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2010 FEB 26 P 2:10

February 26, 2010

EPA ORC
OFFICE OF
REGIONAL HEARING CLERK

Hand Delivered

Ms. Judy Lao-Ruiz
Acting Regional Hearing Clerk
U.S. EPA, Region 1
John McCormack Building
5 Post Office Square
Suite 100
Boston, MA 02109-3912

Re: In the Matter of PropSys Inc.
Docket No. TSCA-01-2009-0101

Dear Ms. Lao-Ruiz:

Please find enclosed the Respondent's Answer to Complaint, for filing in the above-captioned matter.

Thank you for your kind attention to this matter. Please feel free to call me if you have any questions or concerns.

Sincerely,



Malinda R. Lawrence
Counsel for Respondent, PropSys Inc.

cc: William D. Chin, Enforcement Counsel, U.S. EPA, Region 1
Mr. Lee Griswold, PropSys, Inc.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

2010 FEB 26 P 2: 10

In the Matter of:)
)
PropSys Inc.)
55 Lisbon Street)
Suite 2100)
Lewiston, Maine 04240)
)
Respondent.)
)
Proceeding under Section 16(a) of the)
Toxic Substances Control Act)
42 U.S.C. § 2615(a))
)
)

Docket No.

TSCA-01-2009-0101 ORC
OFFICE OF
REGIONAL HEARING CLERK

**ANSWER
TO COMPLAINT
AND REQUEST FOR
HEARING**

RESPONDENT'S ANSWER TO COMPLAINT AND REQUEST FOR HEARING

NOW COMES the Respondent, PropSys Inc., by and through undersigned counsel, and respectfully answers the complaint filed in the above-captioned matter, and requests a hearing, as follows:

I. STATUTORY AND REGULATORY BACKGROUND

1. Paragraph 1 is an introductory paragraph discussing the statutory authority pursuant to which the Complaint is issued and the identity and nature of the complainant, which requires no answer and which the respondent neither admits nor denies. To the extent Paragraph 1 further contains conclusions of law, these the respondent denies.

2. Paragraph 2 is an introductory paragraph discussing the legislative history of and characterizing the statutory authority pursuant to which the complaint is issued which requires no answer and which the respondent neither admits nor denies.

3. Paragraph 3 is an introductory paragraph identifying the federal regulations promulgated pursuant to the statutory authority pursuant to which the

Complaint is issued which requires no answer and which the respondent neither admits nor denies.

4. Paragraph 4 is an introductory paragraph characterizing the statutory and regulatory authority pursuant to which the Complaint is issued which requires no answer and which the respondent neither admits nor denies, and to the extent that it contains conclusions of law, these the respondent denies.

5. Paragraph 5 is an introductory paragraph characterizing “The Disclosure Rule” which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

6. Paragraph 6 is an introductory paragraph characterizing the statutory authority pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

7. Paragraph 7 is an introductory paragraph characterizing the statutory authority pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

8. Paragraph 8 is an introductory paragraph characterizing the statutory authority pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

II. GENERAL ALLEGATIONS

9. Paragraph 9 contains factual allegations which the respondent denies. By way of further answer the respondent asserts that PropSys Inc. is a corporation established under the laws of the State of Maine with a principal office located at 55 Lisbon Street, Suite 2100, Lewiston, Maine. The respondent admits that it manages

several residential properties in Maine. Respondent admits that it “offers a complete array of property management services, including rental management, tenant placement, maintenance management and full accounting services, with a focus on managing and preserving affordable housing units for low and moderate income families and seniors.”

10. In response to the factual allegations contained in Paragraph 10, the respondent admits that at all times relevant to the Complaint the respondent offered for lease the properties listed in the locations listed in Paragraph 10. The remainder of Paragraph 10 contains conclusions of law which the respondent denies.

