

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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IN THE MATTER OF:)
)
Landmark Real Estate Management, Inc.)
Solo Affordable housing Solutions, LLC)
Solo Development 2004, LLC)
Minbar Properties, LLC)
87 Bartlett Street Associates, LLC)
P. O. Box 891)
Lewiston, ME 04243)
)
LA Italian Properties, LLC)
P.O. Box 4510)
Portland, ME 04112)
)
Travis Soule dba Fish Properties)
19 Woodland Way)
New Gloucester, ME 04620)
)
Respondents.)
)

EPA Docket Number
TSCA-01-2009-0106

**AMENDED INITIAL DECISION AND DEFAULT ORDER
AFTER REMAND**

An "Initial Decision and Default Order" was issued by Region 1 on January 10, 2011, in the above captioned matter. On March 3, 2011, the Environmental Appeals Board of the United States Environmental Protection Agency (the "Board") decided to exercise *sua sponte* review of the "Initial Decision and Default Order" pursuant to 40 C.F.R. §§ 22.27 (c), 22.30(b). On March 28, 2011, the Board issued an "Order Remanding to the Regional Judicial Officer" for

further clarification of “which respondent(s) is/are liable for what penalty, and justify the penalty for which each individual respondent is liable.”

Accordingly, the “Initial Decision and Default Order” is amended to read as follows:

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INITIAL DECISION AND DEFAULT ORDER

This is a civil administrative proceeding instituted pursuant to Section 16 (a) of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, and Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits (“Consolidated Rules”), 40 C.F.R. Part 22.

The proceeding was initiated by a Complaint and Notice of Opportunity to Request a Hearing (“Complaint”) filed by the Complainant, United States Environmental Protection Agency, Region 1 (“Complainant” or “EPA”) on September 25, 2009, against the Respondents, Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties (collectively “Respondents”). In its Complaint, EPA alleges that the Respondents violated Section 409 of the TSCA, 15 U.S.C. § 2689; the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.*; and the federal regulations promulgated thereunder, set forth in 40 C.F.R. Part 745, Subpart F (“Disclosure Rule”). For these violations, the Complainant proposes the assessment of a civil administrative penalty totaling \$227,760.00¹ against the Respondents.

¹ The “Memorandum in Support of Default Order” filed by Complainant gives the total penalty as \$227,700, but addition of the individual Respondents assessments in that “Memorandum” actually total \$227,760.00.

In the pending Motion for Default Order, the Complainant alleges that the Respondents are in default for failure to file an Answer to the Complaint and requests that the full penalty be assessed.

Based upon the record in this matter and the following Findings of Fact and Conclusions of Law and Penalty Calculation, the Complainant's Motion for Default Order is hereby GRANTED. The Respondents are hereby found in default and a civil penalty in the amount of \$227,760.00 is assessed, allocated among the individual Respondents as described in the "Determination of Penalty" section below.

BACKGROUND

This proceeding under Section 16 (a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), 40 C.F.R. § 745.118, was initiated by issuing a Complaint on September 25, 2009. Respondents were served with copies of the Complaint by certified mail, return receipt requested. Respondents signed for the Complaints on October 1, 2009, and service was complete on that date. Under 40 C.F.R. § 22.15(a) of the Consolidated Rules, an Answer is due within thirty days after service of the Complaint.

The Complaint explicitly stated on page 24, Section VII. "*Opportunity to Request a Hearing and File Answer*", that:

"63. In accordance with 40 C.F.R. §22.14, Respondents have a right to request a hearing on the issues raised in this Complaint. Any such hearing would be conducted in accordance with the Consolidated Rules of Practice. **A request for a hearing must be incorporated in a written answer.** The original and one copy of the answer must be filed with the Regional Hearing Clerk at the above address within thirty (30) days of receipt of this complaint..."

