

**COURT OF COMMON PLEAS
STARK COUNTY, OHIO**

CLERK OF COURT
STARK COUNTY, OHIO

05 MAY 10 AM 8:37

STATE OF OHIO, EX REL.
JOHN D. FERRERO
PROSECUTING ATTORNEY
P.O. Box 20049
Canton, Ohio 44701-0049

CASE NO. **2005 CV 01505**

JUDGE Liob

and

THE BOARD OF HEALTH OF THE
STARK COUNTY COMBINED
GENERAL HEALTH DISTRICT
3951 Convenience Circle, N.W.
Canton, Ohio 44718

VERIFIED COMPLAINT FOR
PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF

Plaintiffs,

vs.

EMC MORTGAGE
909 Hidden Ridge #200
Irving, Texas 75038

Defendant.

John D. Ferrero, the duly appointed, qualified and acting Prosecuting Attorney for Stark County, Ohio, brings this action on behalf of the State of Ohio pursuant to the provisions of Ohio Revised Code 3767.03, 3707.021, and 3709.21.

The Board of Health of the Stark County Combined General Health District is the board of health of a general health district having authority to make such orders and regulations as are necessary for the public health and the prevention, abatement and suppression of nuisances in Stark County, Ohio, and brings this action pursuant to its power and authority as contained in Chapters 3707, 3709, 3734, and 3767 of the Ohio Revised Code.

ENTERED BY 6

GENERAL ALLEGATIONS

1. Defendant, EMC Mortgage, is the owner of the premises located at 3205 - 5th Street, S.E., Canton, Canton Township, Stark County, Ohio (hereinafter the "Site").
2. The Site is located within the Stark County Combined General Health District, a general health district organized under Chapter 3709 of the Ohio Revised Code.
3. Pursuant to a complaint concerning the open dumping of solid waste and rodent infestation at the Site, an investigation of the Site was made by the Stark County Combined General Health District on July 22, 2004.
4. The 2002 investigations revealed that "solid wastes", as that term is defined by Section 3734.01(E) of the Ohio Revised Code ("O.R.C."), and Rule 3745-27-01(V) of the Ohio Administrative Code ("O.A.C."), were "disposed", as that term is defined by O.R.C. 3734.01(F), at the Site on dates not yet ascertained by Plaintiff, but prior to July 22, 2004.
5. The disposal of solid wastes debris at the Site constitutes "open dumping", as that term is defined by O.R.C. 3734.01(I) and O.A.C. 3745-27-01(B)(23).
6. On December 20, 2004, William Franks, Health Commissioner, issued Defendant, EMC Mortgage, a Public Health Order commanding Defendant to bait and trap for mice; remove and dispose of the solid waste from the lot, home and shed; secure the home and shed to prevent entry into the home and shed; and notify the Stark County Health Department once the clean up has started so progress can be monitored. [A true, accurate and complete copy of the

December 20, 2004 Public Health Order is attached hereto as Exhibit A.]

7. Defendant has refused to comply with the December 20, 2004, Public Health Order within the time provided.

COUNT I

VIOLATION OF R.C. SECTION 3709

8. The allegations of paragraphs 1 through 7 of Plaintiffs' complaint are hereby incorporated into Count I of this complaint as if fully restated herein.
9. R.C. §3709.21 authorizes a general health district to make orders and regulations necessary for the public health and to prevent, abate and suppress nuisances within its jurisdiction.
10. The December 20, 2004, Public Health Order issued to the Defendant by the Stark County Combined General Health District was issued pursuant to R.C. 3709.21 (copy attached hereto as Exhibit A).
11. Despite having been ordered by the December 20, 2004, Public Health Order of the Stark County General Combined Health District to abate the unsanitary and unsafe health conditions at the Site, Defendant has failed to abate the unsanitary and unsafe health conditions at the Site.
12. R.C. §3709.211 provides that when an order of the board of health of a general health district made pursuant to Section 3709.21 of the Ohio Revised Code is not complied with in whole or in part, the board may petition the court of common pleas for injunctive or other appropriate relief requiring all persons to whom such order of the board is directed to comply with such order.
13. The actions described in the paragraphs above constitute a violation of valid

orders and regulations of the Board of Health of the Stark County Combined General Health District for which Plaintiffs are entitled to injunctive relief to abate the unsanitary and unsafe health conditions at the Site.

