

CURLEY & CURLEY P.C.
ATTORNEYS AT LAW
27 SCHOOL STREET
BOSTON MASSACHUSETTS 02108

(617) 523-2990
FACSIMILE (617) 523-7602

ROBERT A. CURLEY, JR
EUGENE F. NOWELL
DAVID D. DOWD
MARTIN J. ROONEY*
LISABETH RYAN KUNDERT
JONI KATZ MACKLER
ROBERT BENEZRA**
EDWARD A. KENDALL
JAMES C. WOOD

*ALSO MEMBER OF NEW HAMPSHIRE BAR
**ALSO MEMBER OF NEW YORK BAR

RECEIVED
2009 JUN 19 P 2:13
ROBERT A. CURLEY - Retired
CLERK
WRITER'S E-MAIL ADDRESS
EAK@CURLEYLAW.COM

June 19, 2009

VIA HAND DELIVERY

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency
Region 1
One Congress Street, Suite 1100 (RAA)
Boston, MA 02114

RE: Environmental Protection Agency v. National Enterprises, Inc., et al.

Dear Ms. Santiago and Mr. Martinez:

Enclosed please find an original and a copy of the Answer and Request for Hearing of National Enterprises, Inc. and MA No. 2, LLC.

Thank you for your attention to this matter.

Very truly yours,
CURLEY & CURLEY, P.C.


Edward A. Kendall, Jr.

EAK, Jr./og
Enclosure

cc: Hugh W. Martinez (enclosing two copies of the Answer and Request for Hearing)

UNITED STATES OF AMERICA
ENVIRONMENTAL PROTECTION AGENCY
REGION 1

RECEIVED

2009 JUN 19 P 2:14

DOCKET NO.:
TSCA-01-2009-0059

CLERK

ENVIRONMENTAL PROTECTION AGENCY,
Complainant,

v.

NATIONAL ENTERPRISES, INC. and
MA NO. 2., LLC,
Respondents.

**ANSWER AND REQUEST FOR HEARING
OF NATIONAL ENTERPRISES, INC. AND MA NO. 2., LLC**

I. STATEMENT OF AUTHORITY

1. Paragraph 1 is an introductory paragraph which requires no response.

II. NATURE OF THE ACTION

2. In response to Paragraph 2, National Enterprises, Inc. (“NEI” or “National”) and MA No. 2, LLC (“MA 2”) (collectively “Respondents”) state that it does appear that the EPA has made the determination alleged.

III. STATUTORY AND REGULATORY BACKGROUND

3. In response to Paragraph 3, the Respondents state that it does appear that the referenced statute was enacted, and further answers that said statute speaks for itself.
4. Paragraph 4 is admitted.

5. The Respondents deny Paragraph 5, as it is an incomplete and misleading summary of the law, and further states that the statute speaks for itself.
6. The Respondents deny Paragraph 6 (a-d), as it is an incomplete and misleading summary of the law, and further states that the statute speaks for itself.
7. The Respondents deny Paragraph 7, as it is an incomplete and misleading summary of the law, and further states that the statute speaks for itself.
8. The Respondents deny Paragraph 8, as it is an incomplete and misleading summary of the law, and further states that the statute speaks for itself.
9. The Respondents deny Paragraph 9, as it is an incomplete and misleading summary of the law, and further states that the statute speaks for itself.

IV. GENERAL ALLEGATIONS

10. Respondent National admits the allegations of Paragraph 10.
11. Respondent MA No. 2 admits the allegations of Paragraph 11.
12. Respondents admit the allegations of Paragraph 12.
13. Respondents deny the allegations of Paragraph 13.
14. In response to Paragraph 14, Respondents state that they are without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 14, and further, the statute speaks for itself.
15. Respondents deny the allegations of Paragraph 15. The apartments at issue in this matter are owned, managed and leased by MA No. 2, LLC as part of the Housing Choice Voucher Program operated by the United States Department of Housing and Urban Development (the program is more commonly referred to as "Section 8"). MA No. 2, LLC provides housing at the Parkview Apartments in Springfield, MA only to low

income families. National Enterprises, Inc. had no active role in the ownership, management and/or leasing of the premises at issue in this Complaint.

16. In response to Paragraph 16, the Respondents admit that a TSCA Subpoena No.: TSCA-01-2006-32 was issued on or around May 8, 2006 and further states that the subpoena speaks for itself.

17. In response to Paragraph 17, the Respondents state that the document responses to Subpoena No.: TSCA-01-2006-32 speak for themselves, and Respondents are without information and knowledge as to what "other information" the EPA may have received.

V. VIOLATIONS

18. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 18 with respect to the EPA's identification of alleged violations.

FIRST COUNT

FAILURE TO PROVIDE LEAD HAZARD INFORMATION PAMPHLET

19. In response to Paragraph 19, the Respondents repeat and incorporate by reference their responses to Paragraphs 1 – 18.

20. The Respondents deny Paragraph 20 as it is an incomplete statement of law.

21. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 21 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.

22. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 22 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.

23. The Respondents deny Paragraph 23.

SECOND COUNT

FAILURE TO DISCLOSE KNOWN LEAD-BASED PAINT/HAZARDS AND PROVIDE RECORDS

24. In response to Paragraph 24, the Respondents repeat and incorporate by reference their responses to Paragraphs 1 – 23.

