

STATE OF VERMONT
WINDHAM COUNTY, SS.

In re:) Windham Superior Court
DAVID MONTESI) Docket No. 530-10-08 Wmcv

STIPULATION OF SETTLEMENT AND CONSENT DECREE

NOW COME the parties, Plaintiff State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Defendant David Montesi 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 Defendant 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. David Montesi ("Defendant") is the owner of record of property located at 63 Williams 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

OCT - 8 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 (“EMP’s”) 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); *see also* Assurance of Discontinuance at ¶ 3.
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.

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

Filed

OCT - 8 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. Defendant owns the property and has in the past and continues presently to rent it and offer it for rent.
14. Defendant and the State of Vermont Department of Health entered into an Assurance of Discontinuance filed in this Court on September 14, 2006 to address Defendant's non-compliance with the Vermont Lead Law.
15. Under the terms of the September 14, 2006 Assurance of Discontinuance, Defendant agrees 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. Defendant filed an EMP affidavit for the property on August 21, 2006 thereby waiving the penalties described in paragraph 15 above.
18. Defendant admits that since the filing of the EMP affidavit on August 21, 2006, he has failed to file the annual EMP affidavits for the property with the Department of Health or his insurance carrier as required by the agreement and 18 V.S.A. § 1759(b). Defendant has represented his position that this failure was oversight on his part and not intentional.

VIOLETIONS

19. Defendant violated Vermont's Lead Law, 18 V.S.A. Chapter 38, by:

Filed

OCT - 8 2008

- a. Failing to file with the Department of Health an affidavit attesting to EMP performance for the property by August 21, 2007;
 - b. Failing to file with the Department of Health an affidavit attesting to EMP performance for the property by August 21, 2008; and
 - c. Failing to file with his liability insurance carrier affidavits attesting to EMP performance for the property.
20. 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.
21. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, Defendant engaged in deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that he misrepresented a material condition of the rental.
22. By renting to tenants, and by offering for rent, property that was not in compliance with the Lead Law, Defendant engaged in unfair acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a), in that his actions amounted to *per se* non-compliance with existing law.
23. Defendant violated the terms and conditions of the September 14, 2006 Assurance of Discontinuance by failing to file an affidavit and failing to perform essential maintenance practices at the property.

REMEDIES

24. Defendant shall fully and timely comply with the requirements of the Vermont Lead Law, 18 V.S.A., Chapter 38, as long as he maintains any ownership or property

Filed

management service interest in the property or in any other pre-1978 residential housing in which he acquires an ownership interest. **His annual due date for the filing of the EMP Compliance Statement for the property shall be September 8th.**

PENALTIES

25. Defendant shall pay \$5,000.00 in civil penalties. Payment of the civil penalty amount shall be made to the "State of Vermont" and shall be sent to: Robert F. McDougall, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.
26. Based on Defendant's demonstrated inability to pay the penalty listed in the preceding paragraph, he is not required to pay the penalty to the State for the violations listed, provided that, if it is determined that the financial information he produced to the Office of the Attorney General is inaccurate in any material respect, the Attorney General may seek to impose an appropriate penalty.
27. In the event of any future violation of Vermont law or this Stipulation of Settlement and Consent Decree, other than a *de minimis* violation, Defendant shall pay to the State of Vermont a liquidated civil penalty of \$10,000.00, regardless of his ability to pay, in addition to any other appropriate relief which may be sought by the State of Vermont.

OTHER RELIEF

28. This Stipulation of Settlement and Consent Decree is binding on Defendant, however, sale of the property may not occur unless Defendant has 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.

Filed

OCT - 8 2008

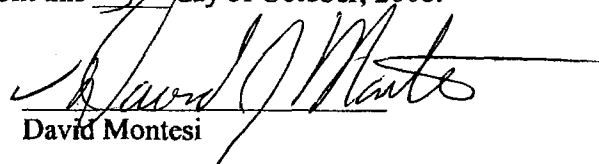
Windsor County
Clerks Office

29. 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.
30. This Stipulation of Settlement and Consent Decree shall not affect marketability of title.
31. Should Defendant fully transfer or sell his ownership interest in the property after being current with all obligations under this Stipulation of Settlement and Consent Decree, his 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.
32. Nothing in this Stipulation of Settlement and Consent Decree in any way affects Defendant's other obligations under state, local, or federal law.
33. Any future failure by Defendant to comply with the terms of this Stipulation of Settlement and Consent Decree shall be subject to additional penalties of no less than \$1,000.00 per violation per day for each day the violation exists. Such penalties may be in addition to the liquidated civil penalty described in paragraph 27 above.

STIPULATION

Defendant acknowledges receipt of and voluntarily agrees to the terms of this Stipulation of Settlement and Consent Decree.

DATED at Springfield Vermont this 31 day of October, 2008.


David Montesi

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

Filed

6

OCT - 8 2008

Windham County
Clerks Office

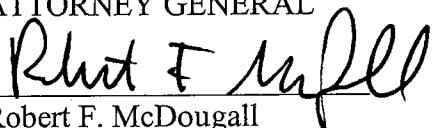
ACCEPTED on behalf of the State of Vermont:

DATED at Montpelier, Vermont this 6th day of October, 2008.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:

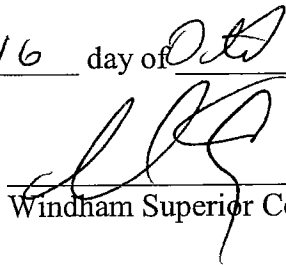

Robert F. McDougall
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, Vermont 05609
802.828.3186

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: David Montesi*, Docket No. 530-10-08 Wmcy.

SO ORDERED.

DATED at Newfane, Vermont this 16 day of OCT, 2008.


Windham Superior Court Judge

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

Filed

OCT 22 2008

Windham County
Clerks Office

cc: R. McDougall
S. Gambini