

STATE OF VERMONT
WASHINGTON COUNTY, SS.

FILED

2009 JUL -7 A 11: 2

STATE OF VERMONT,)
Plaintiff,)
)
v.)
)
SUSAN AIKEN,)
Defendant.)

Washington Superior Court
Docket No. 4967.09 Wncv

SUPERIOR COURT
WASHINGTON COUNTY

COMPLAINT

NOW COMES the State of Vermont, by and through Vermont Attorney General William H. Sorrell, and pursuant to the Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63; and the Vermont lead law, 18 V.S.A., Chapter 38; hereby makes the following Complaint against Vermont realtor Susan Aiken, ("Defendant").

ALLEGATIONS

Parties

1. Defendant Susan Aiken is a licensed Vermont realtor and the owner of Aikencrest, LLC, a St. Johnsbury, Vermont company which includes Susan Aiken Real Estate and Aikencrest Property Management.
2. 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.
3. The Attorney General has an interest in ensuring that owners and managers of rental housing comply with the Vermont lead law, and that documents filed with the State of Vermont, including EMP compliance statements and affidavits, are truthful and accurate.

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4. The Attorney General has an interest in ensuring that property owners and management companies comply with Vermont laws regarding habitability of housing.

Statutory Scheme

5. Lead-based paint in housing, the focus of the 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 rental housing built prior to 1978.¹
7. All paint in pre-1978 rental 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 lead law also requires that owners of pre-1978 rental 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. Since July 1, 2008, the seller of pre-1978 rental housing must, prior to the time a purchase and sale agreement is executed, provide the buyer with materials relating to lead paint, including verification that the EMPs have been completed at the property

¹ Pursuant to the lead law, rental housing constructed prior to 1978 (“pre-1978”) is “target housing” unless exempt by definition. 18 V.S.A. §§ 1751(b)(23) and (26).

and that a current EMP compliance statement has been filed with the State of Vermont. 18 V.S.A. § 1767(a).

11. The Vermont Consumer Fraud Act, 9 V.S.A Chapter 63, prohibits unfair and deceptive acts and practices.
12. The Vermont Supreme Court has recognized that the Consumer Fraud Act applies with respect to the compliance status of rental housing. *Bisson v. Ward*, 160 Vt. 343, 351, 628 A.2d 1256, 1261 (1993) (when a landlord rents property to tenant, the landlord is impliedly representing to his or her tenant that the property is in compliance with the law; landlords commit “a deceptive act by renting an apartment that [is] in violation of the law.”)

Facts Relating to Defendant

13. The property at 316 Spring Street, St. Johnsbury, Vermont (hereinafter “the property”) is pre-1978 rental housing within the meaning of Vermont’s lead law. 18 V.S.A. § 1751(19).
14. An “Affidavit of Performance of Essential Maintenance Practices” (hereinafter “the Affidavit”) for the property was completed and filed with the State of Vermont Department of Health on August 5, 2008. Attachment A (Affidavit).
15. Defendant has taken the essential maintenance practices (“EMP”) course and, since November 6, 1996, has been certified (EMP certificate #1433) to perform EMPs at pre-1978 rental housing. 18 V.S.A. § 1759.
16. The Affidavit represents that Defendant performed EMPs at the property between July 30, 2008 and August 4, 2008. Attachment A.

17. The Affidavit, *inter alia*, represents that Defendant completed EMPs at the property as follows:

- a. Performed visual inspections all interior and exterior surfaces of the building to identify deteriorated paint on July 30, 2008;
- b. Completed the safe stabilization of deteriorated paint on July 30, 2008;
- c. Completed the safe stabilization of paint or blocked access to paint within 30 days of visual inspection or after report by a tenant if more than one square foot of deteriorated paint was found on any exterior surface not associated with a porch on August 4, 2008;
- d. Completed all work at the property using safe work practices on July 30, 2008;
- e. Completed specialized cleaning at the conclusion of work and/or upon change of tenant on August 4, 2008;
- f. Provided a pamphlet titled "Protect Your Family From Lead in Your Home" to tenants at the property on July 31, 2008; and
- g. Posted a notice to tenants at the property encouraging them to promptly report deteriorated paint to the owner or owner's agent on July 31, 2008. *Id.*

18. Defendant signed the Affidavit and her EMP certification number is listed in the section of the document to represent that she performed the various EMPs at the property. *Id.*

