

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2018 MAY 24 P 3:38

In Re: RAYMOND OTIS)

CIVIL DIVISION

)
Docket No. 310-5-18 W/O.

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General Thomas J. Donovan, Jr., and Raymond Otis (“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. An "owner" is defined to include any person who is the property manager, unless the property management contract explicitly states that the property manager is not responsible for compliance with section 1759. 18 V.S.A. § 1751(b)(22)(C).
8. 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).
9. 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.
10. 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 Lead Compliance Practices

11. Respondent is the owner of a rental property management company, Ray's Property Management, LLC.
12. On January 30, 2018, Respondent filed with the Vermont Department of Health an "EMP Rental Property Compliance Statement" for a rental property at 396 N. Main Street, Barre, VT (2 rental units). The rental 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.

13. The EMP Statement represented that Respondent performed EMPs at 396 N. Main Street on January 26, 2018.
14. The EMP Statement specifically certified that Respondent:
 - a. visually inspected exterior surfaces and outbuildings; and
 - b. did not identify deteriorated exterior paint exceeding one square foot.
15. The EMP Statement was signed by Raymond Otis 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.”
16. On February 14, 2018, Vermont Department of Health staff inspected the exterior of 396 N. Main Street and documented (via photographs) deteriorated paint exceeding more than 1 square foot on the property’s exterior surface.
17. Respondent admits the truth of the facts described in ¶¶ 11-16.

The State’s Allegations

18. The Vermont Attorney General’s Office alleges the following violations of the Consumer Protection Act and Lead Law:
 - a. Submitting an EMP compliance statement and inaccurately representing that the property was in compliance with the lead law.
19. 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 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. Respondent shall perform EMPs and file accurate EMP statements in accordance with the Vermont lead law for all rental properties managed by Respondent.
22. Respondent shall pay \$500 in civil penalties and costs for the filing of a false EMP statement.
23. Nothing in this AOD in any way affects Respondent's other obligations under state, local, or federal law.
24. 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

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DATED at Montpelier, Vermont this 14th day of May, 2018.

STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

By:

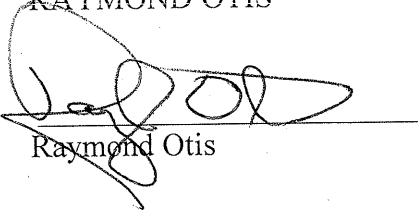


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DATED at Williamstown VT this 22 day of May, 2018.

RAYMOND OTIS

By:



Raymond Otis

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