

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY**

BEFORE THE ADMINISTRATOR

In the Matter of)	
)	
Ric Temple and)	Docket No. TSCA-5-99-015
Paul Nay & Associates)	
)	
Respondents)	

**ORDER DENYING DISMISSAL OF COMPLAINT
and
GRANTING MOTION TO AMEND COMPLAINT**

The Respondents, Ric Temple and Paul Nay & Associates, filed a motion seeking dismissal of this Complaint. The Complaint charges that the Respondents, as agents for a residential real estate transaction in North Vernon, Indiana, failed to comply with the disclosure requirements of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §4851 *et seq* (the "Act"), and its implementing regulations at 40 CFR Part 745, Subpart F.

The Respondents contend that the Complaint failed to sufficiently allege that the Respondents were "agents" as defined in the Act's implementing regulations at 40 CFR §745.103. Under the regulations, agents are required to ensure that the sellers of targeted housing comply with particular disclosure requirements concerning possible lead-based paint hazards in the house, or to personally ensure compliance with such requirements. 40 CFR §745.115(a)(2). The Region 5 Office of the U.S. Environmental Protection Agency (the "Complainant" or "Region") filed a response opposing the motion to dismiss, along with a motion to amend the complaint, intended to clarify portions of the original complaint.

The Lead Hazard Reduction Act regulations, at 40 CFR §745.103 define "agent" as follows:

"Agent means any party who enters into a contract with a seller or lessor, including any party who enters into a contract with a representative of the seller or lessor, for the purpose of selling or leasing target housing. This term does not apply to purchasers or any purchaser's representative who receives all compensation from the purchaser."

In paragraph 13 of the original Complaint, the Region alleges that each of the respondents are "agents" as defined in §745.103, and that they received payment from the seller of the subject target housing.

Although the original Complaint does not expressly allege that the Respondents entered into a contract with the sellers, the allegation that they received payment from the sellers provides sufficient notice under the EPA's pleading rules. In this regard, it is only necessary that a complaint provide a "concise statement of the factual basis for each violation alleged." 40 CFR §22.14(a)(3). Any lack of clarity is remedied in the proposed Amended Complaint, which expressly alleges the existence of a contract between the seller and Respondents.

In their motion, the Respondents also assert that the Region has failed to "demonstrate" that the Respondents were agents or had entered into a contract with the seller of the target housing. This charge misapprehends the purpose of a complaint. The filing of a complaint is not the appropriate time to demonstrate the existence of any alleged facts. That will come later in the litigation process through the introduction of evidence in the various forms permitted by the Consolidated Rules.

Therefore, Respondents' motion to dismiss the Complaint in this proceeding will be denied. Respondents have not filed any response in opposition to Complainant's motion to file an Amended Complaint. The Amended Complaint, by more specifically alleging the existence of a contract between the Respondents and seller, may help clarify and narrow this issue in this proceeding, if indeed Respondents dispute the existence of such a contract. Hence, pursuant to 40 CFR §22.14(c), the motion to Amend the Complaint will be granted.

Order

1. Respondents' motion to dismiss the Complaint in this proceeding is denied.

2. Complainant's motion to file an Amended Complaint is granted. Respondents will have 20 days from the date of service of the Amended Complaint to file their Amended Answer. Since the amendment is minor, this ruling will not affect the schedule set

for filing prehearing exchanges in my Prehearing Order of December 21, 1999.

Andrew S. Pearlstein
Administrative Law Judge

Dated: January 7, 2000
Washington, D.C.