

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

FIVESTAR Realty, Inc.

Respondent

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) Docket No. TSCA-07-2009-0011
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ORDER

Pursuant to 40 C.F.R. § 22.5(a)(1), facsimile filing of page 5 of the Consent Agreement and Final Order is authorized in this proceeding. Counsel for Complainant shall file the original page 5, which shall replace the facsimile of page 5, within one day of receipt of that document from Respondent.

Dated: Nov 23, 2009


Robert L. Patrick
Regional Judicial Officer

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 7

901 N 5th STREET

KANSAS CITY, KANSAS 66101

09 NOV 23 AM 10:41

ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of)

FIVESTAR REALTY, INC.)

Saint Louis, Missouri)

Respondent)

) Docket No. TSCA-07-2009-0011
)
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CONSENT AGREEMENT AND FINAL ORDER

This proceeding for the assessment of a civil penalty was initiated on March 3, 2009, pursuant to § 16(a) of the Toxic Substances Control Act (hereinafter "TSCA"), 15 U.S.C. § 2601 *et seq*, when Complainant issued a Complaint and Notice of Opportunity for Hearing (Complaint) to Respondent, charging violations of the Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F, Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale of Lease of Residential Property (Disclosure Rule), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Hazard Reduction Act of 1992, 42 U.S.C. § 4851 *et seq*. The Complaint proposed a civil penalty of Thirty Four Thousand Two Hundred and Eleven dollars (\$34,211) for these violations.

The parties subsequently entered negotiations in an attempt to settle the allegations contained in the Complaint; this Consent Agreement and Final Order (CA/FO) is the result of such negotiations.

CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint but neither admits nor denies the factual allegations as set forth in the Complaint.
2. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees.
3. Respondent certifies by the signing of this CA/FO that it is presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F.
4. Respondent consents to the issuance of the Final Order hereinafter recited and consents to the payment of a civil penalty as specified in the Final Order.
5. Payment of this civil penalty in full shall resolve all civil and administrative claims for all violations of Section 409 of TSCA, 15 U.S.C. 2689 and 40 C.F.R. Subpart F alleged in this document.
6. Nothing contained in the CA/FO shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits.
7. Respondent understands that its failure to timely pay any portion of the civil penalty described in Paragraph 1 of the Final Order below may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case, interest shall accrue thereon at the applicable statutory rate on the unpaid balance until such civil or stipulated penalty and any accrued interest are paid in full. A late payment handling charge of \$15 will be imposed after thirty (30) days and an

additional \$15 will be charge for each subsequent thirty (30) day period. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

FINAL ORDER

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondent consents to the issuance of the Final Order and consents to the payment of a civil penalty of \$18,000, plus interest of \$313.44 over a period of one year, for a total payment of \$18,313.44. The total civil penalty of \$18,313.44 shall be paid in three installments. The **First payment** of \$6,104.48 is due within thirty (30) days of the effective date of this CA/FO. Respondent shall pay the **Second payment** of \$6,104.48 no later than June 23, 2010. Respondent shall pay the **Third payment** of \$6,104.48 no later than **December 23, 2010**. Payments shall be by Cashier's or Certified Check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference Docket Number TSCA-07-2009-0011.

2. A copy of each check shall be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

Chris Muehlberger
Assistant Regional Counsel
United States Environmental Protection Agency - Region 7
901 N. Fifth Street
Kansas City, Kansas 66101.

3. This executed Consent Agreement and Final Order shall be returned to the
Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas
City, Kansas 66101.

IN THE MATTER OF FiveStar Realty, Inc.
TSCA-07-2009-0011

FOR RESPONDENT:

FIVESTAR REALTY, INC.

Date: 11-20-09

By: Jess B. Stagner

JESS B. STAGNER

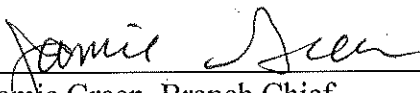
Print Name

IN THE MATTER OF FiveStar Realty, Inc.
TSCA-07-2009-0011


COMPLAINANT:

U. S. ENVIRONMENTAL PROTECTION AGENCY

Date: 11/18/09

By: 
Jamie Green, Branch Chief
Toxics and Pesticides Branch
Water, Wetlands, and Pesticides Division

Date: 11.20.09

By: 
Chris Muehlberger, Assistant Regional Counsel
Office of Regional Counsel

IN THE MATTER OF FiveStar Realty, Inc.
TSCA-07-2009-0011

IT IS SO ORDERED. This Order shall become effective immediately.

Date: Nov. 23, 2009 Robert Patrick
ROBERT L. PATRICK
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 7

IN THE MATTER OF FIVESTAR Realty, Inc., Respondent
Docket No. TSCA-07-2009-0011

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Order and Consent Agreement and Final Order was sent this day in the following manner to the addressees:

Copy hand delivered to
Attorney for Complainant:

Chris Muehlberger
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by Certified Mail Return Receipt to:

Nelson L. Mitten, Esq.
Jennifer L. Geschke, Esq.
Riezman Berger, P.C.
7700 Bonhomme Avenue, 7th Floor
St. Louis, Missouri 63105


Copy by Facsimile and
First Class Pouch Mail to:

The Honorable Susan L. Biro
Chief Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

and

The Honorable Spencer T. Nissen
Administrative Law Judge
U. S. Environmental Protection Agency
Office of Administrative Law Judges
1200 Pennsylvania Avenue, NW
Mail Code 1900L
Washington, D. C. 20005

Dated: 11/23/09


Kathy Robinson
Hearing Clerk, Region 7