

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

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IN THE MATTER OF:

My Van Nguyen
Xem Thi Le

70 Meadow Brook Road
Weston, MA 02393

Respondents

Proceeding under Section
16(a) of the
Toxic Substance Control Act,
42 U.S.C. § 2615(a)

Docket No. TSCA-01-2013-0051

ANSWER and

REQUEST FOR A HEARING

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REGIONAL HEARING CLERK
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ANSWER AND REQUEST FOR A HEARING

Pursuant to paragraph 44 of the Complaint and Notice of opportunity for a hearing the Respondents My Van Nguyen and Xem Thi Le hereby request a hearing. As a request for a hearing is required to be accompanied by an answer, the Respondents answer the complaint as follows:

- 1) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 2) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the

understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

- 3) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 4) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents neither admit nor deny the allegations contained in this paragraph, but lacks sufficient information to form a belief as to the facts alleged in this paragraph, and calls upon the Legal Enforcement Manager of the Office of Environmental Stewardship to prove the same, if relevant.
- 5) The corresponding paragraph of the Complaint contains

conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents further answer that the rules and regulations are not clear and should not apply to these properties. The term "target housing" should not apply to these properties as they are functionally equivalent to housing constructed after 1978. Housing constructed prior to 1978 can be untested so the presence of lead is unknown, tested so the presence of lead is known, brought into compliance so that surfaces under five feet that can be bitten and surfaces below or above five feet can become peeling or flaking and release lead dust, or as in this case the house could be so substantially rehabilitated that the entire interior has been covered with sheetrock and all moulding replaced such that there is no portion of the house that was constructed prior to 1978 that is accessible to any tenant or occupant. For example, the house at 47 Savin Hill Avenue suffered a fire in or about 1989 and the entire house was sheet rocked and all windows, doors and moldings were replaced. The entire exterior was covered with vinyl siding and the

porches were replaced. The house is functionally a new house constructed after 1989.

- 6) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 7) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 8) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 9) The corresponding paragraph of the Complaint contains

conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

10) Admitted.

11) Admitted.

12) Admitted.

13) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents further answer that the housing has been so substantially rehabilitated that it is functionally the equivalent of new housing built after 1978.

14) Admitted in part that there was a meeting however the Respondents do not recall the exact date. As to the lease transactions not containing the required disclosure form the Respondents answer that their basement was flooded and many files were lost. They believe that delead certificates and

disclosures were provided to the prospective tenants but the forms have been lost due to a flood at their home.

- 15) The Respondents answer that the public has limited access to such records and that when the public tries to obtain records of inspections and certificates of compliance that the public does not have the same access as the Environmental Protection Agency. Any Massachusetts homeowner trying to obtain such records can contact the Massachusetts Childhood Lead Poisoning Prevention Program but the availability of such records is profoundly deficient. The problem of the public's lack of access to such records happens when a home is purchased in a foreclosure or from an estate. When the seller is unable to pass along inspection reports, or as here when inspection reports are lost or damaged in a flood, the public has no reasonable means to obtain such records. If the regulations were designed to disclose the existence of lead-based paint hazards, then these records would be made available to the public so that both landlords and tenants could easily access these records. The Respondents deny that such records were available to them at the time of the lease transaction.
- 16) The Respondents admit generally such communication however the Respondents do not recall the exact dates. The Respondents further answer that the Boston Housing Authority

was requested to provide such information but has not done so. The Respondents further answer that the Boston Housing Authority is sometimes unable to provide copies of leases and other documents beyond the current year.

- 17) Admitted.
- 18) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

Count I

- 19) The Respondents repeat its answers contained in Paragraphs 1-18, and incorporates them as if fully set forth herein.
- 20) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 21) Denied. The Respondents further answer that at the present time they do not have any proof that they provided the

pamphlet as their records were destroyed in a flood.

- 22) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 23) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

Count II

- 24) The Respondents repeat its answers contained in Paragraphs 1-23, and incorporates them as if fully set forth herein.
- 25) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents

deny the allegations contained in this paragraph.

26) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondent further answers that certain leases are provided by the Boston Housing Authority and the Metropolitan Boston Housing Partnership and the Respondents have no ability to deviate from the leases provided by these agencies. These agencies use state and federal funds and should provide leases that contain the required language.

27) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

28) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an

answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

Count III

- 29) The Respondents repeat its answers contained in Paragraphs 1-28, and incorporates them as if fully set forth herein.
- 30) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 31) Denied. The Respondents deny these allegations however they admit that at the present time they do not have the records and documents to prove that they complied. All such documents were destroyed in a flood at their home. The Respondents further answer that the leases were prepared by the Boston Housing Authority and/or the Metropolitan Boston Housing Partnership and the Respondents relied upon the housing authority that prepared the leases to prepare leases that contained the required disclosures.
- 32) The corresponding paragraph of the Complaint contains

conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

- 33) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

Count IV

- 34) The Respondents repeat its answers contained in Paragraphs 1-33, and incorporates them as if fully set forth herein.
- 35) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 36) The corresponding paragraph of the Complaint contains

conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents could only provide what they had. As many of their documents were destroyed in a flood they had no documents to provide. The Respondents further answer that public access to such documents is profoundly deficient. If a landlord's documents become lost or destroyed they have no reasonable means to obtain copies of such inspection reports or letters of compliance.

37) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

38) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be

required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.

39) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents further answer that any such penalty is unjust and unfair.

40) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents further answer that the proposed penalty fails to take into account their ability to pay. Each property they own is encumbered by a mortgage. The expenses of each property including mortgage payments, real estate taxes, water bills and maintenance do not provide a "profit"

sufficient to pay anything close to the penalty imposed. The proposed penalty would terminate the Respondents ability to continue to do business. The Respondents deny that the penalties proposed reflect their culpability as they had reason to believe that their property was lead safe in every respect.

- 41) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 42) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph.
- 43) The corresponding paragraph of the Complaint contains conclusions of law, and as such, is well beyond the understanding or ability of the Respondents to formulate an answer, and as such no responsive pleading should be

required. Notwithstanding the foregoing, to the extent that the Respondents are required to answer, the Respondents deny the allegations contained in this paragraph. The Respondents ask for a hearing to determine if the penalties imposed are in compliance with the law.

- 44) The Respondents answer that they request a hearing and this request is contained within the answer filed within thirty days of receipt of the Complaint.

44-1) As a defense the Respondents intend to argue that the properties were so substantially rehabilitated that they are functionally equivalent of new construction.

44-2) The Respondents intend to introduce building permits and direct testimony as to the extent of the rehabilitation that was performed on each property.

The Respondents intend to introduce evidence that the leases were prepared by the Boston Housing Authority and/or the Metropolitan Boston Housing Authority and that any deficiencies in the leases should be not be held against the respondents.

The Respondents further answer that they had a limited time to answer this complaint and that they are still investigating any other defenses

that may be available.

- 44-3) A hearing is requested.
- 45) The Respondents should not be defaulted. They have made a reasonable effort to secure counsel and file an answer. If a Fax number or an email address was provided an answer could have been filled one day earlier.
- 46) The Respondents specifically request an opportunity to have an informal settlement conference.

My Van Nguyen
Xem Thi Le
by their attorney,




Stuart T. Schrier
BBO 447190
Schrier & Associates, P. C.
1005 Dorchester Avenue
Boston, MA 02125
(617) 436-1200 (Phone)
(617) 436-5649 (Fax)
Schrieresq@aol.com

CERTIFICATE OF SERVICE

I, Stuart T. Schrier, attorney for the Respondents, do hereby certify that on February 25, 2014, I served Respondent's Answer and Request for Hearing on

Peter DeCambre, Esquire
Senior Enforcement Counsel
U. S. Environmental Protection Agency
5 Post Office Square, Suite 100
Boston, Massachusetts 02108

by United State Post Office Express Mail, postage pre-paid


Stuart T. Schrier