

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

STATE OF VERMONT, )  
Plaintiff, )  
 )  
v. ) Washington Superior Court  
 ) Docket No. 816-10-09Wncv  
DENNIS LAFERRIERE, )  
Defendant. )

**COMPLAINT**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, pursuant to the Vermont lead law, 18 V.S.A., Chapter 38, the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, and 18 V.S.A. §130; and hereby makes the following Complaint against Dennis Laferriere who owns a rental property at 298 Main Street in Lyndonville, Vermont, and has (1) filed a false Affidavit of Performance of Essential Maintenance Practices with the State of Vermont; (2) engaged in deceptive acts and practices in commerce in violation of 9 V.S.A. § 2453(a); and (3) failed to comply with the terms of an Assurance of Discontinuance and Judgment Order.

**ALLEGATIONS**

*The Parties*

1. Dennis Laferriere (“Defendant”) is the owner of rental property located at 298 Main Street in Lyndonville, Vermont (“the property”). The property has four rental units.
2. The property is pre-1978 “target housing” within the meaning of Vermont’s lead law, 18 V.S.A. § 1751(19), and is subject to the requirements of 18 V.S.A. Chapter 38.
3. The Attorney General has the right to appear in any civil action in which the State is interested when, in his judgment, the interests of the State so require.

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

3 V.S.A. § 157.

4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding the habitability of housing.

*Statutory Scheme*

5. 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.
6. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all rental target housing. 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).
7. EMPs include, but are not limited to, installing window well inserts, visually inspecting properties at least annually for deteriorated lead-based paint, restoring surfaces to be free of deteriorated paint within 30 days after such paint has been visually identified or reported to the owner by a tenant, and posting lead-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a)(2), (4), and (7).
8. The Vermont lead law also requires that the owners of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and the owners’ insurance carrier. 18 V.S.A. § 1759(b).
9. Owners of rental target housing are required by the Vermont lead law to “take reasonable care to prevent exposure to, and the creation of, lead hazards.” 18 V.S.A. § 1761(a).

10. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, including renting of housing that is noncompliant with the lead law.
11. Violations of the Vermont lead law are subject to a civil penalty up to \$10,000 per violation, 18 V.S.A. § 130, and in the case of a continuing violation, each day's continuance may be deemed a separate violation. 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).

***Facts Relating to Defendant***

12. Defendant Dennis Laferriere is the owner of the property, which he has in the past, and continues presently, to rent and offer for rent.
13. In May 2008, the Vermont Department of Health began contact with Defendant concerning his failure to perform EMPs at the property.
14. On May 30, 2008, Defendant and the Department of Health entered into an Assurance of Discontinuance ("AOD") concerning the property. Attachment A (*In re: Dennis Laferriere*, Docket No. S0744-08 CnC, Assurance of Discontinuance, May 30, 2008). The AOD required that Defendant perform EMPs at the property and comply with the Department's work plan to address identified lead hazards within Defendant's control by June 14, 2008.
15. The AOD was filed in Chittenden Superior Court on May 30, 2008, and the Chittenden Superior Court accepted its terms via Judgment Order dated July 15, 2008. Attachment B (*In re: Dennis Laferriere*, Docket No. S0744-08 CnC,

Judgment Order (Katz, M., July 15, 2008)). The work plan described in paragraph 15 was incorporated into the AOD.

16. On June 5, 2008, the Department of Health received an Affidavit of Performance of Essential Maintenance Practices<sup>1</sup> for the property. Attachment C (Affidavit of Performance of Essential Maintenance Practices, received June 5, 2008). The Affidavit was signed by Defendant and notarized.
17. The Department of Health inspected the property for compliance on June 18, 2008, and July 3, 2008. During each of those visits the Department found the property not to be in EMP compliance. Additionally, at that time, the requirements of the work plan to address lead hazards had not been complied with or completed by the dates required under the AOD.
18. The Department of Health has no record of an EMP Compliance Statement being filed for the property in 2009. An EMP Compliance Statement should have been filed on June 5, 2009, one year from the date of the 2008 filing. 18 V.S.A. § 1759.
19. The Department of Health currently has no evidence to demonstrate that EMPs have been completed at the property in 2009.

**FIRST CAUSE OF ACTION – Consumer Fraud Act: false affidavit**

20. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.

