The Law Offices of

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September 23, 2009

Ms. LaDawn Whitehead
Regional Hearing Clerk (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Re: ***In The Matter of: Kathryn Y. Lewis-Campbell, Springfield, Ohio***
Docket Number: TSCA-05-2009-0004

Dear Ms. Whitehead:

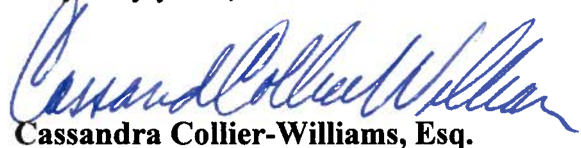
Enclosed please find the original and one (1) copy of the following document, relative to the above captioned matter:

1. ***Respondent's Brief In Opposition to Complainant's Motion for Accelerated Decision on Liability and Appropriate Penalty.***

Please file the above in the normal manner, and return the time stamped copy to me in the enclosed self addressed stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,



Cassandra Collier-Williams, Esq.

CCW: rdc
Enclosure
cc: Judge William B. Moran
Richard R. Wagner, Esq.
Kathryn Y. Lewis-Campbell

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:	)	**DOCKET NO. TSCA-05-2009-0004**
	)	
KATHRYN Y. LEWIS CAMPBELL	)	
SPRINGFIELD, OHIO	)	
	)	**RESPONDENT'S BRIEF IN OPPOSITION TO COMPLAINANT'S MOTION FOR ACCELERATED DECISION ON LIABILITY AND APPROPRIATE PENALTY**
U.S. EPA ID# OHD 106 483 522	)	
RESPONDENT.	)	

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I. INTRODUCTION

NOW COMES the Respondent, Kathryn Y. Lewis Campbell, by and through her undersigned counsel, ***The Law Offices of Cassandra Collier-Williams, LLC***, and hereby submits her ***Brief in Opposition to Complainant's Motion for Accelerated Decision on Liability and Appropriate Penalty***. For all the reasons set forth below, the Respondent prays this Honorable Court denies Complainant's Motion for Accelerated Decision on Liability and Appropriate Penalty.

II. STATEMENT OF FACTS

In 1972, Mrs. Gussie E. Collier, (deceased), who is the mother of the Respondent, purchased the property which is the subject of this matter, located at 137 E. Southern Avenue, Springfield, Ohio 45505 (hereinafter referred to as "the property"). Subsequent to Mrs. Collier's death on February 14, 2001, the property was transferred to Mrs. Collier's six (6) children. Thereafter, 100%

ownership was transferred to the respondent, Ms. Kathryn Y. Lewis-Campbell, the eldest child of Mrs. Collier.

The property remained vacant after Mrs. Collier's death until the time of the sale to Mr. Donald Freeman. Prior to the sale, the property was heavily vandalized, and there was no working electricity. The pipes in the property had been stolen; the woodwork had been stolen; bricks from the fireplace were stolen; squatters put holes in the ceilings and the floors; windows were broken out; stained glass windows were stolen; and a fire was set inside the property.

The property was completely uninhabitable, and was in desperate need of major repairs. Mr. Donald Freeman, who was a long time acquaintance of the Collier family, was employed by the family to cut the grass and make some minor repairs (board up the structure; fix holes in the roof, etc.) At that time, Mr. Freeman resided on Catherine Street in Springfield, Ohio, with his wife. They had three (3) children, who are all over twenty five (25)years of age.

In 2006, the Respondent, Kathryn Lewis-Campbell, made the decision to sell the property due to the numerous break ins, the fire, and the general poor and deplorable condition of the property. As stated above, the property was uninhabitable and could only be sold to someone for purposes of rehab or demolition.

Mr. Freeman, knowing that the Respondent wanted to sell the property, approached the Respondent and asked if he could buy it. Mr. Freeman indicated

that he knew how much the property meant to the Respondent's family and its sentimental value. He stated that he wanted to buy and rehab the property, and eventually move into the property. Because of the uninhabitable condition of the property, and his desire to rehab it, the Respondent sold the property to Mr. Freeman for a huge discounted price of Seven Thousand Five Hundred Dollars ($7,500.00).

Mr. Freeman was well aware of the property's deplorable condition. With that knowledge, he purchased the property **"AS IS."** Furthermore, he knew that the property was uninhabitable and was on the verge of being demolished. Mr. Freeman never communicated to the Respondent that he would be living in the residence, before it was repaired, let alone moving minor children into the property. In fact, neither the Respondent, nor her family, knew that Mr. Freeman had any minor children, as they were birthed outside of his marriage.

Mr. Freeman illegally moved children into an uninhabitable structure without the knowledge and/or consent of the Respondent. Mr. Freeman only communicated to the Respondent that he would rehab the property so that it could become liveable again. Respondent did not sell the property for immediate residential purposes. It was a rehab project. Mr. Freeman never indicated that he was going to live and move any minor children onto the property without it being completely repaired.

