

**STATE OF RHODE ISLAND
PROVIDENCE, SC.**

SUPERIOR COURT

**STATE OF RHODE ISLAND;
PETER F. NERONHA, in his
capacity as Attorney General of the
STATE OF RHODE ISLAND; and
DR. JAMES MCDONALD,
in his capacity as Interim Director,
RHODE ISLAND DEPARTMENT
OF HEALTH**

Plaintiffs,

v.

**TELLEZ INVESTMENT, INC. and
CARLOS TELLEZ**

Defendants.

C.A. No. PC-2022-

**COMPLAINT AND PETITION FOR ENFORCEMENT OF
COMPLIANCE ORDER AND FOR DECLARATORY RELIEF**

A. PRELIMINARY STATEMENT

1. This matter arises as a result of the failure of Tellez Investment, Inc. and Carlos Tellez (hereinafter “Defendants”) to comply with a lead notice of violation that has, by operation of law, become a final compliance order of the Rhode Island Department of Health (“RIDOH”). Defendants own and/or operate a property located at 95 Plainfield Street, Apartment 2, in Providence, Rhode Island (“the property”). The compliance order was issued after a RIDOH-initiated inspection, which found the presence of lead in violation of state law (“lead hazards”) in a lead-poisoned child’s home.¹
2. The compliance order became effective as a final agency order by operation of law following Defendants’ failure to request an administrative hearing in response to a

¹ To safeguard the child’s identity and protected health information this Complaint does not include the identity of the poisoned child or information that could enable an individual to surmise the identity of the poisoned child.

second notice of violation issued by RIDOH. *See* R.I. Gen. Laws § 23-24.6-23; 216 R.I. Code R. § 50-15-3.19.11.

3. The violations outlined in the notice of violation risk the health of any tenants of the property, particularly children.
4. RIDOH is alerted by health care providers when children test positive for lead poisoning. In the event that a child tests positive for lead poisoning, RIDOH then categorizes each positive test by the severity of the poisoning, either a blood lead level (“BLL”) below 5 micrograms per deciliter ($\mu\text{g}/\text{dL}$), a BLL between 5 and 9 $\mu\text{g}/\text{dL}$, or a BLL over 10 $\mu\text{g}/\text{dL}$. The higher the BLL, the more severe the lead poisoning, with any BLL over 5 $\mu\text{g}/\text{dL}$ being considered an elevated blood lead level.
5. According to the CDC, no safe blood lead level has been identified; therefore, any level of lead in the blood is harmful to children. Lead exposure – even at low levels – damages the brain and nervous system, increases a child’s risk of developing permanent learning disabilities, reduces concentration and attentiveness, slows growth and development, and causes behavioral problems that may extend into adulthood. Damage to a child’s brain and nervous system from lead exposure can also cause future hearing and speech complications. Lead poisoning can affect nearly every system in the child’s body.
6. Children are at the greatest risk of lead exposure in older homes that have lead paint. Children are most often exposed to lead paint when they place in their mouths objects or their own fingers that have lead particles or dust on them. Lead dust particles can come from the soil outside the home, from damaged paint inside the home, or from the friction of lead-painted surfaces like windows or doors. Child lead poisonings are

completely preventable with the removal of lead hazards. For this reason, the Rhode Island General Assembly enacted a statutory framework to ensure that property owners remediate lead hazards.

7. In pertinent part, pursuant to R.I. Gen. Laws § 23-24.6-1 *et seq.*, when RIDOH is notified that a child has been lead poisoned, it will arrange for the child's home to be inspected for lead hazards. If lead hazards are found, RIDOH will issue a notice of violation to the property owner with an order that the lead hazards be remediated within 30 days. If the property owner does not provide evidence that the lead hazards have been remediated, RIDOH will issue a second notice of violation after the issuance of the first notice of violation. Should the property owner fail to comply with this second notice of violation within 30 days, the notice of violation becomes a final compliance order, and the Attorney General, after notifying in writing the property owner of their obligations under law and the potential penalties for continued violations, may bring a civil action to bring the property into compliance and seek other relief. *See* R.I. Gen. Laws § 23-24.6-23.

B. PARTIES

8. Peter F. Neronha is the Attorney General of the State of Rhode Island (“Attorney General”). The Attorney General is the State of Rhode Island’s chief law enforcement officer and is authorized to pursue this action by, among other sections of the General Laws of Rhode Island, those cited herein, and the *parens patriae* doctrine.
9. Dr. James McDonald is the Interim Director of RIDOH. RIDOH is authorized to pursue this action by various sections of the General Laws of Rhode Island cited herein.