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<sup>1</sup> Prior to July 1, 2008, owners of pre-1978 rental housing were required to file an Affidavit of Performance of Essential Maintenance Practices demonstrating EMP compliance annually with the Department of Health and the owner's insurance carrier. Since July 1, 2008, owners of pre-1978 rental housing are required to annually file an EMP Compliance Statement (which need not be notarized) annually with the Department of Health, the owner's insurance carrier, and tenants at each unit in the property. 18 V.S.A. § 1759(b)(1)-(3).

21. By submitting a false Affidavit of Performance of Essential Maintenance Practices to the State of Vermont in June 2008 and inaccurately representing that the property was in compliance with the lead law, Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act. 9 V.S.A. § 2453(a).

22. 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).

23. Each day that a violation continues is a separate violation.

**SECOND CAUSE OF ACTION – Consumer Fraud Act: rental of substandard housing**

24. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.

25. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, 18. V.S.A. § 1759, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act. 9 V.S.A. § 2453(a).

26. 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).

27. Each day that a violation continues is a separate violation.

**THIRD CAUSE OF ACTION – Failure to comply with Assurance of Discontinuance and Judgment Order**

28. Defendant entered into an Assurance of Discontinuance with the Department of Health. That AOD was filed in Chittenden Superior Court on May 30, 2008, and accepted by that Court via Judgment Order dated July 15, 2008.
29. Defendant violated the terms of the AOD and Judgment Order by failing to perform EMPs at the property as required by 18 V.S.A. § 1759.
30. By the terms of the AOD and Judgment Order, Defendant is liable for civil penalties in the amount of: \$250 per unit for failure to file an Affidavit of Performance of Essential Maintenance Practices; \$800 per unit at the property for failing to perform EMPs; and additional penalties of \$100 per unit, per day for non-compliance with the Judgment Order beginning June 5, 2009.
31. The property has four units and therefore Defendant, per the terms of the AOD and Judgment Order, is liable as of October 27, 2009, for a total of \$61,800.00 in damages.<sup>2</sup>

**RELIEF SOUGHT**

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully asks the Court to award the following relief:

1. An Order finding that Defendant has violated 18 V.S.A. § 1759 and that the violation is continuing.
2. An Order finding that Defendant violated 9 V.S.A. § 2453(a) by filing a false Affidavit of Performance of Essential Maintenance Practices for the property with the State of Vermont in June 2008.

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<sup>2</sup> The \$61,800.00 is arrived at as follows: (\$250 x 4 = \$1,000) + (\$800 x 4 = \$3,200) + (\$400 (\$100 for each unit) x 144 days between June 14, 2008 and July 31, 2008 = \$57,600).

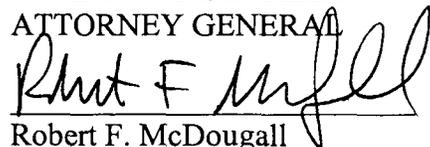
3. An Order finding that Defendant violated 9 V.S.A. § 2453(a) by renting or offering for rent property that is not in compliance with the Vermont lead law and that the violation is continuing.
4. An Order finding that Defendant violated the terms of the AOD and Judgment Order filed in Chittenden Superior Court.
5. Civil penalties of not more than \$10,000.00 for each violation of the lead law.
6. Civil penalties of not more than \$10,000.00 for each violation of the Consumer Fraud Act.
7. Civil penalties of \$61,800.00 for non-compliance with the terms of the AOD and Judgment Order.
8. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
9. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 27<sup>th</sup> day of October, 2009.

Respectfully submitted,

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

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State of Vermont  
County of Chittenden, SS

In Re:

Dennis Laferriere	)	Chittenden Superior Court
525 Wightman Road	)	Docket No. _____
Danville, Vt 05828	)	

ASSURANCE OF DISCONTINUANCE

In accordance with 18 VSA § 125, the Commissioner of the Department of Health hereby accepts this assurance from Dennis Laferriere.

**I**      Assurance

I, Dennis Laferriere hereby state, agree, and assure as follows:

- 1) I am the owner of record of property located at 298 Main Street in Lyndonville.
- 2) I agree to supply the Vermont Department of Health with a full listing of the addresses of all rental properties I own and manage in the state of Vermont.
- 3) I understand and accept that the Vermont Lead Law Chapter 38, Title 18 applies to this property.
- 4) Under 18 VSA § 1759 I must annually complete Essential Maintenance Practices and submit an Affidavit of Performance to the Vermont Department of Health and my liability insurance carrier.
- 5) To date I have not filed an Affidavit or completed Essential Maintenance Practices on the property noted above.

