

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY

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IN THE MATTER OF: :
:
APARTMENTS R US, LLC : DOCKET NO: TSCA-02-2009-9168
:
RESPONDENT :
:
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**JOINT MOTION FOR AN EXTENSION OF TIME TO FILE CONSENT AGREEMENT
AND FINAL ORDER AND STATUS REPORT**

The parties, Complainant and Respondent, in the above captioned matter, do hereby submit this Joint Motion for an Extension of Time to File Consent Agreement and Final Order (CA/FO) and Status Report in response to Judge Biro's Order dated June 7, 2010.

Motion

By way of this motion, the parties request that Complainant be granted a brief three-week extension of time to comply with the Judge's Prehearing Order.

The parties submit the below Status Report to demonstrate that good cause exists for this motion.

Status Report

First, the parties are pleased to inform the Judge that they have reached a settlement that calls for the Respondent to pay a reduced civil penalty in the amount of \$3,380. The Respondent made an inability to pay argument asserting its poor financial condition, and further asserting it could not afford to pay the proposed penalty in the amount of \$67,600. At EPA's request, Respondent submitted three years of Apartments R Us federal tax returns and other financial documents. On or about May 3, 2010, EPA had its financial contractor run an ABEL analysis of the Respondent's financial information. The ABEL analysis confirmed that Respondent was unable to pay a civil penalty in the amount of \$67,600. However, under the Disclosure Rule Enforcement Response Policy (ERP), if a Respondent volunteers to perform a lead-based paint inspection to have its properties certified as being lead-free or lead-safe from exposure to lead-based paint, EPA can reduce the penalty by up to 95%. On or about May 2010, Respondent performed such lead inspections at its properties. On or about June 1, 2010, Respondent provided EPA with the results of said lead inspections which revealed that any lead present in the tested units, buildings and common areas was below actionable levels. EPA requested and Counsel for Respondent submitted a signed and notarized affidavit from the Respondent's inspector affirming the inspector followed all required HUD and EPA procedures in carrying out

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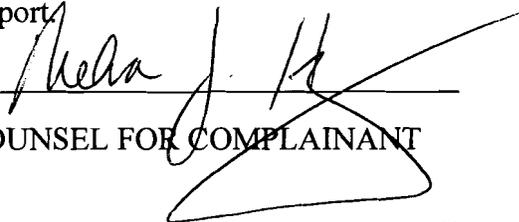
the lead inspection. Furthermore, the parties have memorialized the terms of the settlement in a Consent Agreement and Final Order (CA/FO). At present, the CA/FO package is in the process of undergoing internal concurrence by EPA's program offices and senior managers. After undergoing the internal EPA concurrence process, the CA/FO will be transmitted to Counsel for Respondent for review and signature by Respondent. According to the terms of the settlement, the Respondent has further agreed to pay a cash civil penalty in the amount of \$3,380.

Second, due to vacation and travel schedules around the Independence Day or July 4th Holiday weekend, EPA program staff and Respondent's Counsel may be out of their respective offices. Hence, it may not be possible for the parties to have a fully executed CA/FO by the July 9, 2010 deadline indicated in Judge Biro's Order dated June 7, 2010.

Third, even if Respondent submits the signed CA/FO to EPA via overnight mail by Thursday, July 8, 2010, it is possible that EPA's Regional Judicial Officer would not be available to sign the CA/FO by the current Friday, July 9, 2010 deadline.

As no hearing has been scheduled as yet in this matter, the parties respectfully ask the Court's indulgence and request a brief three-week extension of time until July 30, 2010 for the Complainant to comply with the Judge's Prehearing Order.

For the foregoing reasons, Counsel for EPA and Counsel for Respondent request that the Court grant this joint motion for an extension, if it meets with your approval. Counsel for Respondent concurs on this Joint Motion for an Extension of Time to File CA/FO and Status Report.


COUNSEL FOR COMPLAINANT

Dated: July 1, 2010

Respectfully submitted

Melva J. Hayden, Esquire
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In the Matter of Apartments R Us, LLC, Respondent
Docket No. TSCA-02-2009-9168

CERTIFICATE OF SERVICE

I certify that the foregoing Joint Motion for an Extension of Time to File CA/FO and Status Report has been sent this day to the following addressees listed herein in the manner listed below:

Original and One Copy by Hand to:

Karen Maples
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 2
290 Broadway – 16th Floor
New York, New York 10007-1866

Copy by Facsimile & Certified Mail/
Return Receipt Requested:

The Honorable Susan L. Biro
Chief Administrative Law Judge
Office of Administrative Law Judges
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Copy by Facsimile & Certified Mail/
Return Receipt Requested:

Alan C. Kestenbaum, Esquire
Weil and Kestenbaum
42-40 Bell Boulevard – Suite 302
Bayside, NY 11361

Dated July 1, 2010
New York, NY

Ana Modera