

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
JAN 24 2012

In the Matter of:)
)
Cameel Halim; Wilmette Real Estate &)
Management Company, LLC; WR Property)
Management, LLC; BCHFARGO, LLC;)
BCHROSCOE, LLC; BCH5036, LLC; BCH5625,)
LLC; BCH5633, LLC; BCH5746, LLC;)
BCH5900, LLC; HCT6026, LLC; BCHTOWER,)
LLC; BCHCHURCH, LLC; BCHHOYNE, LLC;)
BCHKENMORE 6230, LLC; BCH6300, LLC;)
BCHSIMPSON, LLC; HCT727, LLC;)
BCHSEELEY, LLC; HCTJACKSON, LLC;)
BCH801, LLC; BCH817, LLC; BCH5830, LLC;)
and BCHEASTWOOD, LLC;)
)
Respondents.)
)
_____)

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Docket No.: TSCA-05-2011-0020

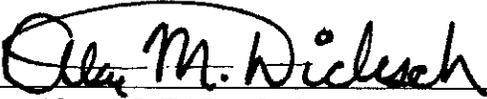
**MOTION TO DISMISS RESPONDENT CAMEEL HALIM
FOR WANT OF SUBJECT-MATTER JURISDICTION**

Respondent and movant Cameel Halim, through Alan M. Didesch his attorney, moves pursuant to 40 C.F.R. §22.16 to be dismissed from this action for want of subject-matter jurisdiction. A memorandum of law is attached in support of this motion.

Respectfully submitted,

Cameel Halim

By:



Alan M. Didesch, his Attorney.

Alan M. Didesch, General Counsel
WR Property Management, LLC
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E-mail: alandidesch@yahoo.com
Illinois State Bar No. 6192123

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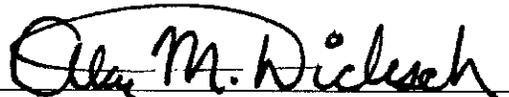
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MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS RESPONDENT CAMEEL HALIM
FOR WANT OF SUBJECT-MATTER JURISDICTION

Respondent and movant Cameel Halim, through Alan M. Didesch his attorney, submits this memorandum of law and affidavit in support of his Motion to Dismiss Respondent Cameel Halim for Want of Subject-Matter Jurisdiction.

INTRODUCTION

On September 23, 2011, the United States Environmental Protection Agency (“EPA”) filed an administrative complaint (the “Complaint”) against Cameel Halim and twenty-three other respondents. The twenty-three non-Halim Respondents are all limited liability companies – twenty-one of which hold legal title to twenty-one different parcels of real property on which are situated residential apartment

buildings. The two other respondent-limited liability companies manage, or managed, the apartment buildings.

In its Complaint, EPA seeks to have personal liability imposed on Halim in the amount of \$5,489,240 for alleged violations of the Lead Disclosure Rule, 40 C.F.R. Part 745. The Lead Disclosure Rule, promulgated by EPA and the United States Department of Housing and Urban Development pursuant to section 1018 of the Lead Hazard Reduction Act, 42 U.S.C. 4852d(a)(1), imposes on owners, lessors, and their agents certain disclosure requirements pertaining to lead-based paint when leasing target housing. Here, EPA seeks imposition of personal liability on Halim even though Halim is not, and was not at the time of the events giving rise to this action, an “owner,” “lessor,” or “agent” within the meaning of the Lead Disclosure Rule. Because Halim is not, and was not, an “owner,” “lessor,” or “agent” within the meaning of the Lead Disclosure Rule, this Tribunal lacks subject-matter jurisdiction with respect to EPA’s claim against Halim. Consequently, Halim respectfully submits that the action against him should be dismissed with prejudice.

ARGUMENT

“Subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt.” *Ashcroft v. Iqbal*, 556 U.S. –, 129 S.Ct. 1937, 1945 (2009) (citing *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006)). Thus, “[i]t is well-established judicial doctrine that any statutory tribunal must ensure that it has jurisdiction over each case *before* adjudicating the merits, that a potential jurisdictional defect may be raised ... by any party, at any stage of the proceedings,

and, once apparent, must be adjudicated.” *Barnett v. Brown*, 83 F.3d 1380, 1383 (Fed. Cir. 1996) (emphasis in original) (citing *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230-31 (1990)). *Accord*, *Western Refining Southwest, Inc. v. Federal Energy Regulatory Comm’n*, 636 F.3d 719, 728 (5th Cir. 2011) (citing *Dillon v. Rogers*, 596 F.3d 260, 271 (5th Cir. 2010)). Here, Halim’s motion raises the issue of a potential jurisdictional defect and, therefore, the motion is timely, properly made, and should be adjudicated before the Tribunal and the Parties proceed on the merits.