- 6) The Vermont Department of Health informs me that the following work needs to be done at the above property immediately:

Follow the below work plan for work in the affected unit, common areas and exterior.

Perform all other Essential Maintenance Practices (EMPs) in all units at the property and sign and file an affidavit for the property with my liability insurance carrier and the Department in accordance with 18 VSA § 1759.

**INTERIOR**

Room	Component	Comments	Work Deadline
All in Apt. 2 (tenant-Michelle White)	Any painted and/or stained components, including porches	Ensure all painted components inside the apartment are intact. Use lead-safe work practices and all work will be done by an EMP certified person. Once the paint stabilization is complete all horizontal surfaces will be cleaning using lead-safe methods.	06/13/08
Other units in building	Any painted and/or stained components	Ensure all units are in compliance with the Vermont Lead Law. Use lead-safe work practices and all work will be done by an EMP certified person.	06/13/08

**EXTERIOR**

Building	Component	Comments	Work Deadline
Main House	Any painted and/or stained surfaces	Ensure all surfaces are in compliance with the Vermont Lead Law. Use lead-safe work practices and all work will be done by an EMP certified person.	06/13/08

Perform all other Essential Maintenance Practices (EMPs) in all units at the property and sign and file an affidavit for the property with my liability insurance carrier and the Department in accordance with 18 VSA § 1759.

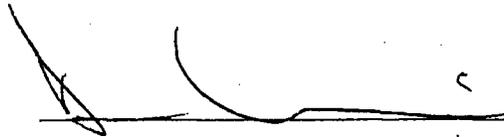
Interior work will be completed by 06/13/08. Exterior work will be completed by 06/13/08. All other requirements of the Vermont Lead Law also need to be met. The enclosed work plan details the required work in the specific unit. Units not included in the work plan should be also brought into EMP compliance.

- 7) ~~I assure that the above-described work will be completed by an EMP certified person.~~  
The precautions outlined in the Department of Health's EMP manual will be followed in completing the work.
- 8) I understand that failure to remove a public health hazard or a violation of 18 VSA § 1759(a) may result in a civil penalty of up to \$10,000.00 under 18 VSA § 130(b)(6).
- 9) At this time a penalty in the amount of \$250 per unit for failure to file an affidavit and \$800 per unit for failure to complete essential maintenance practices has been assessed for violations of 18 VSA § 1759 under 18 VSA § 130(b)(6). Checks should be payable to the Vermont Department of Health and mailed to the attention of Dixie Henry, 108 Cherry Street, Box 70, Burlington, Vermont 05401.
- 10) The penalty stipulated in number 9 above will be waived if full compliance is achieved by 06/13/08 for interior work and by 06/13/08 for exterior work.
- 11) Additional penalties in the amount of \$100 per unit per day will be assessed for non-compliance with 18 VSA § 1759 and this Assurance of Discontinuance beginning 06/14/08 for interior work and by 06/14/08 for exterior work.
- 12) I understand the burden of proof of compliance with VSA §.1759 is my responsibility.
- 13) The Vermont Department of Health will assess compliance with VSA § 1759 by my submission of an Affidavit of Performance of Essential Maintenance Practices and a visual inspection and dust clearance to ensure completion of essential maintenance

practices in the affected unit and a visual inspection of all other units in the building by a Vermont Department of Health designated Inspector/Risk Assessor on or before 06/13/08 for interior work and by 06/13/08 for exterior work.

- 14) I understand it is my responsibility to set up a date for an inspection after full compliance has been reached, but before 06/13/08. I will call Erica Holub at 1-802-863-7380 to arrange for this inspection.
- 15) The inspection is provided at my expense and I will be billed by the Vermont Department of Health or designee for the costs of the time and travel of the Inspector/Risk Assessor not to exceed \$200 per property.
- 16) My signature to this Assurance of Discontinuance in no way releases me from civil or criminal penalties in the future for failure to comply with this or other future actions taken with respect to my ownership of the above named property.
- 17) Compliance with VSA § 1759 will be monitored for 2 consecutive years once initial compliance is reached. During these 2 years the Vermont Department of Health has the authority to inspect my property and records.

