell").

2. Burrell is engaged in the business of leasing residential apartment units.

3. Attorney Edward Lee ("Lee") was first retained, on or about March of 2004, by Willie P. Burrell to handle a variety of legal matters regarding B & D Management, Inc., Burrell Property Management, L.L.C., Willie P. Burrell, and The Willie P. Burrell Trust (hereinafter collectively, "Burrell" or "Respondents").

4. Prior to September 2010, Lee communicated that all of Burrell's affairs "were in order" and that he "was on top of it." Since September 2010, Burrell has attempted to

communicate with Lee, by telephone, on numerous occasions. In September of 2010, Burrell attempted to meet with Lee at his office.

5. However, Lee was not willing to meet with Burrell at that time.

6. Since September 2010, Lee has failed to meet with or communicate with Burrell.

7. On March 25, 2005, the United States Environmental Protection Agency - Region 5 (hereinafter, "EPA") advised Lee that it was planning to file a civil administrative complaint against Burrell. (See Exhibit A, attached hereto).

8. The March EPA letter requested that Burrell provide the EPA with any evidence she had regarding notice compliance with the Toxic Substance Control Act ("TSCA"), 15 U.S.C. § 2601 et seq. (1976), including but not limited to, any evidence of lead based paint warnings to Burrell's tenants and/or tests showing no lead based paint existed in the Burrell apartment units.

9. The EPA requested specific documents to show that Burrell had an "inability to pay" or "continue in business" which are mitigating factors for the proposed civil penalties sought by the EPA.

10. The EPA requested Lee provide it with the requested compliance records, lead paint test results, and mitigation documentation within ten (10) days.

11. Six (6) months later, Lee responded to the EPA by letter dated September 16, 2005. (See Exhibit B, attached hereto).

12. At that time, he provided the EPA with Kankakee County Health Department (hereinafter, "KCHD") Certificates of Lead Free Home (hereinafter, "certificates"). However, Lee failed to request the underlying test results for the certificates from the KCHD. Moreover, Lee never provided the EPA with other evidence of Burrell's compliance with the TSCA, nor did he provide evidence required for Burrell to assert any mitigating factors to the civil penalties sought by the EPA.

13. The EPA responded to Lee's September 2005 letter, on December 28, 2005. (See Exhibit C, attached hereto). At that time, the EPA specifically informed Lee that it believed the certificates were legally inadequate under 40 C.F.R. § 745.103.

14. Lee was also informed that documentation showing the apartment units were lead-free were required by January 31, 2006. Lee failed to further respond to the EPA.

15. On June 22, 2006, the EPA filed a Complaint against Burrell for alleged violations of the TSCA, requesting a civil penalty in excess of \$89,000.

16. Lee was required to file an answer within thirty (30) days. To date, Lee: never entered an appearance; never

filed an answer; never advised Burrell that she was required to file an answer; never informed Burrell a complaint had been filed by the EPA.

17. On December 17, 2010, almost, five (5) years after the filing of the original complaint, the EPA filed a Motion for Default Judgment. The basis for the Default Judgment was Respondents' failure to answer the EPA's Complaint, filed on June 22, 2006.

18. To date, we know of no action Lee has taken since his September 16, 2005 letter to the EPA. Lee never requested that Burrell provide him with information that would have satisfied the requests of the EPA. Lee never informed Burrell that it might be liable for a \$89,000 penalty.

19. On January 11, 2011, Burrell fired Lee, via certified mail. (See Exhibit D, attached hereto). The firing of Lee was performed on the same day, Respondents discovered a Motion for Default Judgment and Complainant's Memorandum In Support of and Motion for Default Order, filed on January 3, 2010), and received by Burrell January 11, 2011.

20. In summary, Respondents attorney failed to make initial inquiries regarding Respondents potential liability, never engaged in any pre-trial motions or negotiations, failed to contact the EPA for preliminary settlement discussions, failed to request a hearing, failed to file an

answer or assert any mitigating factors or defenses. Lee has failed to meet or communicate with Burrell.

