

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 2**

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In the Matter of :  
Wolfe Landau, :  
Respondent. :  
Proceeding under Section 16(a) of :  
Toxic Substances Control Act, :  
15 U.S.C. § 2615(a). :  
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**CONSENT AGREEMENT AND  
FINAL ORDER**

**Docket No.  
TSCA-02-2009-9267**

U.S. ENVIRONMENTAL  
PROTECTION AGENCY-REGION 2  
MAR 26 PM 3:35  
REGIONAL HEARING  
OFFICE

**PRELIMINARY STATEMENT**

This administrative proceeding for the assessment of a civil penalty was instituted pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). The United States Environmental Protection Agency ("EPA"), under authority of TSCA, has promulgated regulations, codified at 40 C.F.R. Part 745, implementing the provisions of Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act ("RLBPHRA"), 42 U.S.C. § 4852d, concerning, *inter alia*, the disclosure of any known lead-based paint and/or lead-based paint hazards in the sale or leasing of designated premises. The Director of the Division of Enforcement and Compliance Assistance of the United States Environmental Protection Agency, Region 2 ("EPA" or "Complainant"), on behalf of the Administrator of the EPA, issued against Respondent a "Complaint And Notice Of Opportunity For Hearing" ("Complaint") on March 30, 2009. The Complaint sets forth 11 separate counts, alleging violations of various requirements set forth in 40 C.F.R. Part 745, and it further asserts the alleged violations rendered Respondent liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1). The answer denies the material allegations regarding liability and requests a hearing.

Complainant and Respondent agree, by entering into this Consent Agreement and Final Order ("CA/FO"), that settlement of this matter upon the terms set forth in this CA/FO is an appropriate means of resolving the claims against Respondent without further litigation. This CA/FO is being issued pursuant to, and under authority of, 40 C.F.R. § 22.18(b). No adjudicated findings of fact or conclusions of law have been made by any tribunal of competent jurisdiction. For the purposes of this CA/FO and for purposes of implementing the settlement set forth herein, Respondent neither admits nor denies the EPA Findings of Fact or the EPA Conclusions of Law that have been set forth below.

EPA FINDINGS OF FACT

1. Respondent, Wolfe Landau, a natural person who resides at 142 Middleton Street in Brooklyn, New York, with his primary place of business at Quality Funding LLC, the address of which is 185 Marcy Avenue, in Brooklyn, New York.

2. Respondent has been president of the Lee Street Properties, Inc., a corporation, and has been a member of each of the following limited liability companies:

- a) Bnei Joel LLC (also known as Bnei Yoel LLC);
- b) Ben Noah LLC (also known as Ben David LLC);
- c) Nussi and Malky LLC (also known as Nussie and Malky LLC);
- d) Miron Plaza LLC;
- e) Zev Baum LLC; and
- f) 194 Humboldt Realty LLC.

3. Respondent has been (and continues to be), the “owner” (as that term is defined in 40 C.F.R. § 745.103),<sup>1</sup> in whole or in part, of each of the following properties and premises, as follows:

- a) since June 16, 2004, the property and premises located at 1269 East 18<sup>th</sup> Street, in Brooklyn, New York (hereinafter the “East 18<sup>th</sup> Street property”), through and/or individually in conjunction with, the Bnei Joel LLC;
- b) since February 7, 2005, the property and premises located at 206 Scholes Street, in Brooklyn, New York (hereinafter the “Scholes Street property”), through and/or individually in conjunction with, the Ben Noah LLC;
- c) since February 16, 2006, the property and premises located at 161 Vernon Avenue, in Brooklyn, New York (hereinafter the “Vernon Avenue property”), through and/or individually in conjunction with, the Nussi and Malky LLC;
- d) since July 28, 2004, the property and premises located at 522 West 134<sup>th</sup> Street, in New York, New York (hereinafter the “West 134<sup>th</sup> Street property”), through and/or individually in conjunction with, the Miron Plaza LLC;
- e) since November 13, 2003, the property and premises located at 140 Fourth Avenue, in Brooklyn, New York (hereinafter the “Fourth Avenue property”),

