FILED

STATE OF VERMONT
WASHINGTON COUNTY, SS. 2008 MAY 28 P 4: 14

In re: BLACK INK PROPERTY MANAGEMENT, LLC.	))	Washington Superior Court Docket No. 521-9-06 Wncv

SUPERIOR COURT WASHINGTON COUNTY

ASSURANCE OF DISCONTINUANCE

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from Black Ink Property Management, LLC and its owners Jane and Ed Benoit (hereinafter "Black Ink") of Montpelier, Vermont this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

Background

Black Ink is a real estate rental and management company doing business in the State of Vermont. Black Ink provides by signed agreement with the owners of the properties listed in Attachment A (hereinafter, "the owners" and "the properties") maintenance and necessary repair services, among other services, on the properties. Black Ink represents on its website that it ensures that needed maintenance is conducted at the properties it manages.

The properties are residential rentals constructed before 1978, and therefore, are "rental target housing" subject to Vermont's Lead Poisoning Law, including the requirement of annual Essential Maintenance Practices ("EMPs") that are designed to reduce childhood lead poisoning risks. *See* 18 V.S.A. § 1751(19) and 1759. Lead-based paint housing is the primary cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ.

Vermont's Lead Poisoning Law requires that EMPs be performed on all rental target housing and include, but are not limited to, the installation of window well inserts,

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the visual inspection of properties at least annually for deteriorated lead-based paint, the restoration of surfaces to be free of deteriorated lead-based paint within 30 days after such paint has been visually identified, and the posting of lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4) and (7). Vermont's Lead Poisoning Law also requires that an affidavit attesting to EMP performance be filed annually with the Vermont Department of Health and with the property owner's insurance carrier. 18 V.S.A. § 1759(b).

In the last calendar year, Black Ink neither performed EMPs on the properties, nor filed affidavits attesting to EMP performance for the properties with the Vermont Department of Health or with the owner's insurance carriers, nor notified the owners of their obligation to perform EMPs and file affidavits with the Vermont Department of Health and their insurance carrier.

The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices, including untruthful advertising for real estate management. On its website and in its signed agreements with the owners, Black Ink represented that it understands the Vermont Lead Poisoning Law and that it performs necessary maintenance and repair services on the properties. The Attorney General's Office alleges that the properties were not maintained in accordance with Vermont's Lead Poisoning Law and that Black Ink's failure to perform EMPs and file the required affidavits, or to notify owner's of their obligation to do so, violated the Vermont Consumer Fraud Act.

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Injunctive Relief

1. Black Ink agrees to the following EMP compliance schedule for the properties:

   a. All written communication with the Attorney General's Office ("AGO") shall be to:

      Robert F. McDougall, Assistant Attorney General
      Office of the Attorney General
      109 State Street
      Montpelier, VT 05609

   b. Not later than **June 10, 2008**, Black Ink shall determine which properties listed in Attachment A will have EMPs performed by Black Ink (hereinafter "EMP properties"), and send a list of those properties to the AGO.

   c. Not later than **June 10, 2008**, Black Ink shall send to the AGO copies of letters or contracts with all owners listed in Attachment A that are not EMP properties, indicating that the owners will be responsible for performing EMPs on their properties.

   d. Not later than **July 1, 2008**, send to the AGO copies of the EMP Interior Visual Inspection Form and EMP Exterior Visual Inspection Form for each EMP property and each unit therein.

   e. Not later than **August 1, 2008**, or at such later date as the parties agree, Black Ink shall complete EMPs for each unit in an EMP property occupied by one or more child age six or under. However, Black Ink will make every effort to complete EMPs for these properties as soon as possible.

   f. Not later than **July 1, 2008**, Black Ink shall submit a plan to the AGO for completing all EMPs required by the Lead Poisoning Law on the exteriors of the EMP properties, utilizing safe work practices, with priority given to those properties identified as being occupied by one or more child age six or under. It is expected that the plan will have an exterior EMP completion date of not later than **October 15, 2008**. The plan may be approved or amended by the AGO in consultation with Black Ink.

   g. Not later than **October 1, 2008**, or at such later dates as the parties agree, such agreement being made by **July 15, 2008**, Black Ink shall complete all interior EMPs for each EMP property.

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h. In addition to ensuring that each Affidavit of EMP Compliance (or EMP Compliance Statement after **July 1, 2008**) for the EMP properties is filed with the Vermont Department of Health and with each landlord's insurance carrier, Black Ink shall send a copy of each affidavit (or statement) to the AGO.

i. Nothing in this Assurance of Discontinuance shall limit the ability of Black Ink to comply with the Lead Poisoning Law at dates earlier than those specified.

j. In the event that Black Ink wishes by agreement with the AGO to extend any of the dates above, such request must be made by Black Ink at least 10 days in advance of the dates specified in this Assurance of Discontinuance.