19. The Affidavit also purports to have been signed by Clifford G. Bove, the seller of the property. *Id.*

20. The Affidavit was notarized by Scott Bollman, a notary public and the listing realtor for the property. *Id.*
21. On August 8, 2008, Department of Health Program Technician/Lead Inspector Technician Edmond Daudelin contacted Defendant concerning the property and the Affidavit.
22. Defendant informed Daudelin that she had filled out the Affidavit without visiting the property, and that she did not expect anyone from the State would verify compliance.
23. Defendant completed the Affidavit in order to facilitate the sale of the property.
24. Daudelin performed an on-site inspection of the property on August 12, 2008.
Daudelin inspected three of the four units at the property.
25. Daudelin's inspection found windows that would not open, window wells that were not clean, flaking and peeling paint on interior surfaces, and flaking paint on exterior walls. In Daudelin's view, the property did not appear to have been recently cleaned or repaired.
26. On September 25, 2008, an investigator from the Attorney General's Office telephoned the seller of the property, Clifford G. Bove of Locust Valley, New Jersey. Mr. Bove informed the investigator that he neither signed the Affidavit nor authorized anyone to sign the Affidavit for him.
27. Mr. Bove also stated that he was not in Vermont on the date the Affidavit was purportedly signed and notarized, August 4, 2008.

FIRST CAUSE OF ACTION – Consumer Fraud Act – False Affidavit

28. The State of Vermont incorporates and realleges paragraphs 1 through 27 above.
29. The Vermont Consumer Fraud Act, 9 V.S.A., Chapter 63, prohibits unfair and deceptive acts and practices in commerce, which include misrepresentation of the EMP compliance of a property in connection with the sale of housing and the falsifying of the property owner/seller's signature on a notarized document in connection with the sale of housing.
30. By submitting the false Affidavit to the State of Vermont and inaccurately representing that the property was in compliance with the lead law in order to facilitate the sale of the property, Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).
31. By submitting the false Affidavit to the State of Vermont and representing that the owner of the property had been present and signed the notarized document in order to facilitate the sale of the property, Defendant engaged in unfair and deceptive acts and practices in commerce in violation of the Consumer Fraud Act, 9 V.S.A. § 2453(a).
32. 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.

SECOND CAUSE OF ACTION – Failure to Perform Essential Maintenance Practices

33. The State of Vermont incorporates and realleges paragraphs 1 through 32 above.
34. The lead law requires that EMPs specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing and that compliance statements (or in the past, affidavits)

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).

35. Pursuant to 18 V.S.A. § 1759(a) only "a person who has successfully completed the EMP training program approved [by the Department of Health] or a person who works under the direct, on-site supervision of a person who has successfully completed such training" may perform EMPs at pre-1978 rental housing.
36. The lead law requires that the seller of pre-1978 rental housing must provide the buyer with materials relating to lead paint, including verification that the EMPs have been completed at the property and that a current EMP compliance statement has been filed with the State of Vermont. 18 V.S.A. § 1767(a).
37. Defendant, who has successfully completed the EMP training program approved by the Department of Health, violated the lead law by representing that she had properly performed EMPs at the property, when in fact she had not performed EMPs at the property.
38. Defendant violated the lead law by providing false verification to the buyer of the property that EMPs were complete at the property.
39. 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).

RELIEF SOUGHT

WHEREFORE, based on the allegations set forth above, the State respectfully asks the Court to award the following relief:

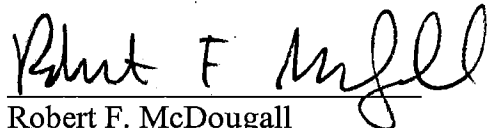
1. An Order finding that Defendant violated 9 V.S.A. § 2453(a).
2. An Order finding that Defendant violated 18 V.S.A. § 1759.
3. Civil penalties of not more than \$10,000.00 for each violation of the Consumer Fraud Act.
4. Civil penalties of not more than \$10,000.00 for each violation of the Vermont lead law.
5. An Order requiring reimbursement to the State for the reasonable value of its services and its expenses in investigating and prosecuting this action.
6. Such other relief as the Court may deem just and appropriate.

DATED at Montpelier, Vermont this 7th day of July, 2009.

Respectfully submitted,

WILLIAM H. SORRELL
ATTORNEY GENERAL

By:



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