



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2
290 BROADWAY
NEW YORK, NEW YORK 10007

JUL 29 2010

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 JUL 29 PM 1:27
REGIONAL HEARING
CLERK

Alan C. Kestenbaum, Esq.
Weil and Kestenbaum
Law Offices
42-40 Bell Boulevard - Suite 302
Bayside, NY 11361

In the Matter of Apartments R Us, LLC
Docket No. TSCA-02-2009-9168

Dear Mr. Kestenbaum:

Enclosed herein is the fully executed Consent Agreement/Final Order ("CA/FO") that resolves the above noted matter. Please note that payment of the civil penalty assessed in the Final Order shall be made in accordance with the terms found at page 4 of the CA/FO.

Should you have any questions concerning this matter, please contact me at (212) 637-3230. Your cooperation is greatly appreciated.

Sincerely yours,

Melva J. Hayden, Esquire
Assistant Regional Counsel
Office of Regional Counsel
Water and General Law Branch/Waste and Toxic Substance Branch

Enclosure

cc: Ms. Karen Maples, Regional Hearing Clerk

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

U.S. ENVIRONMENTAL
PROTECTION AGENCY REGION 2
2010 JUN 29 PM 1:21
REGIONAL HEARINGS
OFFICE

----- X
In the Matter of :
 :
Apartments R Us, LLC, : **CONSENT AGREEMENT AND**
 : **FINAL ORDER**
 :
 Respondent. :
 : Docket No.
 : TSCA-02-2009-9168
 :
 Proceeding under Section 16(a) of :
 the Toxic Substances Control Act. :
----- X

PRELIMINARY STATEMENT

This administrative proceeding for the assessment of a civil penalty was initiated pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a). On September 30, 2009, Complainant in this proceeding, the Director of the Division of Enforcement and Compliance Assistance, United States Environmental Protection Agency, Region 2 ("EPA"), issued a Complaint and Notice of Opportunity for Hearing to Respondent Apartments R Us, LLC ("Respondent"), whose primary place of business is located at 686 Bergen Avenue, Jersey City, New Jersey 07304. The Complaint alleged that Respondent, as owner, failed to ensure compliance with 40 C.F.R. Sections 745.113(b)(1), 745.113(b)(2), 745.113(b)(3), 745.113(b)(4) and 745.113(b)(6) during the years 2007 through 2008, in at least

eight (8) instances, by leasing target housing without providing: a lead warning statement; a statement disclosing any knowledge of lead-based paint; a list of any existing records or reports pertaining to lead-based paint; and/or obtaining verification of the receipt of information by the lessees, and/or signatures and the dates of signature of the lessors, agents, or lessees certifying to the accuracy of their statements. These failures or refusals to ensure compliance with the regulations cited constitute failures or refusals to comply with 40 C.F.R. § 745.113, which are violations of 42 U.S.C. Section 4852d(b)(5) and § 409 of TSCA, 15 U.S.C. § 2689.

Complainant and Respondent agree that settling this matter by entering into this Consent Agreement and Final Order (“CA/FO”), pursuant to 40 C.F.R. Section 22.18(b)(2) and (3) of the revised Consolidated Rules of Practice, is an appropriate means of resolving this matter without further litigation.

FACTUAL ALLEGATIONS

1. Respondent leased target housing apartments to several tenants between 2007 through 2008 as set forth in the Complaint described above.
2. The subject Complaint alleges Respondent leased target housing without providing: a lead warning statement: a statement disclosing any knowledge of lead-based paint: a list of any existing records or reports pertaining to lead-based paint: and/or without obtaining verification of the lessees’ receipt of the required information, and/or certification statements by the lessor, agent or lessee.
3. Based on these alleged failures, EPA contends Respondent committed violations of 40 C.F.R. Section 745.113, including alleged violations of 42 U.S.C. Section 4852d(b)(5) and Section 409 of TSCA, 15 U.S.C. § 2689.

CONSENT AGREEMENT

In lieu of costly and protracted litigation, and pursuant to Section 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. § 22.18, it is hereby agreed, and accepted by Respondent that it shall hereafter the effective date of the Final Order incorporating this Consent Agreement comply with the following terms:

1. Respondent shall comply with the applicable requirements of TSCA, and its implementing regulations set forth at 40 C.F.R. Part 745, Subpart F, with respect to all target housing it leases, sells, or acts as an agent in a lease or sale.
2. For the purposes of this proceeding, Respondent: (a) admits the jurisdictional allegations of the Complaint; and (b) neither admits nor denies the specific factual allegations in the Complaint; and (c) neither admits nor denies the factual allegations in this Consent Agreement.
3. Respondent shall pay a civil penalty to EPA in the total amount of Three Thousand Three Hundred Eighty Dollars (\$3,380). Such payment shall be made by cashier's or certified check or by Electronic Fund Transfer (EFT). If the payment is made by check, then the check shall be made payable to the "**Treasurer, United States of America,**" and shall be mailed to:

