



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:  
(C-14J)

December 10, 2012

Judge M. Lisa Buschmann  
Administrative Law Judge  
Office of Administrative Law Judges  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W., Mail Code 1900L  
Washington, D.C. 20460

**Re: In the Matter of: Dessie L. Brumfield, d/b/a/ Brumfield Properties, L.L.C.**  
**Docket No. TSCA-05-2010-0014.**

Dear Judge Buschmann:

Please find enclosed a copy of COMPLAINANT'S REPLY TO RESPONDENT'S POST-HEARING BRIEF for this civil administrative action which I filed today with the Regional Hearing Clerk.

Sincerely,

A handwritten signature in black ink, appearing to read "JM Trevino".

Jeffery M. Trevino  
Associate Regional Counsel

Enclosure

cc: LaDawn Whitehead  
Regional Hearing Clerk  
Region 5  
U.S. Environmental Protection Agency  
77 W. Jackson Boulevard (E-19J)  
Chicago IL 60604-3590

Dessie L. Brumfield  
5067 N. 37<sup>th</sup> St.  
Milwaukee WI 53209

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

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In the Matter of )  
)  
Dessie L. Brumfield d/b/a Brumfield )  
Properties, LLC, )  
)  
Respondent )

Docket No. TSCA-05-2010-0014

**COMPLAINANT’S REPLY TO RESPONDENT’S POST-HEARING BRIEF**

Complainant hereby files its Reply to Respondent’s Post-Hearing Brief pursuant to the Orders of the Court, dated August 14, 2012, and November 28, 2012.

**I. INTRODUCTION**

Complainant requests the court find Respondent’s Post-Hearing Brief, dated November 14, 2012, failed to provide any fact or law contradicting the fact and law Complainant presented to the Court at hearing and in Complainant’s Post-Hearing Brief, dated October 15, 2012. Therefore, Complainant requests the Court issue an Initial Decision which finds Respondent liable for the violations alleged in the action and assesses the proposed civil penalty of \$58,060.00.

**II. RESPONDENT OFFERED UNACCEPTABLE DOCUMENTS**

**A. Respondent Offered Documents Not In the Official Record**

Respondent’s Post-Hearing Brief offered copies of documents which appeared to be a 1) “Section 1018: The Real Estate Notification and Disclosure Rule,” Question and Answer Document; 2) a “U.S. Department of Housing and Urban Development Guidance on the Lead-Based Paint Disclosure Rule; and, 3) an “Interpretive Guidance for the Real Estate Community

of the Requirements for Disclosure of Information Concerning Lead-Based Paint in Housing.”  
(Brief pp. 2 – 17).

However, Respondent failed to provide the Court or Complainant these documents in her Prehearing Exchange as required. Respondent failed to present these documents at hearing. The Court did not enter these documents into the record at hearing.

Therefore, these documents are not in the record and cannot be considered by Complainant and the Court.

**B. Respondent Offered Documents Which Were Unreliable**

Respondent’s copies of these documents were also entirely unreliable. They appeared incomplete, disorganized, heavily edited, with multiple fonts, inconsistent italics and bold printing, and without any explanation.

Therefore, they are also unreliable and cannot be considered by Complainant and the Court.

**C. Respondent Offered Documents Specifically Excluded by the Court**

Respondent’s Post-Hearing Brief also offered copies of two separate forms entitled “Disclosure of Information on Lead-Base-Paint and/or Lead-Based Paint Hazards,” one for Ashley Thompson and another for Deshonna Bennet. (Respondent Brief, pp. 18 and 19; (Respondent Proposed Exhibit Nos. 12 and 14).

However, Respondent presented Complainant and the Court with these two documents at hearing, attempted to enter them into the record, but the Court declined to do so.

Therefore, they are not in the record and cannot be considered by Complainant and the Court.

### **III. RESPONDENT FAILED TO REFUTE COMPLAINANT'S FACT AND LAW**

#### **A. 3074 N. 28<sup>th</sup> Street, Milwaukee, Wisconsin**

Respondent alleged the lease for this property was to a "Ms. Browley a daycare," and was in full compliance with the law. (Respondent's Brief, p. 24). Respondent failed to allege a specific date for the alleged lease, but provided general and vague statements about homebuyers, flexibility to negotiate key terms of evaluations, sellers lessors and real estate agents sharing responsibility to ensure compliance, and limited requirements for target-housing found to be lead-based paint free. (Respondent's Brief, p. 24).

