

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

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

MGK INC.;)
SHERMAN KATZ;)
LEE REALTY;)
4515 LINDELL BLVD. CORPORATION; and)
4525 LINDELL BLVD. CORPORATION,)
St. Louis, Missouri)

Respondents)

Docket No. TSCA-07-2010-0003

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and MGK Inc., Sherman Katz, Lee Realty, 4515 Lindell Blvd. Corporation and 4525 Lindell Blvd. Corporation (collective Respondents) 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 Renovation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

Section I

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 (CAFO) serves as notice that EPA has reason to believe that Respondents have 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.

Section II

Parties

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

4. The Respondents are MGK Inc.; Sherman Katz; Lee Realty; 4515 Lindell Blvd. Corporation; and 4525 Lindell Blvd. Corporation. Respondents, at all times referred to herein, are each a "person" within the meaning of TSCA. The Respondents are each jointly liable for each of the violations set forth below.

5. Respondents MGK Inc. and Sherman Katz are co-owners of the following apartment buildings: 3141 Portis; 1218-20 Tamm; 6330-32 Clayton Avenue; 6454-56 Wise (all located in St. Louis, Missouri).

6. Respondent Lee Realty is the owner of the following apartment buildings: 6320-22 Oakland, 1003-07 Art Hill, 6534-36 Clayton Avenue; and 6349-52 North Rosebury (all located in St. Louis, Missouri).

7. Respondent 4515 Lindell Blvd. Corporation owns the apartment complex at 4515 Lindell Blvd., St. Louis, Missouri.

8. Respondent 4525 Lindell Blvd. Corporation owns the apartment complex at 4525 Lindell Blvd., St. Louis, Missouri.

Section III

Statutory and Regulatory Background

9. 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 phase-out 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.

Section IV

Factual Allegations

10. 3141 Portis; 1218-20 Tamm; 6330-32 Clayton Avenue; 6454-56 Wise (all located in St. Louis, Missouri) include units that are target housing subject to the disclosure obligations discussed above. Respondents MGK Inc. and Sherman Katz did not fulfill those obligations in leasing units at these properties.

11. 6320-22 Oakland, 1003-07 Art Hill, 6534-36 Clayton Avenue; and 6349-52 North Rosebury (all located in St. Louis, Missouri) include units that are target housing subject to the disclosure obligations discussed above. Respondent Lee Realty did not fulfill those obligations in leasing units at these properties.

12. 4515 Lindell Blvd., St. Louis, Missouri includes units that are target housing subject to the disclosure obligations discussed above. Respondent 4515 Lindell Blvd. Corporation did not fulfill those obligations in leasing units at this property.

13. 4525 Lindell Blvd., St. Louis, Missouri includes units that are target housing subject to the disclosure obligations discussed above. Respondent 4525 Lindell Blvd. Corporation did not fulfill those obligations in leasing units at this property.

Section V

Violations

14. The Complainant hereby states and alleges that Respondents have violated TSCA and federal regulations promulgated thereunder, as follows:

Count 1

15. The facts stated in Paragraphs 1 through 14 above are herein incorporated.

16. Respondent 4525 Lindell Blvd. Corporation is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of 4525 Lindell Boulevard, Apartment Apt 1002, St. Louis, Missouri (the First Property).

17. The First Property was constructed before 1978.

18. Respondent 4525 Lindell Blvd. Corporation entered into a contract to lease the target housing unit located at the Property on or about March 2008.

19. Respondent 4525 Lindell Blvd. Corporation failed to provide the lessees of the Property with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

20. Respondents’ failure to perform the acts indicated in Paragraph 19 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

21. The facts stated in Paragraphs 1 through 14 above are herein incorporated. Respondent 4525 Lindell Blvd. Corporation is the “lessor” as defined by 40 C.F.R. § 745.103, for the lease of 4525 Lindell Boulevard, Apartment Apt 904, St. Louis, Missouri (the Second Property).

22. The Second Property was constructed before 1978.

23. Respondent 4525 Lindell Blvd. Corporation entered into a contract to lease the target housing unit located at the Second Property on or about March 2008.