10. Defendant Tellez Investment, Inc. is a Rhode Island domestic profit corporation and an owner and/or operator of the property.

11. Defendant Carlos Tellez is listed as the president and registered agent for Tellez Investment, Inc. and is an owner and/or operator of the property. His address as the registered agent is the same as that listed for Tellez Investment, Inc.'s principal office: 176 Webster Avenue, Providence, Rhode Island.

C. JURISDICTION

12. Subject matter jurisdiction in this case is properly conferred in this Court pursuant to R.I. Gen. Laws §§ 8-2-13, 8-2-14, and 23-24.6-23(c)(1).

13. Personal jurisdiction over the Defendant in this case is properly conferred in this Court based on the Defendant's presence within the State of Rhode Island.

14. Venue is properly placed in this Court pursuant to R.I. Gen. Laws § 9-4-3.

D. FACTS

15. The property is one of five units in a multi-family dwelling.

16. It was built in the year 1920.

17. Defendant acquired and/or began to manage the property in 2019.

18. Following a child's testing for lead poisoning by a health care provider, RIDOH received notice that the child had an elevated blood lead level.

19. In response to the child's lead poisoning, RIDOH caused an inspection of the child's home to be conducted in order to determine whether the child's home was or could be a source of lead hazards.

20. At this time, the child lived in the property.

21. The RIDOH-initiated inspection found lead hazards in the living room, dining room, and bedrooms, including a child's bedroom, of the property.
22. The inspection also found lead hazards in the shared stairways and hallway, as well as on the exterior door and trim, among other locations.
23. At the time these lead hazards were found, the property was owned and/or operated by the Defendants.
24. Following the inspection, Defendants were given notice of the lead violations.
25. Both the first notice of violation and second notice of violation for the property allege violations of the following laws:
 - a. Lead Poisoning Prevention Act (R.I. Gen. Laws § 23-24.6);
 - b. Rules and Regulations for Lead Poisoning (216 R.I. Code R. § 50-15-3); and the
 - c. Housing Maintenance and Occupancy Code (R.I. Gen. Laws § 45-24.3).
26. Within thirty (30) days of receipt of the first notice of violation, Defendants were ordered to:
 - a. Provide RIDOH with a copy of the Lead Disclosure Form signed by the current tenants of the property indicating they received a copy of the report and the notice of violation; and
 - b. Hire a licensed lead contractor to perform lead hazard reductions to correct the violations found in the report and contact RIDOH when the violations had been corrected in order to schedule a clearance inspection; or
 - c. Notify RIDOH of their enrollment in the Lead Safe Providence Program or RI Housing Lead Safe Homes Program; or

- d. Call RIDOH to schedule a site consultation and perform approved temporary lead hazard control measures, and submit a written request for an extension to the 30-day compliance period; and/or
 - e. Call RIDOH to schedule a site consultation, become a certified Lead Renovator or hire a Lead Renovation Firm, and request a variance to perform lead hazard control to correct the violation.
27. Defendants failed to correct the lead hazards and a second notice of violation was subsequently issued.
28. Within thirty (30) days of receipt of the second notice of violation, Defendants were ordered to correct the outstanding violations through a licensed lead contractor or request an administrative hearing to contest the issuance of the second notice of violation. The Defendant failed to do so.
- 29. To date, Defendants have failed to fully comply with the requirements of the above-mentioned notices of violation, even as Defendants' tenants, if any, may have been exposed to serious lead hazards. This failure to comply constitutes a significant environmental and health hazard to any tenants of the property, as well as the general public.***

COUNT I
(Violation of State Lead Poisoning Prevention Laws)

30. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 29, above, as if set forth in full.
31. Pursuant to R.I. Gen. Laws § 23-24.6-17 of the Rhode Island Lead Poisoning Prevention Act, property owners of multi-family rental units are required to remediate all lead hazards upon notification by RIDOH.

32. After Defendants received the first notice of violation, they had thirty (30) days to correct the lead hazards. Defendants failed to do so, and thus have been non-compliant with regard to the property for more than one year as of the date of the filing of this Complaint.

33. *Wherefore*, Plaintiffs seek a declaration, pursuant to R.I. Gen. Laws § 9-30-1, that Defendants have violated the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 *et seq.*, with regard to lead hazard violations that exist at the property.

COUNT II
(Penalties for Violations)

34. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 33 above, as if set forth in full.

35. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1) (the Lead Poisoning Prevention Act), the Attorney General’s Office has the power to initiate a civil cause of action and to impose “penalties and fines, as appropriate.” Additionally, pursuant to R.I. Gen. Laws § 42-9.1-2(a)(5), the Attorney General’s Office has the authority to “take all necessary and appropriate action, including but not limited to public education, legislative advocacy, and where authorized by law to institute formal legal action, to secure and insure compliance with the provisions of title[] 23,” including the Lead Poisoning Prevention Act of Chapter 24.6, Title 23.

36. This Court may assess such penalties and fines up to \$5000 per day that lead hazard violations have existed in the property. *See* R.I. Gen. Laws § 23-24.6-27; RIDOH Penalty Matrix at 216 R.I. Code R. § 50-15-3.19.5(C).

37. *Wherefore*, this Court should therefore assess penalties and fines up to that amount.

**COUNT III
(Public Nuisance)**

38. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 37, above, as if set forth in full.
39. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second notice of violation for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health.”
40. Additionally, pursuant to R.I. Gen. Laws § 10-1-1 *et seq.*, the Attorney General may bring an action in the name of the state to “abate the nuisance and to perpetually enjoin the person or persons maintaining the nuisance and any or all persons owning any legal or equitable interest in the place from further maintaining ... the nuisance either directly or indirectly.” Similarly, where, as here, the interests in the health and well-being of the People of the State of Rhode Island are implicated and there is harm and potential for further harm to a substantial segment of the Rhode Island population, the Attorney General possesses *parens patriae* standing to commence legal action against the Defendant to stop his unlawful practices.
41. *Wherefore*, this Court should therefore enjoin the nuisance at the property.

**COUNT IV
(Injunctive Relief)**

42. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 41, above, as if set forth in full.

43. Pursuant to R.I. Gen. Laws § 23-24.6-23(c)(1), the Attorney General’s Office has the power to initiate a civil action to compel compliance with the Lead Poisoning Prevention Act through injunctive relief.
44. Furthermore, pursuant to R.I. Gen. Laws § 10-1-3, when an alleged nuisance appears before the court, a temporary injunction may be issued “enjoining any and all respondents from further maintaining or permitting the nuisance[.]”
45. *Wherefore*, this Court should therefore enjoin the nuisance at the property.

**COUNT V
(Receivership)**

46. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 45, above, as if set forth in full.
47. Pursuant to R.I. Gen. Laws § 23-24.6-23(d), following the issuance of a second notice of violation for failure to meet the applicable lead hazard reduction standards, “the unit may be considered abandoned and a public nuisance, which is a menace to public health,” and the Attorney General and RIDOH may “request the court to appoint a receiver for the property, the court in such instances may specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met.”
48. *Wherefore*, if Defendants are unable or otherwise unwilling to assist in remediating the lead hazard violations at the property, this Court should appoint a receiver for the property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Peter F. Neronha, in his capacity as the Attorney General for the State of Rhode Island, and Dr. James McDonald, in his capacity as Interim Director of RIDOH, hereby request that Judgement be entered in favor of the Plaintiffs and that they be granted the following relief:

- a. That Defendants contract with a Lead Hazard Contractor licensed by RIDOH and correct any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;
- b. That Defendants obtain documentation that the Lead Hazard Contractor has corrected any and all outstanding lead violations, making the property compliant with the applicable lead poisoning prevention laws;
- c. That Defendants ensure that any tenants at the property are provided with, or compensated for, adequate housing accommodations during any period that they are unable to remain in their homes due to the remediation of the violations outlined above;
- d. That Defendants ensure that any and all other housing code violations present at the property are repaired;
- e. Should Defendants be unable or otherwise unwilling to assist in obtaining the relief requested above, that this Court appoint a receiver for the property, and specifically authorize the receiver to apply for loans, grants and other forms of funding necessary to correct lead hazards and meet lead hazard mitigation standards, and to hold the property for any period of time that the funding source may require to assure that the purposes of the funding have been met;

- f. That this Court issue a declaratory judgment pursuant to R.I. Gen. Laws § 9-30-1 that Defendants have violated the Lead Poisoning Prevention Act, R.I. Gen. Laws § 23-24.6-1 *et seq.* with regard to lead hazard violations that exist at the property;
- g. That this Court assess penalties and fines as required by law; and
- h. Such other and further relief as this Court deems just and equitable in accordance with the facts of this case.

Respectfully submitted,

STATE OF RHODE ISLAND;
PETER F. NERONHA, in his
capacity as Attorney General of the
STATE OF RHODE ISLAND; and
DR. JAMES MCDONALD,
in his capacity as Interim Director, RHODE
ISLAND DEPARTMENT OF HEALTH,

Plaintiffs,

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