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record about a lease to a "Ms. Browley a daycare," about a lease to a daycare, about a homeowner, or about a finding of any home being "lead-free," as opposed to "lead-safe."

Respondent's allegations were also irrelevant since neither the complaint nor the record included any allegations or evidence for a lease for 3074 N. 28<sup>th</sup> Street, Milwaukee, Wisconsin, for lessee "Ms. Browley." The Complaint and the record included allegations and testimonial and documentary evidence for a lease for 3072 N. 28<sup>th</sup> Street, Milwaukee, Wisconsin, dated January 1, 2009, for lessees Genevieve and Tiffany Carter. (CX 7, 67 – 72, Tr. 166).

#### **B. 2428 W. Brown Street, Milwaukee, Wisconsin**

Respondent alleged the lease for this property was also to a "Ms. Browley a daycare," and in full compliance with the law. (Respondent's Brief, p. 24). Respondent failed to allege a specific date for the alleged lease, but provided general and vague statements about homebuyers, flexibility to negotiate key terms of evaluations, sellers lessors and real estate agents sharing responsibility to ensure compliance, and limited requirements for target-housing found to be lead-based paint free. (Respondent's Brief, pp. 24 and 25).

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record about a lease to a “Ms. Browley,” about a lease to a daycare, about a homeowner, or about a finding of any home being “lead-free,” as opposed to “lead-safe.”

Respondent’s allegations were also irrelevant since neither the complaint nor the record included any allegations or evidence for a lease for 2428 W. Brown Street, Milwaukee, Wisconsin, for lessee “Ms. Browley.” The Complaint and the record included allegations and testimonial and documentary evidence for a lease for 2428 W. Brown Street, Milwaukee, Wisconsin, dated April 15, 2008, for Chrystal Garrison. (CX 7, 95-102; Tr. 181).

**C. 4908 North 40<sup>th</sup> Street, Milwaukee, Wisconsin**

Respondent alleged the lease for this property was to a “Mr. Mario in 2005 and his two boys . . .” (Respondent’s Brief, p. 25). Respondent provided general and vague statements about parties having flexibility to negotiate terms of an evaluation, and the City of Milwaukee stating some inspection is not due for a year. (Respondent’s Brief, p. 25).

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record about a lease to a “Mr. Mario in 2005,” about a lessor or lessee having flexibility to negotiate terms of an evaluation, or the City of Milwaukee stating some inspection is not due for a year, as opposed to the City of Milwaukee Letter, dated October 24, 2006, stating lead hazard reduction work completed at 2428 W. Brown Street, Milwaukee, Wisconsin, had a one-year warranty, and was temporarily “lead-safe,” as opposed to lead-free. (CX 7, 105; RX 7).

Respondent’s allegations were also irrelevant since neither the complaint nor the record include any allegations or evidence for a lease for 4908 N. 40<sup>th</sup> Street, Milwaukee, Wisconsin, for lessee “Mr Mario in 2005.” The Complaint and the record included allegations and

testimonial and documentary evidence for a lease for 4908 N. 40<sup>th</sup> Street, Milwaukee, Wisconsin, dated January 1, 2008, for Elise Moore. (CX 7, 90; Tr. 174).

Complainant agrees with Respondent that the TSCA Lead Disclosure Rule does not require regulated owners and lessors to employ the specific TSCA Lead Disclosure Form. The TSCA Lead Disclosure Rule merely requires regulated owners and lessors to include, as an attachment to a lease or within a lease, the required TSCA Lead Disclosure Information, and before the lessee becomes obligated under the lease. 40 C.F.R. Part 745.

**D. 4908A North 40<sup>th</sup> Street, Milwaukee, Wisconsin**

Respondent alleged the lease for this property was to an unspecified young woman. (Respondent's Brief, p. 25). She provided general and vague statements about parties having flexibility to negotiate terms of an evaluation, and sellers lessors and real estate agents sharing responsibility. (Respondent's Brief, pp. 25 and 26..

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record about a lease to an unspecified young woman, or about a lessor or lessee having flexibility to negotiate terms of an evaluation, or about sellers lessors and real estate agents sharing responsibility.

Respondent's allegations were also irrelevant since neither the complaint nor the record included any allegations or evidence for a lease for 4908A N. 40<sup>th</sup> Street, Milwaukee, Wisconsin, for an unspecified young woman for an unspecified year. The Complaint and the record include allegations and testimonial and documentary evidence for a lease for 4908A N. 40<sup>th</sup> Street, Milwaukee, Wisconsin, dated January 1, 2009, for Ashley Thompson. (CX 7, 83; Tr. 178 and 179).

