

STATE OF VERMONT
WINDHAM COUNTY, SS.

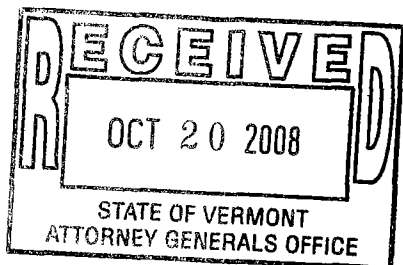
In re:) Windham Superior Court
BRUCE and PATRICIA) Docket No. 485-9-08 Wmcv
WARYAS)

STIPULATION OF SETTLEMENT AND CONSENT DECREE

NOW COME the parties, Plaintiff State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Defendants Bruce and Patricia Waryas and hereby stipulate to the entry of following Settlement and Consent Decree. The parties agree that this Stipulation of Settlement and Consent Decree shall supersede the Assurance of Discontinuance entered into by Defendants and the State of Vermont Department of Health and filed in this Court on September 14, 2006 and that Assurance of Discontinuance shall be dismissed.

STATEMENT OF FACTS AND STATUTORY SCHEME

1. Bruce and Patricia Waryas ("Defendants") are the owners of record of property located at 18 Wells Street, Bellows Falls, Vermont (hereinafter "the property").
2. The property is "rental target housing" within the meaning of Vermont's Lead Law, 18 V.S.A. § 1751(19), and are 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, in his judgment, had an interest. 3 V.S.A. § 157.
4. The Attorney General has an interest in ensuring agreements involving agencies of the state are complied with and honored, and an interest in ensuring that landlords comply with Vermont laws regarding habitability of housing.



Filed

SEP 25 2008

Windham County
Clerks Office

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 pre-1978 rental housing.
7. 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).
8. 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).
9. The Vermont Lead Law also requires that owners of rental target housing file affidavits or compliance statements attesting to EMP performance with the Vermont Department of Health and with the owners’ insurance carrier. 18 V.S.A. § 1759(b).
10. A violation of the EMP 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).
11. The Vermont Consumer Fraud Act, 9 V.S.A, Chapter 63, prohibits unfair and deceptive acts and practices, including the offering for rent, or the renting of, target housing that is noncompliant with the Lead Law.

Filed

SEP 25 2008

Windham County
Clerks Office

12. 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). Each day that a violation continues is a separate violation.
13. Defendants own the property and have in the past and continue presently to rent it and offer it for rent.
14. Defendants and the State of Vermont Department of Health entered into an Assurance of Discontinuance filed in this Court on September 14, 2006 to address Defendants' non-compliance with the Vermont Lead Law.
15. Under the terms of the September 14, 2006 Assurance of Discontinuance, Defendants agree to penalties in the amount of "\$250 per unit for failure to file an affidavit and \$800 for per unit for failure to complete essential maintenance practices." See Assurance of Discontinuance at ¶ 8.
16. The Assurance of Discontinuance included additional penalties in the amount of "\$100 per unit per day... for non-compliance with 18 V.S.A. § 1759 and [the] Assurance of Discontinuance beginning September 30, 2006." *Id.* at ¶ 10.
17. Defendants filed an EMP affidavit for the property on September 25, 2006 thereby waiving the penalties described in paragraph 16 above.
18. Defendants admit that until they were notified of their failure to do so in connection with this Stipulation of Settlement and Consent Decree, they failed to file subsequent annual EMP affidavits for the property with the Department of Health or their insurance carrier as required by the agreement and 18 V.S.A. § 1759(b).

Filed

SEP 25 2008

Windsor County
Clerks Office

19. Defendants completed an EMP Compliance Statement that they filed with the Department of Health, their insurance carrier, and their tenant on September 8, 2008.

VIOLATIONS

20. Defendants violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by:
- a. Failing to file with the Department of Health an affidavit attesting to EMP performance for the property by September 25, 2007; and
 - b. Failing to file with their liability insurance carrier an affidavit attesting to EMP performance for the property.
21. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce that include the rental of, or offering for rent, housing that is noncompliant with the Lead Law.
22. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, Defendants engaged in deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that they misrepresented a material condition of the rental.
23. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, Defendants engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that their actions amounted to *per se* non-compliance with existing law.

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

Filed

SEP 25 2008

24. Defendants violated the terms and conditions of the September 14, 2006

Assurance of Discontinuance by failing to file affidavits and failing to perform annual essential maintenance practices at the property.

REMEDIES

25. Defendants 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 service interest in the property or in any other pre-1978

residential housing in which they acquire an ownership interest. **Their annual**

due date of the filing of EMP Compliance Statements shall be September 8th.

PENALTIES

26. Defendants shall pay civil penalties of \$5,000.00.

27. Based on Defendants' demonstrated inability to pay the penalty listed in the

preceding paragraph, they are not required to pay the penalty to the State of

Vermont for the violations listed, provided that, if it is determined that the

financial information they provided to the Office of the Attorney General is

inaccurate in any material respect, the Attorney General may seek to impose an

appropriate penalty.

28. In the event of any future violation of Vermont law or this Stipulation of

Settlement and Consent Decree, other than a de minimis violation, Defendants

shall pay to the State of Vermont a liquidated civil penalty of \$10,000.00

regardless of their ability to pay. The liquidated civil penalty shall be in addition

to any other appropriate relief which may be sought by the State of Vermont.

Filed

SEP 25 2008

Windham County
Clerks Office

OTHER RELIEF

29. This Stipulation of Settlement and Consent Decree is binding on Defendants, however, sale of the property may not occur unless Defendants have complied with all obligations under this Stipulation of Settlement and Consent Decree, or this Stipulation of Settlement and Consent Decree is amended in writing to transfer to the buyer or other transferee all remaining obligations.
30. Transfer of ownership of any of the property shall be consistent with Vermont law, including the provisions of 18 V.S.A. § 1767 specifically relating to the transfer of ownership of target housing.
31. This Stipulation of Settlement and Consent Decree shall not affect marketability of title.
32. Should Defendants fully transfer or sell their ownership interest in the property after completing all obligations under this Stipulation of Settlement and Consent Decree, their obligations with respect to the property under this Stipulation of Settlement and Consent Decree is extinguished. However, nothing in this Stipulation of Settlement and Consent Decree in any way affects the obligations of future owners of any of the property under Vermont law, including under the Vermont Lead Law.
33. Nothing in this Stipulation of Settlement and Consent Decree in any way affects Defendants' other obligations under state, local, or federal law.

STIPULATION

Defendants acknowledge receipt of and voluntarily agree to the terms of this Stipulation of Settlement and Consent Decree.

Filed

SEP 25 2008

Windham County
Clerks Office

DATED at Sept. 20, 08 Vermont this 20th day of Sept., 2008.

Bruce Waryas
Bruce Waryas

Patricia Waryas
Patricia Waryas

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 23rd day of September, 2008.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: Robert F. McDougall

Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.3186

DECREE, ORDER AND FINAL JUDGMENT

This Consent Decree is accepted and entered as a Decree, Order and Final

Judgment of this Court in the matter of: *In re: Bruce and Patricia Waryas*, Docket No.

485-9-08 Wmcv.

SO ORDERED.

DATED at Newfane, Vermont this 21 day of Oct 2008.

[Signature]
Windham Superior Court Judge

Filed

OCT 17 2008

Windham County
Clerks Office

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

cc: R. McDougall
B & P Waryas