

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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REGIONAL HEARING CLERK
EPA REGION III, PHILA. PA

In the Matter of:

James Ikegwu and Martha Ikegwu
6409 Maple Ave
Baltimore, Maryland 21207

RESPONDENTS

1700 North Castle Street
Baltimore, Maryland 21213

TARGET HOUSING

:
: **U.S. EPA Docket No. TSCA-03-2011-0217**
:
: **COMPLAINANT'S MOTION**
: **TO RETURN CASE FILE TO**
: **PERFECT SERVICE OF**
: **DEFAULT ORDER**
:
: **Proceeding under Sections 409 and 16(a)**
: **of the Toxic Substances Control Act,**
: **15 U.S.C. §§ 2689 and 2615(a)**
:
:

**COMPLAINANT'S MOTION TO RETURN CASE FILE TO
PERFECT SERVICE OF DEFAULT ORDER**

Pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22 (hereinafter the "Consolidated Rules"), the United States Environmental Protection Agency, Region III ("EPA" or "Complainant"), files this Motion to return the above captioned case file in order to perfect service of the Default Order issued against **James Ikegwu and Martha Ikegwu** ("Respondents") for failure to file a timely Answer.

Pursuant to 40 C.F.R. § 22.27(c)(4), the initial decision of a Presiding Officer becomes a final order 45 day after its service, unless the Environmental Appeals Board (the "Board") elects to review the initial decision on its own initiative. As set forth below, the required service of the initial decision has not been made on Respondents. Therefore, review by the Board at this time is premature. In support of this motion, Complainant avers as follows:

1. An Administrative Complaint and Notice of Opportunity for Hearing ("Complaint") was

issued to the Respondents by Complainant and filed with the Regional Hearing Clerk on September 28, 2011.

2. The Complaint was issued under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") under Section 16(a) of the Toxic Substances Control Act, 15 U.S.C. § 2615 ("TSCA").
3. Complainant issued the Complaint to Respondents for violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* ("Lead Paint Disclosure Act"). A true and correct copy of the Complaint was sent by express overnight mail, return receipt requested, to Respondents.
4. The Respondents received the Complaint on September 29, 2011, as evidenced by the date on which the express overnight mail return receipt was signed by Respondent Martha Ikegwu or her representative.
5. The Complaint alleged that Respondents, the Seller(s) of the target housing, did not disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing in the sale agreement, or attach notice of such knowledge to the sales agreement, prior to the purchaser becoming obligated under the sales agreement to purchase such target housing, as required by 40 C.F.R. §745.107(a)(2), and thereby violated Section 1018(b)(5), 42 U.S.C. §4852d(b)(5) of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("RLBPHRA") and TSCA Section 409, 15 U.S.C. § 2689.
6. The Complaint alleged that Respondents, the seller of the target housing, did not provide the purchaser with records or reports pertaining to lead-based paint and/or lead-based paint hazards in the target housing prior to the purchaser becoming obligated under the sales agreement to purchase such target housing, as required by 40 C.F.R. §745.107(a)(4), and thereby violated RLBPHRA Section 1018(b)(5), 42 U.S.C. §4852d(b)(5), and TSCA Section 409, 15 U.S.C. § 2689.
7. Section 1018(b)(5) of the Lead Paint Disclosure Act, 42 U.S.C. § 4852d(b)(5), authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615, up to the maximum amount of \$10,000 for each violation of Section 409 of TSCA, 15 U.S.C. § 2689. Complainant determined the amount of the civil penalty to be six thousand, four hundred and fifty dollars (\$6,450.00).

