

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:

AMBRUST REALTY RENTALS
OMAHA, NEBRASKA

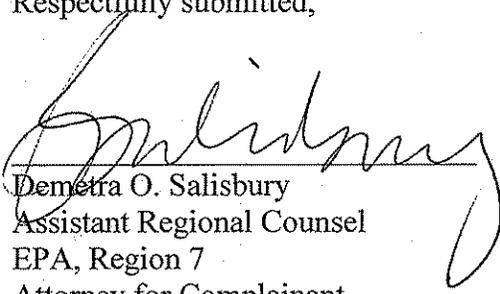
Respondent

)
) Docket No. TSCA-07-2008-0022
)
) MOTION FOR DEFAULT ORDER;
) MEMORANDUM IN SUPPORT OF
) MOTION FOR DEFAULT ORDER;
) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW;
) PROPOSED ORDER

Complainant, the Environmental Protection Agency, Region 7 (EPA) hereby moves for a Default Order pursuant to Rule 22.17(a) of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. § 22.17(a), based upon Respondent's failure to file an answer to the complaint.

In support of this Motion, attached hereto, is Complainant's Memorandum in Support of Motion for Default Order, Findings of Fact and Conclusions of Law, and Proposed Default Order.

Respectfully submitted,


Demetra O. Salisbury
Assistant Regional Counsel
EPA, Region 7
Attorney for Complainant

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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AMBRUST REALTY RENTALS)	
OMAHA, NEBRASKA)	
)	MEMORANDUM IN SUPPORT OF
Respondent)	MOTION FOR DEFAULT ORDER

In support of its Motion for Default Order, Complainant, the United States Environmental Protection Agency, Region 7 (EPA) states as follows:

I. INTRODUCTION

A. Background.

The Complaint and Notice of Opportunity for Hearing (Complaint) in this matter was filed on August 1, 2008. Respondent was served the Complaint on August 6, 2008 when its Representative signed for certified mail with return receipt requested consistent with 40 C.F.R. § 22.5(b)(1)(i). Respondent also received a copy of EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (Consolidated Rules) as required by 40 C.F.R. § 22.5(b)(1)(i).

The complaint contains two counts and proposes a civil penalty of Twenty Two Thousand Dollars (\$22,000.00). Counts 1 and 2 both allege that Respondent violated the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689, by failing to properly conduct lead-based paint disclosure activities. Specifically, Respondent, acting as lessor of target housing, failed to

provide lessees with an approved-EPA lead hazard information pamphlet, or otherwise conduct any lead-based Paint disclosure activities before its lessees were obligated under contracts to lease lessor's property.

B. Requirement to File an Answer

Paragraph 31 of the Complaint states that Respondent must file a written answer within thirty (30) days of receipt of the Complaint if Respondent: (a) contests any material fact upon which the Complaint is based; (b) contends that the penalty proposed in the Complaint is inappropriate; or (c) contends that it is entitled to judgment as a matter of law. The Consolidated Rules also require Respondent to file an answer with the Regional Hearing Clerk within thirty (30) days of service of the complaint. Rule 22.15(a), 40 C.F.R. § 22.15(a).

C. Rule 22.17 Default

Paragraph 33 of the Complaint states that Respondent may be found in default if, within thirty (30) days of receipt of the Complaint, Respondent fails to: (a) submit full payment of the proposed penalty; (b) submit a written statement to the Regional Hearing Clerk that Respondent agrees to pay the penalty within sixty (60) days of receipt of the Complaint; or (c) file a written answer to the Complaint. The Consolidated Rules similarly state that "a party may be found to be in default: after motion, upon failure to file a timely answer to the complaint . . ." Rule 22.17(a), 40 C.F.R. § 22.17(a). Furthermore, "[d]efault by respondent constitutes . . . an admission of all facts alleged in the complaint and a waiver of respondent's right to contest such factual allegations." Rule 22.17(a), 40 C.F.R. § 22.17(a). Consequently, "[w]hen the Presiding Officer finds that default has occurred, he shall issue a default order against the defaulting party . . . unless the record shows good cause why a default order should not be issued." Rule 22.17(c), 40 C.F.R. § 22.17(c).

