

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

VT SUPERIOR COURT
WASHINGTON UNIT

In Re: DARYL WISCH)
HERBERT WISCH)

2018 JAN - 2 - P 3: 27
CIVIL DIVISION
Docket No. 3-1-18 Wncv

ASSURANCE OF DISCONTINUANCE FILED

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Daryl Wisch and Herbert Wisch (“Respondents”), 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.

Respondents' Rental Housing and Lead Compliance Practices

10. Respondents are the owners of at least twelve rental properties, located at: 78 Traverse Place, Rutland (5 units); 9 Hopkins Street, Rutland (4 units); 57 River Street, Springfield (4 units); 51 Merrill Street, Springfield (3 units); 11 Clover Street, Rutland; 2137 VT Route 30, Bomoseen, 126 State Street, Rutland; 128 State Street, Rutland, 130 State Street, 132 State Street, 164.5 State Street, Rutland, 14-14.5 Cottage Street, Rutland, all located in Vermont (collectively, "the Properties").

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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 July 23, 2017, Respondent filed with the Vermont Department of Health an “EMP Rental Property Compliance Statement” for 78 Traverse Place, 57 River Street, and 51 Merrill Street.
14. The EMP Statements represented that Respondent performed EMPs at those three properties in August and November 2016.
15. The EMP Statements specifically certified that Respondents:
 - a. visually inspected exterior surfaces and outbuildings;
 - b. stabilized exterior paint; and
 - c. did not identify deteriorated paint exceeding 1 square foot on exterior surfaces of the buildings, or repaired such deteriorated paint within 30 days.
16. The EMP Statements were signed by Respondents’ property manager 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. In August and September 2017, Vermont Department of Health staff inspected the exterior of the three properties in ¶ 13 and documented (via photographs) deteriorated paint exceeding more than 1 square foot on those properties’ exterior surfaces.

18. Further, on August 7, 2017 the Vermont Department of Health sent a “Notice of Non-Compliance” indicating that Respondents had not filed an “EMP Rental Property Compliance Statement” for two properties at 11 Clover Street and 2137 VT Route 30. The Department allowed for 30 days for Respondents to file the necessary statements.
19. Respondents did not respond to the 30-day Notice, and did not file the EMP compliance statements within 30 days.
20. As of October 2017, Respondents have not filed current EMP compliance statements for those two rental properties.
21. Additionally, Respondents have not filed current EMP compliance statements for six properties located in Rutland: 126, 128, 130, 132, and 164.5 State Street, and 14-14.5 Cottage Street.
22. Respondents admit the truth of the facts described in ¶¶ 10-21.

The State’s Allegations

23. The Vermont Attorney General’s Office alleges the following violations of the Consumer Protection Act and Lead Law:
 - a. Submitting false EMP compliance statements and inaccurately representing that the property was in compliance with the lead law; and
 - b. Failing to file EMP compliance statements for rental properties.
24. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

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Assurances and Relief

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

25. Respondents 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.
26. By May 31, 2018, all exterior EMP work of 11 Clover Street 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 11 Clover Street with lead hazards and areas directly below the deteriorated surfaces, pursuant to 18 V.S.A. § 1759(a)(3).
27. By November 30, 2017, all exterior EMP work of all Properties listed in ¶ 10 (except for 11 Clover Street) shall be completed in a lead-safe manner in accordance with 18 V.S.A. § 1760. If Respondents require additional time to complete the work, Respondents 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. Any extension will be granted only for the exterior of the Properties; all interior work must be completed by November 30, 2017.
28. Within one week of completion of the EMP work at the Properties described in the paragraph above, Respondents will file with the Vermont Department of Health,

Respondents' 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.

29. In the event Respondents wish to rent a unit which becomes vacant in any of Respondents' pre-1978 rental housing before such housing is made EMP compliant, Respondents shall provide advance written notice of the intent to rent to the Office of the Attorney General at the address listed above. Respondents' 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, Respondents shall not rent, or offer for rent, any unit which becomes vacant in any of property owned or managed by Respondents that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described above.

30. Respondents shall pay the sum of \$10,000 in civil penalties and costs for the filing of false EMP compliance statements as follows: (1) \$2,500, paid 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; and (2) \$7,500 to be expended on lead hazard reduction improvements at any of the Properties.

Other Terms

31. This AOD is binding on Respondents, however, sale of any pre-1978 rental property may not occur unless Respondents have 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.
32. Transfer of ownership of any of Respondents' 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.
33. This AOD shall not affect marketability of title.
34. Nothing in this AOD in any way affects Respondents' other obligations under state, local, or federal law.
35. In addition to any other penalties or relief which might be appropriate under Vermont law, any future failure by Respondents 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.

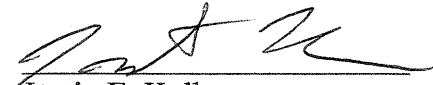
SIGNATURES APPEAR ON NEXT PAGE

DATED at Montpelier, Vermont this 29th day of ^{December}~~November~~, 2017.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:


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DATED at Ludlow, Vt this 18 day of ^{December}~~November~~, 2017.

HERBERT WISCH

By:


Herbert Wisch

DATED at Ludlow, Vt this 18 day of ^{December}~~November~~, 2017.

DARYL WISCH

By:


Daryl Wisch