

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff. )  
 v. )  
 FIRST MULTIPLE LISTING )  
 SERVICE, INC.. )  
 Defendant. )

Civil Action No. C80-1861A  
Filed: November 16, 1983  
Entered: April 26, 1984

FINAL JUDGMENT

Plaintiff, United States of America, having filed its Complaint herein on October 28, 1980, and Plaintiff and Defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

ORDERED, ADJUDGED AND DECREED as follows:

I.

This Court has jurisdiction of the subject matter of this action and each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the Defendant under Section 1 of the Sherman Act (15 U.S.C. §1).

II.

As used in this Final Judgment:

(A) "Member" shall mean any person who is entitled to access to the services offered by Defendant's multiple listing service, whether or not said person is a stockholder in Defendant; and

(B) "Person" shall mean any individual, partnership, firm, association, corporation or other business or legal entity.

III.

This Final Judgment applies to Defendant and to its officers, directors, members, retained agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

....

(A) Refusing to make available or to furnish any and all services that Defendant now or hereafter makes available or furnishes to any of its members to any person who:

- (1) holds a real estate broker's license issued by the appropriate State of Georgia governmental licensing authority and is deemed by said authority to be acting as a principal broker, and whose license is deemed to be in active status by said authority;

- (2) is not the subject of any pending proceedings before the appropriate State of Georgia governmental licensing or disciplinary authority which may result in the suspension or revocation of the applicant's broker's license;
- (3) agrees to abide by Defendant's charter, by-laws, rules and regulations insofar as they are not inconsistent with the terms of this Final Judgment; and
- (4) agrees to pay to Defendant:
- (a) a charge equal to the reasonable set-up costs of preparing to make Defendant's services available to the person;
  - (b) a reasonable security deposit, to secure against any unpaid claims or charges that may be asserted by Defendant against the person, which deposit shall be placed in an account bearing interest at a market rate and shall be returned with the accumulated interest to the depositor upon such person's withdrawal from membership in Defendant.

to the extent not applied against such unpaid claims or charges; and

- (c) reasonable and non discriminatory fees for use of Defendant's services, which shall be equal on a per use basis for all members, whether or not stockholders of Defendant, and which shall not differentiate between persons who became members before or after the date of this Final Judgment. Such fees shall reflect the reasonable expenses of Defendant's operations, and may provide for a reasonable minimum annual fee for access to Defendant's services reflecting a reasonable approximation of the cost of Defendant's standing ready to provide services. The reasonable expenses of Defendant's operations, for purposes of this decree, shall include, in addition to Defendant's other expenditures in providing its services to members: (i) the accumulation and maintenance of reasonable reserves to be used exclusively for developing, maintaining, or improving the services and facilities used or to be used by Defendant to serve its members, and

(ii) an annual return to stockholders, which may be distributed to stockholders as dividends or retained by Defendant for the benefit of stockholders, calculated on the basis of the book value of Defendant's outstanding stock as of the close of the nearest preceding accounting period. The aggregate annual rate of return to all stockholders as a group shall not exceed the sum of the following items: (i) 130 percent of the average (for the calendar year next preceding the date of such determination) of the auction average interest rates for three-month U.S. Treasury bills calculated on the sum of (aa) \$25,000. plus (bb) an amount arrived at by multiplying the book value of Defendant's aggregate outstanding stock by a simple fraction of which the numerator shall be the value of Defendant's net (depreciated) property and equipment and the denominator shall be the value of Defendant's total assets, all as determined as of the close of Defendant's most recent accounting period next preceding the date of such determination; plus (ii) 100 percent of the

average (for the calendar year next preceding the date of such determination) of the auction average interest rates for three-month U.S. Treasury bills calculated on the balance of book value remaining after deducting from total book value \$25,000 plus the portion thereof derived in accordance with the formula specified in subpart (bb) above. Nothing in this Final Judgment shall prohibit Defendant from (i) imposing delivery or service charges, which shall be applied equally to all members, reflecting reasonable approximations of actual costs, including reasonable deposits for keys or books, or (ii) limiting book delivery or photographic services to an area reasonably accessible to such delivery or photographic services; provided, however, that Defendant must make reasonable arrangements for alternative service to inaccessible areas, including shipment of books by common carrier and allowing members to take and submit for publication their own photographs.

