



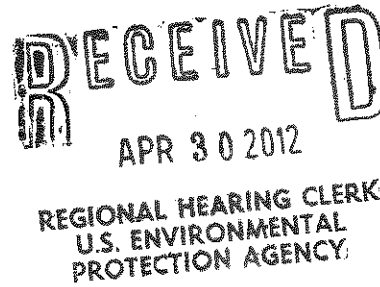
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April 27, 2012

*Archie W. Skidmore
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La Dawn Whitehead, Regional Hearing Clerk
U.S. EPA, Region V., MC-E19J
Office of Enforcement and Compliance
Assurance
77 West Jackson Blvd.
Chicago, IL 60604-2405



**Re: US EPA Complaint
In the Matter of Cindy Draher
Docket No. TSCA-05-2012-0001**

Dear Ms. Whitehead:

Enclosed please find the Respondent's Prehearing Exchange for the above-referenced civil administrative action, pursuant to the Order dated January 11, 2012 and subsequent Order dated April 2, 2012 for filing.

Thank you for your consideration in this matter.

Very truly yours,

SKIDMORE & ASSOCIATES


Archie W. Skidmore

AWS:dlb

cc: Jeffery Trevino, Office of Regional Counsel
Judge Susan L. Biro

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

In the matter of:

Docket No. TSCA-05-2012-0001

Cindy Draher,

Respondent

RESPONDENT'S PREHEARING EXCHANGE

Respondent hereby files its Prehearing Exchange for this civil administrative action pursuant to the Court's Prehearing Order, dated January 11, 2012.

I. Prospective Fact Witness

- A. Cindy Draher
C & D Properties
99 North College Street
Akron, Ohio 44304

Mrs. Draher will be a fact witness. She will testify that in respect to the City of Akron and Section 8 complaints, she went through a process of repair and the matters of complaint were corrected.

In addition, she will testify that she initiated a process of change in respect to lead paint and modified her notices as to lead paint in respect to her leases.

In addition, Respondent employed Lianna Development Corporation who will testify to his qualifications as a certified lead paint contractor who did examine the following premises and his report will be submitted when completed. The delay has been due to lack of funds.

II. Documents and Exhibits

- A. A review of the tax foreclosures that will be filed in respect to the properties on April 30, 2012. In addition, there are four properties listed in this proceeding.
- B. Notice from Kristen M. Scalise, Summit County Fiscal Officer, regarding properties subject to foreclosure.
- C. Foreclosure Mediation Notice for Case No. CV 2011-10-5686.
- D. Proposed Modification Agreement.
- E. Real Estate Values.
- F. Cash Flow Statement.
- G. Tax Return for 2010.
- H. Leases at issue do in fact recite the general warning of lead paint as it relates to children and adults; however, a 10-day notice or publication were not provided. This is not the case since the filing.
- I. Budget.
- J. Income.
- K. Letter from Cindy Draher dated March 30, 2012 to Archie.

III. Desired or Required Hearing Location

Counsel for Respondent ("Counsel") would request a hearing site in Cleveland, Ohio or Akron, Ohio or such location of convenience for counsel for the EPA.

IV. Responses to Specific Requests of the Court

Issues:

In reviewing the authority as a basis for the relief requested in the Complaint, there are two basic issues.

1. In reviewing the lead language in the leases at issue, there was a provision that would seem to be in substantial compliance, or at least a mitigation factor as to the extent of the legislative requirements. The Respondent failed to provide the 10-day election and did not provide the government publication.

2. In respect to the extent of the violation, the issue of fine is the remaining factor and in review of the legislation, there are a number of factors to consider as to income and net worth in respect to the ability to pay the assessed penalty. In consideration of the fine assessment, with no cash flow, Respondent's only alternative would be to liquidate assets and be given the time to avoid a sale at distressed value.

Counsel comments:

Max Dunn, the father of Cindy Draher, was a very successful real estate contractor who passed away leaving his real estate to his two daughters Cindy and Debbie, who resides out of state so the sole responsibility is with Cindy.

In our review of the current Complaint, the result of the research of this organization, counsel found that major changes were mandatory in the method of operation.

Counsel has recommended the Respondent make a number of major organizational changes in respect to management responsibilities. Counsel discovered at least five recent incidents where funds were borrowed and subcontractors were paid and the work was either not commenced or completed, but to the point that the work would have to be completed again.

Rent defaults are very high and are not related to standards in the area. In one particular case, Cindy permitted a tenant to pay \$200.00 a month, an amount of which did not meet her expenses for the unit. Cindy is too lenient and soft-hearted to be operating the units, which by any standard requires a hands-on policy of rent collection. We have that now with the new manager.

In our review we discovered that the Respondent does not have a cash flow; however, she does have net worth and counsel recommended (and Respondent agreed) to sell some of her real estate assets to accomplish the proposed compromise.

One of the problems in Ohio is that it is mandatory for a seller to provide a disclosure statement as to any pending issues involving the real estate. The lead paint disclosure is not prohibitive; however, a claim for \$37,700.00 has had a cloud effect on now three sales.

Counsel has attempted to acquire funds outside the normal banking channels because Respondent has a pending foreclosure and a number on contract real estate tax agreements that the county us about to take action on unless some lending capability is established forthwith.

On April 24, 2012, counsel was notified that there will be an extensive tax sale of the following real estate (See Exhibit B).

Counsel has been in constant communication with Counsel for the Complainant in respect to a negotiated conclusion to this matter.

After review of the nonexistent cash flow, the only source of funds would be the liquidation of real estate assets.

During the process we have negotiated three potential sales; however, with the Complaint pending the sales were not concluded. In Ohio, in addition to the potential of lead paint, it is mandatory as to any litigation that would be affecting title must be disclosed. The general public, brokers and bankers are very weary of our present position.

In addition, over a period of time the credit score of the Respondent has hit rock bottom.

We have contacted two private individuals for a loan to settle the Complaint and, if possible, forestall the Summit County Treasurer.

I believe that in the numerous discussions we have had with counsel for the Complainant, we have the framework for a settlement, but the difficulty is on the part of Respondent to create the funds to carry out a potential settlement.

Counsel submits that the Respondent has come a long way and does recognize that with her health condition that the management load has been too much and after many years of management, the time has come to allow someone else to carry the burden of operation.

Counsel, if given the time to sell assets to finance a settlement, believes it will be concluded. A final consent decree is essential and will expedite the sale of assets necessary to conclude this matter.

The consent decree will solve the reluctance of the buyers, the broker and the banks.

One more comment - counsel for the Complainant has been more than fair in his response to our many questions and internal conflicts of Respondent and has been be a very difficult matter to manage.

In the beginning it seemed that with the extent of the Complaint and the overwhelming amount of material in the prehearing exchange documents that the Respondent would not be understood as to her personal circumstances. Counsel for Plaintiff has taken the time and the effort to be fair.

The court has permitted a late filing when an extension for filing Respondent's prehearing exchange documents and the encouragement to resolve the issues would be for the benefit of everyone concerned. The lead paint issue is a serious concern and the policy of the owner has drastically changed during the course of this proceeding and is in place and in compliance.

Counsel, if given the time, can create the sales necessary to conclude this matter as well as the other non-related financial problems of the Respondent.

I do not believe through this experience that the government is over reaching. I do believe that the mandate is being carried out in a sincere conscientious manner, and that the final result in this case is a good example of each party acknowledging the facts and with a fair exchange for the benefit of everyone including the general public.

I will supplement our efforts for the sale of assets at a future status conference.

Respectfully submitted,

SKIDMORE & ASSOCIATES



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Attorney for Respondent, Cindy Draher,

C & D Properties

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