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<sup>1</sup> Unless specifically stated otherwise, terms or phrases defined by specified statutory and/or regulatory definitions are subsequently used in this Complaint as so defined.

through and/or individually in conjunction with, the Zev Baum LLC; and

f) since January 9, 2006, the property and premises located at 194 Humboldt Street, in Brooklyn, New York (hereinafter the "Humboldt Street property"), through and/or individually in conjunction with, the 194 Humboldt Realty LLC [hereinafter said six properties and premises collectively referred to as the "Brooklyn/Manhattan residential properties"].

4. Respondent has been (and continues to be) the "lessor" (as that term is defined in 40 C.F.R. § 745.103) of each of the Brooklyn/Manhattan residential properties since each of the respective dates set forth in paragraph 3, above.

5. Between June 27, 2001 and March 31, 2008, Respondent was the owner, through Lee Street Properties, Inc., of the premises and property located at 50 Vermont Street, in Brooklyn, New York (another address is 121 Jamaica Avenue; hereinafter the "Vermont Street property").

6. On each of the following dates, Respondent, as lessor on behalf of the listed limited liability company, entered into a contract with the respective individuals named in the subparagraphs below (each individual as "lessee," as defined in 40 C.F.R. § 745.103) to renew the lease for an apartment, as more specifically identified below:

a) on or about June 20, 2005, with Resul Bekiroglu to renew the lease for apartment unit D3 in the East 18<sup>th</sup> Street property (on behalf of Bnei Yoel LLC);

b) on or about August 27, 2007, with Lioudmila Altynnik (also spelled Altunnik) to renew the lease for apartment unit C2 in the East 18<sup>th</sup> Street property (on behalf of Bnei Yoel LLC);

c) on or about April 30, 2006, with Erick S. Molina to renew the lease for apartment unit 9 in the Scholes Street property (on behalf of Ben Noah LLC);

d) on or about May 3, 2007, with Orfelina Luna to renew the lease for apartment unit 2-B in the Vernon Avenue property (on behalf of Nussie and Malky LLC);

e) on or about May 21, 2007, with Carmen Maysonet to renew the lease for apartment unit 1-D in the Vernon Avenue property (on behalf of Nussie and Malky LLC);

f) on or about November 6, 2006, with Ermina Zayas to renew the lease for apartment unit 22 in the West 134<sup>th</sup> Street property (on behalf of Miron Plaza LLC); and

g) on or about October 2, 2007, with Juan Cruz to renew the lease for apartment unit 1R in the Fourth Avenue property (on behalf of Zev Baum LLC); and

h) on or about November 1, 2007, with Michael Matkin to renew the lease for apartment unit 4-R in the Humboldt Street property (on behalf of 194 Humboldt Realty LLC).

7. On or about December 31, 2007, BQNY Properties LLC, entered into a contract with Respondent, as president of Lee Street Properties, Inc., for the sale of the Vermont Street property, and an Indenture effecting this contract of sale was entered into on March 31, 2008 between BQNY Properties LLC and Respondent on behalf of the Lee Street Properties, Inc.

8. In all of the eight leasing contracts identified in paragraph 6, above, Respondent failed to include, either as an attachment or as part of each such contract:

a) the lead warning statement as specified and required by 40 C.F.R. § 745.113(b)(1);

b) the lessor's disclosure statement as specified and required by 40 C.F.R. § 745.113(b)(2);

c) the list of records or reports available to the lessor as specified and required by 40 C.F.R. § 745.113(b)(3) [or, if no such records or reports exist, a statement from the lessor so indicating];

d) the lessee's statement of receipt of information as specified and required by 40 C.F.R. § 745.113(b)(4); and

e) the certification of accuracy of statements as specified and required by 40 C.F.R. § 745.113(b)(6).