The Complaint also states on p. 25 that:

“62. If Respondents fail to file a timely answer to the complaint, Respondents may be found to be in default pursuant to 40 C.F.R. § 22.17. For purposes of this action only, default by Respondents constitutes an admission of all facts alleged in the Complaint and a waiver of Respondents’ right to contest such factual allegations under Section 12 (2)(A) of TSCA, 15, U.S. C. § 2616(2)(A). The penalty assessed in this Complaint shall become due and payable by Respondents without further proceedings thirty (30) days after the default order becomes final pursuant to 40 C.F.R. § 22.27(c).”

To date, none of the Respondents have either filed a written Answer or requested a hearing in this matter, and the thirty day period for doing so has lapsed.

On April 9, 2010, the Complainant filed a Motion for a Default Order. Copies of this Motion were mailed to the Respondents via certified mail, return receipt requested. None of the Respondents have filed a response to the Motion for Default Order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Pursuant to 40 C.F.R. § 22.17 (c) and based on the entire record, I make the following findings of fact:

1. The Complainant is the United States Environmental Protection Agency, Region 1 (“Region”).
2. The Respondents include Landmark Real Estate Management, Inc.; Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC; and Travis Soule dba Fish Properties.
3. Between March 22, 2007 and July 21, 2008, Respondents Solo Affordable Housing Solutions, LLC; Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; LA Italian Properties, LLC and Travis Soule dba Fish Properties owned and offered for lease approximately 100 low-income housing units on about eighteen properties in Lewiston, Maine. These Respondents constitute “owners” and “lessors,” as defined in 40 C.F.R. §745.103.

4. Respondent Landmark Real Estate Management, Inc. managed and offered for lease the properties owned by the Respondents listed above in paragraph 3. This Respondent is a "lessor," as defined in 40 C.F.R §745.103.
5. The housing units owned and/or managed and offered for lease by Respondents, constructed prior to 1978, constitute "target housing" as defined in 40 C.F.R. § 745.103, and do not qualify for exemptions to the provisions of the Lead Hazard Reduction Act or the Lead Disclosure Rule.
6. On July 21, 2006, October 31, 2007 and May 6, 2008, the Maine Department of Health and Human Services issued abatement orders on four apartments owned and/or managed and offered for lease by Landmark Real Estate Management Inc. and Solo Affordable Housing Solutions, LLC, in response to findings of elevated blood lead levels in at least one child residing in each of these apartments.
7. 40 C.F.R. § 745.107(a)(4) requires a lessor to disclose to the lessee the presence of any known lead-based paint and/or lead based paint hazards, or indicate no knowledge of the presence of lead based paint and/or lead-based paint hazards, in the target housing being leased before the lessee becomes obligated under the lease contract.
8. 40 C.F.R. 107(a)(4) requires a lessor to provide the lessee with any records or reports available to the lessor pertaining to lead-based paint and/or lead-based paint hazards in the target housing being leased before the lessee becomes obligated under a lease contract.
9. Respondents Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC failed to disclose the presence of known lead-based paint and/or lead-based paint hazards and/or to provide records or reports of known lead-based paint hazards and/or to provide records or reports of known lead-based paint and/or lead-based paint hazards to the lessee of one housing unit who signed a contract to lease target housing on April 13, 2007.²
10. At the time Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC executed the lease described above in paragraph 9, these Respondents had received an abatement order issued by the Maine Department of Health and Human Services on July 21, 2006, which described lead-based paint hazards in the aforementioned housing unit.
11. The failure of Respondents Landmark Real Estate Management, Inc. and Solo Affordable Housing Solution, LLC to disclose to the lessee the presence of known lead-based paint and/or lead-based paint hazards in target housing and/or to provide records or reports of known lead-based paint and/or lead-based paint hazards with respect to one contract for the lease of target housing

² The lessee of this housing unit did not have any children under the age of eighteen at the time the lease was signed.

constitutes a violation 40 C.F.R. § 745.107(a)(2) and/or 40 C.F.R. § 745.107(a)(4), and Section 409 of TSCA, 15, U.S.C. § 2689.