(B) Refusing to sell a share of stock in Defendant to any person who elects to purchase a share of stock and who:

- (1) satisfies the standards set forth in Paragraph A of this Section; and
- (2) agrees to pay Defendant as the purchase price for the share of stock the lesser of either (a) \$25,000, or (b) a sum equal to (i) the book value of one share of Defendant's stock, plus (ii) an amount arrived at by multiplying the book value of one share of Defendant's stock by a simple fraction of which the numerator shall be the value, not to exceed \$20,000, of Defendant's net (depreciated) property and equipment and the denominator shall be the value of Defendant's total assets, all as determined as of the close of Defendant's most recent accounting period next preceding the date of such purchase. The purchaser may elect to make payment for the share in five annual installments, each consisting of one-fifth of the purchase price, together with accrued interest on the unpaid portion at a rate equal to 130 percent of the average (for the calendar year next preceding the



respective dates when the four final installments become due) of the auction average interest rates for three-month U.S. Treasury bills. The first installment shall be due at the time of purchase. Each succeeding installment shall become due and payable one year after the preceding installment, together with accrued interest to the date of payment of that installment.

(C) Issuing stock in Defendant of a different class, or having different rights, from the stock in Defendant outstanding on the date of entry of this Final Judgment, or in any other manner discriminating between stockholders with regard to the rights, benefits, or privileges of stock ownership.

(D) Issuing stock in Defendant to any person except in accordance with the provisions of Paragraph (B) of this Section.

(E) Issuing an additional share of stock in Defendant to any stockholder in Defendant or exchanging any share of stock in Defendant for more than one share of stock in Defendant.

(F) Establishing, maintaining or enforcing any charter provision, by-law, rule or regulation, or otherwise taking action, which is designed to or has the effect of restricting or limiting the availability of either stockholder or nonstockholder membership in Defendant whether by imposing moratoria on the acceptance of new members or otherwise.

(G) Prohibiting or restricting any member of Defendant from belonging to or otherwise using the services of any other multiple listing service, or adopting or enforcing any such prohibition, except that Defendant may (i) prohibit any of its directors or officers from simultaneously serving as directors or officers of any other multiple listing service, and (ii) require its members to devote a reasonable number of uncompensated hours to the administration of Defendant's service, provided that such an obligation is not used to discriminate against such of Defendant's members as may elect to become members of, or to utilize the services of, another multiple listing service or to discriminate against any member of Defendant who is not a stockholder.

(H) Establishing, maintaining or enforcing any fees, charges, or practices which discriminate among members with respect to the availability of Defendant's services, except that collection of the

charges provided for in Paragraphs (A)(4)(a) and (A)(4)(b) of this Section may be limited to persons who become members after the date of this Final Judgment.

V.

(A) Defendant is ordered and directed to admit to membership any person who meets the criteria set forth in Section IV(A) and to issue a share of stock to any person who meets the criteria set forth in Section IV(B) within thirty (30) days from the receipt of an application. Within ten (10) days from receipt of an application, Defendant shall acknowledge its receipt and furnish the applicant with a copy of the Final Judgment. In the event a question is raised as to whether an applicant meets the criteria set forth in Paragraphs (A) or (B) of Section IV, Defendant shall promptly inform the applicant in writing of the nature of the question, and the applicant shall be permitted an opportunity to supply information to Defendant pertinent to the resolution of such question as has been raised as to his qualifications.

(B) Nothing in this Final Judgment shall affect Defendant's right to purchase or redeem its own stock on such terms, including

price, as it deems appropriate; provided, however, that the purchase or redemption of stock shall not be considered an expense of Defendant's operation within the meaning of Section IV(A)(4)(c). Nothing in this Final Judgment shall affect Defendant's right to use funds received as a return to stockholders pursuant to Section IV(A)(4)(c) or as the purchase price for a share of stock pursuant to Section IV(B)(2) for the purpose of redeeming or purchasing its own stock or for the purpose of paying dividends to its stockholders.

(C) In the event that Defendant collects set-up charges or service fees in excess of its actual requirements, including the payment of a return to stockholders and the accumulation and maintenance of reasonable reserves as provided in Section IV(A)(4)(c), said excess monies shall be returned to the members or credited to their accounts in proportion to the contributions of said members to the amount of the surplus; provided that any amounts then due and payable to Defendant in payment for stock pursuant to Section IV(B)(2) may first be deducted from any member's share of such surplus. Any surplus shall be returned or credited to members within ninety (90) days of the end of each of Defendant's fiscal years.

