

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ERIE

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THE PEOPLE OF THE STATE OF NEW YORK,  
by LETITIA JAMES, Attorney General of New  
York, ERIE COUNTY, NEW YORK, and the  
CITY OF BUFFALO, NEW YORK,

Index No. 810362/2020

Plaintiffs,

v.

Decision

ANGEL E. DALFIN a/k/a/ ELLIOT DALFIN;  
LORRAINE DALFIN; PAUL R. HEIL; BBB4,  
LLC; BRADSVILLE PROPERTIES HOLDINGS,  
LLC; BUFFALO COMMONS, LLC; BUFFALO  
HOLDINGS, LLC; BUFFALO NORTH, INC.;  
CTA MANAGEMENT, LLC; ECO DEV INC.;  
ESSEX INDUSTRY, LLC; GLOUCESTER LAND  
HOLDINGS, LLC; HABITAT PROPERTIES,  
LLC; HAMILTON ENTERPRISES, LLC;  
HOMESTEAD LAND HOLDINGS, LLC;  
IZVILLE PROPERTIES, LLP; LIBERTY  
GROUP ENTERPRISES, LLC; MONTGOMERY  
PROPERTIES, LLC; OTUAB, LLC; PECK  
PROPERTIES, INC.; SWEETHOME, LLC; TDO  
HOLDINGS, LLC; VIN7, LLC;  
WILLIAMSVILLE PROPERTIES HOLDINGS,  
LLC; and YEHUDA BEN AVRAHAM  
GUERRERO, INC.,

Defendants

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Buffalo in worse shape than Flint, Michigan? No disrespect to Flint, but really?

This is a lead paint damages decision. In April, 2022, this Court found the following eight Defendants in default: 1)ANGEL E. DALFIN a/k/a ELLIOTT DALFIN; 2)BBB4, LLC; 3)ESSEX INDUSTRY, LLC; 4)HABITAT PROPERTIES, LLC; 5)HOMESTEAD LAND HOLDINGS, LLC; 6)PECK PROPERTIES, Inc.; 7)VIN7, LLC; and 8)WILLIAMSVILLE PROPERTIES, LLC. Further, in June, 2022 this Court appointed as Receiver, Stephanie Simeon, as executive director of Heart of the City Neighborhoods, Inc. An inquest was held August 3, 2022 “to establish the amount of monetary relief, including penalties, restitution, disgorgement, damages, and CPLR §8303(a)(6) allowances, and any other appropriate relief”.

In support of their request, Plaintiffs, THE PEOPLE OF THE STATE OF NEW YORK, ERIE COUNTY, NEW YORK, and the CITY OF BUFFALO, NEW YORK, jointly requested monetary relief and e-filed submissions. Plaintiffs requested \$5,094,018.45, all but \$17,000.00

of which pursuant to Executive Law §63(12) and GBL §349. The \$17,000.00 is pursuant to New York State CPLR. Two Defense attorneys appeared at the hearing; Mr. Parker MacKay for non-defaulting Defendant PAUL HEIL, and Mr. Richard Steiner for defaulting Defendant, ANGEL E. DALFIN a/k/a/ ELLIOT DALFIN. Notably, Mr. Steiner acknowledged his client has already been found in default so he could only challenge the assessment of damages. Further, Mr. Steiner did not dispute the testimony at the damages inquest. His only critique was if disgorgement of his clients' rent was "just to fund the general budget for the State of New York, I don't see the purpose of achieving that." However, if the "money went to solve the problem, I would probably be mute about any objection to it." Mr. Steiner makes a good point.

This Court reviewed all e-filed submissions, in particular documents ##269-309, filed post Default Judgment, including Affidavits from a Senior Public Health Sanitarian for the Erie County Department of Health, the Commissioner of the City of Buffalo's Department of Permit and Inspection Services, an EPA certified lead paint renovator, a New York State attorney/notary public, Environmental Scientist and a Pediatrician/member of the Buffalo and Erie County Lead Safe Task Force. All Affidavits and submissions document in great detail the blatant, unapologetic fraudulent and illegal actions/violations of various State, County and City regulations/laws perpetuated upon New York State citizens. Further, they did the math. The Court relied upon their Affidavits with Exhibits, as well as the testimony, exhibits and argument from the August 3, 2022 hearing.

