

PHIFER & WHITE, P.C.

ATTORNEYS AND COUNSELORS

JEFFREY G. COLLINS

L. B. KING BUILDING
1274 LIBRARY STREET
SUITE 500
DETROIT, MICHIGAN 48226

TELEPHONE: (313) 964-2360
FACSIMILE: (313) 964-6870
VOICEMAIL EXTENSION #103
EMAIL: JCOLLINS@PHIFERWHITE.COM
WEBSITE: [HTTP://WWW.PHIFERWHITE.COM](http://WWW.PHIFERWHITE.COM)

June 19, 2008

Regional Hearing Clerk (E-13J)
U.S. EPA – Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604

**Re: In the matter of Aretha Marshall
Docket No. TSCA-05-2008-0008
Our File: 730.080001**

Dear Sir/Madam:

Enclosed for filing please find the original and one copy of Respondent's Answer to Complaint and Proof of Service. The Answer also requests a hearing and informal settlement conference. Please file in your usual manner

Thank you for your attention to this matter.

Very truly yours,

PHIFER & WHITE, P.C.

Jeffrey G. Collins

JGC/srf
Enclosures

cc: Jeffrey A. Cahn, Esq. (w/enclosures)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Aretha Marshall)
Detroit, Michigan,)
)
Respondent.)
_____)

Docket No. TSCA-05-2008-0008

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ANSWER TO COMPLAINT

NOW COMES Respondent, Aretha Marshall, by and through her attorneys, Phifer & White, P.C., by Jeffrey G. Collins, and submits the following Answer to Complaint:

1. Respondent admits the allegations in paragraph 1.
2. Respondent admits the allegations in paragraph 2.
3. Respondent admits the allegations in paragraph 3.
4. Respondent admits the allegations contained in paragraph 4.
5. Respondent is without knowledge of the allegations contained in paragraph 5.
6. Respondent admits the allegations in paragraph 6.
7. Respondent admits the allegations in paragraph 7.
8. Respondent admits the allegations in paragraph 8.
9. Respondent admits the allegations in paragraph 9.
10. Respondent admits the allegations in paragraph 10.
11. Respondent admits the allegations in paragraph 11.
12. Respondent admits the allegations in paragraph 12.
13. Respondent admits the allegations in paragraph 13.
14. Respondent admits the allegations in paragraph 14.

15. Respondent admits the allegations in paragraph 15.

16. Respondent asserts that the allegations contained in paragraph 16 are legal conclusions and the Respondent leaves Complainant to their proofs.

17. Respondent denies that an inspection took place at 2200 Blaine on August 25, 2005. On August 25, 2005, Respondent met with U.S. EPA officials in an informational exchange meeting in downtown Detroit.

18. Respondent admits receiving an abatement order for unit 23.

19. Respondent denies that a lease agreement was entered for Apt. 2. Respondent asserts Apt. 3 was not leased from April 2005 until September 2005. The tenant in Apt. 3 was evicted in June 2005. Respondent asserts Apt. 4 was not leased from April 2005 to present. Apartment 4 was occupied from May 2005 to December 2005. Respondent asserts Apt. 31 was not leased from October 2004 to the present. Apartment 31 has been vacant since June 2007. Respondent asserts Apt. 33 was not leased from October 2003 to February 2004. The tenant in Apt. 33 moved January 2004. Respondent leaves the Complainant to their proofs regarding the remaining allegations contained in paragraph 19.

20. Respondent denies that a contract was entered regarding Apt. 2. Respondent leaves the Complainant to their proofs regarding the remaining allegations in paragraph 20. Many of the tenants referenced in paragraph 19 did not occupy the premises for greater than 100 days. The Respondent asserts the alleged contracts were from month-to-month.

21. Respondent denies offering Apt. 2 for lease. Respondent further contests the dates contracts were allegedly entered into regarding Apt. 3 and Apt. 4.

Respondent leaves the Complainant to their proofs regarding the remaining allegations in paragraph 21.

22. Respondent asserts the allegations in paragraph 22 contain a legal conclusion and Respondent leaves the Complainant to their proofs.

23. Respondent asserts the allegations in paragraph 23 contain a legal conclusion and Respondent leaves the Complainant to their proofs.

24. Respondent admits the allegations in paragraph 24.

25. Respondent admits to writing a letter on October 29, 2007. However, the letter was in response to an October 5, 2007 letter from the U.S. EPA. In her letter, Respondent explained how she was in compliance with the alleged violations contained in the U.S. EPA October 5, 2007 letter.

26. Respondent admits the allegations in paragraph 26.

27. Respondent admits the allegations in paragraph 27.

28. Respondent denies the allegations in paragraph 28. Respondent further states that a lease agreement was not entered for Apt. 2.

29. Respondent is without knowledge of the allegations in paragraph 29.

30. Respondent is without knowledge of the allegations in paragraph 30.

31. Respondent denies the allegations in paragraph 31.

32. Respondent is without knowledge of whether a lead warning statement was provided in April 2005, however, the Respondent provided a lead warning statement after August 2005.