To further highlight the uninhabitable condition of the property,

approximately one (1) month after the property was sold to Mr. Freeman, the property received a "Notice of Violation & Orders to Repair or Demolish" from the City of Springfield. This notice clearly states that there was: no electric; no hot or cold running water; windows were broken out; and that the property was unsanitary with cracked and peeling paint and wallpaper.

It was in this unsafe, deplorable property that Donald Freeman brought minor children. And it is because of this unsafe, deplorable, non-residential property that the Complainant brings this instant matter against the Respondent.

III. LAW AND ARGUMENT

A. The Complainant's Motion for Accelerated Decision on Liability and Appropriate Penalty Should Not be Granted Because Genuine Issues of Material Fact Exist, and Therefore the Complainant has not Demonstrated that the Requirements of *40 C.F.R. §22.20* Have Been Fulfilled.

Under ***40 C.F.R. §22.20(a)***,

> The Presiding Officer may at any time render an accelerated decision in favor of a party as to any or all parts of the proceeding, without further hearing or upon such limited additional evidence, such as affidavits, as he may require, if no genuine issue of material fact exists and a party is entitled to judgment as a matter of law.

Furthermore, an accelerated decision under this rule is "similar to judicial summary judgment under Rule 56, Fed. R. Civ. P.," ***In re Green Thumb Nursery, Inc., 6 E.A.D. 782, at 793 (EAB 1997)***, therefore, the evidence must be viewed in the light most favorable to the nonmoving party. ***See In re J & L Specialty***

Products Corp., NPDES Appeal No. 92-22 (EAB, Feb. 2, 1994. See also In re Adolph Coors Company, RCRA-VIII-90-09 (ALJ, March 1, 1991), and ***Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574 (1986)***.

Viewing the evidence in the light most favorable to the Respondent in the case at bar, the Complainant's motion must be denied because the requirements for an accelerated decision are not met. There are genuine issues of material fact, and the Complainant is not entitled to judgment as a matter of law.

B. The Subject Property does not Qualify as Residential Real Property and, Therefore, the Transaction was Exempt from the EPA's Disclosure Requirements.

The subject property was not a residential property at the time it was sold to Mr. Freeman. It was property needing either major rehab, or demolition. "Residential real property" is defined as "real property on which there is situated 1 or more residential dwellings used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of 1 or more persons." ***42 U.S.C. §4851b(24)***. This definition makes it clear that there must be an intention to use or occupy the dwelling on the property in order for it to qualify as "residential." There was no such intention in this case on the behalf of the Respondent. Further, Mr. Freeman did not indicate such an intention to the Respondent. The property was uninhabitable. Had Ms. Lewis-Campbell known that Mr. Freeman was going attempt to live on the property with minor children,

she would have never sold him the property.

Mr. Freeman had known the Respondent's family for a long time, and he was very familiar with the property because of the lawn care he provided to it. He knew the right words to say when he approached the Respondent to ask her if he could purchase the structure. He mentioned the sentimental value, but made no mention of wanting to move into it before he made major repairs to the extensive damage. There was no reason for the Respondent to believe that there was even a slight chance that Mr. Freeman would want to live on the property, because, as previously mentioned, he and his wife maintained a residence in the same town.

Mr. Freeman actually committed fraud by intentionally misrepresenting his intentions for the property, because he never even hinted at his plan to immediately occupy the property when he purchased it. Furthermore, there was never any indication that children were going to be involved with the property, in any way. Mr. Freeman's children were adults when the property was transferred. Nobody in the Respondent's family knew about the minor children he had with someone else, let alone his plan to move them into this condemned, dilapidated structure. The property was sold to him, at a steep discount, for the express purpose of either demolishing it or rehabbing it. Once again, had the Respondent known about Mr. Freeman's actual plan, she would not have sold him the property.

The truth is that Mr. Freeman's actions were so atrocious, that he should

be brought up on criminal charges for child endangerment. Any alleged lead exposure to children was his fault, and his fault alone.

The Respondent did not commit any violations of the EPA Rules. At the time of the sale, the property was not being used as a residence, was not occupied, and was, in fact, uninhabitable. The Respondent sold the property as a rehab project, and not with the intention of it being occupied "as is."

The inspection by the City of Springfield one (1) month later clearly indicated that no person could live in this structure without doing the extensive work required. It would be simply illegal to reside in said property. Consequentially, since there was no intent to sell the property for immediate occupancy, and the property could not legally be occupied, this disqualifies the property from being residential, and it is, therefore, exempt from the Disclosure Requirements.

Whether the property was not a residential property at the time it was sold to Mr. Freeman, and was therefore exempt from the EPA's Disclosure Requirements, is a genuine issue of material fact and, therefore, the Complainant's Motion for Accelerated Decision on Liability and Appropriate Penalty must be denied.

