



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

DEC 6 2006

REPLY TO THE ATTENTION OF:

DT-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0005 8910 6048

Familiar Management and Realty Company, Inc.
and Brendan Murphy
1547 West Augusta Boulevard
Garden Apartment
Chicago, Illinois 60622

Consent Agreement and Final Order, Docket No. TSCA-05-2007-0001^{es}

Dear Mr. Murphy:

I have enclosed a copy of an original fully executed Consent Agreement and Final Order in resolution of the above case. This document was filed on December 6, 2006 with the Regional Hearing Clerk.

The civil penalty in the amount of \$85,000 is to be paid in the manner prescribed in paragraphs 33 and 34. Please be certain that the number BD2750767X001 and the docket number are written on both the transmittal letter and on the check. Payment is due in two installments.

Thank you for your cooperation in resolving this matter.

Sincerely,

Scott Cooper
Anthony L. Restarino

Scott Cooper
Pesticides and Toxics Branch

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Tamara Carnovsky, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF _____)
)
Familiar Management and Realty Company, Inc.,)
and Brendan Murphy)
)
Respondents.)
_____)

Docket No. TSCA - 05-2008-00120
Proceeding to Assess a Civil Penalty
under Section (a) of the Toxic
Substances Control Act (TSCA),
15 U.S.C. § 2615(a)

2008 DEC 6 PM 3:17
REGIONAL ENVIRONMENTAL CLERK

**Consent Agreement and Final Order
Preliminary Statement**

1. This is an administrative action commenced and concluded under the authority vested in the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Section 16 (a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a) and Sections 22.13(b) and 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules) as codified at 40 C.F.R. Part 22 (2005).
2. The Complainant is, by lawful delegation, the Chief of the Pesticides and Toxics Branch, Waste, Pesticides and Toxics Division, U.S. EPA, Region 5.
3. Respondent is Familiar Management and Realty Company, a corporation, with a place of business at 1547 West Augusta, Chicago Illinois 60622.
4. Respondent is Brendan Murphy, a person, who lives at 1547 W. Augusta Boulevard, Garden Apartment, Chicago, Illinois 60622.
5. Where the parties agree to settle one or more causes of action before the filing of a Complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2005).

6. The parties agree that settling this action without the filing of a Complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

7. Respondents consent to entry of this CAFO and the assessment of the specified civil penalty, and agree to comply with the terms of the CAFO.

Statutory and Regulatory Requirements

8. Section 1018 of Title X, Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. 4852d, requires the Administrator to promulgate regulations for the disclosure of lead-based paint hazards in target housing which is offered for sale or lease.

9. Under 42 U.S.C. § 4852d, on March 6, 1996, U.S. EPA promulgated regulations at 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 (“Disclosure Rule”).

10. The Disclosure Rule implements the provisions of 42 U.S.C. § 4852d, which impose certain requirements on the sale or lease of target housing.

11. 40 C.F.R. § 745.103 defines “target housing” as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling.

12. 40 C.F.R. § 745.103 defines “lessor” as any entity that offers target housing for lease, rent, or sublease, including but not limited to individuals, partnerships, corporations, trusts, government agencies, housing agencies, Indian Tribes, and nonprofit organizations.

13. 40 C.F.R. § 745.103 defines “lessee” as any entity that enters into an agreement to lease, rent or sublease target housing, including, but not limited to individuals, partnerships,

corporations, trusts, government agencies, housing agencies, Indian tribes, and nonprofit organizations.

14. 40 C.F.R. § 745.113(b)(1) of the Disclosure Rule requires the lessor to include, as an attachment to or within the contract, a lead warning statement before a lessee is obligated under the contract to lease target housing.

15. 40 C.F.R. § 745.113(b)(2) requires the lessor to include, as an attachment to or within the contract, a statement by the lessor disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

16. 40 C.F.R. § 745.113(b)(3) requires the lessor to include, as an attachment to or within the contract, a list of any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the housing that has been provided to the lessee. If no such records or reports are available, the lessor must so indicate.

