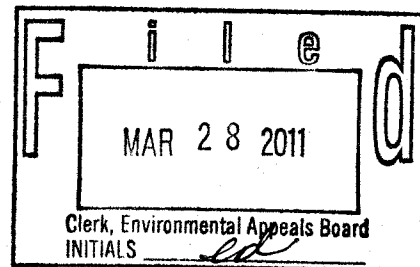


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
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)

LA Italian Properties, LLC)
P.O. Box 4510)
Portland, ME 04112)

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

TSCA Appeal No. 11-01

ORDER REMANDING TO REGIONAL JUDICIAL OFFICER

On January 10, 2011, the Acting Regional Judicial (“RJO”) Officer for U.S. EPA Region 1 (the “Region”) issued an Initial Decision and Default Order (“Default Order”) in the above-captioned matter finding 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 liable for violations of section 409 of the Toxic Substances Control Act (“TSCA”), 15 U.S.C. § 2689, the Residential Lead-Based Paint Hazard Reduction Act of 1992 (“RLBPHRA”), 42 U.S.C. §§ 4851-4856, and their implementing regulations, codified at 40 C.F.R. pt. 745, subpt. F. For these

violations, the Default Order assessed a total administrative penalty of \$227,700.00.

On March 3, 2011, the Environmental Appeals Board (“Board”) exercised *sua sponte* review of the RJO’s decision pursuant to 40 C.F.R. § 22.27(c), .30(b). Upon examination of the Default Order, the Complaint, and other documents in the record, the Board has decided to remand the Default Order to the RJO for clarification on the issue of penalty liability.

The Default Order clouds its central element: who is liable for what penalty. This confusion arises from the Default Order’s varying use of the terms “Respondents” and “Respondent.” The Default Order states in one place that all seven “Respondents” are responsible for a \$227,700 penalty. *See* Default Order at 2 (“The Respondents are hereby found in default and a civil penalty in the amount of \$227,000^[1] is assessed.”). The Default Order later states something quite different:

“the *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.”

Id. at 10 (emphasis added).

¹ The Board assumes that the RJO meant a penalty in the amount \$227,700.00, the total penalty Region 1 proposed and the penalty amount stated in other parts of the Default Order.

Indeed, even if the Board were to assume that the use of the singular form is a typographical error and that the RJO intended to assess a penalty for \$227,7000 against all Respondents, that outcome is inconsistent with the RJO's findings of differing individual responsibility. The Complaint identifies four specific counts, and under each count a different number of violations.² Notably, not all seven Respondents were found liable for each count,³ nor were all Respondents charged under the same count found liable for the same number of violations.⁴ Therefore, the Default Order's findings do not support the Default Order's statement

² The Complaint identifies the following counts: (1) count I - failure to disclose to a lessee the presence of any known lead-based paint and/or lead-based paint hazards in target housing and/or failure to provide records or reports of known lead-based paint and/or lead-based paint hazards; (2) count II - failure 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; (3) count III - failure 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 failure to indicate that no such record or reports exists; and (4) count IV - failure to provide lessees with and EPA-approved lead hazards information pamphlet. See Administrative Complaint and Notice of Opportunity for Hearing at 8-19.

Each count identifies a different number of violations based on the number of lease contracts Complainant found failed to meet statutory and regulatory requirements. See *id.* at 20-23.

³ See, e.g., Default Order at 4-5 ¶¶ 9-11 (finding only Landmark Real Estate Management, Inc. and Solo Affordable Housing Solutions, LLC liable for count I); *id.* at 6-7 ¶¶ 18-20 (finding all respondents, except for LA Italian Properties, LLC, liable for count IV).

⁴ See Default Order at 7 ¶ 21 (finding Landmark Real Estate Management, Inc., and Solo Affordable Housing Solutions, LLC liable for a total of 32 violations under counts I-IV; Landmark Real Estate Management, Inc., and Solo Development 2004, LLC liable for a total of 5 violations under counts II-IV; Landmark Real Estate Management, Inc., and Minbar Properties, LLC liable for a total of 6 violations under counts II-IV; Landmark Real Estate Management, Inc. and 87 Bartlett Street Associates, LLC liable for a total of 3 violations under counts II-IV; Landmark Real Estate Management, Inc. and LA Italian Properties, LLC liable for a total of 2 violations under counts II-III; and Landmark Real Estate Management, Inc. and Travis Soule dba Fish Properties liable for a total of 3 violations under counts II-IV); see also Memorandum in

that all "Respondents" are liable for a \$227,700 penalty, since the \$227,700 represents the combined penalty assessment for all the violations alleged in the Complaint.⁵

Accordingly, the Board remands the Default Order to the RJO for further clarification. On remand, the RJO must clarify which respondent(s) is/are liable for what penalty, and justify the penalty for which each individual respondent is liable.

So ordered.⁶

Dated: 3/28/2011

ENVIRONMENTAL APPEALS BOARD

By: Charles J. Sheehan
Charles J. Sheehan
Environmental Appeals Judge

Support of Default Order at 17.

⁵ This is not to say that the concept of joint and several liability is inapplicable here. For example, Landmark Real Estate Management, Inc., who managed the real estate owed by the other respondents, was the only respondent found liable for all of the violations alleged in the complaint and may be found jointly and severally liable for the portion of the penalty attributable to each respondent. *See, e.g., In re Ronald H. Hunt, et al.*, 12 E.A.D. 774-809 (EAB 2006)(upholding Administrative Law Judge's determination assessing penalties jointly and severally among respondents charged with same TSCA and RLBPHRA violations associated to same properties).

⁶ The three-member panel deciding this matter is comprised of Environmental Appeals Judges Edward E. Reich, Charles J. Sheehan, and Anna L. Wolgast. *See* 40 C.F.R. § 1.25(e)(1).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Remanding to Regional Judicial Officer, 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, TSCA Appeal No. 11-01, were sent to the following persons in the manner indicated:

By 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, MA04243

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

By Inter-Office Mail and FAX:

Amanda J. Helwig
U.S. Environmental Protection Agency
Water Enforcement Division, Office #4118-A
1200 Pennsylvania Ave., N.W.
Washington, DC 20460
Mail Code 2243-A
Fax: (202) 564-0018

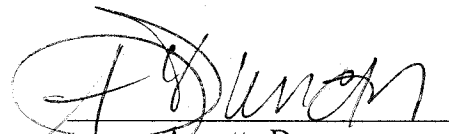
By Pouch Mail and FAX:

Wanda I. Santiago
Paralegal/Regional Hearing Clerk
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Fax: (617) 918 - 0113

Jill T. Metcalf
Acting Regional Judicial Officer
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Fax: (617) 918 - 1029

Andrea Simpson
U.S. EPA Region 1
5 Post Office Square, Suite 100
Boston, MA 02109-3912
Fax: (617) 918 - 1809

Dated: MAR 28 2011


Annette Duncan
Secretary