

U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION 7
901 N. 5th STREET
KANSAS CITY, KANSAS 66101

07 JUN -5 PM 2:00
ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)
)
Devinki Developers,) Docket No. TSCA-07-2007-0017
)
)
Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The U.S. Environmental Protection Agency (EPA), Region 7 and Devinki Developers (Respondent) have agreed to a settlement of this action before filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(B)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This proceeding is an administrative action for the assessment of civil penalties instituted pursuant to Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a).
2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, *Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property*, promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, is the Chief, Radiation, Asbestos Lead and Indoor Programs Branch, EPA, Region 7.

4. The Respondent is Devinki Developers, a real estate management company, located in Kansas City, Missouri.

Statutory and Regulatory Background

5. Congress passed the Residential Lead-Based Paint Hazard Reduction Act of 1992 (the Act), 42 U.S.C. §§ 4851 to 4856, to address the need to control exposure to lead-based paint hazards. The Act amended TSCA by adding Sections 401 to 412, 15 U.S.C. §§ 2681 to 2692. Section 1018 of the Act required EPA and the Department of Housing and Urban Development (HUD) to jointly issue regulations requiring the disclosure of known lead-based paint and/or lead-based paint hazards by persons selling or leasing housing constructed before the phase out of residential lead-based paint use in 1978. The regulations, issued March 6, 1996, and codified at 40 C.F.R. Part 745, Subpart F, require that sellers and lessors of most residential housing built before 1978: a) disclose the presence of known lead-based paint and/or lead-based paint hazards in the target housing; b) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint and/or lead-based paint hazards; c) provide purchasers and lessees with a federally approved lead hazard information pamphlet; d) provide purchasers with a 10-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards before the purchaser is obligated under any purchase contract; and e) include certain disclosure and acknowledgment language in the sales or leasing contract. The failure or refusal to comply with the regulations is a violation of Section 1018 of the Act and Section 409 of TSCA.

Alleged Violations

6. The Complainant hereby states and alleges that Respondent has violated TSCA and federal regulations promulgated there under, as follows:

Count 1

7. Respondent is, and at all times referred to herein, was a 'person' within the meaning of TSCA.

8. Respondent is an 'agent', as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Monica Masuda to represent Masuda Properties, LLC for the purpose of leasing residential units owned by Masuda Properties, LLC at the Brittany Pointe Apartments, headquartered at 8101 Campbell Street, Kansas City, Missouri 64131.

9. Information collected shows that on November 16, 2005 Respondent entered into a contract to lease a residential unit at the Brittany Pointe Apartments, to wit: 8111 Campbell, Apartment 312, Kansas City, Missouri 64131. This property is 'target housing' as that term is defined by 40 C.F.R. § 745.103.

10. Information collected shows that Respondent failed to obtain Lessee's Acknowledgment that she received the pamphlet *Protect Your Family From Lead in Your Home*, in violation of 745 CFR § 745.113(b)(4).

11. Respondent's failure to obtain Lessee's Acknowledgment that she received the pamphlet *Protect Your Family From Lead in Your Home*, is a violation of 745 CFR § 745.113(b)(4), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852(d), and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 2

12. Respondent is, and at all times referred to herein, was a 'person' within the meaning of TSCA.

13. Respondent is an 'agent' as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Monica Masuda to represent Masuda Properties, LLC for the purpose of leasing residential units owned by Masuda Properties, LLC at the Brittany Pointe Apartments, headquartered at 8101 Campbell Street, Kansas City, Missouri 64131.

14. Information collected shows that on November 25, 2005 Respondent entered into a contract to lease a residential unit at the Brittany Pointe Apartments, to wit: 8129 Campbell, Apartment 202, Kansas City, Missouri 64131. This property is 'target housing' as that term is defined by 40 C.F.R. § 745.103.

15. Information collected shows that Respondent failed to obtain Lessee's Acknowledgment that he received the pamphlet *Protect Your Family From Lead in Your Home*, in violation of 745 CFR 745.113(b)(4).

16. Respondent's failure to obtain Lessee's Acknowledgment that he received the pamphlet *Protect Your Family From Lead in Your Home*, in violation of 745 CFR 745.113(b)(4), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852(d), and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 3

17. Respondent is, and at all times referred to herein, was a 'person' within the meaning of TSCA.

18. Respondent is an 'agent' as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Monica Masuda to represent Masuda Properties, LLC for the

purpose of leasing residential units owned by Masuda Properties, LLC at the Brittany Pointe Apartments, headquartered at 8101 Campbell Street, Kansas City, Missouri 64131.

