

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7
901 NORTH 5th STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

KASHFLOW, INC.)

St. Louis, Missouri)

Respondent)

Proceedings under Section 16(a) of the)
Toxic Substances Control Act,)
15 U.S.C. § 2615(a))

DOCKET NO. TSCA-07-2010-0002

COMPLAINANT'S REBUTTAL
PREHEARING EXCHANGE

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Comes now the United States Environmental Protection Agency, Region 7 (EPA or Complainant), and respectfully submits the following Complainant's Rebuttal Prehearing Exchange pursuant to the March 25, 2010, Prehearing Order issued by the Presiding Officer, Chief Administrative Law Judge Susan L. Biro.

EXPECTED WITNESSES IN REBUTTAL

Complainant will present no additional witnesses in response to Respondent's Prehearing Exchange, other than those identified in Complainant's Initial Prehearing Exchange.

DOCUMENTS AND EXHIBITS IN REBUTTAL

Complainant will present no additional documents and exhibits in response to Respondent's Prehearing Exchange, other than those identified in Complainant's Initial Prehearing Exchange.

COMPLAINANT'S STATEMENT IN REBUTTAL

The Prehearing Order directs Complainant in its Rebuttal Prehearing Exchange to submit a statement and/or any documents in response to Respondent's Prehearing Exchange "as to 3(A) through 3(D)" [in the Prehearing Order]. Complainant makes the following statements in rebuttal:

Item 3(A) of the Prehearing Order concerns Paragraphs 13 and 14 of the Complaint, related to Apartment 2W, 5565 Chamberlain. Respondent's Prehearing Exchange provides no detailed narrative statement, but addresses Paragraphs 13 and 14 by documents RX6, RX7, and RX8; and by a proposed affidavit of Denise McCloud.

Respondent's Prehearing Exchange states that Denise McCloud "will testify by Affidavit as attached hereto and incorporated herein as Exhibit RX6." Complainant states that Respondent's Prehearing Exchange does not adequately inform Complainant whether Denise McCloud will be a fact witness present at the hearing, will present written testimony in accordance with Rule 22.22(c), or is unavailable at hearing and her testimony will be by affidavit in accordance with Rule 22.22(d).

Exhibit RX6 is an unsigned, unexecuted, affidavit that purports to show that the tenant was provided the lead hazard information pamphlet before she was obligated under the contract of the lease. Complainant denies the truth of the statement contained in RX6. Complainant would stipulate to the entry of RX7 and RX8, the lease and disclosure form.

Item 3(B) of the Prehearing Order concerns Paragraphs 17 and 18 of the Complaint, related to 5575 Chamberlain. Respondent's Prehearing Exchange provides no detailed narrative statement, but addresses Paragraphs 17 and 18 by documents RX1, RX2, RX3, RX4, and RX5; and by proposed affidavits of Addina Hobson and Qasim Bajwa.

Respondent's Prehearing Exchange states that Addina Hobson "will testify by Affidavit as attached hereto and incorporated herein as Exhibit RX1," and that Qasim Bajwa "will testify by Affidavit as attached hereto and incorporated herein as Exhibit RX2." Complainant states that Respondent's Prehearing Exchange does not adequately inform Complainant whether Addina Hobson or Qasim Bajwa will be fact witnesses present at the hearing, will present written testimony in accordance with Rule 22.22(c), or are unavailable at hearing and their testimony will be by affidavit in accordance with Rule 22.22(d).

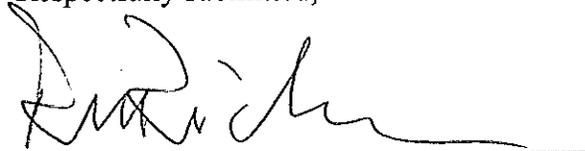
Exhibits RX1 and RX2 are unsigned, unexecuted, affidavits that purport to show that the tenant was provided the lead hazard information pamphlet before she was obligated under the contract of the lease. Complainant denies the truth of the statements contained in RX1 and RX2. Complainant would stipulate to the entry of RX3 and RX5, the lease and disclosure form. Complainant has no comment on RX4, the repair list.

Item 3(C) of the Prehearing Order concerns inability to pay the proposed penalty. Respondent's Prehearing Exchange provides no narrative statement and no documents to show inability to pay the proposed penalty.

Item 3(D) of the Prehearing Order concerns reduction or elimination of the proposed penalty on any other grounds. RX3 and RX7 show children were residing in the units. Respondent's Prehearing Exchange provides no narrative statement and no documents to show the penalty should be reduced or eliminated based on Complainant's application statutory factors or the Penalty Policy in the calculation of said penalties for the violations. Complainant has no comment on RX9, the letter of Harriet L. Jones, or RX10, the incorporation by reference of Complainant's exhibits.

Respondent's Prehearing Exchange appears to materially dispute one fact and one fact only, whether the tenants were each provided the lead hazard information pamphlet before they were obligated under the contracts of the leases.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "R. Richards", written over a horizontal line.

Robert W. Richards, Attorney
Office of Regional Counsel

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand carried the original Complainant's Rebuttal Prehearing Exchange in the matter of KASHFLOW, INC, Docket No. TSCA-07-2010-0002, to the Regional Hearing Clerk and sent a true and exact copy of the Complainant's Rebuttal Prehearing Exchange by certified mail, return receipt requested to:

Robert C. Withington, Esquire
7116 Oakland Avenue
Richmond Heights, Missouri 63117

and sent a copy to:

Honorable Susan L. Biro
U.S. EPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue
Mail Code 1900L
Washington, DC 20460

or by fax:

Fax number: 202-565-0044.

5/27/10

Date



Signature