33. Respondent is without knowledge of the allegations in paragraph 33.

34. Respondent is without knowledge of the allegations in paragraph 34.

35. Respondent is without knowledge of the allegations in paragraph 35.

36. Respondent is without knowledge of whether a lead warning statement was given in October 2004, however, the Respondent provided such a statement after August 2005.

37. Respondent is without knowledge of the allegations in paragraph 37.

38. Respondent is without knowledge of the allegations in paragraph 38.

39. Respondent denies the allegations in paragraph 39.

40. Respondent admits the allegations in paragraph 40.

41. Respondent admits the allegations in paragraph 41.

42. Respondent denies the allegations in paragraph 42. Respondent further states that a lease was not entered for Apt. 2.

43. Respondent is without knowledge of the allegations in paragraph 43.

44. Respondent is without knowledge of the allegations in paragraph 44.

45. Respondent denies the allegations in paragraph 45.

46. Respondent is without knowledge of whether a disclosure statement was provided in April 2005, however, the Respondent provided said statement after August 2005.

47. Respondent is without knowledge of the allegations in paragraph 47.

48. Respondent is without knowledge of the allegations in paragraph 48.

49. Respondent is without knowledge of the allegations in paragraph 49.

50. Respondent is without knowledge of whether the disclosure statement was provided in October 2004, however, the Respondent provided said statement after August 2005.

51. Respondent is without knowledge of the allegations in paragraph 51.

52. Respondent is without knowledge of the allegations in paragraph 52.

53. Respondent denies the allegations in paragraph 53.
54. Respondent admits the allegations in paragraph 54.
55. Respondent admits the allegations in paragraph 55.
56. Respondent denies the allegations in paragraph 56. Respondent further states a lease was not entered for Apt. 2.
57. Respondent is without knowledge of the allegations in paragraph 57.
58. Respondent is without knowledge of the allegations in paragraph 58.
59. Respondent denies the allegations in paragraph 59.
60. Respondent is without knowledge of whether a list of records or reports were provided on April 1, 2005, however, Respondent provided said list after August 2005.
61. Respondent is without knowledge of the allegations in paragraph 61.
62. Respondent is without knowledge of the allegations in paragraph 62.
63. Respondent is without knowledge of the allegations in paragraph 63.
64. Respondent is without knowledge of whether a list of records were provided to the lessee in October of 2004, however, Respondent provided said list after August 2005.
65. Respondent is without knowledge of the allegations in paragraph 65.
66. Respondent is without knowledge of the allegations in paragraph 66.
67. Respondent denies the allegations in paragraph 67.
68. Respondent admits the allegations in paragraph 68.
69. Respondent admits the allegations in paragraph 69.
70. Respondent denies the allegations in paragraph 70. Respondent further states a lease was not entered for Apt. 2.

71. Respondent is without knowledge of the allegations in paragraph 71.

72. Respondent is without knowledge of the allegations in paragraph 72.

73. Respondent denies the allegations in paragraph 73.

74. Respondent is without knowledge of whether a statement affirming receipt of information was provided in April 2005, however, Respondent provided said statement after August 2005.

75. Respondent is without knowledge of the allegations in paragraph 75.

76. Respondent is without knowledge of the allegations in paragraph 76.

77. Respondent is without knowledge of the allegations in paragraph 77.

78. Respondent is without knowledge of whether a statement affirming receipt of information was provided in October 2004, however, Respondent provided said information after August 2005.

79. Respondent is without knowledge of the allegations in paragraph 79.

80. Respondent is without knowledge of the allegations in paragraph 80.

81. Respondent denies the allegations in paragraph 81.

82. Respondent admits the allegations in paragraph 82.

83. Respondent admits the allegations in paragraph 83.

84. Respondent denies the allegations in paragraph 84. Respondent further alleges a lease was not entered for Apt. 2.

85. Respondent is without knowledge of the allegations in paragraph 85.

86. Respondent is without knowledge of the allegations in paragraph 86.

87. Respondent denies the allegations in paragraph 87.

88. Respondent is without knowledge of whether the signatures were provided in April 2005, however Respondent obtained said signatures after August 2005.

89. Respondent is without knowledge of the allegations in paragraph 89.

90. Respondent is without knowledge of the allegations in paragraph 90.

91. Respondent is without knowledge of the allegations in paragraph 91.

92. Respondent is without knowledge if such signatures were obtained in October 2004, however, Respondent obtained said signatures after August 2005.

Respondent is without knowledge of the allegations in paragraph 92.

93. Respondent is without knowledge of the allegations in paragraph 93.

94. Respondent is without knowledge of the allegations in paragraph 94.

95. Respondent denies the allegations in paragraph 95.

96. Respondent disputes the proposed civil penalty of \$84,830.00. All penalties associated with Apt. 2 should be eliminated because no lease was entered with the Respondent. Thus, the proposed penalty associated with Count 1, Count 12, Count 23, Count 34, and Count 45 should be eliminated. In addition, the premises have undergone substantial renovations to ensure the property is free of lead-based paint. The property has undergone a complete building lead abatement and wall restoration by certified contractors which should eliminate and/or drastically reduce the proposed penalty. Further, any proposed penalty relating to Apt. 3, Apt. 4, Apt. 31, Apt. 33, should not include the time period wherein the apartments were vacant. Many of the units were not occupied for greater than 100 days. Also, the proposed civil penalty greatly exceeds the value of the building.