11. Paragraph 11 contains conclusions of fact and law which the respondent denies.

12. Paragraph 12 contains conclusions of fact and law that the respondent denies. By way of further answer, the respondent admits that documents identified in Paragraph 12, to wit:

(a) Lead-Based Paint Risk Assessment, July 11, 2003, CentreVille Commons;

(b) Lead Paint Inspection Report, May 5, 2004, Letter of Lead Hazard Control Compliance, June 16, 2005, with attachments, and April 25, 2007 letter to Mark Seltzer, U.S. Dept. of Housing & Urban Development;

(c) Environmental Lead Inspection Report, November 2000, Maple Knoll Apartments; and

(d) Environmental Lead Inspection Report, November 2000, Pleasant View Acres, and April 25, 2007 letter to Mark Seltzer, U.S. Dept. of Housing & Urban Development;

were available to the respondent.

13. In response to the factual allegations contained in Paragraph 13, respondent admits that on July 31, 2007, representatives of EPA Region 1 were present at Respondent's offices in Lewiston, Maine. Respondent lacks sufficient information to admit or deny the remainder of the factual allegations contained in Paragraph 13.

14. In response to the factual allegations contained in Paragraph 14, the respondent admits that in a letter dated February 12, 2008 EPA Region 1 requested additional information from the respondent.

15. In response to the factual allegations contained in Paragraph 15, the respondent admits that on or about March 17, 2008 the respondent submitted additional information to EPA Region 1 in response to its February 12, 2008 letter.

16. In response to the factual allegations contained in Paragraph 16, the respondent admits that representatives of EPA Region 1 were present at Respondent's offices in Lewiston, Maine. The respondent lacks sufficient information to admit or deny the remainder of the factual allegations contained in Paragraph 16.

17. Paragraph 17 contains conclusions of law which the respondent denies.

III. VIOLATIONS

Count I – Failure to Provide Lead Hazard Information Pamphlet

18. The respondent incorporates by reference its answers to paragraphs 1 through 17 and makes them its answer to Paragraph 18 of Count 1.

19. Paragraph 19 contains characterizations and conclusions of law which the respondent denies.

20. Paragraph 20 contains conclusions of fact and law which the respondent denies. By way of further answer, the respondent admits that the 10 apartment units

specified, at the addresses specified, were leased to the individuals specified, through leases dated on the dates specified, and that the specified individuals had the numbers of children specified in Paragraph 20, and that the respondent handled those lease transactions.

21. Paragraph 21 contains allegations of fact and conclusions of law which the respondent denies.

Count 2 – Failure to disclose Presence of Lead-Based Paint/Paint Hazards and to Provide Reports

22. The respondent incorporates by reference its answer to paragraphs 1 through 21 and makes them its answer to paragraph 22 of Count 2.

23. Paragraph 23 is an introductory paragraph characterizing the purportedly-applicable regulations pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

24. Paragraph 24 is an introductory paragraph characterizing the purportedly-applicable regulations pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

25. Paragraph 25 contains allegations of fact and law which the respondent denies. By way of further answer, the respondent admits that that the 8 apartment units specified, at the addresses specified, were leased to the individuals specified, through leases dated on the dates specified, and that the specified individuals resided with the numbers of children specified in Paragraph 25, and that the respondent handled those lease transactions.

26. Paragraph 26 contains allegations of fact and conclusions of law that the respondent denies.

Count 3 – Failure to Include Lead Warning Statement Within or as an Attachment to Lease

27. The respondent incorporates by reference its answers to paragraphs 1 through 26 and makes them its answer to Paragraph 27 of Count 3.

28. Paragraph 28 is an introductory paragraph characterizing the purportedly-applicable regulations pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

29. Paragraph 29 contains allegations of fact and conclusions of law which the respondent denies. By way of further answer, the respondent admits that that the 10 apartment units specified, at the addresses specified, were leased to the individuals specified, through leases dated on the dates specified, and that the specified individuals resided with the numbers of children specified in Paragraph 29, and that the respondent handled those lease transactions.

30. Paragraph 30 contains allegations of fact and conclusions of law that the respondent denies.

Count 4 – Failure to Include Disclosure Statement Regarding Lead-Based Paint/Paint Hazards in Lease.