12. 40 C.F.R § 745.113(b)(2) requires a lessor to include, as an attachment to or within lease contracts, a statement by the lessor disclosing the presence of known lead-based paint and/or lead based paint hazards, or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards, in the target housing being leased.
13. Between March 22, 2007 and July 21, 2008, Respondents failed to include, as an attachment to or within lease contracts, a statement by the lessors disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts;³ (2) Landmark Real Estate management, Inc. and Solo Development 2004, LLC for two lease contracts;⁴ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;⁵ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;⁶ (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;⁷ and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.⁸
14. The failure of Respondents to include, as an attachment to or within the lease contracts described above in paragraph 13, a statement by the lessors disclosing the presence of known lead-based paint and/or lead-based paint hazards in the target housing being leased, or indicating no knowledge of the presence of lead based paint hazards, constitutes eighteen violations of 40 C.F.R. § 745.113(b)(2) and Section 409 of TSCA, 15 U.S.C. § 2689.
15. 40 C.F.R. § 745.113(b)(3) requires a lessor to include, as an attachment to or within lease contracts, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint hazards, or indicate that no such records or reports exist, for the target housing.
16. Between March 22, 2007 and July 21, 2008, Respondents failed to include as an attachment to or within lease contracts, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint

³ Seven of the lessees under these contracts had one to five children, ranging in age from infants to nine years old, at the time the leased were signed.

⁴ One of the lessees under these contracts had a six month old child at the time the lease was signed.

⁵ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

⁶ The lessee under this contract had a two-year old child at the time the lease was signed.

⁷ The lessee under this contract had a two month old child at the time the lease was signed.

⁸ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

hazards in the housing, or indicate that no such records or reports exist, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts;⁹ (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts;¹⁰ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹¹ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;¹² (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;¹³ and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.¹⁴

17. The failure of Respondents to include, as an attachment to or within the lease contracts described above in paragraph 16, a list of any records or reports available to the lessors that pertain to lead-based paint and/or lead-based paint hazards in the housing, or indicate that no such records or reports exist, constitutes eighteen violations of 40 C.F.R. § 745.113(b)(3) and Section 409 of TSCA, 15 U.S.C. § 2689.
18. 40 C.F.R. § 745.107(a)(1) requires a lessor to target housing to provide lessees with an EPA-approved lead hazard information pamphlet entitled *Protect Your Family from Lead in Your Home*, or an equivalent pamphlet approved by EPA for use in the state, before the lessee becomes obligated under any contract to lease target housing.
19. Between March 22, 2007 and July 21, 2008, Respondents failed to provide an EPA-approved lead hazard information pamphlet to lessees of target housing who entered into lease contracts before those lessees became obligated under the contracts, as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for nine lease contracts;¹⁵ (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for one lease contract;¹⁶ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹⁷ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease

⁹ Seven of the lessees under these contracts had one to five children, ranging in age from infants to nine years old at the time the leases were signed.

¹⁰ One of the lessees under these contracts had a six month old child at the time the lease was signed.

¹¹ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

¹² The lessee under this contract had a two-year old child at the time the lease was signed.

¹³ The lessee under this contract had a two-month old child at the time the lease was signed.

¹⁴ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

¹⁵ Six of the lessees under these contracts had one to six children, with known ages ranging from infants to three years old, at the time the leases were signed.

¹⁶ The lessee under this contract did not have any children under the age of eighteen at the time the lease was signed.

¹⁷ One of the lessees under these contracts had three children, ranging in age from three to eight years old, at the time the lease was signed.

contract;¹⁸ and (5) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.¹⁹

20. The failure of Respondents Landmark Real Estate Management, Inc.; Solo Affordable housing Solutions, LLC, Solo Development 2004, LLC; Minbar Properties, LLC; 87 Bartlett Street Associates, LLC; and Travis Soule dba Fish Properties to provide an EPA-approved lead hazard information pamphlet to the lessees described above in paragraph 19 before the lessees became obligated to lease target housing constitutes fourteen violations of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA, 15 U.S.C. § 2689.
21. I find that the Respondents violated TSCA, the Lead Hazard Reduction Act, and the Lead Disclosure Rule, as follows: (1) Landmark Real Estate management, Inc. and Solo Affordable Housing Solutions, LLC for thirty-two lease contracts; (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for five lease contracts; (3) Landmark Real Estate Management, Inc and Minbar Properties, LLC for six lease contracts; (4) Landmark Real Estate Management Inc. and 87 Bartlett Street Associates, LLC for three lease contracts; (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for two lease contracts; and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for three lease contracts.
22. Respondents were required to file any response to the Motion for Default Order within 15 days of service. 40 C.F.R. §22.16(b). Service of any document other than the Complaint is complete upon mailing. 40 C.F.R. §22.7(c).
23. Respondents' failure to respond to the Motion is deemed to be a waiver of any objection to the granting of the Motion. See 40 C.F.R. § 22.16(b).