19. Information collected shows that on November 23, 2005 Respondent entered into a contract to lease a residential unit owned by Masuda Properties, LLC at the Brittany Pointe Apartments, to wit: 8129 Campbell, Apartment 203, Kansas City, Missouri 64131. This property is Atarget housing@ as that term is defined by 40 C.F.R. § 745.103.

20. Information collected shows that Respondent failed to obtain Lessee's Acknowledgment that she received the pamphlet *Protect Your Family From Lead in Your Home*, in violation of 745 CFR 745.113(b)(4).

21. Respondent=s failure to obtain Lessee's Acknowledgment that she received the pamphlet *Protect Your Family From Lead in Your Home*, is a violation of 745 CFR 745.113(b)(4), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. ' 4852(d), and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

Count 4

22. Respondent is, and at all times referred to herein, was a 'person' within the meaning of TSCA.

23. Respondent is an 'agent' as that term is defined by 40 C.F.R. § 745.103, in that Respondent entered into a contract with Monica Masuda to represent Masuda Properties, LLC for the purpose of leasing residential units owned by Masuda Properties, LLC at the Brittany Pointe Apartments, headquartered at 8101 Campbell Street, Kansas City, Missouri 64131.

24. Information collected shows that on October 3, 2005 Respondent entered into a contract to lease a residential unit at the Brittany Pointe Apartments, to wit: 8101 Campbell, Apartment 314,

Kansas City, Missouri 64131. This property is 'target housing' as that term is defined by 40 C.F.R. § 745.103.

25. Information collected shows that Respondent failed to include, as an attachment to or within the body of the rental contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating that she had no knowledge of the presence of lead-based paint and/or lead-based paint hazards, in violation of 745 CFR 745.113(b)(2).

26. Respondent's failure to include, as an attachment to or within the body of the rental contract, a statement disclosing the presence of known lead-based paint and/or lead-based paint hazards or indicating that she had no knowledge of the presence of lead-based paint and/or lead-based paint hazards, is a violation of 745 CFR 745.113(b)(2), and in accordance with 40 C.F.R. § 745.118(e), a violation of Section 1018 of the Act, 42 U.S.C. § 4852(d), and Section 409 of TSCA, 15 U.S.C. § 2689, and thus Respondent is subject to civil penalties under Section 16 of TSCA, 15 U.S.C. § 2615.

CONSENT AGREEMENT

27. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above.

28. Respondent neither admits nor denies the factual allegations of the Complaint.

29. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above.

30. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys fees.

31. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of Respondent's knowledge, it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.

32. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a mitigated civil penalty in the amount of \$7,920 to be paid within thirty (30) days of the effective date of the Final Order.

33. Respondent understands that its failure to timely pay any portion of the mitigated civil penalty stated in Paragraph 32 above, may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties, late payment handling charges, and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601-2692, and based upon the information set forth in the Consent Agreement accompanying this Final Order, **IT IS HEREBY ORDERED THAT:**

1. Respondent shall pay a mitigated civil penalty of \$7,920 within thirty (30) days of the effective date of this Final Order. Such payment shall identify the Respondent by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and sent to:

EPA-Region 7
c/o Mellon Bank
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251

2. A copy of the check shall simultaneously be sent to the following:

Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101; and

Raymond C. Bosch, Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 N. 5th Street
Kansas City, Kansas 66101.

3. Respondent and Complainant shall each bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENT

Devinki Developers

Date: 12/26/06

By: 

T. D. Koltkin
Print Name

Partner
Title

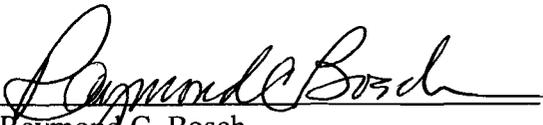
COMPLAINANT

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 1/5/07

By: 
****, Chief
Radiation, Asbestos, Lead and Indoor Programs Branch

Date: 1/5/07

By: 
Raymond C. Bosch
Office of Regional Counsel



IN THE MATTER OF Devinki Developers, Respondent
Docket No. TSCA-07-2007-0017

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Raymond C. Bosch
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Robert J. Lambrechts
Lathrop & Gage L.C.
10851 Mastin Boulevard, Suite 1000
Overland Park, Kansas 66210-1669

Dated: 1/8/07


Kathy Robinson
Hearing Clerk, Region 7