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Attorney for Respondent
HARMONY HOMES, INC.

RECEIVED
U.S. ENVIRONMENTAL PROTECTION AGENCY
PHILADELPHIA, PA

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 ARCH STREET
PHILADELPHIA, PA 19103

IN THE MATTER OF:) Docket No. TSCA-03-2010-0403
)
Harmony Homes, Inc.) **ANSWER TO ADMINISTRATIVE**
) **COMPLAINT**
Respondent)
) **AND**
)
_____) **REQUEST FOR HEARING**

SERVING PARTY: U.S. ENVIRONMENTAL PROTECTION AGENCY

RESPONDING PARTY: HARMONY HOMES, INC.

Respondent Harmony Homes, Inc. ("HHI") answers the United States Environmental Protection Agency's ("EPA") civil administrative complaint as follows:

APPLICABLE STATUTORY AND REGULATORY SECTIONS

1. HHI admits that EPA and Office of Administrative Law Judges have jurisdiction over the above-captioned matter.

2-11. The allegations of Paragraphs 2 through 11 state legal conclusions and statutory definitions that do not require a response.

12-17. The allegations of Paragraphs 12 through 17 restate certain code sections and as legal conclusions do not require a response.

GENERAL ALLEGATIONS

18. HHI incorporates by reference its responses to the allegations contained in Paragraphs 1-17.

19. HHI admits that it is a Maryland corporation, and the balance of the allegations contained in Paragraph 18.

20. HHI denies the allegations in Paragraph 19 as "owner" or "lessor" as those terms are defined in 40 C.F.R. Section 745.103 and with respect to six lease transactions at said properties located in Baltimore City.

21. HHI denies the allegations of Paragraph 20 as those terms are defined in 40 C.F.R. Section 745.103, and denies the remaining allegations of Paragraph 20.

22. HHI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 21 and therefore denies same and demands strict proof thereof.

23. HHI admits the allegations of Paragraph 22.

24. HHI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23, and therefore denies same and demands strict proof thereof.

25. HHI admits the allegations of Paragraph 24.

26. HHI denies the allegations of Paragraph 25.

A. 1805 N. Chester Street (Lease Transaction #1)

- 27. HHI admits the allegations of Paragraph 26.
- 28. HHI denies the allegations of Paragraph 27.
- 29. HHI admits the allegations of Paragraph 28.
- 30. HHI admits the allegations of Paragraph 29.

B. 2522 E. Federal Street (Lease Transaction #2)

- 31. HHI admits the allegations of Paragraph 30.
- 32. HHI denies the allegations of Paragraph 31.
- 33. HHI admits the allegations of Paragraph 32.
- 34. HHI admits the allegations of Paragraph 33.

C. 2607 Llewelyn Ave. (Lease Transaction #3)

- 35. HHI admits the allegations of Paragraph 34.
- 36. HHI denies the allegations of Paragraph 35.
- 37. HHI admits the allegations of Paragraph 36.
- 38. HHI admits the allegations of Paragraph 37.

D. 934 N. Madison St. (Lease Transaction #4)

- 39. HHI admits the allegations of Paragraph 38.
- 40. HHI denies the allegations of Paragraph 39.
- 41. HHI admits the allegations of Paragraph 40.
- 42. HHI admits the allegations of Paragraph 41.

E. 1718 N. Montford Ave. (Lease Transaction #5)

- 43. HHI admits to the allegations of Paragraph 50.
- 44. HHI denies the allegations of Paragraph 51.

45. HHI admits the allegations of Paragraph 52.

46. HHI admits the allegations of Paragraph 53.

F. 1719 N. Montford Ave. (Lease Transaction #6)

47. HHI admits the allegations of Paragraph 54.

48. HHI denies the allegations of Paragraph 55.

49. HHI admits the allegations of Paragraph 56.

50. HHI denies the allegations of Paragraph 57.

G. 617 N. Pulaski St. (Lease Transaction #7)

51. HHI admits to the allegations of Paragraph 58.

52. HHI denies the allegations of Paragraph 59.

53. HHI admits to the allegations of Paragraph 60.

54. HHI admits to the allegations of Paragraph 61.

55. HHI lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 62, and therefore denies same and demands strict proof thereof.

VIOLATIONS

56. HHI denies the allegations of Paragraph 63.

57. HHI denies the allegations of Paragraph 64.

58. HHI denies the allegations of Paragraph 65.

59. HHI denies the allegations of Paragraph 66.

60. HHI denies the allegations of Paragraph 67.

61. HHI denies the allegations of Paragraph 68.

62. HHI denies the allegations of Paragraph 69.

63. HHI denies the allegations of Paragraph 70.

64. HHI denies the allegations of Paragraph 71.

65. HHI denies the allegations of Paragraph 72.

66. HHI denies the allegations of Paragraph 73.

67. HHI denies the allegations of Paragraph 74.

68. HHI denies the allegations of Paragraph 75.

DEFENSES AND OTHER GROUNDS FOR DISMISSAL

FIRST DEFENSE

1. The Civil Administrative Complaint fails to state facts sufficient to warrant the assessment of civil penalties against HHI.

SECOND DEFENSE

2. The Civil Administrative Complaint is fatally flawed in that it fails to adequately describe the relief sought against HHI, including a description of alleged violations for which a penalty is sought and a brief explanation of the severity of each violation, as required by 40 C.F.R. § 22.14(a)(4).

THIRD DEFENSE

3. The assessment of civil penalties against HHI is barred by the doctrines of waiver and estoppel, in that, among other things, the EPA has never sought to impose such penalties in connection with the lease of the Target Housing.

FOURTH DEFENSE

4. The assessment of civil penalties against HHI is barred by the doctrine of laches, and HHI is in substantial compliance with the requirements of the Real Estate

Notification and Disclosure Rule under Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

OPPOSITION TO PROPOSED CIVIL PENALTY


EPA requests a civil penalty of up to \$11,000 for each violation of TSCA. HHI opposes the imposition of such a penalty on several grounds. First, one or more of the defenses outlined above precludes the imposition of any civil penalty on HHI. Second, contrary to the implication of the Civil Administrative Complaint, the alleged violations can, at most, constitute a single one-day violation of TSCA, if such conduct is a violation of TSCA. Third, assuming any penalty is imposed on HHI, such penalty should be far below the maximum allowed based on the lack of history of any prior such violations, lack of ability to pay and / or continue in business, and under the Small Business Policy exception. Fourth, that target housing is found by a certified inspector to have been lead-paint free at the time of the alleged violations and/or reduced risk of exposure of the target housing, mandate reduction of penalty or elimination.

REQUEST FOR HEARING

HHI hereby requests an administrative hearing on the issues raised by the Civil Administrative Complaint and this Answer, and / or for Settlement Conference.

Dated: October 21, 2010

Respectfully submitted for
HARMONY HOMES, INC.
By its attorney,


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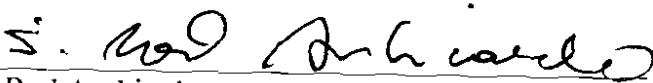
CERTIFICATE OF SERVICE

I hereby certify that on October 21st, 2010, the original and a true copy of the foregoing Answer and Request for Hearing was delivered via first-class mail, postage prepaid, to:

Regional Hearing Clerk (3RC00)
EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and that a true and direct copy of said document was delivered via first-class mail, postage prepaid, to the following:

Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029


S. Rod Acchiardo