To date, although given ample opportunity and notice, Respondent has neither submitted full (or partial) payment of the proposed penalty, nor a written statement to the Regional Hearing clerk stating that Respondent agrees to pay the penalty within sixty days of receipt of the Complaint, nor filed a written answer to the Complaint.

II. RESPONDENT HAS NOT FILED ANSWER TO THE COMPLAINT

Both Paragraph 31 of the Complaint and Consolidated Rule 22.15(a) required Respondent to file an answer with the Regional Hearing Clerk within thirty (30) days of service of the complaint. 40 C.F.R. § 22.15(a). The contents of the answer are also prescribed by the Rules: “[t]he answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint with regard to which respondent has any knowledge.” Rule 22.15(b), 40 C.F.R. § 22.15(b); see also Complaint 31.

As of the date this Motion was filed, more than thirty days since the filing of the Complaint, Respondent has filed no documents with the Regional Hearing Clerk. Respondent should be found to be in default because it failed to file an answer to the Complaint or respond in any other manner to the Complaint.

III. RESPONDENT SHOULD BE FOUND TO BE IN DEFAULT

Pursuant to the Consolidated Rules, a party may be found to be in default after motion, for failure to file a timely answer to the complaint. Rule 22.17(a), 40 C.F.R. § 22.17(a). Respondent was served with the Complaint on August 6, 2008. See Exhibit 1. According to the Consolidated Rules, the thirty days in which Respondent has to file an answer in response to the

Complaint begins to run the day after personal service of the Complaint is complete. Rule 22.7(a), 40 C.F.R. § 22.7(a)(Computation of time). Thus, the computation of the period of time prescribed to answer began on August 7, 2008. As a result, Respondent's answer was due on September 5, 2008. To date, Respondent has not filed an answer to the Complaint.

IV. CONCLUSION.

Based on the foregoing, the Motion for Default, and the Findings of Fact and Conclusions of Law, Complainant respectfully requests that the Presiding Officer issue an Order finding the Respondent in default for failing to file an answer to the Complaint. EPA also requests that the Presiding Officer finds that Respondent admits all the facts alleged in the Complaint and as a result has violated TSCA. Finally, EPA requests that the Presiding Officer assess a civil administrative penalty in the amount of Twenty Two Thousand Dollars (\$22,000.00) for Respondent's multiple violations of TSCA.

Respectfully submitted,

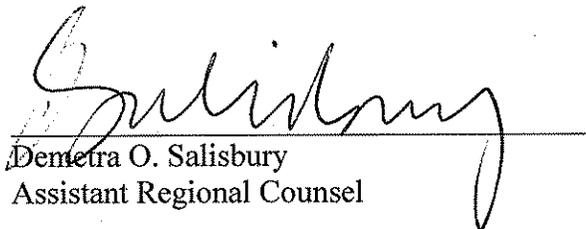

Demetra O. Salisbury
Assistant Regional Counsel

Exhibit 1

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Herbert J. Ambrusi
 Ambrusi Realty Rentals
 3163 Leavenworth Street
 Omaha, Nebraska 68105

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent
Herbert J. Ambrusi Addressee

B. Received by (Printed Name) Date of Delivery
Herbert J. Ambrusi 8/6

D. Is delivery address different from item 1? Yes
 If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.
 4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Transfer from service label) **7004 2510 0006 9719 6513**

PS Form 3811, February 2004 Domestic Return Receipt 102895-02-04-1540

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KANSAS CITY, KANSAS 66101**

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. TSCA-07-2008-0022
AMBRUST REALTY RENTALS)	
OMAHA, NEBRASKA)	
)	FINDINGS OF FACT AND
Respondent)	CONCLUSIONS OF LAW; PROPOSED
)	DEFAULT ORDER

FINDINGS OF FACT

Based upon the record in this matter, including the Complaint, and the Complainant's Motion for Default Order, I find as follows:

1. The Complainant by delegation from the Administrator of the United States Environmental Protection Agency (EPA), is the Chief of the Toxics and Pesticides Division, EPA, Region 7. Complaint 3.
2. The Respondent is Armbrust Realty Rentals, 3163 Leavenworth Street, Omaha, Nebraska 68105. Complaint 4.
3. Respondent is a "person" as defined by the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2689. Complaint 7.
4. Respondent is the "owner" as defined by 40 C.F.R. § 745.103, for the purpose of leasing the following properties: 3454 South 82nd Street #3, Omaha, Nebraska 68214, and 3208 Marcy Street #4, Omaha, Nebraska 68105. Complaint 8.
5. Respondent is the "lessor" as defined by 40 C.F.R. § 745.103, for the purpose of leasing the following properties: 3454 South 82nd Street #3, Omaha, Nebraska 68214, and 3208 Marcy Street #4, Omaha, Nebraska 68105. Complaint 9.

