

U. S. ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of )  
 )  
PROFESSIONAL EQUITIES, INC. ) Docket No. TSCA-07-2008-0025  
 )  
Respondent )

**CONSENT AGREEMENT AND FINAL ORDER**

The U.S. Environmental Protection Agency (EPA), Region 7 and Professional Equities, Inc. (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties; Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

**FACTUAL ALLEGATIONS**

**Jurisdiction**

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known*

*Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

### **Parties**

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Toxics and Pesticides Branch, EPA, Region 7.

4. The Respondent is Professional Equities, Inc., a corporation incorporated in the state of Missouri and authorized to conduct business in the State of Missouri.

### **Statutory and Regulatory Background**

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phaseout of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence

of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

**Factual Background**

6. Respondent is, and at all times referred to herein was, a “person” within the meaning of TSCA.

7. Respondent is the “lessor” or “agent” as that term is defined by 40 C.F.R. § 745.103, of multiple dwelling units in St. Louis, Missouri, located in the following eight multi-unit property complexes (“the Properties”):

- |                                  |                                |
|----------------------------------|--------------------------------|
| a. Orchard Park Apartments       | 10894 Verhaven Street, 63114   |
| b. Villa St. Cyr Apartments      | 1045 Villa St. Cyr Road, 63137 |
| c. Lilac Court Apartments        | 9805 Lilac Drive, 63137        |
| d. Woodson Park Apartments       | 100 Kalen Drive, 63114         |
| e. Hebert Street Apartments      | 5841-43 Cabanne Avenue, 63112  |
| f. Virginia Manor Apartments     | 7153 Virginia Avenue, 63111    |
| g. Jefferson Townhomes           | 333 Tuckahoe Drive, 63125      |
| h. Lucas Hunt Village Apartments | 5303 Lucas Hunt Road, 63121    |

8. The Properties were constructed before 1978; therefore, housing units in the Properties are “target housing” as that term is defined by 40 C.F.R. § 745.103.

**Alleged Violations**

9. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated thereunder, as follows:

**Count 1**

10. The facts stated in Paragraphs 1 through 8 above are herein incorporated.

11. Information collected during an EPA review of Respondent's records in April 2007 shows that Respondent entered into multiple contracts to lease target housing units in the Properties during the time period from August 15, 2003 through April 4, 2007.

12. Information collected shows that, for all leases for target housing units at the Properties, executed during the time period from August 15, 2003 through April 4, 2007, Respondent failed to perform the following acts before the lessee was obligated under a contract to lease target housing:

- include a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating no knowledge of the presence of same
- include a list of any records or reports available to lessor pertaining to lead-based paint/hazards or indicating no such records/reports available
- include a statement affirming lessee's receipt of required information
- include the acknowledgment by the agent that it has informed lessor of lessor's legal obligations
- include lessor and agent signatures certifying to accuracy of statements/information

13. Respondent's failure to perform the acts indicated in paragraph 12 above are violations of 40 C.F.R. § 745.113(b)(2) through (b)(6) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), violations of Section 1018 of the Act, 42 U.S.C. § 4852d, and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

#### **CONSENT AGREEMENT**

14. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Consent Agreement and Final Order.

15. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of this Consent Agreement and Final Order.

16. Respondent neither admits nor denies the factual allegations set forth above.

17. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

18. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

19. Respondent certifies by the signing of this Consent Agreement and Final Order that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

20. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty in the amount of \$10,500.00 to be paid within thirty (30) days of the effective date of the Final Order. Payment of this civil penalty shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.

21. The effect of settlement described in Paragraph 20 above is conditioned upon the accuracy of the Respondent's representations to EPA, as memorialized in Paragraph 19 of this Consent Agreement and Final Order.

22. Respondent understands that its failure to timely pay any portion of the civil penalty stated in Paragraph 20 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling

charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charged for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

23. No portion of the civil penalty or interest paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as a deduction for federal, state, or local income tax purposes.

24. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

#### **FINAL ORDER**

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a civil penalty of \$10,500.00 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7  
Fines and Penalties  
Cincinnati Finance Center

P.O. Box 979077  
St. Louis, MO 63197-9000

2. A copy of the check shall simultaneously be sent to the following:

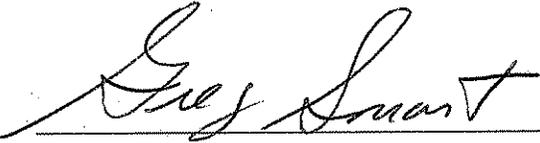
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

Chris R. Dudding, Attorney  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. The effective date of this Consent Agreement and Final Order shall be the date on which it is filed with the Regional Hearing Clerk.

**RESPONDENT**  
**PROFESSIONAL EQUITIES, INC.**

Date: 8/13/08

By: 

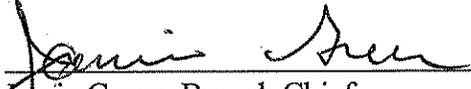
Greg Smart  
Print Name

Executive VP  
Title

**COMPLAINANT**

**U. S. ENVIRONMENTAL PROTECTION AGENCY**

Date: 8/14/08

By:   
Jamie Green, Branch Chief  
Toxics and Pesticides Branch  
Water, Wetlands, and Pesticides Division

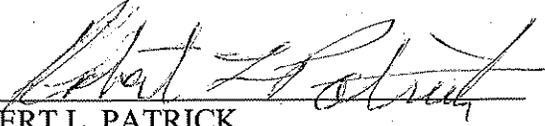
Date: 8/14/08

By:   
Chris R. Dudding, Attorney  
Office of Regional Counsel

**IT IS SO ORDERED.** This Order shall become effective immediately.

Date:

August 14, 2008

  
\_\_\_\_\_  
ROBERT L. PATRICK

Regional Judicial Officer

U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF Professional Equities, Inc., Respondent  
Docket No. TSCA-07-2008-0025

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to  
Attorney for Complainant:

Chris R. Dudding  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Greg Smart  
Professional Equities, Inc.  
18433 Edison Ave.  
Chesterfield, Missouri 63005

Dated: 8/15/08



Kathy Robinson  
Hearing Clerk, Region 7