97. Respondent admits the allegations in paragraph 97. Taking all of the factors as alleged in paragraph 97 into consideration, the Respondent contends the proposed penalty is excessive. In addition, the Respondent has displayed a

cooperative attitude with the U.S. EPA. The Respondent has timely responded to requests and letters by the U.S. EPA.

98. Respondent admits the allegations in paragraph 98.

99. Respondent acknowledges receipt of the September 5, 2007 letter from the U.S. EPA. However, respondent did not identify financial factors which bore on her ability to pay a civil penalty because Respondent believed she was in compliance with the law.

100. The proposed penalty is beyond the financial means of the Respondent to pay. Respondent, a retired senior citizen, is unable to pay.

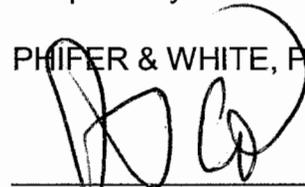
WHEREFORE, Respondent requests a hearing before the Administrative Law Judge and prays this Court will dismiss the Complaint and award her attorney fees and costs incurred in defending this action.

Respectfully submitted,

PHIFER & WHITE, P.C.



Aretha Marshall, Respondent



JEFFREY G. COLLINS (P37260)
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360

DATED: June 18, 2008

AFFIRMATIVE DEFENSES AND/OR MITIGATING FACTORS

1. The Respondent asserts she has taken affirmative steps to abate any lead-based paint on the premises, including but not limited to:

- (i) lead encapsulation of Apt. 23 by a State Certified Asbestos Contractor;

- (ii) paint lead-barrier compound encapsulated building materials with lead-free paint;
- (iii) repair wall plaster and ceilings in the bathroom and bedrooms of Apt. 3;
- (iv) paint Apt. 3 and Apt. 23 with lead-free paint;
- (v) install linoleum flooring in kitchens of Apt. 4 and 34;
- (vi) install new kitchen ceilings in Apt. 4 and paint the kitchen ceilings;
- (vii) complete building lead abatement and wall restoration by certified contractors;
- (viii) thoroughly clean all apartments whenever there is a change of tenants;
- (vii) following encapsulation procedures, the Respondent received approval by the City of Detroit, Buildings and Safety Engineering Department;

2. The Respondents efforts have rendered the premises lead-based paint free or in the alternative, have greatly reduced the risk of exposure to lead-based paint.

3. A lease agreement was not entered regarding Apt. 2.

4. Respondent provided lessees with the publication "Protect Your Family From Lead in Your Home."

5. Respondent provided lessees with the form "Disclosure of Information on Lead Based Paint and/or Lead Based Paint Hazards."

6. The proposed civil penalty as alleged in paragraph 96 is excessive and beyond the Respondent's ability to pay.

7. After August 2005, lessees acknowledged receipt of being provided all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in housing.

8. After August 2005, Respondent provided lessees with a lead warning statement.

9. That at least five of the lessees are senior citizens and falls outside the statutory framework of 42.U.S.C. §4851, et seq.

10. Respondent reserves the right to add additional affirmative defenses.

11. Respondent reserves the right to raise the statute of limitations as an affirmative defense.

REQUEST FOR HEARING

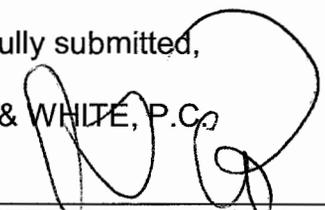
Respondent requests a hearing before an Administrative Law Judge. If possible, the Respondent would request the hearing be held in Detroit, Michigan.

REQUEST FOR SETTLEMENT CONFERENCE

Respondent requests an informal Settlement Conference

Respectfully submitted,

PHIFER & WHITE, P.C.

By: 

JEFFREY G. COLLINS (P37260)
Attorneys for Respondent
1274 Library Street, Suite 500
Detroit, Michigan 48226
(313) 964-2360


Aretha Marshall, Respondent

Dated: June 18, 2008

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:) Docket No. TSCA-05-2008-0008
)
Aretha Marshall)
Detroit, Michigan,)
)
Respondent.)
_____)

PROOF OF SERVICE

Sherri R. Farkas hereby certifies that on the 19th day of June 2008, she filed an original and one copy (via Federal Express) of ***Respondent's Answer to Complaint, Affirmative Defenses and/or Mitigating Factors, Request for Hearing, Request for Settlement Conference*** and this ***Proof of Service*** with the Regional Hearing Clerk (E-13J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604 and a copy of the above documents upon:

JEFFREY A. CAHN (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-6670

Via first class mail by placing said pleadings in an envelope with postage fully prepaid thereon and depositing in a United States Mail receptacle in Detroit, Michigan.

I declare that the above is true to the best of my knowledge, information and belief.



Sherri R. Farkas

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