The party invoking jurisdiction bears the burden of establishing its requirements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-60 (1992). Consequently, when the tribunal’s jurisdiction is challenged as a factual matter by the opposing party, the party invoking jurisdiction bears the burden of supporting its jurisdictional allegations by “competent proof.” *NLFC, Inc. v. Devcom Mid-America, Inc.*, 45 F.3d 231, 237 (7th Cir.), *cert. denied*, 514 U.S. 1104 (1995) (citing, *inter alia*, *McNutt v. General Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936)). This means that the plaintiff must prove by “a preponderance of the evidence or ‘proof to a reasonable probability that jurisdiction exists.’” *NLFC, Inc.*, 45 F.3d at 237 (quoting *Gould v. Artisoft, Inc.*, 1 F.3d 544, 547 (7th Cir. 1993)). In determining whether subject-matter jurisdiction exists, the tribunal “may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue[.]” *Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995). *Accord*, *Western Transp. Co. v. Couzens Warehouse & Distribs., Inc.*, 695 F.2d 1033, 1038 (7th Cir. 1982) (citing *Nuclear Eng’g Co. v. Scott*, 660 F.2d 241, 252 (7th Cir. 1981)

and *Grafton Corp. v. Hausermann*, 602 F.2d 781, 783 (7th Cir. 1979)). Here, Halim challenges as a factual matter the Tribunal's jurisdiction. Therefore, EPA bears the burden of proving jurisdiction by a preponderance of the evidence. Moreover, because the Tribunal may properly look beyond the allegations of the Complaint, Halim properly submits his affidavit in support of this motion.

The Lead Disclosure Rule requires, among other things, that the owners, lessors, and agents of target housing provide certain information to a lessee before the lessee becomes obligated under a lease. In the context of leasing transactions, the Rule imposes disclosure requirements on "owners," "lessors," and "agents." *See, e.g.* 40 C.F.R. §§745.113(b) and (c). Accordingly, liability under the Lead Disclosure Rule is limited to those individuals who are "owners," "lessors," or "agents."

The terms "owner," "lessor," and "agent" are defined with specificity in the Lead Disclosure Rule. Specifically, "owner" "means any entity that has legal title to target housing ...," 40 C.F.R. §745.103. Moreover, "lessor" "means any entity that offers target housing for lease, rent, or sublease ...," *Id.* And, "agent" "means any party who enters into a contract with a ... lessor, including any party who enters into a contract with a representative of the ... lessor, for the purpose of ... leasing target housing." *Id.*

In the action here, since at least January 1, 2005, each of the limited liability company-respondents, other than Wilmette Real Estate and Management Company, LLC and WR Property Management, LLC, have held legal title to the various residential apartment buildings which make up the subject matter of this action (the

“Respondent Owners”). Affidavit of Cameel Halim, pars. 4 and 5. (“Halim Aff.”, a copy of which is attached to this motion as “Exhibit A.”) Consequently, these Respondent Owners are “owners” under the Lead Disclosure Rule – for they “have legal title to target housing.” *See* 40 C.F.R. §745.103. Furthermore, since at least January 1, 2005, each of the Respondent Owners has offered target housing for lease, rent, or sublease. Halim Aff., par. 6. Thus, these Respondent Owners are “lessors” (“Respondent Lessors”) under the Lead Disclosure Rule – for they offer target housing for lease, rent, or sublease. *See* 40 C.F.R. §745.103.

