



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4  
SAM NUNN  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA GEORGIA 30303-8960

SEP 21 2010

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Dan Forry, Owner  
Biscayne Apartments  
150 Northland Drive  
Lexington, Kentucky 40505

Re: Biscayne Apartments;  
Docket No. TSCA-04-2010-2733(b)

Dear Mr. Forry:


Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

As stated in Section V of the CAFO, the assessed penalty of \$3,328 is due within 30 days from the effective date. Please ensure that the face of your cashier's or certified check includes the name of the company and the docket number of this case. Penalty payment questions should be directed to Ms. Lori Weidner either by telephone at (513) 487-2125 or by written correspondence to her attention at U.S. Environmental Protection Agency (EPA), Cincinnati Accounting Operations address identified in the CAFO. Should you have any questions about this matter or their compliance status in the future, please call me at (404) 562-8979 or Mr. Kevin L. Woodruff at (404) 562-8828.

Also enclosed is a copy of the October 2001 *Enforcement Alert* titled "U.S. EPA Notifying Defendants of Securities and Exchange Commission's Environmental Disclosure Requirements." This document puts your client on notice of their potential duty to disclose to the

Internet Address (URL) • <http://www.epa.gov>

Recycled/Recyclable • Printed with Vegetable Oil Based Inks on Recycled Paper (Minimum 30% Postconsumer)

 Jeaneanne M. Gettle  
Chief  
Pesticides and Toxic  
Substances Branch

Enclosures

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
ATLANTA, GEORGIA

IN THE MATTER OF: )  
 )  
Fashion Square II, LLC )  
d/b/a Biscayne Apartments )  
 )  
Respondent. )  
\_\_\_\_\_ )

Docket No. TSCA-04-2010-2733(5)

2010 SEP 21 AM 3:32  
HEARING ROOM  
EPA REGION 4  
RECEIVED

**CONSENT AGREEMENT AND FINAL ORDER**

**I. Nature of the Action**

1. This is a civil penalty proceeding pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides, and Toxics Management Division, United States Environmental Protection Agency, Region 4 (EPA). Respondent is Fashion Square II, LLC d/b/a Biscayne Apartments.
2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18, and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.13(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

## II. Preliminary Statements

3. The Administrator of EPA promulgated regulations at 40 C.F.R. Part 745, Subpart F under the authority of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d (Title X). It is a prohibited act under Section 409 of TSCA, 15 U.S.C. 2689, for any person to fail or refuse to comply with a provision of Title X or with any rule or order issued under Title X.
4. For purposes of enforcing Title X under TSCA, the penalty for each violation applicable under Section 16 of that Act, 15 U.S.C. 2615, shall not be more than \$10,000, pursuant to Title X, 42 U.S.C. § 4852d(b)(5) Title X. For each violation occurring after January 31, 1997, a penalty of up to \$11,000 may be assessed pursuant to 40 C.F.R. Part 19.
5. The authority to take action under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under TSCA to EPA Region 4 by EPA Delegation 12-2-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 12-2-A. Pursuant to the aforementioned delegations, the Director of Air, Pesticides and Toxics Management Division has authority to commence an enforcement action as the Complainant in this matter.
6. Pursuant to 40 C.F.R. § 22.5(c)(4) the following individual is authorized to receive service for EPA in this proceeding:

Kevin L. Woodruff  
Lead and Children's  
Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960  
(404) 562-8828.

### **III. Specific Allegations**

7. Respondent is a Lessor, as defined at 40 C.F.R. § 745.103, of residential housing located at 150 Northland Drive #3, Lexington, Kentucky, 150 Northland Drive #5, Lexington, Kentucky, 150 Northland Drive #4, Lexington, Kentucky, 150 Northland Drive #7, Lexington, Kentucky, 150 Northland Drive #14, Lexington, Kentucky, 150 Northland Drive #20, Lexington, Kentucky, 150 Northland Drive #22, Lexington, Kentucky and 150 Northland Drive #23, Lexington, Kentucky. These residential housings are "target housing," as defined at 40 C.F.R. § 745.103.
8. Based on information obtained by EPA on or about February 10, 2010, relating to Respondent's contracts to lease its target housing described above, EPA alleges that Respondent violated Section 409 of TSCA and 40 C.F.R. Part 745, Subpart F as follows:
  - a. Pursuant to 40 C.F.R. § 745.113(b)(4), each contract to lease target housing shall include in the contract for lease a statement by the Lessee affirming receipt of the information. Respondent failed to include the appropriate information in at least eight leases.

