

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)
)
PAT SARGENT REAL ESTATE,) Docket No. TSCA-06-2008-6104
)
Respondent.)

ORDER REMANDING CASE
TO REGIONAL JUDICIAL OFFICER

The Complaint initiating this proceeding was filed on September 29, 2008, pursuant to the Consolidated Rules of Practice, 40 C.F.R. Part 22 ("Rules"), which govern this proceeding. Rule 22.15(a) thereof required that an "answer" to the Complaint be filed by the Respondent within 30 days. 40 C.F.R. § 22.15(a). On October 29, 2008, the Regional Hearing Clerk stamped as "received" a paper that appears to be a photocopy of page 9 of the Complaint, upon which is handwritten "I request an appeal or a hearing," signed "Pat Sargent," and dated October 25, 2008. On November 5, 2008, a "Joint Motion for Extension of Time to File Answer," was filed by the parties requesting that Respondent be given an extension of 60 days for the filing of its "answer." The Motion further indicated that the parties had agreed to enter into settlement negotiations and hope to reach a settlement.

On January 14, 2009, prior to a ruling on the Motion, but past the 60 day extension period requested therein, the Regional Hearing Clerk forwarded the case file to the Office of Administrative Law Judges (OALJ) for assignment to an Administrative Law Judge for hearing. OALJ subsequently offered the parties an opportunity to participate in its Alternative Dispute Resolution, and counsel for Complainant accepted the invitation.

Rule 22.16(c) provides that "[t]he Regional Judicial Officer . . . shall rule on all motions filed or made *before an answer* to the complaint is filed," and "an Administrative Law Judge shall rule on all motions filed or made *after an answer* is filed . . ." 40 C.F.R. § 22.16(c)(italics added). As to Respondent's "answer," the Rules require that it "clearly and directly admit, deny or explain *each* of the factual allegations contained in the complaint . . ." or include a statement that respondent has no knowledge of a particular factual allegation. 40 C.F.R. § 22.15(b)(italics added). Failure to so respond with respect to any material allegation constitutes an admission of the allegation. 40 C.F.R. § 22.15(d). Respondent is also required to include in its Answer "the circumstances or arguments which are alleged to constitute the grounds of defense; the facts which respondent disputes; the basis for opposing any proposed relief; and "whether a hearing is requested." 40 C.F.R. § 22.15(b).

The paper submitted by Respondent on October 29, 2008, while requesting a hearing, clearly fails to meet the requirements of Rule 22.15(b) for an answer in that it does not respond to *each* of the factual allegations contained in the complaint. That such paper was insufficient to serve as an answer is evident by the parties subsequently filed Joint Motion requesting that Respondent be given additional time to file its "answer."

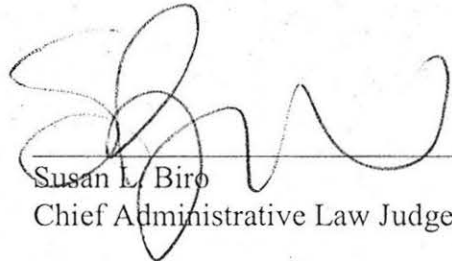
Rule 22.17(a) provides that:

A party may be found to be in default: after motion, upon failure to file a timely answer to the complaint. . . . Default by respondent constitutes, for purposes of the pending proceeding only, an admission of all facts alleged in the Complaint and a waiver of respondent's right to contest such factual allegations. . . .

40 C.F.R. § 22.17(a).

To date, the Complainant has not filed a motion for default in this proceeding based upon Respondent's failure to timely answer the Complaint. In any event, in accordance with Rule 22.16(c), such motion would be ruled upon by the Regional Judicial Officer who is vested with jurisdiction over this matter unless and until an answer meeting the requirements of the Rules is filed.

Accordingly, this matter is hereby **REMANDED** to the Regional Judicial Officer for adjudication.

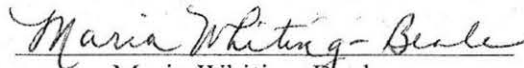

Susan L. Biro
Chief Administrative Law Judge

Dated: February 11, 2009
Washington, D.C.

In the Matter of Pat Sargent Real Estate, Respondent
Docket No. TSCA-06-2008-6104

CERTIFICATE OF SERVICE

I certify that the foregoing **Order Remanding Case To Regional Judicial Officer**, dated February 11, 2009, was sent this day in the following manner to the addressees listed below:


Maria Whiting-Beale
Staff Assistant

Dated: February 11, 2008

Original and One Copy by Pouch Mail to:

Lorena S. Vaughn
Regional Hearing Clerk
U.S. EPA
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

Copy by Pouch Mail to:

Michael C. Barra
Regional Judicial Officer (6RCM)
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Dallas, TX 75202-2733

Rebekah C. Reynolds, Esquire
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Copy by Regular Mail to:

Pat Sargent
1603 N. Highway 67
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