6. The properties referenced in Paragraphs 4 and 5 were constructed before 1978; therefore, they are "target housing" as defined by 40 C.F.R. § 745.103. Complaint 10.

7. Respondent entered into a contract to lease 3454 S. 82nd Street #3, Omaha, Nebraska, 68124, on or about April 1, 2006. Complaint 13.

8. Two children, ages six and four years old, resided at the property referenced in Paragraph 7. Complaint 14.

9. Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet or otherwise conduct lead-based paint disclosure activities before the lessee was obligated under a contract for lease of the property referenced in Paragraph 7. Complaint 15.

10. Respondent entered into a contract to lease 3208 Marcy Street #4, Omaha, Nebraska 68105, on or about October 27, 2006. Complaint 20.

11. A four year old child resided at the property referenced in Paragraph 10 during the term of the lease entered into on or about October 27, 2006. Complaint 21.

12. Respondent failed to provide the lessee with an EPA-approved lead hazard information pamphlet or otherwise conduct lead-based paint disclosure activities before the lessee was obligated under a contract for lease of the property referenced in Paragraph 10. Complaint 22.

13. Respondent's failure to provide an EPA-approved lead hazard information pamphlet or otherwise conduct lead-based paint disclosure activities at the properties referenced in Paragraphs 7 and 10, are violations of 40 C.F.R. §§ 745.107(a) and 745.115, and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. § 4852(d), and section 409 of TSCA, 15, U.S.C. § 2689. Complaint 16, 23.

14. The penalty in this matter was calculated in accordance with the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), and EPA's Section 1018 Disclosure Rule Enforcement Response and Penalty Policy, dated December 2007. Complaint 27.

15. Respondent was assessed a penalty of \$11,000 for the violation referenced in Paragraph 9, and a penalty of \$11,000 for the violation referenced in Paragraph 12, a total penalty of \$22,000. Complaint 18, 25, 29.

16. The Complaint in this matter was filed on August 1, 2008. Complaint, page 1.

17. The Complaint was served on August 6, 2008, in person to Respondent by certified mail, return receipt requested. Respondent's representative, Herbert J. Armbrust signed the Return Receipt document. Exhibit 1 of the Motion for Default Order.

18. Respondent has failed to timely file an answer to the Complaint.

CONCLUSIONS OF LAW

Based upon the findings set forth in the Findings of Fact above, and the record in this matter, it is concluded that:

1. The Respondent is found to be in default for failure to timely file an answer to the Complaint.

2. For the purposes of this proceeding only, Respondent has admitted all facts alleged in the complaint and waived his right to contest such factual allegations.

3. The Respondent violated Section 1018 of the Act, 42 U.S.C. § 4852(d), and section 409 of TSCA, 15, U.S.C. § 2689.

4. The penalty of twenty two thousand dollars (\$22,000.00) is appropriate for Respondent's violations of TSCA.

PROPOSED ORDER

Therefore, having considered the entire record in this matter, and pursuant to the authority of Section 16 of TSCA, 15 U.S.C. § 2615, it is hereby

ORDERED AND DECREED THAT:

Respondent has failed to file an answer to the complaint filed in this matter on August 1, 2008. Respondent is found to be in default. Respondent is found in violation of Section 1018 of the Act, 42 U.S.C. § 4852(d), and section 409 of TSCA, 15, U.S.C. § 2689, as alleged in the Complaint. Respondent is assessed a penalty of Twenty Two Thousand Dollars (\$22,000) for his violations. The penalty is due and payable within thirty days of entry of this Order and shall be made by cashier's or certified check payable to the United States Treasury and remitted to:

Regional Hearing Clerk
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000.

Checks should reference the name and docket number of this Order. Failure to pay any portion of the civil penalty assessed herein shall result in the commencement of a civil action in federal district court to recover the amount due, together with interest thereon at the applicable statutory rate.

Dated

Regional Judicial Officer