Dated: 5/14/08

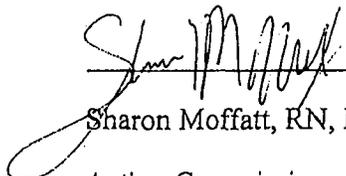


Dennis Laferriere

II Acceptance

In lieu of instituting an action or proceeding against Dennis Laferriere, I hereby accept the above assurance from Dennis Laferriere.

Dated: 5/20/08

  
\_\_\_\_\_  
Sharon Moffatt, RN, MSN  
Acting Commissioner of Health

III Order

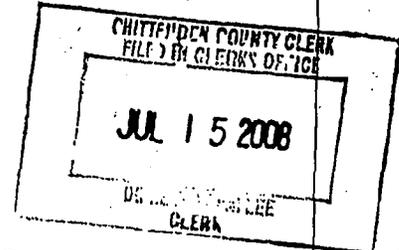
An Assurance of Discontinuance having been given by Dennis Laferriere, and accepted by the Commissioner of Health, such Assurance is hereby made an Order of this Court.

SO ORDERED in accordance with 18 VSA § 125(b) on this \_\_\_\_ day of \_\_\_\_, 2008.

\_\_\_\_\_  
Superior Judge

JUL 1 8

State of Vermont  
County of Chittenden, SS



In Re:

Dennis Laferriere  
525 Wightman Road  
Danville, Vt 05828

) Chittenden Superior Court  
) Docket No. S0744-08 CnC  
)

RECEIVED

JUL 16 2008

VDH LEGAL

JUDGMENT ORDER

This action came before the Court pursuant to 18 V.S.A. § 125(b) upon the filing of an Assurance of Discontinuance given by Dennis Laferriere and accepted by the Commissioner of Health. In accordance with the agreement of the parties, it is hereby ~~ORDERED, ADJUDGED AND DECREED~~ as follows:

1. The property owned by Respondent Dennis Laferriere, located at 298 Main Street, Lyndonville, Vermont, is a residential rental property constructed prior to 1978 and is subject to the requirements in the Vermont Lead Law, 18 V.S.A. Chapter 38.
2. Respondent failed to complete Essential Maintenance Practices (EMP) and failed to submit an EMP Affidavit to the Department of Health and to the Respondent's liability insurance carrier, as required by 18 V.S.A. § 1759.
3. Respondent shall supply the Department of Health with a full listing of the addresses of all rental properties he owns and manages in the State of Vermont.
4. Respondent shall complete, by the dates specified, all work described in paragraph 6 of the Assurance; shall ensure that all such work is completed by a person who is EMP certified by the Department; and shall ensure that the work conforms to the precautions and procedures outlined in the Department's EMP manual.
5. Respondent shall contact the Department, as specified in paragraph 14 of the Assurance, to arrange a date for a compliance inspection of the property as specified in

paragraph 13 of the Assurance. Respondent shall bear the costs of such inspection as specified in paragraph 15 of the Assurance.

6. Pursuant to 18 V.S.A. § 130(b)(6), a civil penalty may be imposed for failure to remove a public health hazard or for a violation of 18 V.S.A. § 1759. A civil penalty is assessed in the amount of \$250 per unit for Respondent's failure to file an EMP Affidavit and in the amount of \$800 per unit for failure to complete EMP in violation of 18 V.S.A. § 1759, however, these penalty assessments are waived unless the Department files an appropriate motion seeking to enforce such penalties. In the event the Department seeks to enforce such penalties, Respondent shall bear the burden of proof of compliance.

7. Additional penalties in the amount of \$100 per unit per day may be assessed for non-compliance with 18 V.S.A. § 1759 and with this Order beginning June 14, 2008. In the event the Department seeks to enforce such penalties, it shall file an appropriate motion and Respondent shall bear the burden of proof of compliance.

8. Respondent's provision of the Assurance shall not release him from any civil or criminal penalties in the future for failure to comply with this or future actions taken with respect to his ownership of the property at 298 Main Street, Lyndonville, Vermont.

