

**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. UTPALA BANDY,
 in her capacity as Interim Director,
 RHODE ISLAND DEPARTMENT
 OF HEALTH**

Plaintiffs,

v.

AMANDA WEINBERGER

Defendant.

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C.A. No. PC-2023-

**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 Amanda Weinberger (hereinafter “Defendant”) 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”).

The Defendant owns and/or operates a property located at 476-478 Smith Street in Providence, Rhode Island (“the property”). The RIDOH final compliance orders were issued after multiple children living at the property were lead poisoned in two years.

Three RIDOH-initiated inspections have continued to find the presence of lead in violation of state law (“lead hazards”) in the home.¹

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.

2. The compliance orders became effective as a final agency order by operation of law following Defendant's failure to request an administrative hearing in response to a second notice of violation issued by RIDOH. *See* R.I. Gen. Laws § 23-24.6-23; 216 R.I. Code R. § 50-15-3.6.11(B).2. The violations outlined in the notices of violation risk the health of any tenants of the property, and particularly children.
3. 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 categorizes each positive test by the severity of the poisoning with categories for (1) a blood lead level below 5 micrograms per deciliter ($\mu\text{g}/\text{dL}$); (2) a blood lead level between 5 and 10 $\mu\text{g}/\text{dL}$, inclusive; and (3) a blood lead level over 10 $\mu\text{g}/\text{dL}$. The higher the blood lead level, the more severe the lead poisoning. RIDOH considers any blood lead level over 5 $\mu\text{g}/\text{dL}$ to be an elevated blood lead level ("EBLL") that indicates childhood lead poisoning.
4. According to the Centers for Disease Control and Prevention ("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 a child's body.
5. 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 friction on 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.

6. 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.
7. Pursuant to 216 R.I. Code R. 50-15-3.5.6, owners of pre-1978 non-exempt rental units are required to have a Certificate of Lead Conformance ("CLC") for their units. CLCs must be renewed every two years, or until the next tenant turnover, whichever period is longer. R.I. Gen. Laws § 42-128.1-4. Where a tenancy exceeds two years, property owners are still required to obtain visual inspections and submit proper documentation to RIDOH. *Id.*
8. CLCs are essential to the State of Rhode Island's lead poisoning prevention framework, as they are currently the State's primary prevention tool to ensure landlords have fulfilled

their affirmative duty to eliminate conditions conducive to lead poisoning in their properties.

9. CLCs also serve to safeguard Rhode Island’s rental housing market and consumer-tenants against the offering of rental units that are both dangerous and legally insufficient.

B. PARTIES

10. 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.

11. Dr. Utpala Bandy 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.

12. Defendant Amanda Weinberger is the owner and/or operator of the property located at 476-478 Smith Street, Providence, RI.

C. JURISDICTION

13. 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).

14. 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 or, pursuant to R.I. Gen. Laws § 9-5-33, Defendant’s operation of a rental unit within the State of Rhode Island.

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

D. FACTS

16. The property is a multi-unit apartment building built in 1900. According to the Tax Assessor database, the property is listed as a three-unit building.

17. The Defendant has owned the property since October 2019.
18. In 2021, RIDOH received notice that two children residing in one unit at the property had elevated blood lead levels (“EBLLs”).
19. After receiving notice of the lead poisonings, RIDOH caused an initial inspection of the property to be conducted to test paint, dust, soil, and water for lead.
20. In the children’s apartment, the initial inspection found lead hazards in—among other places—the children’s bedroom, another bedroom, the living room, kitchen, dining room, front common staircase, and the rear common staircase.
21. The soil surrounding the property was also found to contain a hazardous amount of lead.
22. On April 5, 2022, following the initial inspection, RIDOH mailed a first notice of violation (“first NOV”) to the Defendant.
23. Approximately 4 months after the first NOV was sent, a reinspection of the property found that lead hazards remained. Accordingly, on August 16, 2022, RIDOH issued a second notice of violation (“second NOV”) to the Defendant.
24. Between 2021 and 2023, multiple children from another family residing in another unit at the property, address 478 Smith Street, were also lead poisoned.
25. In September 2022, RIDOH recorded a lien on the property.
26. In December 2022, the Attorney General sent a warning letter to the Defendant, demanding that the property come into compliance with the law.
27. To date, the Defendant has failed to do so, leaving their tenants at risk of lead poisoning and serious harm.
28. Neither unit at the property has a Certificate of Lead Conformance (“CLC”), as required by law.