9. With regard to the contract of sale identified in paragraph 7, above, the Complaint asserts that Respondent failed to include as an attachment thereto, the following:

a) the lead warning statement as specified under and required by 40 C.F.R. § 745.113(a)(1);

b) the disclosure statement as specified under and required by 40 C.F.R. § 745.113(a)(2) [or a statement indicating no knowledge of lead-based paint and/or lead-based paint hazards];

c) the list of records or reports available to the lessor as specified and required by 40 C.F.R. § 745.113(a)(3) [or, if no such records or reports exist, a statement from the lessor so indicating];

d) the purchaser's statement of receipt of information as specified and required by 40 C.F.R. § 745.113(a)(4);

e) the purchaser's statement of risk assessment and inspection, or of waiver thereof, as specified and required by 40 C.F.R. § 745.113(a)(5); and

f) the certification of accuracy of statements as specified and required by 40 C.F.R. § 745.113(a)(7).

10. Subsequent to issuance of the Complaint, Respondent produced documentation that appears to demonstrate a *prima facie* case that the attachments specified and required for the contract of sale for the Vermont Street property (as identified in paragraph 9, above) were included.

#### EPA CONCLUSIONS OF LAW

1. The Vermont Street property and each of the Brooklyn/Manhattan residential properties is:

a) a "residential real property" (as defined in Section 1004(24) of RLBPHRA, 42 U.S.C. § 4851b(24));

b) a "residential dwelling unit" (as defined in Section 1004(23) of RLBPHRA, 42 U.S.C. § 4851b(23) and in 40 C.F.R. § 745.103); and

c) "target housing" (as defined in Section 1004(27) of RLBPHRA, 42 U.S.C. § 4851b(27) and in 40 C.F.R. § 745.103).

2. Under the contract of sale for the Vermont Street property, BQNY Properties LLC was a "purchaser" (as that term is defined in 40 C.F.R. § 745.103) of target housing.

3. Respondent's failure in all of the eight leasing contracts identified in paragraph 6 of the "EPA Findings of Fact," above, to include, either as an attachment or as part of each such contract each of the following constitutes a failure or refusal to comply with a provision of 40 C.F.R. § 745.113(b) [more fully identified below]:

a) the lead warning statement as specified and required by 40 C.F.R. § 745.113(b)(1);

b) the lessor's disclosure statement as specified and required by 40 C.F.R. § 745.113(b)(2);

c) the list of records or reports available to the lessor as specified and required by 40 C.F.R. § 745.113(b)(3) [or, if no such records or reports exist, a statement from the lessor so indicating];

d) the lessee's statement of receipt of information as specified and required by 40 C.F.R. § 745.113(b)(4); and

e) the certification of accuracy of statements as specified and required by 40 C.F.R. § 745.113(b)(6).

4. Each of the specific regulatory provisions of 40 C.F.R. § 745.113(b), identified in paragraph 3 of the "EPA Conclusions of Law," above, is a rule issued under:

a) Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5); and

b) Subchapter IV of TSCA, 15 U.S.C. §§ 2681-2692.

5. Each of Respondent's failures or refusals to comply with a specific provision of 40 C.F.R. § 745.113(b), as identified in paragraph 3 of the "EPA Conclusions of Law," above:

a) constitutes, pursuant to Section 1018 of the RLBPHRA, 42 U.S.C. § 4852d(b)(5), a prohibited act under, and thus a violation of, Section 409 of TSCA, 15 U.S.C. § 2689; and

b) is made unlawful by, and thus constitutes a violation of (*i.e.* a prohibited act under), Section 409 of TSCA, 15 U.S.C. § 2689.

6. For each of Respondent's violations of Section 409 of TSCA, 15 U.S.C. § 2689, as identified in paragraph 5 of the "EPA Conclusions of Law," above, Respondent is liable to the United States pursuant to Section 16(a)(1) of TSCA, 15 U.S.C. § 2615(a)(1).