Complainant agrees with Respondent that the TSCA Lead Disclosure Rule does not require regulated owners and lessors to employ the specific TSCA Lead Disclosure Form. The TSCA Lead Disclosure Rule merely requires regulated owners and lessors to include, as an attachment to a lease or within a lease, the required TSCA Lead Disclosure Information, and before the lessee becomes obligated under the lease. 40 C.F.R. Part 745.

**E. 3463 N. 13<sup>th</sup> Street, Milwaukee, Wisconsin**

Respondent alleged the lease for this property was to an unspecified tenant in an unspecified year. (Respondent's Brief, p. 26). She provides general and vague statements about the need for inspections for target-housing found to be lead-based paint free, and the timeliness of lead-based paint disclosure statements. (Respondent's Brief, p 26).

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record about a lease to an unspecified tenant in an unspecified year, or about the need for inspections for target-housing found to be lead-based paint free, and the timeliness of lead-based paint disclosure statements.

Respondent's allegations were also irrelevant since neither the complaint nor the record included any allegations or evidence for a lease for 3463 N. 13<sup>th</sup> Street, Milwaukee, Wisconsin, for an unspecified tenant in an unspecified year. The Complaint and the record include allegations and testimonial and documentary evidence for a lease for 3463 N. 13<sup>th</sup> Street, Milwaukee, Wisconsin, dated November 28, 2008 and December 1, 2008, for L. Evans and A. Rush. (CX 7, 73- 82; Tr. 171).

Complainant agrees with Respondent that the TSCA Lead Disclosure Rule does not require regulated owners and lessors to employ the specific TSCA Lead Disclosure Form. The TSCA Lead Disclosure Rule merely requires regulated owners and lessors to include, as an

attachment to a lease or within a lease, the required TSCA Lead Disclosure Information, and before the lessee becomes obligated under the lease. 40 C.F.R. Part 745.

**F. 2230 N. Teutonia Road, Milwaukee, Wisconsin**

Finally, Respondent alleged she no longer owned the property at this address.

(Respondent's Brief, p. 26).

However, Respondent failed to cite any supporting testimonial or documentary evidence in the record.

Respondent's allegations were also irrelevant since the issue is not whether she currently owned the single-family dwelling located at this address, but rather whether she owned it at the time of the relevant leases, dated March 1, 2007, and May 15, 2008. (CX 7, 65, 61-64, Tr. 176 and 174).

Furthermore, on October 6, 2004, Respondent gained legal title to the single-family dwelling located at 2230 North Teutonia Road, Milwaukee, Wisconsin. She remained the owner of record as of July 5, 2012. (CX 11, 219-228). Respondent also stated at hearing "My name is Dessie L. Brumfield. . . I am the property owner." (Tr. 5).

**IV. CONCLUSION**

Complainant requests the court find Respondent's Post-Hearing Brief failed to provide any fact or law contradicting the fact and law Complainant presented to the Court at hearing and in Complainant's Post-Hearing Brief.

Therefore, Complainant requests the Court issue an Initial Decision which finds Respondent liable for the violations alleged in the action and assesses the proposed civil penalty of \$58,060.00.

Respectfully submitted,



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Jeffery M. Trevino

John P. Steketee

Associate Regional Counsels

Region 5

U.S. Environmental Protection Agency

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Chicago, IL 60604

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BEFORE THE ADMINISTRATOR

In the Matter of )

Dessie L. Brumfield d/b/a Brumfield )  
Properties, LLC, )

Respondent )

Docket No. TSCA-05-2010-0014

CERTIFICATE OF SERVICE

I hereby certify that today I filed with Ladawn Whitehead, Regional Hearing Clerk, Region 5, U.S. Environmental Protection Agency, 77 West Jackson Boulevard (E-19J), Chicago, Illinois, 60604, the original and one copy of COMPLAINANT'S REPLY TO RESPONDENT'S POST-HEARING BRIEF for this civil administrative action, and issued to the court and Respondent one copy by regular U.S. Mail to the following address:

Judge M. Lisa Buschmann  
Office of the Administrative Law Judges  
U.S. Environmental Protection Agency  
Mail Code 1900L  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460-2001

Dessie L. Brumfield  
5067 North 37<sup>th</sup> Street  
Milwaukee, WI 53290

  
\_\_\_\_\_  
Jeffery M. Trevino  
Associate Regional Counsel

10 December 2012  
\_\_\_\_\_  
Date