31. The respondent incorporates by reference its answers to paragraphs 1 through 30 and makes them its answer to Paragraph 31.

32. Paragraph 32 is an introductory paragraph characterizing the purportedly-applicable regulations pursuant to which the complaint is issued which requires no answer and to the extent that it contains conclusions of law these the respondent denies.

33. Paragraph 33 contains allegations of fact and conclusions of law which the respondent denies. By way of further answer, the respondent admits that the 10 apartment units specified, at the addresses specified, were leased to the individuals

specified, through leases dated on the dates specified, and that the specified individuals resided with the numbers of children specified in Paragraph 33, and that the respondent handled those lease transactions.

34. Paragraph 34 contains allegations of fact and conclusions of law which the respondent denies.

IV. PROPOSED PENALTY

35. Paragraph 35 is a summary paragraph characterizing the statutory authority pursuant to which the Complaint is issued which requires no answer.

36. Paragraph 36 contains allegations of fact and conclusions of law which the respondent denies.

37. In response to the allegations contained in paragraph 37, the respondent admits that the Complainant has sought penalties in the amount specified in Paragraph 37, denies that the Complainant is entitled to assessment of such penalties or that such penalties are justified, and to the extent that the remainder of Paragraph 37 contains conclusions of law, these the respondent denies.

V. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

38. Paragraph 38 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer. Respondent admits that it has a right to a hearing on the allegations contained in the Complaint and in fact requests a hearing.

39. Paragraph 39 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

40. Paragraph 40 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

41. Paragraph 41 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

42. Paragraph 42 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

43. Paragraph 43 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

VI. QUICK RESOLUTION

44. Paragraph 44 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer.

VII. SETTLEMENT CONFERENCE

45. Paragraph 45 contains characterizations of the statutory and regulatory authority pursuant to which the Complaint is issued which require no answer. By way of further answer, the respondent states that it already has conferred informally with Complainant and participated in a Settlement Conference, and that it has been and remains willing to pursue reasonable settlement of this matter.

WHEREFORE, the respondent respectfully requests that the Complaint against it be dismissed, and that judgment be entered for the respondent, together with its costs. The respondent requests a hearing on this matter.

SECOND DEFENSE

By way of further answer, Respondent asserts that it is not the legal entity charged in the Complaint.

THIRD DEFENSE

By way of further answer, Respondent asserts that the Complaint was not properly served on the respondent.

FOURTH DEFENSE

By way of further answer, Respondent asserts that some or all of the property units named in the Complaint were lead-based paint free, and that some or all of the property units named in the Complaint were free of lead-based paint hazards at all times relevant to the Complaint, and that the Complaint fails to state a claim for which relief can be granted and should be dismissed.

RESPECTFULLY SUBMITTED:

PropSys Inc.,
Respondent.

By:


Malinda R. Lawrence
Verrill Dana, LLP
One Portland Square
Portland, Maine 04112-0586
(207) 774-4000
mlawrence@verrilldana.com
Counsel for Respondent

Date

2/26/2010

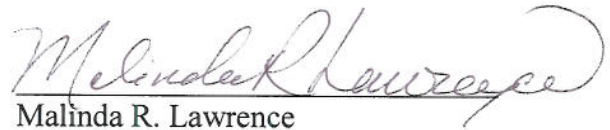
CERTIFICATION OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served on the following counsel of record for the Complainant, Legal Enforcement Manager of the Office of Environmental Stewardship, U.S. Environmental Protection Agency, Region 1 by U.S. Mail, first class postage pre-paid:

William D. Chin
Enforcement Counsel
U.S. EPA, Region 1
One Congress Street
Suite 1100 (Mail Code: SEL)
Boston, Massachusetts 02114-2023

Date: _____

2/26/10

A handwritten signature in dark ink, appearing to read "Malinda R. Lawrence", written over a horizontal line.

Malinda R. Lawrence
Counsel for Respondent