#### **AGREEMENT ON CONSENT**

Based upon the foregoing, and pursuant to Section 16(a) of TSCA, 15 U.S.C. § 2615(a), and 40 C.F.R. § 22.18 of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, it is hereby agreed by and between Complainant, and voluntarily accepted by Respondent, that Respondent, for purposes of this Consent Agreement and in the interest of settling this matter

expeditiously without the time, expense or uncertainty of a formal adjudicatory hearing on the merits: (a) admits the jurisdictional allegations of the Complaint; (b) neither admits nor denies the non-jurisdictional allegations of the Complaint; (c) neither admits nor denies the "EPA Findings of Fact" or "EPA Conclusions of Law" as set forth in this document; (d) consents to the assessment of the civil penalty as set forth below; (e) consents to the issuance of the Final Order accompanying this Consent Agreement; and (f) waives its right to seek or obtain judicial review of, or otherwise contest, said Final Order.

Pursuant to 40 C.F.R. § 22.31(b), the executed CA/FO shall become effective and binding when it is filed with the Regional Hearing Clerk of the United States Environmental Protection Agency, Region 2 (such date henceforth referred to as the "effective date").

It is further hereby agreed by and between Complainant and Respondent, and voluntarily accepted by Respondent, that there shall be compliance with the following terms and conditions:

1. Respondent shall pay a civil penalty to EPA in the amount of **TWENTY THOUSAND (\$20,000.00) DOLLARS**, to be paid in accordance with the terms and schedule set forth in paragraph 2, below. Payment in accordance with the provision set forth below shall be made by cashier's checks, certified checks or by electronic fund transfer (EFT). If payment is made by cashier's checks or by certified checks, such checks shall be made payable to the "**Treasurer, United States of America**," and shall be identified with a notation thereon listing the following: *In the Matter of Wolfe Landau, Docket Number TSCA-02-2009-9267*. If payment is made by checks, each one shall be mailed to the following address:

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

Alternatively, if Respondent chooses to make each installment payment by EFT, Respondent shall then provide the following information to its remitter bank:

- a. Amount of Payment
- b. SWIFT address: **FRNYUS33, 33 Liberty Street, New York, New York 10045**
- c. Account Code for Federal Reserve Bank of New York receiving payment: **68010727**
- d. Federal Reserve Bank of New York ABA routing number: **021030004**

e. Field Tag 4200 of the Fedwire message should read: **D 68010727  
Environmental Protection Agency**

f. Name of Respondent: **Wolfe Landau**

g. Case docket number: **TSCA-02-2009-9267**

2. Payment shall be received (if made by checks) or effected (if implemented by EFT) as follows:

a) in the amount of **TEN THOUSAND (\$10,000.00) DOLLARS** within forty-five (45) days of the date the Regional Judicial Officer signs the Final Order accompanying this Consent Agreement; and

b) in the amount of **TEN THOUSAND (\$10,000.00) DOLLARS** within ninety (90) days of the date the Regional Judicial Officer signs the Final Order accompanying this Consent Agreement.

Payment shall be made in accordance with the instructions set forth in paragraph 1 of this section, above. If Respondent makes payment by cashier's checks or certified checks, then each such check shall be *received* at the above-listed address on or before the date specified. If Respondent makes payments by the EFT method, then the EFT for each payment shall be *received* on or before the date specified.

3. Whether Respondent makes payment by cashier's checks, certified checks or by the EFT method, Respondent shall promptly thereafter furnish reasonable proof that each such payment has been made, and such proof shall be furnished to each of:

Lee A. Spielmann  
Assistant Regional Counsel  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

Karen Maples, Regional Hearing Clerk  
Environmental Protection Agency, Region 2  
290 Broadway, 16<sup>th</sup> floor  
New York, New York 10007-1866

4. Failure to timely (as set forth above) make each such payment within the time period set forth above may result in referral of this matter to the United States Department of Justice or

the United States Department of the Treasury for collection.

5. Furthermore, if either payment is not made on or before the date when such payment is made due under the terms of this document, interest for said payment shall be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the date said payment was to have been made through the date said payment has been received. In addition, a late payment handling charge of \$15.00 will be assessed for each thirty (30) calendar day period or any portion thereof, following the date payment was to have been made, in which payment of the amount remains in arrears. In addition, a 6% per annum penalty will be applied to any principal amount that has not been received by the EPA within ninety (90) days of the date for which payment was required hereto to have been made.

