

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I

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Office of Regional Hearing Clerk

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

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 in the amount of \$227,700 against the Respondents.

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 of \$227,700 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 \$227,000 is assessed.

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 a copy of the Complaint by certified mail, return receipt requested. Respondents signed for the Complaint 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, Respondents have neither filed a written Answer nor 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. It was mailed to the Respondents via certified mail, return receipt requested. The Respondents have not 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, 2007.¹

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 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;² (2) Landmark Real Estate management, Inc. and Solo Development 2004, LLC for two lease contracts;³ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;⁴ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;⁵ (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;⁶ and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.⁷

¹ The lessee of this housing unit did not have any children under the age of eighteen at the time the lease was signed.

² 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.

³ One of the lessees under these contracts had a six month old child at the time the lease was signed.

⁴ 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.

⁵ The lessee under this contract had a two-year old child at the time the lease was signed.

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

⁷ The lessee under this contract had a fourteen-year old child at the time the lease was signed.

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 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;⁸ (2) Landmark Real Estate Management, Inc. and Solo Development 2004, LLC for two lease contracts;⁹ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹⁰ (4) Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC for one lease contract;¹¹ (5) Landmark Real Estate Management, Inc. and LA Italian Properties, LLC for one lease contract;¹² and (6) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.¹³
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.

⁸ 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.

⁹ One of the lessees under these contracts had a six month old child at the time the lease was signed.

¹⁰ 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.

¹¹ The lessee under this contract had a two-year old child at the time the lease was signed.

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

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

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;¹⁴ (2) Landmark Real Estate management, Inc. and Solo Development 2004, LLC for one lease contract;¹⁵ (3) Landmark Real Estate Management, Inc. and Minbar Properties, LLC for two lease contracts;¹⁶ (4) Landmark Real Estate Management, Inc. and 878 Bartlett Street Associates, LLC for one lease contract;¹⁷ and (5) Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties for one lease contract.¹⁸
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 EAP-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. Respondent was 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. Respondent's failure to respond to the Motion is deemed to be a waiver of any objection to the granting of the Motion. 40 C.F.R. § 22.16(b).

¹⁴ 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.

¹⁵ The lessee under this contract did not have any children under the age of eighteen at the time the lease was signed.

¹⁶ 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.

¹⁷ The lessee under this contract had a two-year old child at the time the lease was signed.

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

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.

Complainant requests the assessment of a penalty of \$227,700 for the violations stated in the Complaint, based on its 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. In its "Memorandum in Support of Default Order," Complainant included a detailed explanation of the basis for the penalty requested. Memorandum at pp.11-18.

Regulations at 40 C.F.R. § 22.18(c) provide that the relief in a motion for default shall be ordered unless the requested relief is clearly inconsistent with the record of the proceeding or the Act. Based on my review of the record, I have determined that the penalty amount proposed in the Complaint and requested in the Motion for Default Order is appropriate. With regard to the violations, Complainant has justified imposition of a substantial penalty. The lessors failed to

disclose the presence of any known lead-based paint and/or lead based paint hazards and/or to provide to the lessees of target housing any available records or reports of lead-based paint and/or lead based paint hazards. The lessors 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, or indicating no knowledge of the presence of lead-based paint and/or lead based paint hazards, in the target housing being leased. The lessors failed to provide a potential lessee with a list of records or reports that pertain to lead-based paint or lead-based paint hazards, or failed to indicate that no such records or reports exist. Lessors failed 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 lessees became obligated under any contract to lease target housing.

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 harm for these violations under the ERPP is “major.” 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.” 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.”

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 by Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2) for consideration in assessing the penalty.

For all these reasons, based on the nature, circumstances, extent and gravity of the violations, in accordance with Section 16 of TSCA, 15 U.S.C. § 2615, I have determined that the \$227,700 penalty assessed against the Respondents as calculated by the Complainant is appropriate.

In assessing this penalty, I find persuasive the rationale for the calculation of the assessed penalty set forth in the Complaint, as well as in the Complainant's "Memorandum in Support of Default Order," filed with this proceeding. Accordingly, I incorporate such rationale by reference into this Order.

DEFAULT ORDER

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 and Respondent is hereby ORDERED, as follows:

- (1) Respondent is assessed a civil penalty in the amount of \$227,700.
- (2) Respondent shall, within thirty calendar days after this Default Order has become final, pay the civil penalty by bank, certified or cashier's check in the amount of \$227,700 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

- (3) A transmittal letter identifying the subject case and EPA docket number, as well as Respondents' names and addresses must accompany the checks.
- (4) If Respondents fail to pay the penalty 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.
- (5) 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.

January 10, 2011

Date

Jill T. Metcalf

Jill T. Metcalf
Acting Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that the **Default Order and Initial Decision** by Regional Judicial Officer Jill T. Metcalf 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, LA Italian Properties, LLC, and Travis Soule dba Fish Properties, Docket No. TSCA-01-2009-0106**, was served on the parties as indicated below:

Certified Mail –
Return Receipt Requested

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

Federal Express -

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

Pouch Mail -

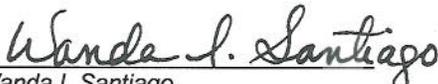
Assistant Administrator for
Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2201A)
Washington, D.C. 20460

Pouch Mail-

Amanda J. Helwig
U.S. Environmental Protection Agency
Water Enforcement Division, Office # 4118-A
1200 Pennsylvania Avenue, NW
Mail Code 2243-A
Washington, D.C. 20460

Inter Office Mail -

Andrea Simpson
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912


Wanda I. Santiago
Paralegal/Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Dated: January 18, 2011