

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2017 JUL 28 A 10:13

In Re: DAVID BUSHEY

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)

CIVIL DIVISION

Docket No. 432-7-17-WNCV

FILED

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and David Bushey (“Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

Regulatory Framework

1. 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.
2. 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).
3. All paint in rental target housing is “presumed to be lead-based unless a lead inspector or lead risk assessor has determined that it is not lead-based.” 18 V.S.A. § 1760(a).
4. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.
5. 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-based paint hazard information in a prominent place. 18 V.S.A. § 1759(a) (2), (4) and (7).

6. The EMP requirements also mandate that an owner of rental target housing file affidavits or 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).
7. A violation of the lead law requirements 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).
8. The Vermont Consumer Protection Act, 9 V.S.A Chapter 63, prohibits unfair and deceptive acts and practices, which includes the offering for rent, or the renting of, target housing that is noncompliant with the lead law.
9. Violations of the Consumer Protection 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.

Respondent's Rental Housing and Lead Compliance Practices

10. Respondent is the owner of seven rental properties located at: 42 Cedar Street; 44 Cedar Street; 46 Cedar Street; 24 Huntington Street; 26 Huntington Street; and 17 Walnut Street, all located in St. Albans (collectively, "the Properties").
11. The Properties were all constructed prior to 1978, and therefore, are pre-1978 "rental target housing" within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are all subject to the requirements of 18 V.S.A. Chapter 38.
12. Respondent has in the past and continues presently to rent and offer for rent units in the Properties.

13. On November 29, 2016, the Vermont Department of Health sent a “Notice of Non-Compliance” indicating that Respondent had not filed an “EMP Rental Property Compliance Statement” for the properties at 42-46 Cedar Street. The Department allowed for 30 days for Respondent to file the necessary statements.
14. Respondent did not respond to the 30-day Notice, and did not file EMP compliance statements within 30 days.
15. As of June 2017, Respondent has not filed current EMP compliance statements for all six rental properties.
16. Respondent admits the truth of the facts described in ¶¶ 10-15.

The State’s Allegations

17. The Vermont Attorney General’s Office alleges the following violations of the Consumer Protection Act and Lead Law:
 - a. Failing to file EMP compliance statements for rental properties.
18. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

Assurances and Relief

In lieu of instituting an action or proceeding against Respondent, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Accordingly, the parties agree as follows:

19. Respondent shall fully and timely comply with the requirements of the Vermont lead law, 18 V.S.A., Chapter 38, as long as they maintain any ownership or property management interest in the Properties and in any other pre-1978 rental housing in

which they currently have, or later acquire, an ownership or property management interest.

20. By July 31, 2017, Respondent shall complete all EMP inspections and work of the Properties (as specified in 18 V.S.A. § 1759), giving priority to the Properties where a child age 6 or under is residing. If Respondent requires additional time to complete the work, Respondent will contact the Attorney General's Office before the expiration of the above deadlines and provide a detailed justification for any extension.
21. Within one week of completion of the EMP work at the Properties described in the paragraph above, Respondent will file with the Vermont Department of Health, Respondent's insurance carrier and with the Office of the Attorney General, a completed EMP compliance statement for all Properties, and will give a copy of the compliance statement to an adult in each rented unit of all Properties. The copy for the Office of the Attorney General shall be sent to: *Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.*
22. In the event Respondent wishes to rent a unit which becomes vacant in any of Respondent's pre-1978 rental housing before such housing is made EMP compliant, Respondent shall provide advance written notice of the intent to rent to the Office of the Attorney General at the address listed above. Respondent's advance written notice shall also: (1) verify that the interior of the specific unit to be rented is EMP compliant; (2) provide an update as to any remaining EMP work to be performed at the property, including the date by which the entire property will be EMP compliant.

Otherwise, Respondent shall not rent, or offer for rent, any unit which becomes vacant in any of property owned or managed by Respondent that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described above.

23. Respondent shall pay the sum of \$5,000 in civil penalties and costs for the failure to file EMP compliance statements. Based on Respondent's demonstrated inability to pay the full penalty and upon review of financial information provided to the State by Respondent, the State agrees to accept a reduced penalty of \$1,000. Payment of the \$1,000 shall be made to "the State of Vermont" and sent to the following address: *Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609*. Respondent shall also expend at least three thousand dollars (\$3,000), including the actual cost of materials and the actual cost of labor, on lead hazard reduction improvements at the Properties described herein.

24. Respondent shall pay the costs of any follow-up compliance inspections as determined by the Attorney General's Office.

Other Terms

25. This AOD is binding on Respondent, however, sale of any pre-1978 rental property may not occur unless Respondent has complied with all obligations under this AOD, or this AOD is amended in writing to transfer to the buyer or other transferee all remaining obligations.

26. Transfer of ownership of any of Respondent's pre-1978 rental properties shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767 specifically relating to the transfer of ownership of pre-1978 rental housing.
27. This AOD shall not affect marketability of title.
28. Nothing in this AOD in any way affects Respondent's other obligations under state, local, or federal law.
29. In addition to any other penalties or relief which might be appropriate under Vermont law, any future failure by Respondent to comply with the terms of this AOD shall be subject to a liquidated civil penalty paid to the State of Vermont in the amount of at least \$5,000 and not more than \$10,000.

SIGNATURES APPEAR ON NEXT PAGE

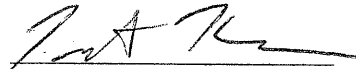
**Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609**

DATED at Montpelier, Vermont this 28th day of July, 2017.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:

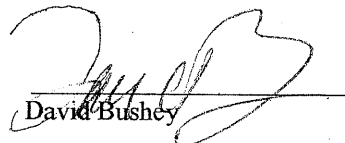


Justin E. Kolber
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609
(802) 828-5620
justin.kolber@vermont.gov

DATED at St Albans, Vermont this 19th day of July, 2017.

DAVID BUSHEY

By:



David Bushey

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

WILLIAM E. GRIFFIN
CHIEF ASST. ATTORNEY
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July 28, 2017

Donna Waters, COM
Washington Superior Court
65 State Street
Montpelier, VT 05602

Hand Delivered

Re: *State of Vermont v. David Bushey*

Dear Ms. Waters:

Enclosed for filing with the Court on the above-referenced matter, please find the Assurance of Discontinuance. I would appreciate you returning the copy to me with your date stamp noted.

Thank you.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'My-Lanh S. Graves'.

My-Lanh S. Graves
Administrative Secretary

Enc.