

STATE OF VERMONT  
SUPERIOR COURT  
WASHINGTON UNIT

VT SUPERIOR COURT  
WASHINGTON UNIT  
CIVIL DIVISION

2016 AUG 30 P 3:25

In Re: ROBERT IMMLER

) CIVIL DIVISION

) Docket No. 515-8-16 whw

FILED

ASSURANCE OF DISCONTINUANCE

The State of Vermont, by and through Vermont Attorney General William H. Sorrell, and Robert Immler (“Respondent”), hereby enter into this Assurance of Discontinuance (“AOD”) pursuant to 9 V.S.A. § 2459.

***Regulatory Framework***

1. 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.
2. 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).
3. 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).
4. The lead law requires that essential maintenance practices (“EMPs”) specified in 18 V.S.A. § 1759 be performed at all pre-1978 rental housing.
5. 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).

6. 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).
7. 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).
8. The Vermont Consumer Protection 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.
9. Violations of the Consumer Protection Act are subject to a civil penalty of up to \$10,000.00 per violation. 9 V.S.A. § 2458(b)(1).

***Respondent's Rental Housing and Lead Compliance Practices***

10. Respondent is the owner of two rental properties, containing 6 total rental units, located at 118 High Street (3 units) and 182 High Street (3 units) located in Brattleboro, Vermont (collectively, "the Properties").
11. The Properties were all constructed prior to 1978, and therefore, are pre-1978 "rental target housing" within the meaning of the Vermont lead law, 18 V.S.A. § 1751(23), and are all subject to the requirements of 18 V.S.A. Chapter 38.
12. Respondent has in the past and continues presently to rent and offer for rent the Properties.
13. On January 17, 2016, Respondent filed with the Vermont Department of Health an "EMP Rental Property Compliance Statement" for 118 High Street; on January 25, 2016,

Respondent filed with the Vermont Department of Health an “EMP Rental Property Compliance Statement” for 182 High Street (hereinafter “EMP Statements”).

14. The EMP Statements represent that Respondent performed EMPs at 118 High Street in October 2015, and at 182 High Street on January 18, 2016.

15. The EMP Statements specifically certify that Respondent:

- a. visually inspected exterior and interior surfaces and outbuildings;
- b. stabilized exterior and interior paint; and
- c. did not identify deteriorated paint exceeding 1 square foot on exterior and interior surfaces of the buildings.

16. The EMP Statements were signed by Robert Immler and certified that “all information provided on this form is true and accurate” and acknowledged that “providing false, incomplete or inaccurate information on this form is unlawful and is punishable by civil and criminal penalties pursuant to Vermont law.”

17. On January 25, 2016 and again on March 29, 2016, Vermont Department of Health staff inspected the exterior and interior surfaces of the Properties and documented (via photographs) deteriorated paint exceeding more than 1 square foot on the exterior and interior surfaces of the Properties.

18. Respondent admits the truth of the facts described in ¶¶ 10-17.

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

*The State’s Allegations*

19. The Vermont Attorney General’s Office alleges the following violations of the Consumer Protection Act:

a. Submitting false EMP Statements and inaccurately representing that the Properties were in compliance with the lead law.

20. The State of Vermont alleges that the above behavior constitutes unfair and deceptive acts and practices under 9 V.S.A. § 2453.

**Assurances and Relief**

In lieu of instituting an action or proceeding against Respondent, the Attorney General and Respondent are willing to accept this AOD pursuant to 9 V.S.A. § 2459. Accordingly, the parties agree as follows:

21. Respondent 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 interest in the Properties and in any other pre-1978 rental housing in which they currently have, or later acquire, an ownership interest.

22. By September 15, 2016, Respondent shall hire, at his expense, an EMP-certified independent contractor to conduct compliance inspections and perform all EMP work of the interior and common areas of 118 High Street, as specified in 18 V.S.A. § 1759. By September 30, 2016, Respondent shall hire, at his expense, an EMP-certified independent contractor to conduct compliance inspections and perform all EMP work of the exterior of 118 High Street and 182 High Street, as specified in 18 V.S.A. § 1759. If Respondent requires additional time to complete the work, Respondent will contact the Attorney General's Office before the expiration of the above deadlines and provide justification for any extension.

23. Within one week of completion of the EMP work at the Properties described in the paragraph above, Respondent will file with the Vermont Department of Health,

Respondent's insurance carrier and with the Office of the Attorney General, a completed EMP compliance statement for all properties, and will give a copy of the compliance statement to an adult in each rented unit of all properties. The copy for the Office of the Attorney General shall be sent to: Justin Kolber, Assistant Attorney General, Office of the Attorney General, 109 State Street, Montpelier, Vermont 05609.

24. In the event Respondent wishes to rent a unit which becomes vacant in any of Respondent's pre-1978 rental housing before such housing is made EMP compliant, Respondent shall provide advance written notice of the intent to rent to the Office of the Attorney General at the address listed above. Respondent's advance written notice shall also: (1) verify that the interior of the specific unit to be rented is EMP compliant; (2) provide an update as to any remaining EMP work to be performed at the property, including the date by which the entire property will be EMP compliant. Otherwise, Respondent shall not rent, or offer for rent, any unit which becomes vacant in any of the properties that is not EMP compliant until such time as the EMP work is complete and the EMP compliance statement is distributed as described above.

25. Respondent shall pay the sum of \$20,000 in civil penalties and costs for the conduct described in this AOD. Payment shall be made as follows:
- a. Within two weeks after entry of this AOD, Respondent shall pay ten thousand dollars (\$10,000) by a single check payable to "the State of Vermont" and sent to the Office of the Attorney General at the address listed in paragraph 23; and
  - b. Respondent shall expend at least ten thousand dollars (\$10,000), including the actual cost of materials and the actual cost of labor, on lead hazard reduction improvements at any or all of the Properties described herein.

**Other Terms**

26. This AOD is binding on Respondent, however, sale of any pre-1978 rental property may not occur unless Respondent has complied with all obligations under this AOD, or this AOD is amended in writing to transfer to the buyer or other transferee all remaining obligations.
27. Transfer of ownership of any of Respondent's pre-1978 rental 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.
28. This AOD shall not affect marketability of title.
29. Nothing in this AOD in any way affects Respondent's other obligations under state, local, or federal law.
30. In addition to any other penalties or relief which might be appropriate under Vermont law, any future failure by Respondent to comply with the terms of this AOD shall be subject to a liquidated civil penalty paid to the State of Vermont in the amount of at least \$5,000 and not more than \$10,000.

\*\*\*SIGNATURES APPEAR ON NEXT PAGE\*\*\*

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

DATED at Montpelier, Vermont this 30<sup>th</sup> day of August, 2016.

STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL

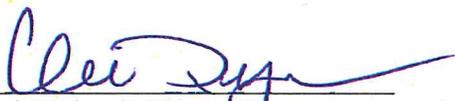
By:   
Justin E. Kolber  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609  
(802) 828-5620  
[justin.kolber@vermont.gov](mailto:justin.kolber@vermont.gov)

DATED at Brattleboro, VT this 26<sup>th</sup> day of August, 2016.

ROBERT IMMLER

By:   
Robert Immler

Approved as to form:

  
Christopher S. Dugan, Esq.  
CADY & DUGAN, P.C.  
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P.O. Box 2341  
Brattleboro, Vermont 05303  
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