

22.13(a). A copy of the Complaint was sent to Creps Realty, Inc. via certified mail return receipt requested to “5918 57th Street, Flushing, NY 11378”, the business address identified on the deeds for the properties at issues in this matter. According to a certified mail return receipt “green card” signed by “M. Crespo”, the Complaint was received on January 19, 2012. Relying on the certified mail return receipt “green card” as evidence of proper delivery and service of the Complaint, EPA filed a Certificate and Proof of Service on January 26, 2012 in accordance with 40 C.F.R 22.5(b)(1)(iii). As of April 20, 2012 Respondent had not filed an Answer to the Complaint and on that day EPA filed a Motion for Default Order. As of the date of this Motion, no ruling has been made on EPA’s April 20, 2012 Motion for Default Order and for the reasons discussed below EPA moves to withdraw it.

II. DISCUSSION

Sections 40 C.F.R. §§ 22.5(b)(1)(i) and (ii)(A) of the Consolidated Rules of Practice set forth the applicable procedural requirements for serving complaints on domestic corporations such as Respondent. Such regulatory provisions require a complaint to be served “personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery” on “respondent, or a representative authorized to receive service of process on respondent’s behalf”, specifically, “an officer, partner, a managing or general agent, or any other person authorized by appointment or by Federal or State law to receive service of

process.” 40 C.F.R. §§ 22.5(b)(1)(i) and (ii)(A). While the Complaint in this matter was addressed to authorized entity and delivered through an authorized method under the Consolidated Rules of Procedure, EPA wants to be certain that the Complaint is served in full compliance with the applicable procedural requirements of Sections 40 C.F.R. §§ 22.5(b)(1)(i) and (ii)(A). Today, EPA is seeking to serve a copy of the Complaint on Respondent’s Registered Agent and is therefore concurrently moving to withdrawal its April 20, 2012 Motion for Default Order to allow Respondent time to file an Answer in accordance with the Consolidated Rules of Practice.

III. CONCLUSION

For the forgoing reasons, the Regional Judicial Officer should grant Complainant’s Motion to Withdrawal its Motion for Default Order.

Respectfully submitted,



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Senior Assistant Regional Counsel

OCT 16 2012
Date