DETERMINATION OF PENALTY

In determining the amount of any penalty to be assessed, Section 16 of TSCA, 15 U.S.C. § 2615, requires the Complainant to consider the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violators, ability to pay, the effect of the proposed penalty on the ability of the violators to continue to do business, any history of prior violations, the degree of culpability of the violators, and such other matters as justice may require.

¹⁸ The lessee under this contract had a two-year old child at the time the lease was signed.

¹⁹ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

Complainant requests the assessment of a total civil penalty of \$227,760.00 from all the Respondents, allocated as described below, for the violations stated in the Complaint and based on analysis of the statutory factors and with specific reference to EPA's December 2007 Section 1018 Disclosure Rule Enforcement Response and Penalty Policy ("ERPP"). The ERPP considers the risk factors for exposure to lead-based paint and lead-based paint hazards. Section 1018(b)(5) of the Lead Hazard Reduction Act and 40 C.F.R. § 745.118(f), as amended by the Debt Collection and Improvement Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321 (1996) and EPA's Civil Monetary Penalty Inflation Adjustment Rule, promulgated thereunder at 40 C.F.R. Part 19, provide that for purposes of enforcing the Lead Disclosure Rule under the TSCA, the penalty for each violation applicable under Section 16 of TSCA shall be no more than \$11,000 for violations that occurred after July 28, 1997 and on or before January 12, 2009.

The ERPP penalty calculation takes into account two components: a gravity based penalty and upwards or downwards adjustments to the gravity based penalty. Gravity refers to the overall seriousness of the violation and is based on the "nature" of the violation, the "circumstances" of the violation and the "extent" of harm that may result from a given violation. The "nature" of a violation refers to the actual or possible presence of lead-based paint and/or lead-based paint hazards in the target housing. The "circumstances" reflect the probability of harm resulting from a particular violation due to impairment of a lessee's ability to assess the information required to be disclosed. The "extent" of harm is based on the degree, range, or scope of the violation's potential for childhood lead poisoning, based on the age of any children who live in the target housing and whether a pregnant woman lives in the target housing.

Based on my review of the record, I have determined that the penalty amounts proposed in the Complaint and requested in the Motion for Default Order are appropriate. The basis for

imposition of a penalty and the distribution of the penalty amounts among the Respondents is as follows:

Count I: Failure to disclose to the lessee the presence of any known lead-based paint and/or lead-based paint hazards in target housing and/or failure to provide to the lessee records or reports pertaining to lead-based paint and/or lead-based paint hazards.

A lessor's failure to disclose the presence of any known lead-based paint and/or lead-based paint hazards and/or to provide to the lessee any available records or reports of lead-based paint and/or lead-based paint hazards, as required by 40 C.F.R. § 745.107(a)(2) and/or § 745.107(a)(4), results in a high probability of impairing a lessee's ability to properly assess and weigh the potential health risks associated with leasing target housing, greatly increasing the likelihood of exposure to lead-based paint. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.107(a)(2) and /or § 745.107(a)(4) constitutes a Level 1 violation. ERPP at Appendix B-1.

Respondents Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC failed to comply with the requirements of 40 C.F.R. §§ 745.107(a)(2) and/or 745.107(a)(4) for one lease contract. For housing units occupied by a lessee without any children under eighteen years of age, the extent of the harm for this violation under the ERPP is "minor," with a penalty amount of \$2,580. *Id.* at Appendix B-4. Accordingly, pursuant to Appendix B-4 of the ERPP, the appropriate penalty assessment for this violation is as follows:

- i. Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC (1 violation)..... \$2,580.00

Count II: Failure to include, as an attachment to or within the lease contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards, or indicating no knowledge of the presence of lead-based paint and/or lead-based paint hazards.

