



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
2890 WOODBRIDGE AVE
EDISON, NEW JERSEY 08837

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
2008 JAN -9 AM 10:14
REGIONAL HEARING
CLERK

JAN - 3 2008

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Randal W. Habeeb
Pless & Habeeb, LLP
Three University Plaza
Hackensack, New Jersey 07601

Re: In the Matter of Nigito Realty Co.
Docket No. TSCA-02-2007-9167

Dear Mr. Habeeb:

Enclosed is a fully executed copy of the Administrative Consent Agreement and Final Order in the above-referenced proceeding, signed by the Regional Administrator of the United States Environmental Protection Agency, Region 2.

Please note that the forty-five (45) day period for payment of the first installment of the civil penalty commenced as of the date this Consent Agreement was signed by the Regional Administrator. Please arrange for payment of this penalty according to the instructions given within the enclosed document under "Terms of Consent Agreement". Further, please ensure that a copy of the evidence of payment is mailed to the EPA staff member listed in that section of the Agreement.

Please contact Laura Livingston of my staff at (732) 906-6998, if you have any questions regarding this matter.

Sincerely,

Daniel Kraft for

Kenneth S. Stoller, P.E., QEP, DEE
Chief
Pesticides and Toxic Substances Branch

Enclosure

cc: Mr. Paul Nigito

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
JAN -9 AM 10:14
REGIONAL HEARING
CLERK

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In the Matter of :
 :
 :
 Nigito Realty Co., : **CONSENT AGREEMENT AND**
 : **FINAL ORDER**
 :
 :
 Respondent. : Docket No.
 : TSCA-02-2007-9167
 :
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
----- X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of civil penalties was initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). On March 27, 2007, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing (the "Complaint") to Respondent Nigito Realty Co., with a primary place of business located at 930 Kinderkamack Road, River Edge, NJ 07661. The Complaint alleged that Nigito Realty, acting as an agent, failed to ensure compliance with 40 C.F.R. Sections 745.113(b)(2), and 745.113(b)(3) during the years 2003 through 2006, by leasing target housing without: (1) providing a statement disclosing any knowledge of lead-based paint; and/or (2) providing a list of any existing records or reports pertaining to lead-based paint or a statement that no such records or reports exist. These failures or refusals, by an agent, to ensure compliance with the regulations cited constitute failures or refusals to comply with 40 C.F.R. § 745.115(a)(2), which are violations of 42 U.S.C. Section 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CAFO”), pursuant to 40 C.F.R. Section 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent acted as agent to lease the following target housing units to the following tenants on or about the dates below:

On or about June 1, 2003, Victoria Garcia entered into a contract to lease 265 Beech Street, Apartment 44, Hackensack, NJ 07601. Two minors under 18 years of age would reside in the apartment.

On or about May 26, 2006, Segundo Suqui Lema and Neli Suqui Lema entered into a renewal contract to lease 265 Beech Street, Apartment 22, Hackensack, NJ 07601. A minor under 18 years of age would reside in the apartment.

On or about July 1, 2005, Lori Anderson and Mark Fischer entered into a contract to lease 265 Beech Street, Apartment 37, Hackensack, NJ 07601.

On or about July 1, 2004, Robin McQueen entered into a contract to lease 265 Beech Street, Apartment 4, Hackensack, NJ 07601. A minor under 18 years of age would reside in the apartment.

2. Respondent leased the above referenced target housing units without: (1) providing a statement disclosing any knowledge of lead-based paint, and/or (2) proving a list of any records or reports pertaining to lead-based paint or a statement that no such records exist.

3. Based on the failures described above, Respondent committed violations of 40 C.F.R. Section 745.115(a), which are violations of 42 U.S.C. Section 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. § 22.18, it is hereby agreed, and accepted by Respondent that it shall hereafter the date of execution of this Consent Agreement comply with the following terms:

1. Respondent shall comply with the applicable requirements of TSCA, and its implementing regulations, with respect to all target housing it leases or sells or acts as an agent in the lease or sale thereof.

2. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies specific factual allegations in the Complaint; and (c) neither admits nor denies EPA's Findings of Fact and Conclusions of Law in this Consent Agreement.

3. Respondent shall pay a civil penalty in the amount of Seven Thousand Two Hundred Ten Dollars (\$7,210), payable in two (2) installments as noted below. Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "Treasurer, United States of America" and shall be mailed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The checks shall be identified with a notation of the name and docket number of this case as follows: In the Matter of Nigito Realty Co., Docket Number TSCA-02-2007-9167.

If Respondent chooses to make the payment by EFT, then Respondent shall provide the following information to its remitter bank:

1. Amount of Payment;
2. SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045;
3. Account Code for Federal Reserve Bank of New York receiving payment: 68010727;
4. Federal Reserve Bank of New York ABA routing number: 021030004;
5. Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency;"
6. Name of Respondent: Nigito Realty Co.; and
7. Case Number: TSCA-02-2007-9167.

The first payment, in the amount of Three Thousand Seven Hundred Ten Dollars (\$3,710), must be *received* at the above address or via EFT on or before forty-five (45) calendar days after the Effective Date of this CA/FO. The second payment, in the amount of Three Thousand Five Hundred Dollars (\$3,500), must be *received* at the above address or via EFT on or before four (4) months after the Effective Date of this CA/FO. (The dates by which payments must be received shall hereinafter be referred to as the "due dates".) Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made, to both:

Laura Livingston
U.S. Environmental Protection Agency, Region 2
2890 Woodbridge Avenue
Lead Team, MS 225
Edison, NJ 08837

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866.

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of Treasury for collection.
- b. Furthermore, if payments are not received on or before their due dates, interest will be assessed at the annual rate established by the Secretary of the Treasury

pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

- c. The civil penalty constitutes a penalty within the meaning of 26 U.S.C. § 162(f).
- d. The effective date of this CAFO shall be the date of filing with the Regional Hearing Clerk, U.S. E.P.A. Region 2, New York, New York.

4. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit.

5. This CAFO is being voluntarily and knowingly entered into by the parties to resolve the civil and administrative claims alleged in the Complaint. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to its issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

6. Respondent explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

7. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on the Findings of Fact and Conclusions of Law herein, or on the accompanying Final Order.

8. Full payment of the penalty in a settlement pursuant to 40 C.F.R. § 22.18(b) shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

9. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

10. The provisions of this CAFO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

11. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

12. Each party hereto agrees to bear its own costs and fees in this matter.

13. Respondent consents to service upon Respondent by a copy of this CAFO by an EPA employee other than the Regional Hearing Clerk.

Nigito Realty Co.
Docket No. TSCA-02-2007-9167

RESPONDENT:

Nigito Realty Co

BY: _____

(Signature)

NAME: Paul Nigito

(PLEASE PRINT)

TITLE: manager

DATE: 12/19/07

COMPLAINANT:

~~Dore LaPosta, Director~~

Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007

PATRICK DURACK
For DL

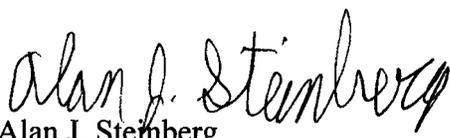
DATE: DECEMBER 27, 2007

Nigito Realty Co.

Docket No. TSCA-02-2007-9167

FINAL ORDER

The Regional Administrator of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.


Alan J. Sternberg
Regional Administrator
U.S. Environmental Protection Agency
Region 2
290 Broadway
New York, NY 10007

DATE: 12-28-07

Nigito Realty Co.
Docket No. TSCA-02-2007-9167

CERTIFICATE OF SERVICE

I certify that I have this day caused to be sent the foregoing fully executed CONSENT AGREEMENT and FINAL ORDER, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and One Copy
by Interoffice Mail:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway, 16th floor
New York, NY 10007-1866

Copy by Certified Mail,
Return Receipt Requested:

Mr. Randal W. Habeeb
Pless & Habeeb, LLP
Three University Plaza
Hackensack, NJ 07601

Dated: January 3, 2008
Edison, NJ

Joseph Zurawski