24. Respondent 4525 Lindell Blvd. Corporation failed to provide the lessees of the Property with an EPA-approved lead hazard information pamphlet or to perform any other lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

25. Respondents' failure to perform the acts indicated in Paragraph 25 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

26. The facts stated in Paragraphs 1 through 14 above are herein incorporated.

27. Respondent 4525 Lindell Blvd. Corporation is the "lessor" as defined by 40 C.F.R. § 745.103, for the lease of 4525 Lindell Boulevard, Apartment Apt 403, St. Louis, Missouri (the Third Property).

28. The Third Property was constructed before 1978.

29. Respondent 4525 Lindell Blvd. Corporation entered into a contract to lease the target housing unit located at the Third Property on or about January 2007.

30. Respondent 4525 Lindell Blvd. Corporation failed to provide the lessees of the Third Property with an EPA-approved lead hazard information pamphlet or to perform any other

lead-based paint disclosure activities before lessees became obligated under contract to lease the target housing unit.

31. Respondents' failure to perform the acts indicated in Paragraph 23 above are violations of 40 C.F.R. §§ 745.107, 745.113, 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 Respondents are subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Section V

Consent Agreement

33. For purposes of this proceeding, Respondents admit the jurisdictional allegations set forth above.

34. Respondents neither admit nor deny the factual allegations set forth above.

35. Respondents waive their right to contest any issue of fact or law set forth above and its right to appeal the Final Order accompanying this Consent Agreement.

36. Respondents and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.

37. Respondents certify by the signing of this Consent Agreement and Final Order that they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

38. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty as specified in the Final Order.

39. Payment of this civil penalty in full 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.

40. In settlement of this matter, Respondents agree to complete the following lead abatement Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits:

Abatement of lead-based paint at the property located at 1003-1007 Art Hill Place in Saint Louis, MO 63139, in accordance with the SEP Work Plan that is attached to this document and incorporated by reference. In accordance with Missouri state regulations, found at 19 CSR 30-70.630, following the completion of the abatement work, Respondents must have lead clearance testing performed by a certified risk assessor. The abatement work and the lead clearance testing may not be performed by the same individual or entity.

41. Within thirty (30) days of the Effective Date of the Final Order, Respondents will provide EPA with a copy of the letter sent to the Missouri Department of Health and Senior Services informing the state of Respondents' intent to perform a SEP and requesting procedural information pertaining to performance of the SEP.

42. The total expenditure for the SEP shall be not less than \$19,800 and the SEP shall be completed no later than 120 days from Effective Date of the final order. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

43. Respondents agree that the abatement work on the SEP project referenced in Paragraph 40 above will be performed by entities licensed and/or certified by the state of Missouri to perform lead-based paint abatement activities. Respondents are responsible for ensuring that the entity or entities performing the SEP project described in Paragraph 40 above

receive a copy of this Consent Agreement and Final Order (CAFO) and all attachments pertaining to the SEP project including the EPA approved SEP Work Plan, if applicable.

Respondents are responsible for any failure to complete the SEP in accordance with all applicable terms of this agreement.

44. Within thirty (30) days of completion of the SEP, Respondents shall submit a SEP Completion Report to EPA, with a copy to the state agency identified below. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs, documented by copies of purchase orders, receipts or canceled checks;
- (iii) The final abatement report, as required by state law; and
- (iv) The following certification signed by each Respondent or, if a Respondent is a corporation, an officer of the corporation:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

The report shall be directed to the following:

As to EPA:

Mr. Stephven X. Richard
WWPD/TOPE
U.S. Environmental Protection Agency, Region 7

901 North 5th Street
Kansas City, Kansas 66101.

As to the State:

Brandon Rekus
Missouri Department of Health and Senior Services
930 Wildwood
Jefferson City, MO 65109

45. If the SEP referenced in Paragraph 40 above is not timely completed to the satisfaction of EPA in accordance with the terms of this Final Order, Respondents shall pay a stipulated penalty in the amount of 120% of the projected costs of the SEP minus any documented expenditures determined by EPA to be acceptable for the SEP. This stipulated penalty is consistent with the EPA SEP Policy, effective May 1, 1998. For the SEP, the following instances constitute a failure to complete the project in accordance with the terms of this Final Order:

