

# WEIL & KESTENBAUM

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December 15, 2009

U.S. ENVIRONMENTAL  
PROTECTION AGENCY  
2009 DEC 16 AM 11:28  
REGIONAL HEARING  
CLERK

Karen Maples  
Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway, 16<sup>th</sup> Floor  
New York, N. Y. 10007-1866

**Re: Apartments R Us**  
**Docket No. TSCA-02-2009-9168**

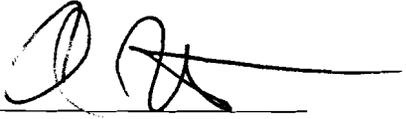
Dear Ms. Maples:

Enclosed herewith please find an original and one copy of the Answer in the above referenced matter. It is my understanding that Mr. Zissou previously requested an informal conference with EPA to discuss the issues relating to the alleged violations in the amount of the proposed penalty. Kindly advise the undersigned at your convenience of the conference date.

Thanking you for your courtesies and cooperation in this matter.

Very truly yours,

WEIL & KESTENBAUM

By: 

Alan Kestenbaum

enc.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

-----X  
In the Matter of

**Apartments R Us,**

Respondent,

Proceeding under Section 16(a) of  
the Toxic Substances Control Act  
-----X

**ANSWER**

Docket No.  
TSCA-02-2009-9168

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGL  
2009 DEC 16 PM 11:28  
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Respondent, Apartments R Us, by their attorneys, Weil & Kestenbaum, answering  
the Complaint of the U.S. Environmental Protection Agency hereby alleges as follows:

1. Respondent admits the allegations contained in the paragraphs of the Complaint numbered 1, 2, and 3.
2. With respect to paragraphs 4 and 5 of the Complaint, Respondent denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in those paragraphs.
3. Respondent admits the allegations of the paragraphs of the Complaint numbered 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31.
4. Respondent repeats, reiterates and realleges each and every admission and denial as previously set forth in response to paragraph 32 of the Complaint.
5. As paragraph 33 of the Complaint sets forth what purports to be a statement of

- law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
6. Respondent admits the allegations contained in paragraph 34 of the Complaint.
  7. Respondent denies the allegation contained in paragraph 35 of the Complaint.
  8. As paragraph 36 of the Complaint sets forth what purports to be a statement of law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
  9. Respondent denies the allegations contained in paragraph 37 of the Complaint, as Respondent complied with the statute.
  10. With respect to paragraph 38, the Respondent repeats, reiterates and realleges each and every admission and denial as previously set forth in paragraphs 1 through 37.
  11. As paragraph 39 of the Complaint sets forth what purports to be a statement of law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
  12. Respondent admits the allegations contained in the paragraph of the Complaint numbered 40.
  13. Respondent denies the allegations contained in the paragraph of the complaint numbered 41.
  14. As paragraph 42 of the Complaint sets forth what purports to be a statement of

- Law to the Presiding Officer of the hearing.
22. Respondent denies so much of paragraph 49 as states that it failed to comply with 40 C.F.R. § 745.113 (b)(3).
  23. With respect to paragraph of the Complaint numbered 50, Respondent repeats, reiterates and realleges each and every admission and denial as previously set forth herein.
  24. As paragraph 51 of the Complaint sets forth what purports to be a statement of law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
  25. Respondent admits paragraph 52 of the Complaint.
  26. Respondent denies paragraph 53 of the Complaint.
  27. As paragraph 54 of the Complaint sets forth what purports to be a statement of law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
  28. With respect to paragraph 55 of the Complaint, Respondent denies so much of the paragraph as states that Respondent failed to comply with the 40 C.F.R. § 45.113 (b)(4).
  29. With respect to paragraph 56 of the Complaint Respondent repeats, reiterates and realleges each and every admission and denial as previously set forth herein.
  30. As paragraph 57 of the Complaint sets forth what purports to be a statement of

law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.

31. Respondent admits the allegation in paragraph 58 of the Complaint.
32. With respect to paragraph 59, Respondent denies the allegations contained in that paragraph of the Complaint.
33. As paragraph 60 of the Complaint sets forth what purports to be a statement of law, Respondent neither admits nor denies the allegation and refers all matters of Law to the Presiding Officer of the hearing.
34. With respect to paragraph 61 of the Complaint, Respondent denies so much of the paragraph as states that Respondent failed to comply with 40 C.F.R. § 745.113 (b)(6).

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

35. Respondent, for each real estate transaction for the rental of the apartments described in the Complaint, had an attachment signed by the Lessor, Agents or Lessees, certifying that to the best of their knowledge Lessor had no knowledge of lead based paint and/or lead based paint hazards in the housing and that the Lessee had received the pamphlet “Protect Your Family From Lead In Your House”.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

36. That tenants Alexander Trilivas, Daniela Sanchez, Dorothy Smith, Diane Smith, Shalika R. Mahmuwd and Robert Peoples were lessees under the Section 8 program and each of their leases contained a lead paint disclosure in the manner prescribed by Statute. The Respondent contends that the proposed penalty is inappropriate as the number of the violations, the circumstance level and the extent of the alleged violations are inaccurate.
37. As and for a third affirmative defense the Respondent requests a Hearing in this matter to resolve the disputed issues.
38. Respondent respectfully submits that the proposed civil penalty would compromise Respondent's ability to continue the business.

**WHEREFORE**, Respondent requests after Hearing that the Complaint be in all respects dismissed,

Dated: Bayside, New York  
December 14, 2009

Yours, etc.



WEIL & KESTENBAUM  
Attorneys for Respondent  
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Bayside, New York 11361  
(718) 281-0100

To: Dore, The Postal Director  
Division of Enforcement & Compliance Assistance  
U.S. Environmental Protection Agency, Region 2  
290 Broadway  
New York, N. Y. 10007-1866