

STATE OF VERMONT  
WASHINGTON COUNTY, SS.

STATE OF VERMONT, )  
Plaintiff, )  
 )  
v. ) Washington Superior Court  
 ) Docket No. Wncv  
NELSON FARMS, INC. and )  
DOUGLAS NELSON, )  
Defendants. )

**COMPLAINT**

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and pursuant to the Vermont lead law, 18 V.S.A., Chapter 38; and the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63; hereby makes the following complaint against Nelson Farms, Inc. and Douglas Nelson who own numerous residential rental properties in the Vermont towns of Newport, Coventry, Craftsbury, Derby and Irasburg and have failed to perform essential maintenance practices as required by 18 V.S.A. § 1759(b).

**ALLEGATIONS**

***The Parties***

1. Defendants Nelson Farms, Inc. and Douglas Nelson (“Defendants”) own a number of rental properties in the Vermont towns of Newport Center, Coventry, Derby and Irasburg. Six rental properties (“the properties”) owned by Defendants are listed in Attachment A. See Attachment A.

2. The properties were constructed prior to 1978, are “rental target housing” within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are subject to the requirements of 18 V.S.A. Chapter 38.

Office of the  
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Montpelier,  
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3. The Attorney General has the right to appear in any civil action in which the State, in his judgment, has an interest. 3 V.S.A. § 157.

4. The Attorney General has an interest in ensuring that landlords comply with Vermont laws regarding habitability of housing.

*Statutory scheme*

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. 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).

8. 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).

9. Under the lead law, 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).

10. 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).

11. The Vermont Consumer Fraud 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.

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.

***Facts relating to Defendants***

13. Defendants are the owners of the properties listed in Attachment A which they have in the past and continue presently to rent and offer for rent. *See* Attachment A. Upon information and belief, Defendants presently offer some of the properties for use by workers as a part of pay for services.

14. The Vermont Department of Health has no evidence to demonstrate that Defendants maintained the properties in accordance with Vermont's lead law in 2008, 2009 or 2010.

15. The Vermont Department of Health has no evidence to demonstrate that Defendants performed EMPs on the properties in 2008, 2009 or 2010.

16. The Vermont Department of Health has no evidence to demonstrate that Defendants filed any EMP compliance statements attesting to EMP performance with their insurance carrier or tenants in 2008, 2009 or 2010.

17. The Office of the Attorney General sent Defendants a letter dated April 6, 2009 which advised them of the lead law and requested proof of lead law compliance at the properties within 90 days.

18. Defendants did not respond to the April 6, 2009 letter.

19. The Office of the Attorney General sent Defendants a Civil Investigative Demand by certified mail on July 17, 2009 requesting proof of lead law compliance at the properties and other information.

20. The Civil Investigative Demand was signed for and received by Defendant Douglas Nelson on July 18, 2009.

21. Defendants did not respond to the Civil Investigative Demand.

**FIRST CAUSE OF ACTION – Failure to perform essential maintenance practices**

22. The State of Vermont incorporates and realleges paragraphs 1 through 21 above.

23. The lead law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all rental target housing and that compliance statements attesting to EMP performance be filed with the Department of Health and the property owner's insurance carrier on an annual basis. 18 V.S.A. § 1759. Copies of the compliance statements must also be given to all tenants at the property and to new tenants prior to entering a lease agreement. 18 V.S.A. § 1759(b)(3)-(4).

24. EMPs require that a property owner “[p]romptly and safely remove or stabilize lead-based paint if more than one square foot of deteriorated lead-based paint is found on any interior or exterior surface located within any area of the dwelling to which access by tenants is not restricted.” 18 V.S.A. § 1759(a)(3).

25. Owners must also install “window well inserts in all windows or protect window wells by another method approved by [the Department of Health].” 18 V.S.A. § 1759(a)(1).

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

- a. Failing to file with the Department of Health an EMP compliance statement attesting to EMP performance for any of the properties during 2008, 2009 or 2010; and
- b. Failing to file with their liability insurance carrier or tenants EMP compliance statements attesting to EMP performance for any of the properties in 2008, 2009 or 2010.

27. A violation of the EMP requirements may result in a maximum civil penalty of \$10,000.00. 18 V.S.A. § 130(b)(6).

28. Each day that a violation continues is a separate violation. 18 V.S.A. § 130(b)(6).

**SECOND CAUSE OF ACTION – Consumer Fraud: noncompliant rental housing**

29. The State of Vermont incorporates and realleges paragraphs 1 through 28 above.

30. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include the rental of, or offering for rent, housing that is noncompliant with the lead law.

31. 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).

32. Each of the six noncompliant properties represents a separate violation of the Consumer Fraud Act and each day is a separate violation.

33. 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).

34. Each day that a violation continues is a separate violation.

### **RELIEF SOUGHT**

WHEREFORE, based on the allegations set forth above, the State of Vermont respectfully requests that the Court award the following relief:

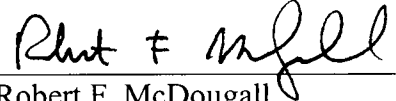
1. An Order finding that Defendants violated 18 V.S.A. § 1759 for each of the six non-compliant properties and that the violations are continuing.
2. An Order finding that Defendants violated 9 V.S.A. § 2453(a) for renting or offering for rent each of the six non-compliant properties and that the violations are continuing.
3. Civil Penalties of not more than \$10,000 for each violation of the lead law.
4. Civil Penalties of not more than \$10,000 for each violation of the Consumer Fraud Act.
5. An Order requiring that Defendants hire, at their expense and with the approval of the Attorney General's Office, an independent contractor who is certified by the Department of Health to perform EMP work to conduct compliance inspections of the interior and exterior of the six identified non-compliant properties and all other rental target housing properties owned by Defendants.
6. An Order requiring that Defendants bring the identified six non-compliant properties and any other non-compliant properties identified by the independent inspection into compliance with the requirements of the lead law
7. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.

8. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 23<sup>rd</sup> day of April, 2010.

Respectfully submitted,

WILLIAM H. SORRELL  
ATTORNEY GENERAL

By: 

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## ATTACHMENT A

1. 575 Main Street, Derby, single unit
2. 267 U.S. Route 5, Derby, 4 units
3. Route 14 (Dutton), Irasburg, single unit
4. Airport Road, Beloin House, Coventry, single unit
5. Airport Road, St. Onge House, Coventry, single unit
6. Searles Road, Searles House, Newport, single unit

**Six properties, ten total units**