A lessor's failure to include, as an attachment to or within a lease contract, a statement disclosing knowledge of lead-based paint and/or lead-based paint hazards, as required by 40

C.F.R. § 745.113(b)(2), results in a significant probability of impairing a lessee's ability to properly assess the risks associated with leasing target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.113(b)(2) constitutes a Level 3 violation. ERPP at Appendix B-1.

Respondents failed to comply with the requirements of 40 C.F.R. § 745.113(b)(2) as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts; (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts; (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts; (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract; (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract; and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.

For housing units occupied by a pregnant woman and/or a child under six years of age, or where the age of the occupant is unknown, the extent of the harm for these violations under the ERPP is "major," with a penalty amount of \$7,740.00. For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm for these violations under the RPP is "significant," with a penalty amount of \$5,160.00. For housing unites occupied by a lessee without any children under eighteen years of age, the extent of harm for these violations under the ERPP is "minor," with a penalty amount of \$770.00. *Id.* at Appendix B-4.

Accordingly, pursuant to Appendix B-4 of the ERPP, the appropriate penalty assessments for these violations are as follows:

- i. Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC (11 violations)²⁰ \$54,680.00
- ii. Landmark Real Estate Management, Inc. and Solo Development 2004, LLC (2 violations)²¹ \$8,510.00

²⁰ Six major violations, one significant violation, four minor violations

²¹ One major violation, one minor violation

iii.	Landmark Real Estate Management, Inc. and Minbar Properties, LLC (2 violations) ²²	\$8,510.00
iv.	Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (1 violation) ²³	\$7,740.00
v.	Landmark Real Estate Management, Inc. and LA Italian Properties, LLC (1 violation) ²⁴	\$7,740.00
vi.	Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties (1 violation) ²⁵	\$5,160.00

Count III. Failure to include, as an attachment or within the contract to lease target housing, a list of records or reports available to the lessors that pertain to lead-based paint or lead-based paint hazards, or failure to indicate that no such records or reports exist.

A lessor’s failure to provide a potential lessee with a list of records or reports that pertain to lead-based paint or lead-based paint hazards, or failure to indicate that no such records or reports exist, as required by 40 C.F.R. § 745.113(b)(3), results in a low impact on the lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and/or lead-based paint hazards in target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.113(b)(3) constitutes a Level 5 violation. ERPP at Appendix B-1.

Respondents failed to comply with the requirements of 40 C.F.R. § 745.113(b)(3) as follows: (1) Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC for eleven lease contracts; (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts; (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts; (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract; (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract; and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.

²² One major violation, one minor violation

²³ One major violation

²⁴ One major violation

²⁵ One significant violation

For the housing units occupied by a pregnant woman and/or a child under six years of age, or where the age of the occupant is unknown, the extent of harm for these violations under the ERPP is “major” with a penalty amount of \$2,580.00. For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm for these violations under the ERPP is “significant,” with a penalty amount of \$1,680.00. For housing units occupied by a lessee without any children under eighteen years of age, the extent of harm for these violations under the ERPP is “minor,” with a penalty amount of \$260.00. *Id.* at Appendix B-4.

Accordingly, pursuant to Appendix B-4 of the ERPP, the appropriate penalty assessments for these violations are as follows:

- i. Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC (11 violations)²⁶\$18,200.00
- ii. Landmark Real Estate management, Inc. and Solo Development 2004, LLC (2 violations)²⁷\$2,840.00
- iii. Landmark Real Estate Management, Inc. and Minbar properties, LLC (2 violations)²⁸\$2,840.00
- iv. Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (1 violation)²⁹ \$2,580.00
- v. Landmark Real Estate Management, Inc. and LA Italian Properties, LLC (1 violation)³⁰ \$2,580.00
- vi. Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties (1 violation)³¹ \$1,680.00

Count IV: Failure to provide lessees with an EPA approved lead hazard information pamphlet.