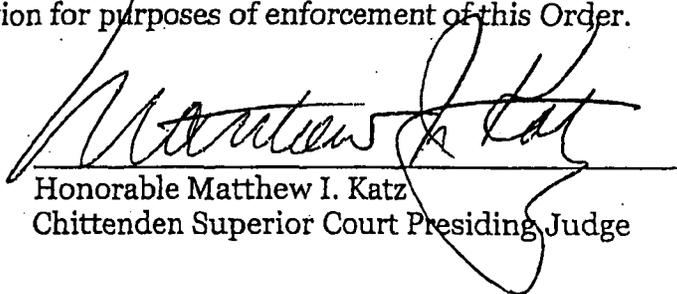
9. Respondent shall provide access to the Department to inspect the property at 298 Main Street, Lyndonville, Vermont, and records relating to such property, for a period of two consecutive years once initial compliance with 18 V.S.A. § 1759 has been achieved.

10. This Court shall retain jurisdiction for purposes of enforcement of this Order.

SO ORDERED:

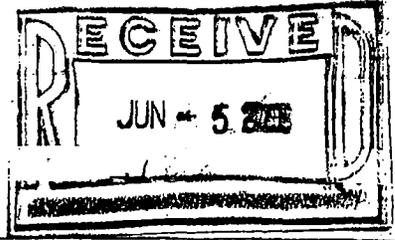
July 15, 2008

Date



Honorable Matthew I. Katz  
Chittenden Superior Court Presiding Judge

**Affidavit of Performance  
of Essential Maintenance Practices**  
(In accordance with 18 VSA § 1759)



Physical Address of Property: 298 MAIN ST  
(Only one building per affidavit)

Town: LYNDON VILLE VT  
(please print)

**Check One:**

- Rental Housing built before 1978  
 Child Care Facility: Name as it appears on license or registration: \_\_\_\_\_

I hereby swear that to the best of my knowledge and belief, the following essential maintenance practices were completed on the dates given by the person or entity specified for the property listed above:

Essential Maintenance Practice (EMP)	Date Completed	Performed By
1. Ensure that any person performing EMPs has completed an approved course or is supervised on-site by someone who has completed an approved course.	12/18/96	Cert. # 4053
2. Visually inspected all interior and exterior surfaces of the building to identify deteriorated paint <input checked="" type="checkbox"/> Annually and/or ..... <input checked="" type="checkbox"/> Upon change of tenant .....	6/2/08	D.L.
3. Installed window well inserts in all windows.	N.A.	
4. Safely stabilized paint within 30 days of visual inspection or after report by a tenant, if more than one square foot of deteriorated paint was found on any interior surface or on any exterior porch surface.	6/4/08	D.L.
5. Safely stabilized paint or blocked access to paint within 30 days of visual inspection or after report by a tenant if more than 1 square foot of deteriorated paint was found on any exterior surface not associated with a porch. (If exterior repair work was identified after November 1 of any year, the repair may be delayed until no later than May 31 of the following year.)	6/4/08	D.L.
6. Performed all work using safe work practices. Kept creation of lead dust to a minimum by NOT burning, water blasting, dry scraping, power sanding, or sand blasting.		D.L.
7. Performed specialized cleaning <input checked="" type="checkbox"/> At the conclusion of work and/or ..... <input checked="" type="checkbox"/> Annually in units with children under 6 and/or ..... <input checked="" type="checkbox"/> Upon change of tenant .....	6/4/08	D.L.
8. Provided pamphlet "Protect Your Family From Lead in Your Home" to current and prospective tenants and current and prospective owners of child care facilities.	6/4/08	D.L.
9. Posted, in a prominent location, a notice to occupants encouraging them to promptly report deteriorated paint to the owner or owner's agent.	6/4/08	D.L.

DEWANE LAFFERDEE  
Legibly print property owner's name

[Signature]  
Property owner's signature

Property Owner's Mailing Address: 525 WILKINSON RD

STATE OF VERMONT  
COUNTY OF Caledonia SS

DANVILLE VT

Subscribed and sworn to before me this 2 day of June 08

[Signature]  
NOTARY PUBLIC  
COMMISSION EXPIRES: 2/2011

White - Health Department  
Yellow - Insurance carrier  
Pink - Property Owner

Each year an affidavit must be filed with the owner's liability insurance carrier and with the:  
VERMONT DEPARTMENT OF HEALTH, Childhood Lead Poisoning Prevention Program PO Box 70, Burlington, VT 05402-0070