COUNT II

VIOLATION OF R.C. SECTION 3707

14. The allegations of paragraphs 1 through 13 of Plaintiffs' complaint are hereby incorporated into Count II of this complaint as if fully restated herein.
15. R.C. §3707.01 provides that when a building, premises or the sewerage thereof is, in the opinion of the board of health, in a condition dangerous to life or health, the board may declare it a public nuisance and order the dangerous conditions be removed, abated, suspended or altered by the owner, agent or other person having control thereof or responsible for such condition and may prosecute him for refusal or neglect to obey such order.
16. The Site owned by Defendant was found to be in a condition dangerous to life and human health by the December 20, 2004, Public Health Order issued by the Stark County Combined General Health District.
17. Despite having been ordered by the December 20, 2004 Public Health Order of the Stark County Combined General Health District to abate the unsanitary and unsafe health conditions on the Site, Defendant has failed to abate the unsanitary and unsafe health conditions thereon in direct violation of the December 20, 2004 Public Health Order.
18. R.C. §3707.021 provides that when an order of the board of health of a general health district made pursuant to Section 3707.01 of the Ohio Revised Code is

not complied with in whole or in part, the board may petition the court of common pleas for an injunction requiring all persons to whom such order of the board is directed to comply with such order.

19. The actions described in the paragraphs above constitute a violation of valid orders and regulations of the Stark County Combined General Health District for which Plaintiffs are entitled to injunctive relief to abate the unsanitary and unsafe health conditions at the Site.

COUNT III

VIOLATION OF OHIO'S SOLID WASTE DISPOSAL LAWS

20. The allegations of paragraphs 1 through 19 of Plaintiffs' Complaint are hereby incorporated into Count III of this complaint as if fully restated herein.
21. The July 22, 2004 inspection revealed that "solid wastes," as that term is defined by R.C. §3734.019E) and O.A.C. 3745-27-01(V) were "disposed," as that term is defined by R.C. §3734.019F), at the Site on dates not yet ascertained by Plaintiff, but prior to July 22, 2004.
22. The Site is a "solid waste disposal facility," as that term is defined by R.C. §3734.01(N) and O.A.C. 3745-27-01(C)(11).
23. O.R.C. §3734.02(C) prohibits any person from establishing a solid waste disposal facility without submitting an application for a permit and receiving a permit issued by the Director of the Ohio Environmental Protection Agency. Defendant does not have a license to operate or maintain a solid waste disposal facility at the Site, nor have they applied for such a license.
24. O.R.C. §3734.02 provides that the board of health of each district shall provide

for the inspection, licensing, and enforcement of sanitary standards for solid waste disposal site. O.R.C. §3734/05(A)(1) and O.A.C. 3745-37-01(A) prohibit any person from operating and maintaining a solid waste disposal facility without a license issued by the board of health of the district in which the property is located or by the Director of the Ohio Environmental Protection Agency. Defendant does not have a license to operate or maintain a solid waste disposal facility at the Site, nor has he applied for such a license.

25. The disposal of solid wastes at the Site constitutes "open dumping," as that term is defined by R.C. §§3734.01(I) and 3734.03, and O.A.C. 3745-27-01(B)(23).
26. On December 20, 2004, Defendant was ordered to legally dispose of solid waste at the Site.
27. O.A.C. 3745-27-05 provides that solid waste disposal shall be as follows:

3745-27-05 Authorized, limited, and prohibited solid waste disposal methods.

- (A) Solid wastes shall be disposed of only by the following methods or combination thereof:
 - (1) Sanitary landfill, or
 - (2) Incineration, or
 - (3) Composing, or
 - (4) Methods not mentioned in paragraphs (1) through (3) above and not prohibited by this Chapter 3745-27, provided that such methods are demonstrated to the satisfaction of the Director to be capable of disposing of solid wastes without causing water pollution, and without violating these regulations and any regulations adopted by the

Director pursuant to Ohio Revised Code Chapter 3704 (Air Pollution Control).

Defendants have failed to comply with the above-referenced Administrative Rule in disposing of solid waste at the Site.