Plaintiffs' request of \$5,094,018.45 breaks down as follows:

**A. \$630,000 total penalty for G.B.L. § 349 violations**

The \$630,000.00 request for GBL §349 violations is based on the false and/or non-existent lead disclosures given to tenants and purchasers of the subject properties. The defaulting Defendants have been found by this Court to have engaged in 126 instances of deceptive acts or practices as defined by GBL §349(a). Each such act is subject to a penalty of up to \$5,000.00.  $126 \times \$5,000 = \$630,000.00$ .

**B. \$3,101,900 restitution for ongoing County Code violations**

The \$3,101,900 request is based upon continuing violations of Article IX of the County Code on lead poisoning in housing. Violators are subject to civil penalties of up to \$250 per day for each violation of the Code and up to \$500 per violation per day, if upon County reinspection, the violation has not been remedied. Each day a violation continues constitutes a separate offense. Plaintiffs seek penalties in one case (78 Deshler Street) for \$250/day for 16 violations lasting 622 days and secondly (952 Northampton Street) for \$100/day for 7 violations lasting 877 days.

**C. \$60,050.00 restitution for continuing violation of Buffalo Charter**

The \$60,050.00 restitution request is for continuing violations of City of Buffalo property management license requirements. Section 265-1 of the Charter and Code of the City of Buffalo requires property managers who engage in managing three or more residential City properties to obtain a license from the City. Violations result in a penalty of up to \$1,500.00 per violation, with each day it continues constituting a separate violation. ANGEL DALFIN managed over 150

properties in the City without the required license. Petitioners seek a conservative \$50.00/day from September 18, 2017 through January 1, 2021 (1,201 total days) representing the approximate three year period prior to the filing of the Complaint through the last day evidence shows Defendants were still managing properties in Buffalo. Thus, 1,201 days x \$50 per day = \$60,050.00

**D. \$21,590 restitution for unpaid City of Buffalo rental registration fees**

The State also requests restitution of \$21,590 for unpaid City of Buffalo rental registration fees. Under the City Code §264-4, owners of residential rental properties are required to obtain a “rental dwelling unit registration certificate”. Violations are punishable by fines up to \$1,500.00 and revocation of the certificate. In addition, if the annual fee is not paid, it is doubled 30 days after the due date. After 60 days, an additional fine of \$75.00 is imposed. The \$21,590 is the total amount documented by the City as the unpaid rental registration fees, including late fees.

**E. \$1,263,478.45 disgorgement of rent received pursuant to Exec. Law § 63(12)**

Plaintiffs request \$1,263,478.45 as disgorgement of rent received pursuant to Executive Law § 63(12) for Defaulting Defendants’ persistent additional illegality, fraud and public nuisance. Under New York law, disgorgement is not a penalty, but instead “focuses on the gain to the wrongdoer” and “merely requires the return of wrongfully obtained profits.” *Greenberg*, 27 N.Y.3d 490 at 497–98 (2016). Thus, disgorgement “aims to deter wrongdoing by preventing the wrongdoer from retaining ill-gotten gains from fraudulent conduct.” *People v. Ernst & Young*, 114 A.D.3d 569, 569 (1st Dep’t 2014) To ensure that the Defaulting Defendants do not profit from their egregious behavior and to deter similar behavior, the State seeks, pursuant to Executive Law § 63(12), the disgorgement of rent received by the Defaulting Defendants on each of the properties that had lead paint violations, for the time period after each property was first cited for a lead paint violation. The State’s request for disgorgement is limited to properties cited for lead paint violations, and only for rents received after each house was cited for violations. Analysis of Defendant DALFIN’s general ledger for his rental operation indicates the amount of rent received during this time period for these properties is at least \$1,263,478.45, and likely higher.