6. The civil penalty provided for in this section and any charge that accrues as a result of untimely payment of the civil penalty by Respondent constitute a penalty within the meaning of 26 U.S.C. § 162(f).

7. By executing this consent agreement, Respondent hereby certifies that, to the best of his knowledge, he has corrected the violations set forth in paragraph 8 of the "EPA Findings of Fact," above.

8. Respondent shall maintain compliance with applicable 40 C.F.R. Part 745 regulations with regard to his leasing or selling any residential real property, residential dwelling unit and/or target housing.

9. Complainant shall mail to Respondent (to the representative designated below or to such other representative as Respondent has so informed EPA, Region 2, in writing that he has designated for such purpose) a copy of the fully executed CA/FO, and Respondent consents to service of the CA/FO upon him by an employee of EPA other than the Regional Hearing Clerk:

Raphael A. Weitzner, Esq.  
134 Broadway, Suite 616  
Brooklyn, New York 11211

10. Respondent has read this Consent Agreement, understands its terms, and consents to the issuance of the Final Order accompanying this Consent Agreement and consents to making full payment of the civil penalty in accordance with the terms and schedule set forth above.

11. This CA/FO is not intended, and shall not be construed, to waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable federal, state and local law and regulations governing the disclosure of lead paint and lead-based paint hazards in its leasing or sale of target housing.

12. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve and settle with prejudice the administrative claims alleged in the Complaint bearing docket number TSCA-02-2009-9267 upon full payment of the penalty amount and any charges that accrue pursuant to paragraph 5 of this section, above. Notwithstanding the above, nothing herein shall affect the right of the EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation(s) of law resulting from or pertaining to Respondent's leasing or sale of target housing.

13. Respondent hereby waive his right to seek or to obtain any hearing on the allegations made in the Complaint, and on the terms and conditions set forth in the Consent Agreement and its accompanying Final Order and/or on the EPA Findings of Fact or EPA Conclusions of Law, above.

14. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit or proceeding to enforce this Consent Agreement or any of its terms and conditions.

15. Respondent voluntarily waives any right or remedy he might have pursuant to 40 C.F.R. § 22.8 to be present during discussions with, or to be served with and reply to any memorandum or other communication addressed to, the Regional Judicial Officer of EPA, Region 2, where the purpose of such discussion, memorandum or other communication is to recommend that such official accept this Consent Agreement and issue the accompanying Final Order.

16. Each party shall bear its own costs and fees in connection with this proceeding.

17. Each undersigned signatory to this Consent Agreement certifies that: a) he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms, conditions and requirements set forth in this Consent Agreement, and b) he or she is duly and fully authorized to bind the party on behalf of whom (which) he or she is entering this Consent Agreement to comply with and abide by all the terms and conditions of this Consent Agreement.



***In the Matter of Wolfe Landau***  
**Docket Number TSCA-02-2009-9267**

**FINAL ORDER**

The Regional Judicial Officer of EPA, Region 2, concurs in the foregoing Consent Agreement in the case of *In the Matter of Wolfe Landau*, bearing Docket Number TSCA-02-2009-9267. Said Consent Agreement, having been duly accepted and entered into by the parties, shall be, and hereby is, ratified and incorporated into this Final Order, which shall become effective when filed with the Regional Hearing Clerk of EPA, Region 2. 40 C.F.R. § 22.31(b). This Final Order is being entered pursuant to the authority of 40 C.F.R. § 22.18(b)(3) and shall constitute an order issued under Section 16(a)(2)(A) of the Toxic Substances Control Act, 15 U.S.C. § 2615(a)(2)(A).

DATED: March 24, 2010  
New York, New York

  
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**HELEN FERRARA**  
Regional Judicial Officer  
U.S. Environmental Protection Agency –  
Region 2