

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FIRST DEPARTMENT

-----X
In the Matter of the Application of
NEW YORK CITY COALITION TO END LEAD
POISONING, INC., et al.,

Plaintiffs-Respondents,

for a Judgment pursuant to Article 78 and § 3001 of
the Civil Practice Law and Rules

- against -

PETER VALLONE, as Speaker of the New York
City Council, et al.,

Defendants-Appellants.
-----X

**AFFIRMATION OF
HAROLD M. SHULTZ
IN SUPPORT OF
DEFENDANTS'
MOTION**

New York County Index
No. 120911/99

HAROLD M. SHULTZ, an attorney duly admitted to practice before the courts of
the State of New York, affirms the following to be true under penalties of perjury pursuant to
Rule 2106 of the Civil Practice Law and Rules:

1. I am the Special Counsel at the City of New York's Department of Housing
Preservation and Development ("HPD"). I have been employed by HPD for a total of 23 years.
My responsibilities within HPD include numerous facets of the agency's effort to initially
implement and then enforce the lead paint poisoning prevention law, Local Law 38 of 1999
("Local Law 38"). My responsibilities also include various tasks related to HPD's work in
complying with Local Law 38 as a landlord of more than 13,000 apartment units. I am fully
familiar with the facts and circumstances stated herein based upon personal knowledge and upon
conversations with HPD and City employees. I submit this affirmation in support of defendants'
motion, and in opposition to plaintiffs' cross-motion.

2. I have reviewed plaintiffs' opposition papers, and I take issue with plaintiffs' characterization that the defendants' extensive description of the hazards of abatement of intact lead paint are "contrived arguments." See Pls.' Br. at 34-35 (defendants' "most contrived arguments are based entirely on one premise -- that unless a stay is granted the City will be required ... to enforce the removal of all lead paint, intact or otherwise.... LL 1 did not require the removal of all lead paint. It required its removal or safe covering." [emphasis in original]). Plaintiffs' apparently contend that the hazards of abating intact lead paint are only present when lead paint is removed, but not when it is covered. Plaintiffs are wrong.

3. The term abatement "means any set of measures designed to permanently eliminate lead based paint or lead based paint hazards," including removal, permanent enclosure (i.e. safe covering), encapsulation or replacement. See 24 C.F.R. § 35.100. See also NYC Health Code § 173.14(b)(1). Most significantly, intact (and thus not harmful) lead paint will be disturbed regardless of the method utilized, thereby creating hazards where none existed. For this reason, the Department of Health's safety standards apply regardless of the method used. See NYC Health Code § 173.14(a)(1) ("This section shall apply to ... enclosure ... of [lead] paint").

4. In addition to the dangers that are posed when intact lead paint is abated utilizing the covering method, the per apartment cost described in my prior affidavit would remain the same. Specifically, the calculation of abatement costs at \$15,000 to \$20,000 per apartment was based on the permanent enclosure (i.e. sheet rocking) and component replacement (i.e. windows) methods. Accordingly, the detrimental consequences of Local Law 1's mandated full abatement that I described in my prior affidavit remain regardless of whether the abatement method is removal or "safe covering."

5. For the foregoing reasons and those detailed in my prior affidavit, it is respectfully requested that the defendants' motion be granted, and that plaintiffs' cross-motion be denied.

Dated: April __, 2001.
New York, New York

HAROLD M. SHULTZ