**F. \$16,000 in allowances pursuant to C.P.L.R. § 8303(6)**

The State also requests \$16,000.00 in allowances pursuant to C.P.L.R. § 8303(a)(6) based upon the delineated \$2,000.00 per each of the eight defaulting Defendants. In relevant part, (a) Discretionary allowance in action. Whether or not costs have been awarded, the court before which the trial was had, or in which the judgment was entered, on motion, may award:

6. to the plaintiffs in an action or proceeding brought by the attorney-general under ...subdivision twelve of section sixty-three of the executive law,..a sum not exceeding two thousand dollars against each defendant.

*N.Y. C.P.L.R. §8303 (McKinney)*

**G. \$1,000 in recoverable costs pursuant to C.P.L.R. §§ 8201 and 8301**

Lastly, Petitioners request \$1,000 in recoverable costs and disbursements pursuant to

C.P.L.R. §§ 8201 and 8301 for recovery of certain litigation expenses.

Costs awarded in an action shall be in the amount of:

1. two hundred dollars for all proceedings before a note of issue is filed; plus
2. two hundred dollars for all proceedings after a note of issue is filed and before trial; plus
3. three hundred dollars for each trial, inquest or assessment of damages.

*N.Y. C.P.L.R. §8201 (McKinney)*

a) Disbursements in action or on appeal. A party to whom costs are awarded in an action or on appeal is entitled to tax his necessary disbursements

*N.Y. C.P.L.R. §8301 (McKinney)*

Notably, Courts are empowered to make specific allocations in response to the above requests brought under Executive Law § 63(12) (“Exec. L. § 63(12)”) and General Business Law § 349 (“G.B.L. § 349”). State Finance Law § 4(11) and Executive Law § 63(16) explicitly authorize the State may be directed to disburse and allocate monetary relief obtained in the resolution of such actions “to a local government” or “to prevent, abate, restore, mitigate, or control any identifiable instance of prior or ongoing water, land, or air pollution.” Therefore, these provisions allow funds ordered by this Court to be specifically allocated “to prevent, abate, mitigate, or control the exposure of children to lead hazards in Buffalo and Erie County.” Further, Plaintiffs have advised NEW YORK STATE will be leading collection efforts with respect to this damages award, as agreed by Counsel for the City of Buffalo and Erie County.

Plaintiffs request that this Court award the requested monetary relief to be full and consistent with the Orders entered by two Supreme Courts Justices from Onondaga and Bronx counties in *State v. Kiggins* and *State v. Chestnut Holdings of New York*, thereby ordering that all funds recovered be used by the State, City, or County “to prevent, abate, mitigate, or control the exposure of children to lead hazards.”

**Consent Orders with similar lead paint damages**

*People of the State of New York v. Kiggins, et al.*, Index No. 008397/2021

[Complaints pursuant to Executive Law §63(12) and General Business Law §349 resulted in payments to “prevent, abate, mitigate, or control the exposure of children to lead paint within the City of Syracuse or Onondaga County, or to provide assistance to the families affected by lead exposure.”]

*People of the State of New York v. Chestnut Holdings of NY*, Index No. 22837/2020

[Chestnut “shall comply with the Lead Poisoning Prevention Act” and pay “to prevent, abate, mitigate, or control the exposure of children to lead paint.”]

**Relevant Law on Allocation of Damages**

12. Whenever any person shall engage in repeated fraudulent or illegal acts or otherwise demonstrate persistent fraud or illegality in the carrying on, conducting or transaction of business, the attorney general may apply, in the name of the people of the state of New York, to the supreme court of the state of New York, on notice of five days, for an order enjoining the continuance of such business

activity or of any fraudulent or illegal acts, directing restitution and damages and, ..., and the court may award the relief applied for or so much thereof as it may deem proper... The term “persistent fraud” or “illegality” as used herein shall include continuance or carrying on of any fraudulent or illegal act or conduct. The term “repeated” as used herein shall include repetition of any separate and distinct fraudulent or illegal act, or conduct which affects more than one person. Notwithstanding any law to the contrary, all monies recovered or obtained under this subdivision by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

16. (a) Notwithstanding any other law to the contrary, in resolving, by agreed judgment, stipulation, decree, agreement to settle, assurance of discontinuance or otherwise, any claim or cause of action, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, a state agency or a state official or employee acting in their official capacity shall not have the authority to include or agree to include in such resolution any term or condition that would provide the state agency, official, or employee, their agent or designee, the settling party, or any third party with control or discretion over how any moneys to be paid by the settling party would be used, spent, or allocated.