C. **The Respondent did not Violate the EPA's Disclosure Rules, but, Had There Been a Violation, No Penalty Should be Assessed Against the Respondent, Because of Her Lack of Culpability for Any Alleged Lead Exposure; Her Lack of Prior Violations; and Her Inability to Pay.**

The Respondent should not be liable to pay any penalty in this case. "The purpose of [the] Enforcement Response and Penalty Policy (ERPP) is to provide predictable and consistent enforcement responses and penalty amounts for violations of Section 1018, yet retain flexibility to allow for individual facts and circumstances of a particular case." The facts and circumstances of the case at bar are such that no penalty should be assessed, for several reasons:

First, Ms. Lewis-Campbell has had no prior violations against her.

Second, the house was not sold as a residential property, so the EPA's Disclosure Rules had no application to the transaction. As stated above, in order to be residential, there must be intent to occupy the property. If Mr. Freeman ever had any intention to move into the property before renovating it, he fraudulently kept that intention from the Respondent. The property was uninhabitable. The City inspectors declared it illegal to reside there until the numerous major violations were completed. Mr. Freeman knew that the house was uninhabitable. In fact, only one month after the sale, the city gave him notice that the property had to be completely repaired or demolished. Mr. Freeman had actual knowledge that the property was not being sold as a residential property, yet he chose to ignore that fact. He moved in and allowed his young children to live in a place

which he knew was not, and could not be, residential.

Therefore, Complainant's motion should be denied.

Third, the Respondent should not be penalized because any alleged lead exposure was through no fault of her own. She had no knowledge that Mr. Freeman would move into the property she sold him, nor did she know that there would be minor children involved in the transaction. The Respondent had no idea about Mr. Freeman's secret illegitimate children; as far as she knew, all of Mr. Freeman's children were adults who were capable of living on their own. Mr. Freeman deliberately moved his young children into the dilapidated property, knowing all of the health risks. Mr. Freeman had his own home at the time that he purchased the property. There was no reason for him to move into the subject dilapidated, condemned property. In fact, no sane or rational person would have "lived" in this property. Besides the Respondent and her family, Mr. Freeman was the one person who knew the extent of the damage to the property: it was completely ruined by fire, vandalism, etc. If there is anyone at fault in this case, it is Mr. Freeman, not the Respondent, and she should not be punished for Mr. Freeman's willful and reckless acts.

Consequently, Complainant's motion should be denied.

Lastly, the Respondent is unable to pay any penalty which may be imposed by this Honorable Court. The EPA will not impose penalties that are beyond a Respondent's financial means. ***Section 1018 Disclosure Rule Enforcement***

Response and Penalty Policy, at 17. The Respondent is raising her two grandchildren by herself. As this Court knows, raising children is tough enough on a family's finances, but it is even worse in this economy. Additionally, she is a single woman, whose income has decreased in recent years through no fault of her own. Her job at Mercy Medical Center was phased out, and she was rendered unemployed. In 2006, her total income was Seventy-Eight Thousand Three Hundred Thirty Six Dollars ($78,336.00). In 2008, it had fallen to only Thirty Four Thousand Five Hundred Sixty-Seven Dollars ($34,567.00). This is approximately a Sixty-Six Percent (66%) drop in her income over two (2) years. She has done her best to keep a roof over her head, and food on her table. The Respondent has already given the Complainant copies of her tax returns from 2005 to 2008, as proof of this drastic decrease. Currently, what little disposable income she has goes to buying necessities for her and her minor grandchildren.

Consequently, Complainant's motion must be denied.

IV. CONCLUSION

The property in question is exempt from the definition of "target housing," due to the fact that it was not residential real property, as defined by the EPA. Thus, no penalty should be assessed against the Respondent because there was no violation of any EPA Disclosure Rules. Since this is a genuine issue of material fact, the Complainant's motion should be denied because he did not meet the

requirements for an Accelerated Decision, per ***40 C.F.R. §22.20(a)***.

Even if the Respondent had violated the Disclosure Rules, no penalty should be assessed against her. The Respondent's financial situation precludes her from being able to pay; she has no history of prior violations; and she was not at fault for any alleged lead exposure. Mr. Freeman's own negligence precludes any liability on the part of the Respondent. He deliberately assumed the risk of moving into the property, with young children, even though he knew of all of the dangers, and the fact that the property was condemned.

Since there are genuine issues of material fact, the Complainant is not entitled to an Accelerated Decision on Liability and Penalty, and therefore the Complainant's motion should be denied.

WHEREFORE, for the above stated reasons, Respondent Kathryn Y. Lewis-Campbell prays this Honorable Court deny the Complainant's Motion for Accelerated Decision on Liability and Penalty.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2009, a copy of the foregoing was delivered via regular U.S. mail to the following:

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