17. 40 C.F.R. § 745.113(b)(4) requires the lessor to include, as an attachment to or within the contract, a statement by the lessee affirming receipt of the information set out in 40 C.F.R. § 745.113(b)(2) and (b)(3) and the Lead Hazard Information Pamphlet before a lessee is obligated under the contract to lease target housing.

18. 40 C.F.R. § 745.113(b)(6) requires the lessor to include, as an attachment to or within the contract, the signatures of the lessor and the lessee certifying to the accuracy of their statements to the best of their knowledge along with the dates of signature before a lessee is obligated under the contract to lease target housing.

19. Under 42 U.S.C. § 4852d(b)(5) and 40 C.F.R. § 745.118(e), failure to comply with the Disclosure Rule is a violation of Section 409 of TSCA, 15 U.S.C. § 2689, which subjects the violator to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118(f), and 42 U.S.C. § 4852d(b)(5).

Stipulated Facts

20. Between September 1, 2002 and June 2006, Familiar Management and Realty Company owned rental property consisting of 15 residential dwelling units (units) located at 3861 West Flournoy Chicago, Illinois (Apartment Building).

21. The rental property identified in paragraph 20, above, is “target housing” as defined in 40 C.F.R. § 745.103.

22. During the time period identified in paragraph 20, Familiar Management and Realty Company either directly or through its authorized agent, Brendan Murphy, entered into contracts with individuals for the lease of the units in the Apartment Building.

23. The individuals who entered into the contracts to lease the rental units described in paragraph 22 above, to pay rent in exchange for occupancy of the rental property at the Apartment Building, were “lessees” as defined at 40 C.F.R. § 745.103. Respondents were “lessors” as defined at 40 C.F.R. § 745.103.

24. Respondents stated they were not aware of the Lead Disclosure Rule requirements in their response to a TSCA Administrative Subpoena dated September 22, 2005. Respondents did not provide any Lead Disclosure Rule documentation to the lessees as required by the Lead Disclosure Rule during the time period identified in paragraph 20.

Alleged Violations

25. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to provide each lessee with a U.S. EPA approved lead hazard information pamphlet before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.107 (a)(1).

26. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to include as an attachment, or within each contract, a lead warning statement before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(1).

27. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to include as an attachment, or within each contract, 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 lead-based paint and/or lead-based paint hazards, before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. §745.113(b)(2).

28. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to include as an attachment, or within each contract, a list of any records or reports available to the lessor that pertain to lead-based paint and/or lead-based paint hazard information or indicate that no such records or reports exist, before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(3).

29. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to include as an attachment, or within each contract, a statement by each lessee

affirming receipt of the information required by 40 C.F.R. § 745.113(b)(2) and (b)(3) and the lead hazard pamphlet before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(4).

30. During the time period referenced in paragraph 20, above, U.S. EPA alleges that Respondents failed to include as an attachment, or within each contract, the signatures of the lessor and each lessee certifying to the accuracy of their statements and the dates of such signature before each lessee was obligated under each contract to lease the unit, as required by 40 C.F.R. § 745.113(b)(6).

Penalty Calculation

31. Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d(b)(5), and 40 C. F. R. Part 745 Subpart F, authorize the assessment of a civil penalty under TSCA § 16 in the maximum amount of \$10,000 for each violation of TSCA § 409. This maximum penalty amount has been adjusted to \$11,000 per each violation under the Civil Monetary Penalty Inflation Adjustment Act and Rule for violations occurring after July 28, 1997. 40 C. F. R. § 19.2 (61 Fed . Reg . 69361 [1996]).

32. In determining a civil penalty, the U.S. EPA has taken into consideration the nature, circumstances, extent and gravity of the violation alleged and, with respect to the violator, ability to pay, affect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other factors as justice may require.