During the period from January 1, 2005 through December 31, 2007, respondent Wilmette Real Estate & Management Company, LLC (“Wilmette Real Estate”) was the managing agent for each Respondent Owner/Lessor named in this action. Halim Aff., par. 7. As managing agent for each of the Respondent Owners/Lessors, Wilmette Real Estate was exclusively responsible for the leasing of all dwelling units, including target housing, for the period extending from January 1, 2005 through December 31, 2007. Halim Aff., par. 8. At no time during the period extending from January 1, 2005 through December 31, 2007 did respondent Halim enter into any contractual relationship directly with any of the Respondent Owners/Lessors for the purpose of leasing the target housing which forms the subject matter of this action. Halim Aff., par. 9. Nor at any time during the period extending from January 1, 2005 through December 31, 2007 did respondent Halim enter into any contractual relationship indirectly with any of the Respondent

Owners/Lessors for the purpose of leasing the target housing which forms the subject matter of this action. Halim Aff., par. 10.

After December 31, 2007, and continuing through the present, WR Property Management, LLC (“WR Property Management”) was the managing agent for each Respondent Owner/Lessor named in this action. Halim Aff., par. 11. As managing agent for each of the Respondent Owners/Lessors, WR Property Management was exclusively responsible for the leasing of all dwelling units, including target housing, for the period extending from January 1, 2008 through the present. Halim Aff., par. 12. At no time during the period extending from January 1, 2008 through the present did respondent Halim enter into any contractual relationship directly with any of the Respondent Owners/Lessors for the purpose of leasing the target housing which forms the subject matter of this action. Halim Aff., par. 13. Nor at any time during the period extending from January 1, 2008 through the present, did respondent Halim enter into any contractual relationship indirectly with any of the Respondent Owners/Lessors for the purpose of leasing the target housing which forms the subject matter of this action. Halim Aff., par. 14.

In summary, respondent Halim is not, and was not, an “owner” under the Lead Disclosure Rule because he did not hold legal title to the target housing which forms the subject matter of this action. Further, respondent Halim is not, and was not, a “lessor” under the Lead Disclosure Rule because he did not offer target housing for lease, rent, or sublease. And further, respondent Halim is not, and was not, an “agent” under the Lead Disclosure Rule because he did not enter into any

contractual relationship, directly or indirectly, with any of the Respondent Owners/Lessors for the purpose of leasing the target housing which forms the subject matter of this action.

In conclusion, respondent Halim does not fit into the Lead Disclosure Rule's definition of "owner," "lessor," or "agent." Because Halim is not, and was not, an "owner," "lessor," or "agent," the disclosure requirements of the Lead Disclosure Rule and its concomitant penalties cannot be extended to encompass him – for it is a jurisdictional prerequisite to liability under the Lead Disclosure Rule that Halim be an "owner," "lessor," or "agent." Accordingly, Halim respectfully submits that this Tribunal lacks subject-matter jurisdiction with respect to the claim against him and he further submits that he should be dismissed as a party-respondent to this action.

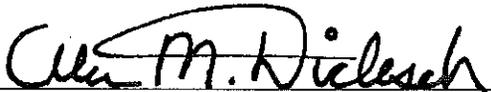
CONCLUSION

"[J]urisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the [tribunal] is that of announcing the fact and dismissing the cause[.]" *S.C. Johnson & Son, Inc. v. Buske*, Civil No. 09-286-GPM, 2009 WL 3010833 at *2 (S.D. Ill. Sept. 17, 2009 (quoting *Ball v. Southwest Fiduciary, Inc.*, Civil No. 09-194-GPM, 2009 WL 1708764 at *1 (S.D. Ill. June 17, 2009)). Subject-matter jurisdiction *vis-à-vis* respondent Halim does not exist and, therefore, the cause against him should be dismissed.

WHEREFORE, respondent Cameel Halim respectfully requests that this Tribunal dismiss this action as against him for want of subject-matter jurisdiction.

Respectfully submitted,

Cameel Halim

By: 
Alan M. Didesch, his Attorney.