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

The check shall be identified with a notation thereon: ***IN THE MATTER OF APARTMENTS R US, LLC***, and shall bear thereon the Docket Number ***TSCA-02-2009-9168***. If Respondent

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

- 1) Amount of Payment.
- 2) SWIFT address: FRNYUS33, 33 Liberty Street, New York, NY 10045.
- 3) Account Code for Federal Reserve Bank of New York receiving payment: 68010727.
- 4) Federal Reserve Bank of New York ABA routing number: 021030004.
- 5) Field Tag 4200 of the Fedwire message should read "D68010727 Environmental Protection Agency."
- 6) Name of Respondent: **Apartments R Us, LLC.**
- 7) Case Number: **TSCA-02-2009-9168.**

Whether the payment is made by check or by EFT, the Respondent shall promptly thereafter furnish reasonable proof that such payment has been made to:

Melva J. Hayden, Esq.
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

and

Karen Maples, Regional Hearing Clerk
Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007-1866

Payment must be received at the above address on or before 45 calendar days after the date of signature of the Final Order, which is located at the end of this CA/FO and shall hereafter be referred to as the "due date". Payment which is untimely or not made is subject to the following penalties:

- a. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.

- b. Furthermore, if payment is not received on or before the due date, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to the Debt Collection Act, 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. A 6% per annum penalty also will be applied on any principal amount not paid within 90 days of the due date.

4. This Consent Agreement is being voluntarily and knowingly entered into by the parties to resolve (conditional upon full payment of the civil penalty herein and upon the accuracy of Respondent's representations in this proceeding) the civil and administrative claims alleged in the Complaint in this matter. Nothing herein shall be read to preclude EPA or the United States, however, from pursuing appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. Respondent has read the Consent Agreement, understands its terms, finds it to be reasonable and consents to the issuance and its terms. Respondent consents to the issuance of the accompanying Final Order. Respondent agrees that all terms of settlement are set forth herein.

5. Respondent has had an opportunity to review this matter at length with its counsel and explicitly and knowingly consents to the assessment of the civil penalty as set forth in this Consent Agreement, and agrees to pay the penalty in accordance with the terms of this Consent Agreement.

6. Respondent explicitly and knowingly waives its right to request or to seek any Hearing on the Complaint or on any of the allegations therein asserted, on the Factual Allegations herein, or on the accompanying Final Order.

7. Full payment of the penalty in a settlement pursuant to 40 C.F.R. § 22.18(b) shall only resolve Respondent's liability for Federal civil penalties for the violations and facts alleged in the Complaint.

8. Each undersigned signatory to this Consent Agreement certifies that he or she is duly and fully authorized to enter into and ratify this Consent Agreement and all the terms and conditions set forth in this Consent Agreement.

9. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.

10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussion with or to be served with and to reply to any memorandum or communication addressed to the Regional Judicial Officer where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

11. Each party hereto agrees to bear its own costs and fees in this matter.

12. Respondent consents to service upon Respondent by a copy of this Consent Agreement and Final Order by an EPA employee other than the Regional Hearing Clerk.

In the Matter of Apartments R Us, LLC
Docket No. TSCA-02-2009-9168

RESPONDENT:

Apartments R Us, LLC

BY: _____



(Authorized Signature)

NAME: _____

Steve Baras
(PLEASE PRINT)

TITLE: _____

President

DATE: _____

7/20/10

COMPLAINANT:

Dore LaPosta, Director

Division of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency - Region 2
290 Broadway
New York, NY 10007-1866

DATE: _____

July 28, 2010

In the Matter of Apartments R Us, LLC
Docket No. TSCA-02-2009-9168

FINAL ORDER

The Regional Judicial Officer of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Consent Agreement, entered into by the parties to this matter, is hereby approved, incorporated herein, and issued as an Order pursuant to Section 16(a) of the Toxic Substances Control Act and 40 C.F.R. § 22.18(b)(3). The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.



Helen Ferrara

Regional Judicial Officer

U.S. Environmental Protection Agency - Region 2

290 Broadway

New York, NY 10007-1866

Date: July 28, 2010

In the Matter of Apartments R Us, LLC
Docket No. TSCA-02-2009-9168

CERTIFICATE OF SERVICE

I certify that I have on this day caused to be sent the foregoing Consent Agreement and Final Order, bearing the above-referenced docket number, in the following manner to the respective addressees below:

Original and one copy by hand to:

Office of the Regional Hearing Clerk.
U.S. EPA- Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

Copy by Pouch Mail:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U.S. Environmental Protection Agency
Mail Code 1900L
401 M Street, S.W.
Washington, DC 20460

Copy by Certified Mail
Return Receipt Requested:

Alan C. Kestenbaum, Esq.
Weil & Kestenbaum
Law Offices
42-40 Bell Boulevard - Suite 302
Bayside, NY 11361

Dated: JUL 29 2010
New York, New York

Mildred N. Bag