### **IV. Consent Agreement**

9. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set forth above and neither admits nor denies the factual allegations set forth above.

10. Respondent waives its right to a hearing on the allegations contained herein and its right to appeal the proposed Final Order accompanying the Consent Agreement.
11. Respondent consents to the assessment of the penalty proposed by EPA and agrees to pay the civil penalty as set forth in this CAFO.
12. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of 40 C.F.R. Part 745, Subpart F.
13. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 16(a) of TSCA, for the specific violations alleged herein. Except as specifically provided in this CAFO, EPA reserves all other civil and criminal enforcement authorities, including the authority to address imminent hazards. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA, and it is Respondent's responsibility to comply with said laws and regulations.
14. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of 40 C.F.R. Part 745, Subpart F.

#### **V. Final Order**

15. Respondent is assessed a civil penalty of **THREE THOUSAND THREE HUNDRED TWENTY EIGHT DOLLARS** (\$3,328), which shall be paid within thirty (30) calendar days of the effective date of this CAFO.
16. Respondent shall remit the civil penalty by either a cashier's or certified check made payable to the "Treasurer, United States of America," and shall send the check to the following address by U.S. Postal Service:

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

**The check shall reference on its face the name of the  
Respondent and Docket Number of this CAFO.**

17. At the time of payment, Respondent shall send a separate copy of the check or wire transfer and a written statement that the payment has been made in accordance with this CAFO, to each of the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

Kevin L. Woodruff  
Lead and Children's  
Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960;

and,

Saundi Wilson  
Office of Environmental Accountability  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, Georgia 30303-8960.

18. For the purposes of state and federal income taxation, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.
19. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a

delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of this CAFO, if the penalty is not paid by the date required. A charge will also be assessed to cover the administrative costs, both direct and indirect, of overdue debts. In addition, a late payment penalty charge shall be applied on any principal amount not paid within 90 days of the due date.

20. Complainant and Respondent shall bear their own costs and attorney fees in this matter.
21. This CAFO shall be binding upon the Respondent, its successors and assigns.
22. The undersigned representative of the party to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally binds that party to this CAFO.

**[ The remainder of this page is intentionally left blank ]**



**AGREED AND CONSENTED TO:**

*FASHION SQUARE II, LLC DBA*

**Respondent:** BISCAYNE APARTMENTS

**Docket No.:** TSCA-04-2010-2733(b)

By: *[Signature]* (Signature) Date: 8/9/10

Name: DANIEL S. PORRY (Typed or Printed)

Title: MEMBER (Typed or Printed)

**Complainant: U.S. Environmental Protection Agency**

By: *[Signature]* Date: 9/1/10

*for* Carol L. Kernker, Acting Director  
 Air, Pesticides and Toxics  
 Management Division  
 U.S. EPA, Region 4  
 61 Forsyth Street  
 Atlanta, Georgia 30303-8960

**APPROVED AND SO ORDERED** this 21<sup>st</sup> day of Sept., 2010.

By: *[Signature]*

Susan B. Schub  
 Regional Judicial Officer

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set out below, I filed the original and one copy of the foregoing Consent Agreement and Final Order and served a true and correct copy of the foregoing Consent Agreement and Final Order, in the Matter of: Fashion Square II, LLC d/b/a Biscayne Apartments, **Docket No.: TSCA-04-2010-2733(b)**, to the addressees listed below.

Kevin Woodruff  
Lead and Children's  
Health Section  
U.S. EPA Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

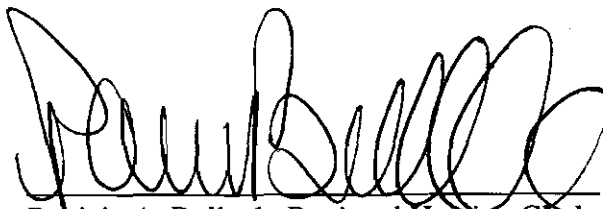
Robert Caplan  
Office of Environmental Accountability  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(via EPA's internal mail)

Dan Forry  
Owner  
Fashion Square II, LLC  
Biscayne Apartments  
150 Northland Drive  
Lexington, KY 40505

(via Certified Mail, Return Receipt Requested)

Date: 9-21-10



Patricia A. Bullock, Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street  
Atlanta, GA 30303  
(404) 562-9511