Alan M. Didesch, General Counsel
WR Property Management, LLC
107 Green Bay Road
Wilmette, Illinois 60091-3303
Telephone: (847) 920-2079
Facsimile: (847) 256-1092
E-mail: alandidesch@yahoo.com
Illinois State Bar No. 6192123

Exhibit A

Halim Affidavit

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Docket No.: TSCA-05-2011-0020

AFFIDAVIT OF CAMEEL HALIM

Under penalty of perjury as provided by applicable law, I, Cameel Halim, state as follows:

1. I have personal knowledge of and am competent to testify to the matters set forth in this affidavit.
2. I am a named Respondent in the case captioned *In the Matter of Cameel Halim et al.*, docket number TSCA-05-2011-0020, currently pending before the United States Environmental Protection Agency.
3. I am the “registered agent for service of process” and the “manager” – as those terms are defined and used in the Illinois Limited Liability Company

Act, 805 ILCS 180/1-5 – for the following Illinois limited liability companies,
all of which are respondents in the case referenced in paragraph 2 above:

- a. Wilmette Real Estate & Management Company, LLC
- b. WR Property Management, LLC
- c. BCHFARGO, LLC
- d. BCHROSCOE, LLC
- e. BCH5036, LLC
- f. BCH5625, LLC
- g. BCH5633, LLC
- h. BCH5746, LLC
- i. BCH5900, LLC
- j. HCT6026, LLC
- k. BCHTOWER, LLC
- l. BCHCHURCH, LLC
- m. BCHHOYNE, LLC
- n. BCHKENMORE 6230, LLC
- o. BCH6300, LLC
- p. BCHSIMPSON, LLC
- q. HCT727, LLC
- r. BCHSEELEY, LLC
- s. HCTJACKSON, LLC
- t. BCH801, LLC

| | | |
|----|-------------------|---|
| p. | BCHSEELEY, LLC | 7444-54 North Seeley, Chicago, Illinois |
| q. | HCTJACKSON, LLC | 7535-45 West Jackson, Forest Park, Illinois |
| r. | BCH801, LLC | 801-07 Seward, Evanston, Illinois |
| s. | BCH817, LLC | 817-35 Seward, Evanston, Illinois 605-09 Elmwood, Evanston, Illinois |
| t. | BCH5830, LLC | 5830 North Kenmore, Chicago, Illinois |
| u. | BCHEASTWOOD, LLC. | 917 West Eastwood, Chicago, Illinois |

5. Since at least January 1, 2005, no legal entities other than those referenced in paragraph 4 above have held legal title to the referenced apartment buildings.
6. Since at least January 1, 2005, the Illinois limited liability companies referenced in paragraph 4 above have offered housing, including target housing, for lease, rent, or sublease.
7. During the period from January 1, 2005 through December 31, 2007, Wilmette Real Estate & Management Company, LLC (“Wilmette Real Estate”) was the managing agent for each of the residential apartment buildings identified in paragraph 4 above.
8. As managing agent for the residential apartment buildings identified in paragraph 4 above, Wilmette Real Estate was exclusively responsible for the leasing of dwelling units, including target housing, during the period from January 1, 2005 through approximately December 31, 2007.

9. At no time during the period from January 1, 2005 through December 31, 2007 did I, Cameel Halim, enter into any contractual relationship directly with any of the Illinois limited liability companies identified in paragraph 4 above for the purpose of leasing target housing.
10. At no time during the period from January 1, 2005 through December 31, 2007 did I, Cameel Halim, enter into any contractual relationship indirectly with any of the Illinois limited liability companies identified in paragraph 4 above for the purpose of leasing target housing.
11. During the period from January 1, 2008 through the present, WR Property Management, LLC (“WR Property Management”) was the managing agent for each of the residential apartment buildings identified in paragraph 4 above.
12. As managing agent for the residential apartment buildings identified in paragraph 4 above, WR Property Management was exclusively responsible for the leasing of dwelling units, including target housing, during the period from January 1, 2008 through the present.
13. At no time during the period from January 1, 2008 through the present did I, Cameel Halim, enter into any contractual relationship directly with any of the Illinois limited liability companies identified in paragraph 4 above for the purpose of leasing target housing.
14. At no time during the period from January 1, 2005 through the present did I, Cameel Halim, enter into any contractual relationship indirectly with any of

the Illinois limited liability companies identified in paragraph 4 above for the purpose of leasing target housing.

FURTHER AFFIANT SAYETH NAUGHT.

Dated: January 19, 2012



Cameel A. Halim

Subscribed and sworn to before me

this 19th day of January 2012:



Matthew Powell, Notary Public

- Respondent Cameel Halim's Memorandum in Support of Motion to Dismiss,
and
- Respondents' Answer and Affirmative Defense to Complaint.

By: Alan M. Didesch

Alan M. Didesch

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