

VT SUPERIOR COURT
WASHINGTON UNIT

STATE OF VERMONT

2011 JUL 11 P 4:06

SUPERIOR COURT
Washington Unit

CIVIL DIVISION

Docket No. Wncv

STATE OF VERMONT,
Plaintiff,

proposed

430-7-11 *Wncv*

v.

MARY FERNANDEZ
Defendant.

FILED

2011 JUL 13 P 2:32

Wncv

VT SUPERIOR COURT
WASHINGTON UNIT

STIPULATION OF SETTLEMENT AND CONSENT DECREE

To resolve the allegations in the Complaint filed in the above captioned matter, Plaintiff State of Vermont and Defendant Mary Fernandez (hereinafter "Defendant") stipulate and agree to the following:

1. Defendant shall complete all essential maintenance practices ("EMPs") at the five properties listed in Attachment A of the Complaint ("the properties") as follows:
 - a. Any EMP work necessary at the properties will be completed by an individual who is certified by the Vermont Department of Health to perform EMPs.
 - b. Priority for completion of EMPs at the properties shall be given to any properties where children are known to reside, particularly if the children are age 6 or younger.
 - c. Defendant shall immediately ensure that access to exterior surfaces and components of the properties with lead hazards and areas directly below the deteriorated surfaces are clearly restricted as described in 18 V.S.A. § 1759(a)(3).
 - d. Not later than July 28, 2011, Defendant shall complete all interior EMPs required by the lead law, including window well inserts, at all of the units of the properties where children age 6 or younger reside, believed to be three units total. Defendant

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shall also provide the Attorney General's Office with a written update as to the progress of interior EMP completion at all of the remaining properties.

- e. Not later than August 21, 2011, Defendant shall complete all **interior** EMPs required by the lead law at the remaining units of all properties, including window well inserts unless the windows have been replaced with vinyl windows by this time.
 - f. Defendant shall provide written confirmation of completion of the interior EMPs to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609. Written confirmation shall be provided no later than ten days after the dates specified in paragraphs 1(d) and (e).
 - g. Not later than August 31, 2011, Defendant shall complete all **exterior** EMPs required by the lead law at all of the properties.
 - h. Not later than September 10, 2011, Defendant will file with the Vermont Department of Health and with Defendants' insurance carrier, and will give a copy to an adult in each rented unit of any of the properties, a completed EMP compliance statement for each of the properties, and will also provide a copy of the completed EMP compliance statement to the Office of the Attorney General at the address provided in paragraph 1(f).
2. Defendant shall not rent, or offer for rent, any unit which becomes vacant in a property that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described above.
 3. Defendant will endeavor in good faith to comply with the terms and conditions of this Consent Decree. In the event that Defendant wishes to extend any of the compliance dates by agreement with the Attorney General's Office, the Attorney General's Office will

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exercise good faith and consider such request, provided that such request is made no later than 10 days in advance of the dates specified in this Consent Decree.

4. Defendant shall fully and timely comply with the requirements of the Vermont lead law, 18 V.S.A., Chapter 38, as long as the Defendant maintains any ownership or property management service interest in the properties and in any other pre-1978 rental housing in which the Defendant acquires an ownership interest.

PENALTIES

5. Defendant shall pay two thousand five hundred dollars (\$2,500.00) in civil penalties to the State of Vermont. Payment shall be made to the "State of Vermont" and shall be sent to the Attorney General's Office at the address listed in paragraph 1(f). The payment shall be due at the time this document is executed by Defendant.

6. In addition to the payment described in paragraph 5, Defendant shall expend at least five thousand dollars (\$5,000.00), including the actual cost of materials and the actual (or if the work is done by employees of Defendant, the reasonable) cost of labor, on any or all of the following lead hazard reduction improvements at any of the properties or in any other pre-1978 rental housing in which Defendant acquires an interest:

- a. Replacement of painted windows;
- b. Replacement of painted doors;
- c. Covering of painted exterior walls with siding; and
- d. Replacement or covering of interior or exterior (including porch) floors and stairs with permanent carpeting or other permanent floor covering;

provided that the building component in question was installed and first painted before 1978; *and further provided that* Defendant may submit for prior approval

other potential lead hazard reduction improvements (e.g. soil coverage) to the Attorney General's Office, which shall have complete discretion to determine whether the improvements count toward the required expenditure.

7. Defendant shall provide written documentation of the expenditures to the Attorney General's Office at the address provided in paragraph 1(f) by August 15, 2011.

OTHER RELIEF

8. Defendant may not sell any of the properties unless all obligations in paragraphs 1, 5, 6 and 7 have been completed or this Consent Decree is amended in writing to transfer to the buyer or other transferee all remaining obligations.
9. Transfer of ownership of any of the 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.
10. This Consent Decree shall not affect marketability of title.
11. Nothing in this Consent Decree in any way affects Defendant's other obligations under state, local, or federal law.
12. If Defendant shall, at any time in the future, fail to comply with the terms and conditions of this Consent Decree, then each future failure of Defendant to comply with the terms and conditions of this Consent Decree shall constitute a separate civil action for which the State of Vermont may pursue additional civil penalties beyond the civil penalty outlined herein.

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STIPULATION

Defendant Mary Fernandez acknowledges receipt of and voluntarily agrees to the terms of this Consent Decree and waives any formal service requirements of the Complaint, Consent Decree, and Decree, Order and Final Judgment.

DATED at Northfield, Vermont this 6 day of July, 2011.

Mary Fernandez
Mary Fernandez

Approved as to form:

DATED at Northfield, Vermont this 7th day of July, 2011.

Michael Popowski, Esq.
Michael Popowski, Esq.

ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 11th day of July, 2011.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

Robert F. McDougall
Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
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Montpelier, Vermont 05609

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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: *State of Vermont v. Mary Fernandez*, Docket

No. 430-7-11 Wncv.

SO ORDERED.

DATED at Montpelier, Vermont this 13 day of July, 2011.



Washington Superior Court Judge

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