8. Pursuant 40 C.F.R. § 22.15(a), if a Respondent (1) contests any material fact upon which a Complaint is based; (2) contends that the amount of the penalty proposed in the Complaint is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, Respondent must file a written Answer to the Complaint with the Regional Hearing Clerk within thirty (30) days after service of the Complaint. and shall serve copies on all other parties. In addition, pursuant to the Consolidated Rules at § 22.7(c), service of the Complaint is completed when the return receipt is signed.
9. In the instant case, pursuant to the Consolidated Rules, Respondents were required to file their Answer no later than October 29, 2011. Respondents failed to file a timely Answer under Consolidated Rules.
10. On or about September 26, 2012, EPA submitted to the Regional Judicial Officer ("RJO") for review and signature, a Motion for a Default Order and a request for the issuance of a Default Order (the "September 26, 2012 Default Motion") for failure to file a timely Answer. The September 26, 2012 Motion for a Default Order requested the imposition of the penalty proposed in the Complaint without further proceedings.
11. A true and correct copy of the September 26, 2012 Default Motion was sent via express mail return receipt requested. However, delivery of the Default Motion could not be confirmed because no signature for delivery of the Default Motion was obtained by the express mail delivery service. Therefore, service of the default Motion on Respondents serving as notation of the action prior to the submission of the Default Motion to the RJO had not been made.
12. Complainant's Motion to Withdraw the September 26, 2012 Default Motion was filed with the Regional Hearing Clerk on November 21, 2012 and submitted to the RJO as a pending matter.
13. Complainant's Second Motion for a Default Order, was also filed with the Regional Hearing Clerk on November 21, 2012. Complainant's Second Motion for a Default Order set forth the same supporting pleadings as Complainant's Motion for a Default Order filed on September 26, 2012.
14. Complainant, after filing, and before attempting service of Complainant's Second Motion

for a Default Order, continued its investigation regarding the appropriate address by which the Respondents should be served.

15. On April 3, 2014 the RJO signed a Default Order (the "April 3, 2014 Default Order") against Respondents requested in Complainant's Second Motion for a Default Order and ordered it to be served on Respondents via the Regional Hearing Clerk.
16. The Regional Hearing Clerk filed and mailed a copy of the April 3, 2014 Default Order to Respondents via first class mail.
17. The Default order was returned to the Regional Hearing Clerk undelivered.
18. As of the date of the issuance of the April 3, 2014 Default Order the Respondents have not been served with the April 3, 2014 Default Order

As stated above, Pursuant to Consolidated Rule, 40 C.F.R. § 22.27(c)(4), the initial decision of a Presiding Officer becomes a final order after 45 day after its service, unless the Environmental Appeals Board (the "Board") elects to review the initial decision on its own initiative. As set forth above, no service of the April 3, 2014 Default Motion has been made on Respondents. Therefore, review by the Board at this time is premature. The pleadings above fully support this Motion to return the case file to the Regional Hearing Clerk so that service of the April 3, 2014 Default Order can be perfected.

WHEREFORE, Complainant requests the return of the case file, In the Matter of: James and Martha Ikegwu U.S. EPA Docket No. TSCA-03-2011-0217, to the Regional Hearing Clerk.

Respectfully submitted,

Date

May 29, 2014



Rodney Travis Carter
Senior Assistant Regional Counsel

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

Transmitted Via Electronic and Inter-Office Mail

May 29, 2014

Clerk of the Board
U.S. Environmental Protection Agency
Environmental Appeals Board
1200 Pennsylvania Avenue, NW
Mail Code 1103M
Washington, DC 20460-0001

**Re: COMPLAINANT'S MOTION TO RETURN CASE FILE TO
PERFECT SERVICE OF DEFAULT ORDER**

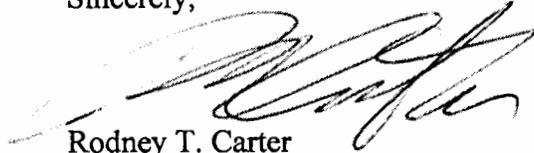
Dear Clerk of the Board:

Enclosed please find COMPLAINANT'S MOTION TO RETURN CASE FILE TO
PERFECT SERVICE OF DEFAULT ORDER (the "Motion") for the enforcement matter **In the
Matter of: James Ikegwu and Martha Ikegwu, U.S. EPA Docket No. TSCA-03-2011-0217,**
filed this date in response to the Environmental Appeals Board's May 15, 2014 ORDER
ELECTING TO EXERCISE SUA SPONTE REVIEW.

The Motion has been filed with the Regional Hearing Clerk for Region III. A true and correct hard copy of the Motion, as well as an Electronic copy, has been sent to the Secretary for the U.S. Environmental Protection Agency, Environmental Appeals Board.

If you have any questions please contact me, Rodney T. Carter at (215) 814-2478.

Sincerely,



Rodney T. Carter
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region III

Enclosures: COMPLAINANT'S MOTION TO RETURN CASE FILE TO
PERFECT SERVICE OF DEFAULT ORDER

cc: **Annette Duncan**, Secretary
U.S. Environmental Protection Agency
Environmental Appeals Board
1201 Constitution Avenue, NW
WJC East, Room 3334
Washington, DC 20004