(D) Nothing in this Final Judgment shall prevent Defendant from suspending or terminating the membership of any member who at the time of such suspension or termination fails to meet the standards of or fulfill obligations assumed pursuant to Section IV(A) or, in the case of stockholders, to meet the standards of or fulfill obligations assumed under Section IV(B).

VI.

Defendant shall:

(A) Furnish within thirty (30) days after the date of entry of this Final Judgment, a copy thereof to each of its officers, directors, member firms, employees and retained agents.

(B) Furnish a copy of this Final Judgment to each person who, subsequent to Defendant's compliance with Paragraph (A) of this Section, becomes an officer, director, member firm, employee or retained agent of Defendant, said copy to be furnished within thirty (30) days of said person's achieving such status.

(C) File with this Court and with Plaintiff within sixty (60) days after the date of entry of this Final Judgment, an affidavit as to the fact of its compliance with Paragraph (A) of this Section.

(D) Obtain from each person served with this Final Judgment pursuant to Paragraph (A) or (B) of this Section a written statement evidencing such person's receipt of a copy of this Final Judgment and retain such statements in its files.

#### VII.

Defendant shall require, as a condition of the sale or disposition of all, or substantially all, of Defendant's total assets or stock, to any person or persons seeking to perform essentially the same services as Defendant, that the acquiring party agree to be bound by the provisions of this Final Judgment. The acquiring party shall file with the Court, and serve upon Plaintiff, its consent to be bound by this Final Judgment.

VIII.

(A) Once each fiscal year, for a total of five (5) successive fiscal years, Defendant shall conduct an examination of its operations to determine compliance with the provisions of this Final Judgment. The persons conducting the examinations must be given complete cooperation by Defendant's officers, directors, member firms, employees and retained agents, and shall be given access to all relevant books and records of Defendant.

(B) Descriptions by Defendant as to how the examination will be conducted are to be submitted to Plaintiff for approval within six (6) months after the date of entry of this Final Judgment.

(C) Within one hundred twenty (120) days after the close of each of its fiscal years ending after the anniversary date of the entry of this Final Judgment, a report of the findings of each such examination shall be filed with the Court, and a copy thereof submitted to Plaintiff and to the officers and directors of Defendant.

IX.

Within sixty (60) days after the entry of this Final Judgment, Defendant shall mail or deliver to the real estate boards in the nineteen counties listed in Paragraph 5 of the Complaint in this action either a copy of this Final Judgment or a notice of its entry, which notice shall also set forth, verbatim, the text of Sections IV and V hereof and the advice that this Final Judgment is available for inspection in the Office of the Clerk of the United States District Court in Atlanta, Georgia.

X.

(A) For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

- (1) duly authorized representatives of the Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable written notice directed to Defendant's principal office, shall be permitted:



(a) access during the office hours of Defendant to inspect and copy all books, ledgers, accounts, minutes, correspondence, memoranda, and other records and documents in the possession or under the control of Defendant, which may have counsel present, relating to any of the matters contained in the Final Judgment; and

(b) subject to the reasonable convenience of Defendant and without restraint or interference from it to interview officers, directors, members, employees and agents of Defendant, any of whom, as well as Defendant, may have counsel present, regarding any such matters; and

(2) upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to Defendant's principal office, Defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(B) No information or documents obtained by the means provided in this Final Judgment shall be divulged by any representative of

the Department of Justice to any person other than a duly authorized representative of the Executive Branch of Plaintiff except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(C). If at the time information or documents are furnished by Defendant to Plaintiff, Defendant represents and identifies in writing the material in any such information or documents to be that to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by Plaintiff to Defendant prior to divulging such material in any legal proceeding (other than proceedings initiated by Plaintiff to enforce compliance with this Final Judgment or to punish any violation hereof or a grand jury proceeding).

XI.

This Final Judgment shall expire on, and have no effect after, the end of Defendant's fiscal year ending after the tenth (10th)

anniversary of the date of entry of this Final Judgment by this Court; provided, however, that such expiration shall not relieve members or Defendant from any monetary obligation incurred as a result of this Final Judgment during its term.

XII.

Defendant's two counterclaims against Plaintiff are dismissed, with prejudice, upon entry of this Final Judgment.

XIII.

Jurisdiction is retained by this Court for the purpose of enabling any party to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of any of the provisions of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith or for the punishment of any violation hereof.

Entry of this Final Judgment is in the public interest.

DONE and ORDERED This 26th Day of April, 1984.

/s/ Marvin H. Shoob, Judge  
Marvin H. Shoob, Judge  
United States District Court  
Northern District of Georgia