**(b) Paragraph (a) of this subdivision shall not apply** to any provision in the resolution of a claim or cause of action providing...(6) moneys to be used to prevent, abate, restore, mitigate or control any identifiable instance of prior or ongoing water, land or air pollution...

***N.Y. Exec. Law § 63 (McKinney)***

(h) In addition to the right of action granted to the attorney general pursuant to this section,... The court may award reasonable attorney's fees to a prevailing plaintiff.

(j) Notwithstanding any law to the contrary, all monies recovered or obtained under this article by a state agency or state official or employee acting in their official capacity shall be subject to subdivision eleven of section four of the state finance law.

***N.Y. Gen. Bus. Law § 349 (McKinney)***

11. (a) Notwithstanding any other law to the contrary and except as provided by paragraph (b) of this subdivision, no state agency or a state official or employee acting in their official capacity, may pay out or otherwise disburse funds obtained as the result of a judgment, stipulation, decree, agreement to settle, assurance of discontinuance, or other legal instrument resolving any claim or cause of action, whether filed or unfiled, actual or potential, and whether arising under common law, equity, or any provision of law, except pursuant to an appropriation...

**(b) Paragraph (a) of this subdivision shall not apply** to (1) moneys to be distributed to the federal government, to a local government, or to any holder of a bond or other debt instrument issued by the state, any public authority, or any public benefit corporation;

...(2) moneys to be distributed solely or exclusively as a payment of damages or restitution to individuals or entities that were specifically injured or harmed by the defendant's or settling party's conduct and that are identified in, or can be identified by the terms of, the relevant judgment, agreement to settle, assurance of discontinuance, or relevant instrument resolving the claim or cause of action; ...(6) moneys to be used to prevent, abate, restore, mitigate, or control any identifiable instance of prior or ongoing water, land or air pollution;...

*N.Y. State Fin. Law § 4 (McKinney)*

**Testimony and Affidavit from Melinda Cameron, M.D.:**

Dr. Cameron is a pediatrician at Oishei Children's Hospital with approximately 36 years' experience treating lead poisoned children and a medical director for the lead poisoning prevention center; funded by New York State. The center serves as the treatment centers for kids. They consult with the physicians in the area who have children with elevated levels, and have developed close relationships with the health departments in terms of their case management of the children. Dr. Cameron testified that through a New York State Grant, she covers the eight Western New York counties, although primarily Buffalo and Erie County being the urban area where most of the children come from. She occasionally treats children from Chautauqua County, Niagara County or Genesee County from more rural areas.

From her testimony at the August hearing:

Through my career I have been involved with all of the coalitions, the local coalitions, Erie County, Buffalo together from the community looking at ways to try to address the lead poisoning problem in Buffalo because it's been very severe. If anybody wants to know about lead, I am the local expert. I am also -- I am an academic physician through the

University of Buffalo, so I train medical students and residents as well, and I'm specifically the one that would train them on that because it's considered my specialty.

Over her years she has gained direct knowledge of the sources, impacts, and solutions to pediatric lead-poisoning. Dr. Cameron's opinions and recommendations reflect the collective priorities of expert stakeholders and members of the Buffalo and Erie County Lead Safe Task Force (Task Force). The Task Force is a cross-sector collaboration focused on eradicating childhood lead poisoning in Erie County. It is convened by the Community Foundation for Greater Buffalo, Task Force members including the City of Buffalo, Erie County government, the Buffalo Public Schools, individuals from the medical community, non-profit leaders, philanthropic entities, and residents .

Further, Dr. Cameron testimony:

Lead is bad for everyone, but specifically for children because lead is a severe neurotoxin and because it causes brain damage and nerve damage in children that is the crucial time when their nervous system is developing, the first two years of life. So as a neurotoxin it's especially dangerous to be exposed at that point in time. So lead is more dangerous than for older adults.