2. In the event that a tenant denies Black Ink access needed to complete EMPs required under the terms of this Assurance and where Black Ink immediately substantiates and documents that denial of access to the Attorney General's Office, Black Ink may assert an affirmative defense in an action to enforce the EMP schedule above. Black Ink will bear the burden of demonstrating that the tenant refused to grant proper access despite Black Ink's best efforts to obtain such access.

3. Black Ink agrees to annually notify in writing all current and future "rent only" clients of their obligations under Vermont's Lead Poisoning Law. "Rent only" is used to refer to those clients of Black Ink who have chosen not to utilize Black Ink's maintenance and repair services.

4. If in the future, should Black Ink use Property Rental Agreements (or similar contracts) to document and/or memorialize its business arrangements with "rent only" clients, such Agreements will contain the following language:

> *The Owner and Rental Agent acknowledge that they are familiar with Vermont's Lead Poisoning Law (Title 18 of the Vermont*

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Statutes Annotated, Chapter 38), including the Essential Maintenance Practices requirements. The Owner further acknowledges that it/he/she is responsible for maintaining the property in compliance with Vermont's Lead Poisoning Law and for filing all documents required by such law with the Vermont Department of Health and the Owner's liability insurance carrier.

5. Black Ink agrees to include in all future "Exclusive Right to Rent or Lease Agreement" or similar contracts which reflect the services which Black Ink will provide to current and future clients for whom it provides **more** than "rent only" services, clarification of whether Black Ink or the owner is responsible for compliance with Vermont's Lead Poisoning Law. Should such clarification be lacking, Black Ink agrees that it shall be responsible for compliance with Vermont's Lead Poisoning Law.

6. Black Ink shall prominently incorporate in all future "Exclusive Right to Rent or Lease Agreement" or similar contracts in the "Other items of mutual agreement" section or in a section which deals with repair and maintenance, the following language:

   In any pre-1978 rental building, all repairs and maintenance shall be conducted in accordance with Vermont's Lead Poisoning Law (Title 18 of Vermont Statutes Annotated, Chapter 38) and regulations, including the performance of Essential Maintenance Practices and the prohibitions against unsafe work practices.

7. Notwithstanding the above:

   a. Any currently unoccupied properties: In the case of any of the properties which are not currently occupied, Black Ink shall complete, or shall ensure that the owner has completed, all EMPs before the properties are occupied; and

   b. Future contracts/occupied properties: In the case of any additional **occupied** properties that Black Ink enters into a contract with an owner to provide repair and maintenance services after signing this Assurance of Discontinuance, Black Ink shall complete all EMPs

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within thirty (30) days of the signing of the repair and maintenance contract; and

c. Future contracts/unoccupied properties: In the case of any additional **unoccupied** properties that Black Ink enters into a contract with an owner to provide repair and maintenance services after signing this Assurance of Discontinuance, Black Ink shall complete, or ensure that owner has completed, all EMPs prior to occupancy.

Penalties

1. Black Ink shall pay a civil penalty of five thousand dollars ($5,000.00) to the State of Vermont. Payment shall be sent to:

   Robert F. McDougall, Assistant Attorney General
   Office of the Attorney General
   109 State Street
   Montpelier, Vermont 05609

2. The penalties in the preceding paragraph shall be waived by the Attorney General's Office if Black Ink fully completes the Injunctive Relief provisions set forth above in the time and manner described.

3. Future violations of this Assurance of Discontinuance shall be subject to a minimum penalty of $500.00 per violation up to the maximum provided by law. Black Ink understands that any violation of this Assurance of Discontinuance may result in the imposition of additional civil penalties and further sanctions.

Binding Effect

1. Black Ink acknowledges that it enters into this agreement freely and that it has had a fair opportunity to have this Assurance of Discontinuance reviewed by an attorney on its behalf prior to signing.

2. This Assurance of Discontinuance is binding upon Black Ink, its owners, its assigns and successors.

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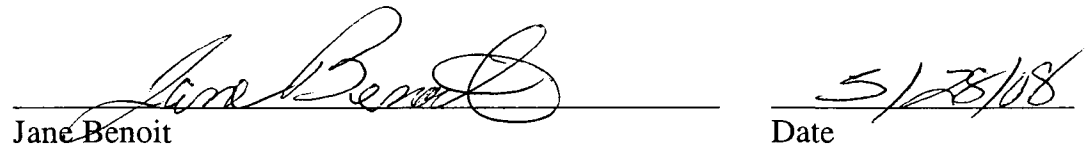
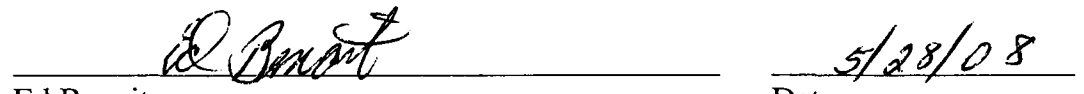
3. This Assurance of Discontinuance does not in any way alter any other obligation Black Ink and its owners have under State, federal or local law and resolves only the allegations set forth in this document.