33. Respondents shall pay \$85,000 civil penalty in two installments, plus interest at a

rate of 2 percent per annum, on the dates and in the amounts shown on the payment schedule attached as Exhibit A. Respondents may prepay the \$85,000 civil penalty plus accrued interest to date of such payment without being subject to a prepayment penalty. Each payment shall be by cashier's or certified check payable to the "Treasurer, United States of America," and mailed to the following address:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

34. Respondents shall accompany the payment with a transmittal letter, stating Respondents' names, complete addresses, the case docket number and the billing document (BD) number. Respondents shall write the case docket number and the BD number on the face of the check. The BD number may be found on the cover letter transmitting this CAFO.

Respondents shall send copies of the check and transmittal letter to:

Regional Hearing Clerk (E-13J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Scott Cooper (DT-8J)
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

Tamara Carnovsky (C-14J)
Office of Regional Counsel
U.S. EPA Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3590

35. This civil penalty is not deductible for Federal tax purposes.

36. If Respondents do not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

37. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondents must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal for failure to pay a part of a debt more than 90 days past due.

Terms of Settlement

38. Respondents admit the jurisdictional allegations in this CAFO and neither admit nor deny the factual allegations in this CAFO.

39. Respondents waive their right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and their right to appeal this CAFO.

40. Respondents certify that, as of the effective date of this CAFO, they are in full compliance with the requirements of 40 C.F.R. Part 745, Subpart F, and intend to continue to comply fully with 40 C.F.R. Part 745, Subpart F.

41. The parties consent to the terms of this CAFO.

42. This CAFO settles U.S. EPA's claims for civil penalties for violations alleged.

43. Nothing in this CAFO restricts U.S. EPA's authority to seek Respondents' compliance with the Act and other applicable laws and regulations.

44. This CAFO does not affect Respondents' responsibility to comply with TSCA, the Lead-Based Paint Hazard Reduction Act and other applicable Federal, state and local laws and regulations.

45. The terms of the CAFO bind the Respondents and their assigns.

46. Each person signing this Consent Agreement certifies that he or she has the authority to sign this Consent Agreement for the party for whom he or she represents and to bind that party to its terms.

47. Each party agrees to bear its own costs and fees in this action.

48. This CAFO constitutes the entire agreement between the parties.

49. This CAFO shall become effective immediately upon filing with the Regional Hearing Clerk, U.S. EPA, Region 5.

**Consent Agreement and Final Order:
Familiar Management and Realty Company, Inc.,
and Brendan Murphy**

Docket No. TSCA-05-2007-0001²⁰.

Date: 11-10-06

By: Brendan Murphy
Brendan Murphy, Respondent

Date: 11-10-06

By: Brendan Murphy
Familiar Management and Realty Company Inc.
Respondent

United States Environmental Protection Agency,
Complainant

Date: 11-27-06

By: Mardi Klevs
Mardi Klevs, Chief
Pesticides and Toxics Branch
Waste, Pesticides and Toxics Division

Date: 11/30/06

By: Margaret M. Guenther
Margaret M. Guenther, Director
Waste, Pesticides and Toxics Division

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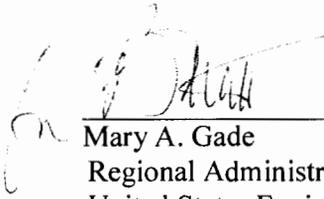
**IN THE MATTER OF:
Familiar Management and Realty Company, Inc.,
and Brendan Murphy**

Docket No. TSCA-05-2007-000100.

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, will become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 12-5-06



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

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Exhibit A

Principal Sum = \$85,000.00
Interest 2% per annum

<u>Payment</u>	<u>Principal</u>	<u>Remaining</u>	<u>Interest</u>	<u>Total</u>
4/2/07	\$42,500.00	\$42,500.00	\$722.50	\$43,222.50
10/1/07	\$42,500.00	\$0	\$429.72	\$42,929.72

CERTIFICATE OF SERVICE

I hereby certify that a copy of the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Familiar Management and Realty Company, Inc. and Brendan Murphy, was filed on December 6, 2006, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0005 8910 6048 , a copy of the original to the Respondents:

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Tamara Carnovsky, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD



Elizabeth Lytle
Pesticides and Toxics Branch
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. *ISCA 05-2007-000120*.

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