- (i) Failure to expend the funds in a manner acceptable to EPA or otherwise to complete the project pursuant to the terms of this consent agreement.
- (ii) Failure to ensure, through good faith and timely efforts, that the SEP project is completed by the anticipated completion date of within one hundred and twenty (120) days of the Effective Date of the Final Order. In the event of circumstances beyond its control rendering the anticipated completion date unfeasible, Respondents may demonstrate good faith by promptly notifying EPA Region 7 contact identified in Paragraph 26 above of the change in circumstances and proposing a new completion date acceptable to EPA for the SEP.
- (iii) Any stipulated penalties for which Respondents are liable under this agreement shall be due and payable within ten (10) days of any of the Respondent's receipt of a written demand from Complainant.

46. Respondents certify that they are not required to perform or develop the SEP by any federal, state or local law or regulation; nor are any of the Respondents required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondents further certify that none of the Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

47. For federal income tax purposes, Respondents agrees that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

48. Any public statement, oral or written, in print, film or other media, made by any of the Respondents making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

49. Respondents understand that their failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below or any portion of a stipulated penalty as stated in Paragraph 45 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated 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 charge 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.

Section VI

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. Respondents shall pay a civil penalty of Two Thousand and Two Hundred Dollars (\$2,200) within thirty (30) days of the Effective Date of this Final Order. Such payment shall identify Respondents by name and docket number and shall be by Certified or Cashier's Check made payable to the "United States Treasury" and sent to:

US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire transfers should be directed to the Federal Reserve Bank of New York:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency"

2. A copy of the check or other information confirming payment shall simultaneously be sent to the following:

Regional Hearing Clerk

U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North 5th Street
Kansas City, Kansas 66101.

3. Respondents shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such project as specified in the Consent Agreement.

4. Respondents and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

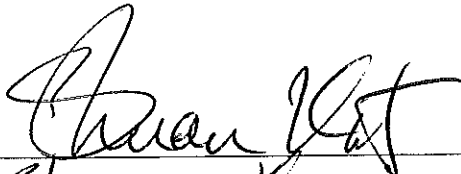
5. The Effective Date of this Consent Agreement Final Order shall be the day that Respondents receive the final entered agreement following signature by EPA.

RESPONDENTS

MGK INC.

Date: 12/12/09

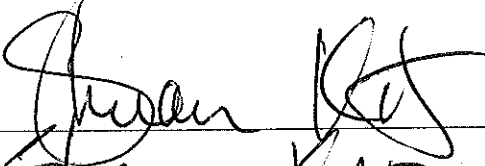
By:


SHERMAN KATZ Sec/Treas
(Print Name and Title of
Person Signing on Behalf of Any Organization)

SHERMAN KATZ

Date: 12/12/09

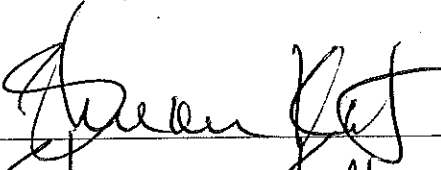
By:


SHERMAN KATZ
(Print Name and Title of
Person Signing on Behalf of Any Organization)

LEE REALTY

Date: 12/12/09

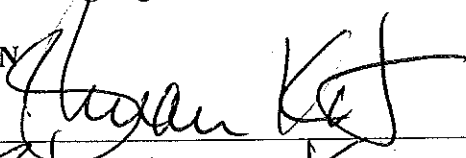
By:


SHERMAN KATZ Sec/Treas
(Print Name and Title of
Person Signing on Behalf of Any Organization)

4515 LINDELL BLVD. CORPORATION

Date: 12/12/09

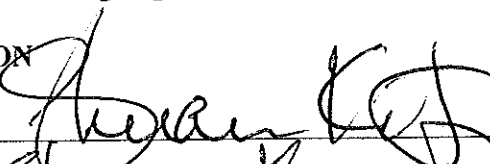
By:


SHERMAN KATZ President
(Print Name and Title of
Person Signing on Behalf of Any Organization)

