

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

In Re: BERNADETTE HICKEY)

2018 FEB 9 10:58
CIVIL DIVISION

) Docket No. 90-2-18 Wnc

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Bernadette Hickey (“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 a rental property at 50 Atkinson Street in Bellows Falls, VT (5 rental units).
11. The property was constructed prior to 1978, and therefore, is pre-1978 "rental target housing" within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and is 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 property.

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

13. On October 9, 2017, Respondent filed with the Vermont Department of Health an “EMP Rental Property Compliance Statement” for 50 Atkinson Street.
14. The EMP Statement represented that Respondent performed EMPs at 50 Atkinson Street on September 30, 2017.
15. The EMP Statement specifically certifies that Respondent:
 - a. visually inspected exterior surfaces and outbuildings; and
 - b. stabilized all deteriorated exterior paint in excess of 1 square foot.
16. The EMP Statement was signed by Bernadette Hickey and certified that “all information provided on this form is true and accurate” and acknowledged that “providing false, incomplete or inaccurate information on this form is unlawful and is punishable by civil and criminal penalties pursuant to Vermont law.”
17. On October 17, 2017, Vermont Department of Health staff inspected the exterior of 50 Atkinson Street and documented (via photographs) deteriorated paint exceeding more than 1 square foot on the property’s exterior surface.
18. Respondent admits the truth of the facts described in ¶¶ 10-17.

The State’s Allegations

19. The Vermont Attorney General’s Office alleges the following violations of the Lead Law:
 - a. Submitting a false EMP compliance statement and inaccurately representing that the property was in compliance with the lead law.

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

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:

20. 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 property and in any other pre-1978 rental housing in which they currently have, or later acquire, an ownership or property management interest.
21. By May 31, 2018, all exterior EMP work of the property shall be completed in a lead-safe manner in accordance with 18 V.S.A. § 1760. Until the exterior work is complete, Respondent shall restrict access to exterior surfaces and components of the Property with lead hazards and areas directly below the deteriorated surfaces, pursuant to 18 V.S.A. § 1759(a)(3). If Respondent requires additional time to complete the work, Respondent will contact the Department of Health to request an extension of time agreement before the expiration of the above deadlines and provide a detailed justification for any extension.
22. Within one week of completion of the EMP work at the property 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, an updated and completed EMP compliance statement for the property, and will give a copy of the compliance statement to an adult in each rented unit of the property. The copy for the Office of the Attorney General shall be sent to: Justin Kolber, Assistant

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

Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

23. 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.
24. Respondent shall pay the sum of \$7,500 in civil penalties and costs as follows: (1) \$2,500 paid to the "State of Vermont" (in monthly installments of \$500 if Respondent wishes), and sent to the following address: Justin E. Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609; and (2) \$5,000 to be expended on lead hazard reduction improvements at the Property.

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 property 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.

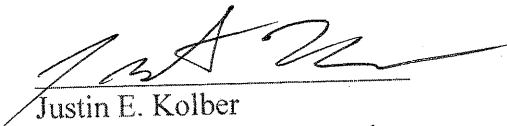
SIGNATURES APPEAR ON NEXT PAGE

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

DATED at Montpelier, Vermont this 8th ^{February} day of ~~January~~, 2018.

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 New York, New York this 19 day of January, 2018.

BERNADETTE HICKEY

By: 
Bernadette Hickey

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