21. On January 11, 2011 I sent Mr. Lee a certified letter, no. 7005 3110 0002 7480 5883 regarding this matter. The letter came back "UNCLAIMED" on February 4, 2011. Exhibit H, attached hereto.

22. Essentially, Lee has disappeared.

23. Respondents assert that they have been singled out by the EPA.

24. The major apartment rental companies in Kankakee county are: (1) Crestview Village Apartments; (2) East Court Village; (3) Hidden Glenn Apartments; (4) Preferred Property Group, L.L.C.; (5) Property Management, Ltd.; (6) Sherwood Forest Apartments; and (7) Stafford Apartments.

25. The government has selected the Respondents for enforcement action "invidiously or in bad faith, i.e., based upon the impermissible consideration of their race as Afro-Americans" and their well known political views.

26. The government has a desire to prevent the exercise of Respondents' constitutional rights, while other similarly situated violators named above were left untouched.

27. The EPA proposes a fine of \$89,430. Respondents, if fined as proposed by the EPA would essentially put Respondents out of business or severely hamper Respondents' ability to continue in business.

28. Moreover, such a fine would not only hurt Respondents, but the employees of the company.

29. Finally, some of the fines may have to be passed onto Respondents tenants, many of which are low-income.

30. Respondents submit their financial information under Confidential Business Information, in accordance with 40 C.F.R. part 2, which is privileged and filed accordingly as Exhibit E, attached hereto.

31. The proposed penalty should be reduced by 80%, because the units identified by the government were in fact lead-free.

32. Respondents submit the Lead-Free Certificate of Home, the Illinois license of the inspector who actually performed the tests, and the underlying test results, all of which are attached hereto as Exhibit F, attached hereto.

33. The Respondents contend that they were willing to cooperate with the governments' enforcement action of the TCSA.

34. Any lack of cooperation thus far, has been the result of their prior attorney's gross negligence.

35. Respondents have requested a settlement conference with the Government. See Exhibit G, attached hereto.

36. Respondents agreed to an inspection of their records, without being compelled to do so.

37. The only reason Respondents failed to further

cooperate was a result of their grossly negligent attorney who failed to provide the government with information that would have shown Respondents' belief that the units were lead free.

38. Respondents were willing to cooperate as they believed they were in compliance with the TSCA.

39. Respondents immediately came into compliance with the TSCA after realizing that strict written compliance with the TSCA was required.

40. Respondents are willing to settle this matter prior to any pre-hearing exchange document.

41. The Respondents are a closely held family company which employs a total of 6 employees, five of which are related by kinship.

42. The Respondents' business is eligible for the elimination of the entire proposed penalty since Respondents have made good-faith effort to immediately comply with the disclosure rules of the TSCA; the governments' allegations, if true, would mean this is Respondents' first offense; Respondents immediately, upon notice of violating the TSCA, came into full compliance with the TSCA in 2003; finally, the alleged violations do not constitute a significant health or environmental threat, because the units were, in fact, lead-free. Exhibit F, attached hereto.

43. Respondents, here, are only liable for the alleged

violations of the TSCA for the units located at 257 N. Chicago #1; 257 N. Chicago #5; 575 E. Oak and 993 N. Schuyler.

44. No child under the age of 18 nor pregnant women lived in 575 E. Oak during all relevant times alleged in the government's complaint.

45. Respondents contend that they were unaware of the Disclosure Rule in 2003.

46. Respondents had sole control of the conditions leading up to alleged violations for 257 N. Chicago #1; 257 N. Chicago #5; 575 E. Oak and 993 N. Schuyler.

47. Respondents did not willfully violate the TSCA.

48. Respondents' gross rents for the tax years 2007, 2008 and 2009 was approximately \$651,825.00.

I affirm the foregoing are true and correct, to the best of my knowledge, under penalty of perjury.

Willie P. Burrell  
Willie P. Burrell

3/02/2011  
Date

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