29. Subsequent testing indicates that children in both units continue to have elevated blood lead levels.
30. The Defendant has engaged in unfair and deceptive trade practices by flouting important health and safety laws that law-abiding landlords follow. The Rhode Island General Assembly enacted the Unfair Trade Practice and Consumer Protection Act to create a statutory framework to ensure fair play and healthy competition within Rhode Island. R.I. Gen. Laws § 6-13.1-5(a) (“Consumer Protection Act”). This framework applies to the rental housing market, where deceptive and unfair trade practices must be curtailed.
31. There are children under the age of six residing at the property.
32. To date, and for nearly two years, the Defendant has failed to fully comply with the requirements of the above-mentioned Notices of Violation, even as the Defendant’s tenants 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)

33. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 32, above, as if set forth in full.
34. 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.
35. Now, nearly two years after receiving the first notice of violation, Defendant has still failed to correct lead hazards at the property in contravention of state law.

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

**COUNT II
(Penalties for Violations)**

37. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 36 above, as if set forth in full.

38. 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.

39. This Court may assess such penalties and fines up to \$5,000 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. § 50-15-3.6.5(C).

40. *Wherefore*, this Court should therefore assess penalties and fines up to that amount for the property.

**COUNT III
(Public Nuisance)**

41. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 40, above, as if set forth in full.

42. 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” when “occupied by a pregnant woman or a child under the age of six (6) years”
43. 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 her unlawful practices.
44. *Wherefore*, this Court should therefore enjoin the nuisance at the property.

**COUNT IV
(Injunctive Relief)**

45. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 44, above, as if set forth in full.
46. 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.
47. 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[.]”

48. *Wherefore*, this Court should therefore enjoin the nuisance at the property.

**COUNT V
(Receivership)**

49. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 48, above, as if set forth in full.

50. 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.”

51. *Wherefore*, if Defendant is unable or otherwise unwilling to assist in remediating the lead hazard violations at the property, this Court should appoint a receiver for the property.

**COUNT VI
(Violation of the Deceptive Trade Practices Act)**

52. Plaintiffs hereby reallege and incorporate by reference herein, the allegations contained in Paragraphs 1 through 51, above, as if set forth in full.

53. Making implicitly or explicitly false or misleading statements or omissions to tenants and prospective tenants about the quality, nature, and certification of rental units, and failing to provide legally required CLCs are unfair methods of competition and unfair and deceptive acts and practices in violation of R.I. Gen. Laws § 6-13.1-2 *et seq.*

54. The Defendant has engaged in actions which are unfair methods of competition and unfair or deceptive to tenants by:

- a. Implicitly representing to tenants that the Defendant's property is safe and habitable when, in fact, it is frequently unsafe, not habitable, toxic, and not maintained; and
- b. Implicitly representing to tenants that the Defendant is operating a rental property that conforms to material provisions of state law when, in fact, the property does not conform to state law because the Defendant has failed to maintain the property and obtain the CLC legally required for the property.

55. *Wherefore*, this Court should enjoin the Defendant from engaging in unfair or deceptive trade practices in violation of the Consumer Protection Act; take any necessary action to restore to any tenants and the state any money or property that may have been acquired by any unfair method of competition or unfair or deceptive trade practices, including requiring restitution to be paid to the Defendant's tenants harmed by their deceptive and unfair conduct or by disgorgement of profits; and assess a civil penalty up to \$10,000 for each violation of the Consumer Protection Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, Peter F. Neronha, in his capacity as the Attorney General for the State of Rhode Island, and Dr. Utpala Bandy, in her 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 Defendant contracts 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 Defendant obtains 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 Defendant ensures 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 Defendant ensures that any and all other housing code violations and lead hazards present at the dwelling are repaired;
- e. That Defendant obtains a Conditional Lead-Safe Certificate, or other required lead-safe certificate, for each rental unit at the property;
- f. Should Defendant 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;
- g. That this Court issue a declaratory judgment pursuant to R.I. Gen. Laws § 9-30-1 that Defendant has 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;
- h. That this Court assess penalties and fines as required by law; and
- i. 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
ATTORNEY GENERAL;**

**DR. UTPALA BANDY
DEPARTMENT OF HEALTH**

By Their Attorney:

**PETER F. NERONHA
ATTORNEY GENERAL**

/s/ Paul Meosky

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