So it's not that a child comes in with symptoms of lead and you say, oh, they have lead and you treat it. That is what happened in the past back in the 1960s and before that

before our rules required screening. So most of these children are discovered through screening, but the impact that it has on them -- and this is the research that's been done continuously -- is that it's very much a neurotoxin that causes permanent damage to the nervous system and brain damage developmental problems, and that happens at levels when we don't even see overt symptoms. So it's a hidden poison for children.

Lead is the most studied neurotoxin there is, but each study becomes more alarming in terms of the effects of lead at even very low levels. There's no safe level of lead in the body. We should not have lead. So there's no normal lead level.

Dr. Cameron explained in her Affidavit and in her testimony at the hearing that Lead in Buffalo is generational. She has treated children whose parents were treated for lead poisoning. It's very difficult to accurately measure the total impact that Lead poisoning has had on our community, but Buffalo is in the top ten cities in the country. She has often heard that Buffalo is number five or number six. Lead poisoning is a devastating diagnosis for parents. They are very concerned about the future development of their children. It's also very disrupting on their lives because they realize that they are being poisoned by their own home, something that's in their own home. Dr. Cameron has seen patients and families who have experienced a lot of guilt about it because they are not providing a safe place for their children. And also, if one child is affected, then you are always concerned about other children as well. So it's something that's very emotionally impactful, financially impactful.

Often these families have no other place to go and are very concerned about their living situations when this is discovered. "It's terrible. It's still terrible", because Dr. Cameron still has to treat these kids. It has gotten better over the years, but there's still a lot of progress to be made just in the fact that she still has to treat these kids and that these levels still exist. "It's something that as a community we really need to constantly keep in the forefront of our mind so that these kids can develop to their potential".

When Dr. Cameron was asked how she would compare the lead-poisoning problem in Buffalo to that in Flint, she replied:

Our area is definitely worse. We definitely have kids with higher levels. Again, the Flint was a media issue, and it was also because of the source of lead poisoning was in the water, and so it was a different source. It got media attention and actually got a lot of money out of that for helping these kids in their area, but here our probl

The City of Buffalo and Erie County already have significant lead hazard mitigation and prevention programs in place. Erie County Department of Health (ECDOH) and Department of Permits Inspections (DPIS) are in the best position to carry out the preventative actions necessary to protect children from lead exposure and poisoning. Concerted efforts are underway in Buffalo to combat the silent epidemic of lead poisoning that disproportionately impacts poor children and children of color living in old rental housing, but more must be done. Unsafe rental houses in East Buffalo, abandoned by landlords like the defendants in this action, must be made safe for tenants and their families. Bolstering the capacity of ECDOH and DPIS, to take a wide range of preventative actions especially, will make a difference in reversing the unacceptably high rates of lead poisoning in the City of Buffalo.

**New York State Pattern Jury Instructions:**

The Court reviewed and considered the following New York State Pattern Jury Instructions: 1:2B (Split Trial-Damages), 1:8 (Weighing Testimony), 1:21 (Review Principles Stated), 1:23 (Burden of Proof), 1:25 (Consider only Testimony & Exhibits), 1:27 (Exclude Sympathy), 1:91 (Interested Witness), 2:277 (Damages), CPLR §3215 was reviewed.

After said review and consideration of the essential facts, applicable charges, law and decisions, this Court decides as follows:

This Court hereby grants the requested monetary relief in full, in the form of a final money judgment against the Defaulting Defendants jointly and severally, in the amount of \$5,094,018.45. Further, the Court directs the money be used by the City of Buffalo, Erie County, and New York State to prevent, abate, mitigate, and/or control the exposure of children to lead hazards. An undetermined number of children and families have been severely and permanently injured by the intentional and cruel actions of the defaulting Defendants. Justice requires that the money collected from them should be spent to stop the generational trauma inflicted on our Western New York community.

In addition to the above, all applicable interest and costs shall be included in this Judgment. This constitutes the Decision of this Court. Counsel is hereby directed to submit the appropriate Order & Judgment. The e-filing and/or mailing of a copy of this Decision by this Court to counsel and the Clerk's Office shall not constitute notice of entry and service.

*Catherine Nugent Panepinto*

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Hon. Catherine Nugent Panepinto  
Supreme Court Justice

Dated: November 7, 2022  
Buffalo, New York

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