4525 LINDELL BLVD. CORPORATION

Date: 12/12/09

By:

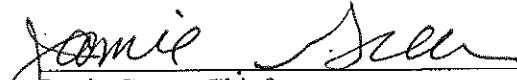

SHERMAN KATZ President
(Print Name and Title of
Person Signing on Behalf of Any Organization)

IN THE MATTER OF
MGK Inc.; Sherman Katz; Lee Realty; 4515 Lindell Blvd. Corporation; & 4525 Lindell Blvd. Corporation
Docket No. TSCA-07-2010-0003

COMPLAINANT

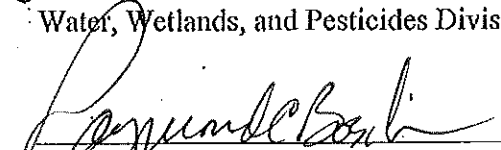
U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 12/23/09



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

Date: 12/16/09



Raymond C. Bosch
Office of Regional Counsel

IN THE MATTER OF
MGK Inc.; Sherman Katz; Lee Realty; 4515 Lindell Blvd. Corporation; & 4525 Lindell Blvd. Corporation
Docket No. TSCA-07-2010-0003

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

Date: January 12, 2010 Robert L. Patrick
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

Supplemental Environmental Project Workplan

TBI Construction Services proposes the following for the property located at 1003-1007 Art Hill Place in Saint Louis, MO 63139. Scope of work is as follows:

- Lead correction plan needed for EPA compliance per visual inspection performed by customer's agent. All work to be done in compliance with HUD's "Guidelines for Evaluation and Control of Lead-Based Paint".

ABATEMENT

- Establish required containment using 6 mil polyethylene sheeting, caution tape, and hazard placards
- Remove existing aluminum storm door and store onsite
- Remove existing interior wood trims if necessary and store onsite
- Wet mist defective painted surfaces to the point of saturation
- Remove door slab, frame, exterior trims, transom sashes, and associated hardware and dispose of properly
- Allow to dry and HEPA vacuum all visible paint chips, dust, and debris
- Prepare opening as necessary for installation of new door
- Install new premium insulated steel 9-lite GBG 2-panel door sized to opening including frame, exterior trims, and associated hardware per manufacturer's recommendations
- Enclose exterior frame and trims with bent aluminum coil stock wraps and apply premium silicone sealant to all seams and transitions as necessary to insure full encapsulation of any hazardous materials (colors to match existing)
- Enclose interior of transom frame with gypsum board and apply sealant and paint as necessary to key into adjoining interior trims
- Reinstall customer's salvaged interior trims and apply a fresh coat of clear polyurethane sealer
- Reinstall customer's salvaged aluminum storm door and insure proper function

Location: (see below)

Exterior Entry Doors = 18 each (A = 10/Bright Brass) (C = 8/Satin Chrome)

- \$19,500.00 (Includes material, labor, and cleanup)

TESTING

- Provide final cleaning and achieve passing clearance test for disturbed areas
- \$500.00 (Includes material, labor, and cleanup)

Lump Sum Total = \$20,000.00

****NOTE**** Front facing entry doors to have bright brass hardware; rear facing entry doors to have satin chrome hardware. Each rental unit will have a keyed entry knob and single cylinder deadbolt keyed alike to unit and secondary keyed to master. Common doors will have passage knobs with separate keyed deadbolts.

IN THE MATTER OF MGK Inc.; Sherman Katz; Lee Realty; 4515 Lindell Blvd. Corporation; & 4525 Lindell Blvd. Corporation, Respondents
Docket No. TSCA-07-2010-0003

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:

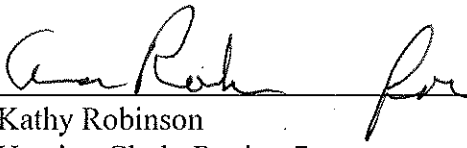
Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Jessica E. Merrigan
Lathrop & Gage LLP
2345 Grand Blvd, Suite 2200
Kansas City, Missouri 64108

Dated: 1/13/10


Kathy Robinson
Hearing Clerk, Region 7