Signatures

By signing below, Black Ink and its owners jointly and individually agree that the facts contained in the section entitled "Background" are true and voluntarily agree to and submit to the terms of this Assurance of Discontinuance.



Jane Benoit — Date 5/28/08



Ed Benoit — Date 5/28/08

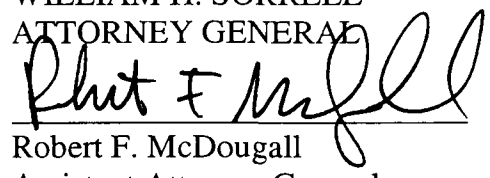
Acceptance

In lieu of instating an action or proceeding against Black Ink and its owners, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance.

DATED at Montpelier, Vermont this 28th day of May, 2008

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Robert F. McDougall
Assistant Attorney General
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ATTACHMENT A

BLACK INK RENTAL PROPERTY LIST

Property Address	*Town*
51 Upper Cherry Street	Hardwick
51 Upper Cherry Street	Hardwick
51 Upper Cherry Street	Hardwick
51 Upper Cherry Street	Hardwick
75 Prospect Street	Barre
75 Prospect Street	Barre
75 Prospect Street	Barre
75 Prospect Street	Barre
75 Prospect Street	Barre
75 Prospect Street	Barre
39 Main Street	Plainfield
39 Main Street	Plainfield
39 Main Street	Plainfield
39 Main Street	Plainfield
39 Main Street	Plainfield
19 Elmwood Ave	Barre
19 Elmwood Ave	Barre
19 Elmwood Ave	Barre
19 Elmwood Ave	Barre
19 Elmwood Ave	Barre
95 Seminary Street	Barre
95 Seminary Street	Barre
97 Seminary Street	Barre
97 Seminary Street	Barre
Maple Ave Deli	Barre
100 Summer Street	Barre
100 Summer Street	Barre
100 Summer Street	Barre
100 Summer Street	Barre
14 Academy Street	Barre
16 Academy Street	Barre
18 Academy Street	Barre
1 East Street	Barre
1 East Street	Barre
1 East Street	Barre
1 East Street	Barre
1 East Street	Barre
22 Cliff Street	Barre
22 Cliff Street	Barre
22 Cliff Street	Barre
10 Central Street	Randolph

Property Address	*Town*
38 Bethel Drive	Bethel
22 Cliff Street	Barre
24 Cliff Street	Barre
24 Cliff Street	Barre
24 Cliff Street	Barre
24 Cliff Street	Barre
16 Averill Street	Barre
18 Averill Street	Barre
20 Averill Street	Barre
20 Averill Street	Barre
20-1/2 Averill Street	Barre
22 Averill Street	Barre
22-1/2 Averill Street	Barre
14 East Street	Barre
14 East Street	Barre
14 East Street	Barre
14 East Street	Barre
14 East Street	Barre
14 East Street	Barre
161-163 Washington	Barre
161-163 Washington	Barre
161-163 Washington	Barre
161-163 Washington	Barre
161-163 Washington	Barre
161-163 Washington	Barre
21-23 Highland Ave	Barre
21-23 Highland Ave	Barre
21-23 Highland Ave	Barre
21-23 Highland Ave	Barre
21-23 Highland Ave	Barre
21-23 Highland Ave	Barre
67 Perry Street	Barre
69 Perry Street	Barre
69 Perry Street	Barre
69 Perry Street	Barre
69 Perry Street	Barre
71A Perry Street	Barre
71B Perry Street	Barre
13 Vine Street	Montpelier
13 Vine Street	Montpelier

Property Address	*Town*
13 Vine Street	Montpelier
13 Vine Street	Montpelier
11 Cross Street	Montpelier
27 Terrace Street	Montpelier
1673 Stone Road	Williamstown
14 Velie Ave	Barre
78 Cox Brook Road	Northfield Falls
3 Cross Street	Montpelier
95 Highland Street	Northfield
74 West Road	Barre Town
19 Kent Street	Montpelier
? US Route 302	East Topsham
? East Hill Road	Plainfield
17 Camp Street	Barre
3 Birchwood Park	Barre
27 Ridge Street	Montpelier
97 Kent Hill Road	Calais
30 Guillmette Road	Middlesex
6268 Hollister Hill Road	Plainfield
269 Main Street	Montpelier
269 Main Street	Montpelier
228 Walker Road	Berlin
333 Lower State Street	Montpelier
255 Royce Road	Roxbury
113 West Hill View Drive	Cambridge
17 West Hill View Drive	Cambridge
147 Berlin Street	Montpelier
140 Factory Street	Montpelier
260 Elm Street	Montpelier
260 Elm Street	Montpelier
3 Long Street	Barre
670 Cherry Tree Hill Road	East Montpelier
1009 Hollister Hill	Plainfield
4167 US Route 12	Berlin
2 Foster Street	Barre
43 Spruce Grove	Waterbury Center
90 Tremont Street	Barre
387 Carey Road	Hardwick
608 Adamant Road	Adamant
37 Forrest Street	Randolph