28. R.C. §3734.03 and O.A.C. 3745-27-05(C) provide that no person shall conduct, permit, or allow open dumping. Defendant has conducted, permitted, or allowed open dumping at the Site in violation of the above-referenced Code Section and Administrative Rule.
29. R.C. §3734.11 prohibits any person from violating any section of Chapter 3734 of the Ohio Revised Code or rules adopted thereunder. The actions described above in paragraphs 24, 25, 26, 27 and 28 constitute a violation of Chapter 3734 of the Ohio Revised Code and the Administrative Rules and regulations adopted thereunder.
30. Because Defendant has no license to dispose of solid waste at the Site, because he has not followed the required solid waste disposal methods, and because he has engaged in open dumping at the Site, Defendant is subject to injunctive relief pursuant to R.C. §3734.10 and is liable for a civil penalty of up to \$10,000.00 for each day of each violation of Chapter 3734 of the Ohio Revised Code.

COUNT IV

COMMON LAW NUISANCE

31. The allegations of paragraph 1 through 30 of Plaintiffs' complaint are hereby incorporated into Count III of this complaint as if fully rewritten herein.

32. The actions described in the paragraphs above have caused an unreasonable interference with the health, welfare and safety of the neighboring public and constitute a common law public nuisance, for which Defendant is subject to injunctive relief prohibiting the creation and continuance of said nuisance.

COUNT V

STATUTORY NUISANCE

33. The allegations of paragraphs 1 through 32 of Plaintiffs' Complaint are hereby incorporated into Count V of this complaint as if fully restated herein.
34. R.C. §3767.13(B) provides that no person shall cause or allow offal, filth or noisome substances to be collected or remain in any place to the damage and prejudice of others or of the public.
35. On dates as yet ascertained by Plaintiffs, but prior to December 20, 2004, Defendant has allowed the conditions cited in paragraphs 1 through 7 on the Site to exist to the damage and prejudice of others and of the public. Since at least December 20, 2004, and continuing to the present, Defendant has failed to remedy the conditions.
36. The actions described in the paragraphs above constitute a nuisance, as defined in R.C. §3767.01() and 3767.13, for which Plaintiffs are entitled to injunctive relief, pursuant to R.C. §3767.03, and a tax, pursuant to R.C. §3767.08.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs specifically request that this Court:

- (A) Issue a preliminary and permanent injunction, pursuant to R.C. §3709.211, R.C. §3707.021, R.C. §3767.03, R.C. §3734.10 and/or any other appropriate laws,

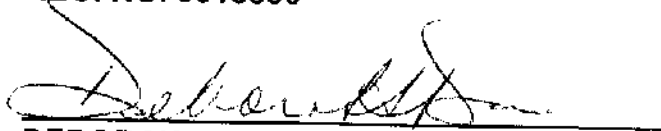
prohibiting Defendant from adding to or further exacerbating the unsanitary and unsafe health conditions at the Site.

- (B) Issue a preliminary and permanent mandatory injunction, pursuant to R.C. §3709.211, R.C. §3707.021, R.C. §3767.03, R.C. §3734.10 and/or any other appropriate laws, ordering Defendant to abate and correct the unsanitary and unsafe health conditions and violations at the Site cited in the Stark County Combined General Health District December 20, 2004 Public Health Order.
- (C) Issue a preliminary and permanent injunction, pursuant to R.C. §§3734.10, 3767.02-3767.06, 3734.10 and/or any other appropriate laws,
- (D) Issue a mandatory injunction, pursuant to R.C. §§3734.10, 3734.20, 3767.02-3767.06 and any other appropriate laws, requiring Defendant to abate the illegal disposal and open dumping at the Site, including but not limited to, requiring Defendant to remove all solid wastes currently at the Site to an approved sanitary landfill.
- (E) Order Defendant to pay a civil penalty of up to \$10,000.00 per day of each violation of R.C. Chapter 3734, pursuant to R.C. §3734.10.
- (F) Order Defendant to pay a tax of \$300.00 for maintaining a nuisance, pursuant to R.C. §§3767.01-3767.13.
- (G) Retain jurisdiction of the Site for the purpose of making necessary orders in the future carry out this Court's judgment.
- (H) Order Defendant to pay all costs of this action and to pay Plaintiffs any fees and/or costs it has incurred herein by virtue of having to commence and prosecute this action.

- (l) Grant any other relief as may be justified under the circumstances and equities of this case.

