STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2011 AUG 30 P 12:44

CIVIL DIVISION
Docket No. Wncv
54 8 11

STATE OF VERMONT,
Plaintiff,

v.

SET ONE PROPERTIES,
Defendant.

**ASSURANCE OF DISCONTINUANCE**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and hereby accepts from Set One Properties ("Defendant") this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459.

**Background**

Defendant is the owners of the following properties (hereinafter "the properties"):

**9 Summer Street, Barre, VT – 5 units**
**48 Maple Avenue, Barre, VT – 5 units**

The properties are residential rental properties constructed before 1978 and are therefore subject to Vermont's lead law, including the requirement of annual essential maintenance practices ("EMPs") that are designed to reduce childhood lead poisoning risks. 18 V.S.A. § § 1751(19), 1759. Lead-based paint in housing, the focus of the Vermont lead law, is a leading cause of childhood lead poisoning, which can result in adverse health effects, including decreases in IQ. All paint in pre-1978 housing is presumed to be lead-based unless a certified inspector has determined that it is not lead-based. 18 V.S.A. § 1759(a).

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to the owner, and posting lead paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4) and (7). The Vermont lead law requires owners of rental housing to file annual compliance statements attesting to EMP performance with the Vermont Department of Health and with the owner's insurance carrier. 18 V.S.A § 1759(b). A copy of the compliance statement must be given to all tenants and to new tenants prior to entering into a lease agreement. 18 V.S.A. § 1759(b)(3) and (4).

The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices, including the offering for rent, or the renting of, housing that is non-compliant with the lead law.

A violation of the Vermont lead law may result in a maximum civil penalty of $10,000.00. 18 V.S.A. § 130(b)(6). Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6). Violations of the Consumer Fraud Act are subject to a civil penalty of up to $10,000.00 per violation. 9 V.S.A. §2458(b)(1). Each day that a violation continues is a separate violation.

The properties are not currently in compliance with the Vermont lead law. Defendant has informed the State of its intention to complete the EMP work necessary at the properties but do not expect that the work will be complete until September 30, 2011.

**Office of the ATTORNEY GENERAL**
**109 State Street**
**Montpelier, VT 05609**

## INJUNCTIVE RELIEF

Defendant agrees to the following:

1. Defendant shall immediately ensure that access to exterior surfaces and components of the properties with lead hazards and areas directly below the deteriorated surfaces are clearly restricted as described in 18 V.S.A. § 1759(a)(3).
2. Defendant shall give priority to completion of EMPs at any of the properties where a child age 6 or under is residing.
3. Not later than **September 30, 2011** all EMP work, interior and exterior, shall be completed at both of the properties.
4. Upon completion of the EMPs at the properties, but no later than October 10, 2011, Defendant will file with the Vermont Department of Health and Defendant's insurance carrier(s), a completed EMP compliance statement for the property, and will give a copy to an adult in each rented unit of the compliance statement for the property.
5. Upon completion of EMPs at the properties, Defendant shall also provide proof of completion to the Office of the Attorney General at the following address: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609. A copy of the EMP compliance statement for each property shall be sufficient proof of completion.
6. All work performed at the properties, whether by Defendant, its employees, or by hired contractors and/or painting companies, shall be performed using safe work practices consistent with 18 V.S.A. § 1760. Contractors and/or painting companies must have all necessary certifications and licenses required to perform

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

the work. It shall be the obligation of Defendant to ensure that any contractors and/or painting companies they hires to perform EMP work are aware of the provisions of 18 V.S.A. § 1760, intend to use safe work practices at the properties and are properly licensed and certified.

7. If Defendant anticipates not being able to fully comply with the deadlines for EMP compliance solely due to delays relating to contractors and/or painting companies hired to perform the EMP work, Defendant may request an extension of the deadline from the Attorney General's Office. Such request shall be made as soon as the delay is recognized and must include an approximate date by which the work shall be complete.

8. In the event that Defendant wishes by agreement with the Office of the Attorney General to extend any of the dates above for reasons not relating to delays caused by contractors and/or painting companies hired to perform the EMP work, such request must be made by Defendant at least 10 days in advance of the dates specified in this Assurance of Discontinuance.

9. Defendant shall fully and timely comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38, as long as it maintains any ownership interest in the properties listed in Attachment A or in any other pre-1978 residential housing in which it currently has or later acquires an ownership interest or provides property management services (unless by property management contract the Defendant is explicitly not responsible for EMPs).

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

## PENALTIES

10. Defendant shall pay civil penalties of five thousand ($5,000.00). Payment shall be due October 20, 2011, and payment made to the "State of Vermont" and shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
11. If Defendant complies with the EMP requirements of this Assurance of Discontinuance set forth in paragraphs 1 through 6 above, the penalties provided in paragraph 10 shall be waived by the State of Vermont.
12. The filing of the EMP compliance statements for the properties by October 10, 2011, as described in paragraphs 4 and 7, shall be considered compliance with the requirements of this Assurance of Discontinuance. If, however, it is determined that the filed EMP compliance statements are not accurate, the State may pursue the penalties in paragraph 10 in addition to any other appropriate action under the Vermont lead law.

## OTHER RELIEF

13. This Assurance of Discontinuance is binding on Defendant, however, sale of any of the properties may not occur unless all obligations set forth herein have been completed or this Assurance of Discontinuance is amended in writing to transfer to the buyer or other transferee all remaining obligations.
14. Transfer of ownership of any of the properties shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767, specifically relating to the transfer of ownership of target housing.
15. This Assurance of Discontinuance shall not affect marketability of title.

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

16. Should Defendant fully transfer or sell its ownership interest in any of the properties after completing all obligations set forth herein, its obligations with respect to that particular property under this Assurance of Discontinuance is extinguished. However, nothing in this Assurance of Discontinuance in any way affects the obligations of future owners of any of the properties under Vermont law, including under the Vermont lead law.
17. Nothing in this Assurance of Discontinuance in any way affects Defendant's other obligations under state, local, or federal law.
18. Any future failure by Defendant to comply with the Vermont lead law at any of the properties referenced in this Assurance of Discontinuance, or violations of the terms of this Assurance of Discontinuance, shall be subject to additional penalties of no less than $10,000.00 per violation per day for each day the violation exists.

**Signature**

By signing below, Defendant acknowledges and agrees that the facts contained in the section entitled "Background" are true and voluntarily agrees to and submits to the terms of this Assurance of Discontinuance.

DATED at COLCHESTER, Vermont this 23 day of AUGUST, 2011.

Dawn Terrill, as authorized agent and co-owner of Set One Properties

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

**Acceptance**

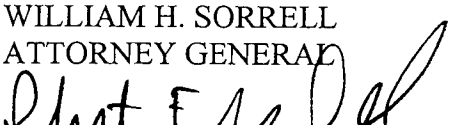
In lieu of instituting an action or proceeding against Defendant, the Office of the Attorney General, pursuant to 9 V.S.A. § 2459, accepts this Assurance of Discontinuance.

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 30th day of August, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.3186

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609