A lessor’s failure to provide a potential lessee with an EPA approved lead hazard information pamphlet, as required by 40 C.F.R. § 745.107(a)(1), results in a high probability of impairing a lessee’s ability to properly assess information regarding the risks associated with exposure to lead-based paint and to weigh this information regarding the risks associated with

²⁶ Six major violations, one significant violation, four minor violations
²⁷ One major violation, one minor violation
²⁸ One major violation, one minor violation
²⁹ One major violation
³⁰ One major violation
³¹ One significant violation

exposure to lead-based paint and to weight this information with regard to leasing target housing. Pursuant to the ERPP, a violation of 40 C.F.R. § 745.107(a)(1) constitutes a Level 1 violation. ERPP at Appendix B-1.

Respondents failed to comply with the requirements of 40 C.F.R. § 745.107(a)(1) as follows: (1) Landmark Real Estate management, Inc. and Solo Affordable Housing Solutions, LLC for nine lease contracts; (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for one lease contract; (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts; (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract; and (5) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.

For the housing units occupied by a pregnant woman and/or child under six years of age, or where the age of the occupant is unknown, the extent of harm for these violations under the ERPP is “major,” with a penalty amount of \$11,000.00. For housing units occupied by a child between six years of age and eighteen years of age, the extent of harm for these violations under the ERPP is “significant,” with a penalty amount of \$7,740.00. For housing units occupied by a lessee without any children under eighteen years of age, the extent of harm for these violations under the ERPP is “minor,” with a penalty amount of \$2,580.00. *Id.* at Appendix B-4.

Accordingly, pursuant to Appendix B-4 of the ERPP, the appropriate penalty assessments for these violations are as follows:

- i. Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC (9 violations³²) \$67,220.00
- ii. Landmark Real Estate Management, Inc. and Solo Development 2004, LLC (1 violation)³³ \$2,580.00
- iii. Landmark Real Estate Management, Inc. and Minbar Properties, LLC (2 violations)³⁴ \$13,580.00

³² Four major violations, two significant violations, three minor violations

³³ One minor violation

- iv. Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (1 violation)³⁵ \$11,000.00
- v. Landmark Real Estate management, Inc. and Travis Soule dba Fish Properties (1 violation)³⁶ \$7,740.00

Based on the forgoing penalty calculations for the violations alleged in the Complaint, the total combined penalty assessments for the Respondents under Counts I-IV are distributed as follows:

- i. Landmark Real Estate Management Inc. and Solo Affordable Housing Solutions, LLC (32 violations).....\$142,680.00
- ii. Landmark Real Estate Management, Inc. and Solo Development 2004, LLC (5 violations)..... \$13,930.00
- iii. Landmark Real Estate Management, Inc. and Minbar Properties, LLC (6 violations).....\$24,930.00
- iv. Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (3 violations).....\$21,320.00
- v. Landmark Real Estate Management, Inc. and LA Italian Properties, LLC (2 violations).....\$10,320.00
- vi. Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties (3 violations).....\$14,580.00

The Respondents failed to file an Answer to the Complaint and therefore did not raise an inability to pay defense or otherwise address the effect of the proposed penalty on the ability of the Respondents to continue to do business. The Respondents also did not provide for the record other information concerning any history of prior violations, the degree of culpability, or other such matters as justice may require, which are the remaining factors identified in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2) for consideration in assessing the penalty.

Section 22.17(c) of the Consolidated Rules of Practice provides in part that upon issuing a default, “[t]he relief proposed in the complaint...shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act.” See 40 C.F.R. § 22.17(c). For

³⁴ One major violation, one minor violation
³⁵ One major violation
³⁶ One significant violation

all the reasons given above, and based on the nature, circumstances, extent and gravity of the violations, I have determined that the penalties proposed by the Complainant to be assessed against the Respondents are appropriate based on the record and TSCA.

DEFAULT ORDER

For failing to file an Answer to the Complaint, Respondents are hereby found to be in DEFAULT. Pursuant to the Consolidated Rules at 40 C.F.R. Part 22, including 40 C.F.R. § 22.17, a Default Order and Initial Decision is hereby ISSUED.