**JOHN D. FERRERO
PROSECUTING ATTORNEY
REG. NO. 0018590**

By:



**DEBORAH A. DAWSON
Reg. No. 0021580
Senior Assistant, Civil Division
110 Central Plaza South, Suite 510
P.O. Box 20049
Canton, Ohio 44701-0049
Telephone: (330) 451-7865
Facsimile: (330) 451-7965
Counsel for Plaintiffs**

STATE OF OHIO)
)
COUNTY OF STARK)

SS

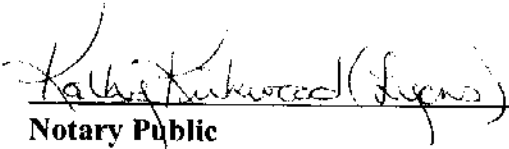
Verification

Deborah Moore being duly cautioned and sworn, hereby state that I am a District Sanitarian of Environmental Health of the Stark County Combined General Health District, which requested, by authority granted it under the laws of the State of Ohio, that this action be commenced in the name of the State of Ohio against Defendants for violations of the laws and regulations stated in this Complaint. I have read the foregoing Complaint and based upon my personal knowledge, information, and belief, hereby verify that the allegations contained therein are true and correct. A true, accurate and copy of the Public Health Order referenced in the Complaint has been attached hereto as an Exhibit.



Deborah Moore R.S.

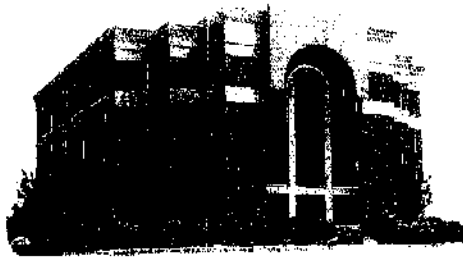
Sworn to before me and subscribed in my presence this 14 Day of April, 2005.



Notary Public

Kathy Lyons
Notary Publ.
My Commission Exp. 10/2/06

mailed 12-20-04



Health Commissioner:
William J. Franks, M.P.H.
Medical Director:
Grant A. Mason, Jr., M.D.
President Board of Health:
James Recchio, Jr.

STARK COUNTY HEALTH DEPARTMENT

Board Members:
Mrs. Agnes Young
Blair Zimmerman
Lori Mertes, M.D.
Nancy Kerstetter
Michael D. Krebs
Tammy Luther
Cory Feller

December 20, 2004

EMC Mortgage
909 Hidden Ridge #200
Irving, TX 75038

PUBLIC HEALTH ORDER

Open Dumping of Solid Waste, Mouse Infestation, Unsecured Home and Shed at 3209 5th St. SE, Parcel Number 1304813, Canton Township

Dear Sirs:

An inspection was conducted on July 22, 2004, concerning the following: improper disposal of solid waste (household garbage, tires, furniture, construction and demolition waste), unsecured home and shed, and a mouse infestation at the above referenced address. The inspection was made by Deborah (Anderson) Moore of the Stark County Health Department.

Reinspection on November 15, 2004 concluded that the home is still not secure and is infested with mice. The solid waste still exists at the property. Please be advised this is in violation of Solid Waste Regulations in Chapter 3734 of the Ohio Revised Code (O.R.C.), Chapter 3767 of the O.R.C. and Section 3745-27-05(C) of the Ohio Administrative Code (O.A.C.). You are also in violation of Chapter 3745-400 and Chapter 3707.01 of the O.R.C.

You are hereby ordered to :

1. Bait and trap for mice.
2. Remove the solid waste from the lot, home and shed and dispose of waste at a licensed disposal facility.
3. Secure home and shed to prevent entry into the home and shed.
4. You are to notify the Stark County Health Department once the clean up has started so that progress can be monitored. Copies of all receipts generated from the transfer and disposal of the materials are to be submitted to the Stark County Health Department. You are advised that materials cannot be burned or buried on the property.

You have thirty (30) days from the date of this letter to comply with this **Public Health Order**. Failure to comply with this order will result in the matter being turned over to the Stark County Prosecutor for further legal action.

This correspondence only addresses specific observations in the areas that were inspected. Compliance with the requirements outlined in this correspondence does not relieve the obligations to comply with other local, state, and federal laws and regulations.

If you have any questions concerning, please contact Deborah Moore at (330) 493-9904, extension 260, between the hours of 8:30AM to 9:30 AM weekdays.

Sincerely,

A handwritten signature in cursive script, appearing to read "W. Franks".

William Franks, MPH
Health Commissioner