25. The Respondents deny Paragraph 25 as it is an incomplete statement of law.

26. The Respondents deny Paragraph 26 as it is an incomplete statement of law.

27. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 27 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.

28. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 28 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.

29. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 29 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.

30. The Respondents deny Paragraph 30.

THIRD COUNT

FAILURE TO INCLUDE LEAD WARNING STATEMENT

31. In response to Paragraph 31, the Respondents repeat and incorporate by reference their responses to Paragraphs 1 – 30.

32. The Respondents deny Paragraph 32 as it is an incomplete statement of law.

33. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 33 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.
34. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 34 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.
35. The Respondents deny Paragraph 35.

FOURTH COUNT

FAILURE TO INCLUDE DISCLOSURE STATEMENT REGARDING LEAD-BASED PAINT/HAZARDS

36. In response to Paragraph 36, the Respondents repeat and incorporate by reference their responses to Paragraphs 1 – 35.
37. The Respondents deny Paragraph 37 as it is an incomplete statement of law.
38. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 38 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.
39. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 39 at this time with respect to Respondent MA 2 and deny same as to Respondent NEI.
40. The Respondents deny Paragraph 40.

VI. PROPOSED PENALTY

41. The Respondents deny Paragraph 41 as it is an incomplete statement of law.
42. The Respondents deny Paragraph 42, as it is an incomplete and misleading summary of the law, and further state that the statute and regulations speak for themselves.

43. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 43 (a-d) at this time as to penalties and deny the alleged violations.

44. The Respondents are without knowledge or information sufficient to respond as to the truth of the allegations of Paragraph 44 at this time.

45. The Respondents admit Paragraph 45.

VII. OPPORTUNITY TO REQUEST A HEARING AND FILE ANSWER

46. The Respondents deny Paragraph 46 as it is an incomplete statement of law. The Respondents do request a hearing on this matter.

VIII. DEFAULT ORDER

47. The Respondents deny Paragraph 47 as it is an incomplete statement of law. This paragraph is not applicable to this matter.

IX. SETTLEMENT CONFERENCE

48. The Respondents are willing to discuss a reasonable settlement of this matter.

X. ADDITIONAL MATTERS

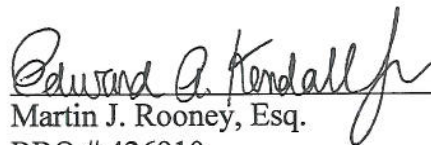
49. MA No. 2, LLC is the owner of the property at issue. MA No. 2., LLC hired a local representative, Ms. Janet Matos, to manage and lease the property during the time period at issue. As stated above, National Enterprises, Inc. had no active role in the ownership, management and/or leasing of the premises at issue in this Complaint. Therefore, National Enterprises, Inc. should not be named in this Complaint as it had no active role in the ownership, management or leasing of the property at issue. MA No. 2, LLC provides housing only to low income families primarily through participation in the Section 8 Program operated by the United States Department of Housing and Urban

Development at the premises at issue or similar programs. Other than their operating funds, MA NO. 2, LLC and National Enterprises, Inc. have negligible resources. Any penalty in this matter would seriously impede the ability of MA No. 2, LLC to continue providing low income Section 8 housing within Springfield, MA and specifically at the Parkview Apartments. In addition, at this time there is no evidence that MA No. 2, LLC ever committed any intentional violations of any disclosure rule, and MA No. 2, LLC has never profited in any fashion from any inadvertent non-disclosures. As there is no evidence that National Enterprises, Inc. played an active role in owning, managing or leasing the premises at issue this Complaint and Counts contained therein should be dropped as to National Enterprises, Inc. The Respondents reserve the right to supplement this response in a timely fashion.

THE RESPONDENTS CLAIM THEIR RIGHT TO A HEARING ON ALL RELEVANT MATTERS.

Respondents,
NATIONAL ENTERPRISES, INC. and
MA NO. 2, LLC,
By their Attorneys,

CURLEY & CURLEY, P.C.

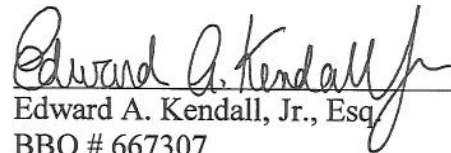


Martin J. Rooney, Esq.
BBO # 426910
Edward A. Kendall, Jr., Esq.
BBO # 667307
27 School Street
Boston, MA 02108
(617) 523-2990

CERTIFICATE OF SERVICE

I, Edward A. Kendall, Jr., hereby certify that I served a true and correct copy of the foregoing pleading by hand delivery to the following counsel of record: Hugh W. Martinez, Senior Enforcement Counsel, U.S. Environmental Protection Agency, Region 1, One Congress Street, Suite 1100 (SEL), Boston, MA 02114-2023 and Wanda I. Santiago, Regional Hearing Clerk, U.S. Environmental Protection Agency-Region 1, One Congress Street, Suite 1100 (RAA), Boston, MA 02114-2023.

Dated: 6/19/09


Edward A. Kendall, Jr., Esq.
BBO # 667307