Based on my findings of the Respondents' violations of TSCA, the Lead Hazard Reduction Act, and the Lead Disclosure Rule, I have determined that \$227,760.00 constitutes the appropriate total civil penalty to assess against Respondents, distributed as follows:

- i. Landmark Real Estate Management Inc. and Solo Affordable Housing Solutions, LLC (32 violations).....\$142,680.00
- ii. Landmark Real Estate Management, Inc. and Solo Development 2004, LLC (5 violations)..... \$13,930.00
- vii. Landmark Real Estate Management, Inc. and Minbar Properties, LLC (6 violations).....\$24,930.00
- viii. Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC (3 violations).....\$21,320.00
- ix. Landmark Real Estate Management, Inc. and LA Italian Properties, LLC (2 violations).....\$10,320.00
- x. Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties (3 violations).....\$14,580.00

Respondents shall, within thirty calendar days after this Default Order has become final, pay their allocated portion of the civil penalty by bank, certified or cashier's checks in the amounts identified above payable to the "Treasurer of the United States of America." Respondents should note on these checks the docket number for this matter (EPA Docket No. TSCA-01-2009-0106.) The checks shall be forwarded to:

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

In addition, at the time of payment, notice of payment of the civil penalty and copies of the checks should be forwarded to:

Ms. Wanda Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100
Mail Code: ORA 18-1
Boston, Massachusetts 02109-3912

A transmittal letter identifying the subject case and EPA docket number, as well as the Respondent's name and address must accompany the checks.

If a Respondent fails to pay the portion of the total penalty assessed to it within the prescribed statutory period after entry of this Order, interest on the penalty may be assessed. See 31 U.S.C. §3717; 40 C.F.R. §13.11.

Pursuant to 40 C.F.R. §22.27 (c), this initial decision shall become a final order forty-five (45) days after its service upon the parties and without further proceedings, unless (1) a party moves to reopen the hearing within twenty (20) days after service of this initial decision, pursuant to 40 C.F.R. § 22.28(a); (2) an appeal to the Environmental Appeals Board is taken within (30) days after this initial decision is served upon the parties; (3) a party moves to set aside a default order that institutes an initial decision; or (4) the Environmental Appeals Board elects, upon its own initiative, to review this initial decision, pursuant to 40 C.F.R. § 22.30(b).

IT IS SO ORDERED.

July 14, 2011

Date

Jill T. Metcalf

Jill T. Metcalf
Acting Regional Judicial Officer

Certificate of Service

I hereby certify that the **Amended Initial Decision and Default Order After Remand** by Regional Judicial Officer Jill Metcalf in the matter of **Landmark Real Estate Management, Inc., Solo Affordable Housing Solutions, et. al Docket No. TSCA-01-2009-0106**, was served on the parties as indicated.

UPS

Travis Soule, President/Manager
Landmark Real Estate Management, Inc.
Solo Affordable Housing Solutions, LLC
Solo Development 2004, LLC
Minbar Properties, LLC
87 Bartlett Street Associates, LLC
P.O. Box 891
Lewiston, MA 04243

Travis Soule, Manager
LA Italian Properties, LLC
P.O. Box 4510
Portland, ME 04112

Travis Soule dba Fish Properties
19 Woodland Way
New Gloucester, ME 04620

E-mail

Environmental Appeals Board
U.S. Environmental Protection Agency
Colorado Building, Suite 600
1341 G. Street, N.W.
Washington, D.C. 20005

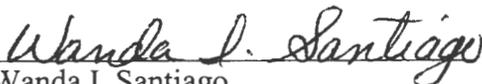
UPS

Assistant Administrator for Enforcement and Compliance
Assurance
US EPA
1200 Pennsylvania Ave. N.W.
Mail Code 2201A
Washington, DC 20460

Hand Delivered

Andrea Simpson
Senior Enforcement Counsel
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dated: September 20, 2011


Wanda I. Santiago
Paralegal/Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100 (ORA 18-1)
Boston, MA 02109

