

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Multiple Listing Service, Portland Board of Realtors, Washington County Board of Realtors, and Clackamas County Board of Realtors., U.S. District Court, D. Oregon, 1972 Trade Cases ¶74,221, (Dec. 5, 1972)

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United States v. Multiple Listing Service, Portland Board of Realtors, Washington County Board of Realtors, and Clackamas County Board of Realtors.

1972 Trade Cases ¶74,221. U.S. District Court, D. Oregon. Civil No. 72-68. Entered December 5, 1972. Case No. 2210, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Real Estate Commissions—Multiple Listing Service—Consent Decree.—A real estate multiple listing service in the Portland, Oregon area was prohibited by a consent decree from commission-fixing agreements, arrangements and practices, including refusing to list because of the fee set forth in the listing.

Refusal to Deal—Real Estate Multiple Listing Service—Consent Decree.—A real estate multiple listing service was barred by a consent decree from restricting or limiting the right of any property owner to an exclusive listing of the owner's property, boycotting or refusing to deal with any property owner or any person licensed to sell real estate, or refusing to accept for multiple listing any listing for the sale of real estate because of the rate or amount of commission set forth in such listing.

Restraints—Membership Requirements—Real Estate Multiple Listing Service—Consent Decree.—A real estate multiple listing service was prohibited by a consent decree from setting dues for membership that are not approximately related to the cost, refusing to accept members who are not members of any local, state or national realty board or association. Further, the service would be required to admit to membership any duly licensed broker, subject to reasonable and nondiscriminatory requirements.

For plaintiff: Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, Marquis L. Smith, Anthony E. Desmond, James E. Figenshaw, and Richard B. Cohen, Dept. of Justice. **For defendant:** A. J. Johnson, for Multiple Listing Service.

Partial Final Judgment Against Defendant Multiple Listing Service

SKOPIK, D. J.: Plaintiff, United States of America, having filed its complaint herein on January 26, 1972, and the Consenting Defendant, Multiple Listing Service, having filed its answer to said complaint, and the parties by their respective attorneys having consented to the making and entry of this Partial Final Judgment without admission by any party in respect to any issue;

Now, Therefore, before any testimony has been taken herein, 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

[*Jurisdiction*]

This Court has jurisdiction over the subject matter of this action and of the Consenting Defendant. The complaint herein having named more than one defendant, the Court having considered all facts and circumstances in this case hereby determines that there is no just reason for delay and directs entry of this Partial Final Judgment. The complaint states claims upon which relief may be granted against the Consenting Defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U. S. C. § 1), commonly known as the Sherman Act.

II

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[*Definitions*]

As used in this Final Judgment:

- (A) "Consenting Defendant" means defendant Multiple Listing Service;
- (B) "Real Estate Broker" means any person holding a real estate broker's license under the laws of the State of Oregon;
- (C) "Cooperative sale" means a sale of real property that has been listed with one real estate broker and sold by another;
- (D) "Rates or amount of commissions or other fees" means the total of any rates, commissions, or other fees and in addition means any rates, commissions, or other fees payable to either the selling or the listing real estate broker on a cooperative sale, or any percentage split or division thereof;
- (E) "Person" shall mean any individual, partnership, firm, association, corporation, or other business or legal entity.

III

[*Applicability*]

The provisions of this Partial Final Judgment shall apply to the Consenting Defendant and to each of its directors, officers, agents, employees, subsidiaries, successors and assigns, and, in addition, to all of its members and other persons in active concert or participation with it who receive notice of this Partial Final Judgment by personal service or otherwise.

IV

[*Practices*]

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

- (A) Fixing, establishing, or maintaining any rates or amount of commissions or other fees for the sale, lease, or management of real estate;
- (B) Urging, recommending, or suggesting that any of its members adhere to any schedule or other recommendation concerning the rates or amount of commissions or other fees for the sale, lease, or management of real estate;
- (C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rates or amount of commissions or other fees for the sale, lease, or management of real estate;
- (D) Including in any instructional course or other educational material any recommended, or suggested rates or amount of commissions or other fees for the sale, lease, or management of real estate;
- (E) Adopting, adhering to, maintaining, enforcing, or claiming any rights under any by-law, rule, regulation, plan, or program which restricts or limits the right of any of its members or any other real estate broker to seek any rate or amount of commission or other fee in accordance with his own business judgment;
- (F) Taking any action against any person where such action is based upon the person's failure or refusal to charge any particular rate or amount of commission or other fee;
- (G) Adopting, adhering to, maintaining, enforcing, or claiming any right under any by-law, rule, regulation, plan, or program which restricts or limits the right of any of its members to disclose said member's own *listings to whomsoever he wishes*;
- (H) Adopting, adhering to, maintaining, enforcing, or claiming any rights under any by-law, rule, regulation, plan, or program which restricts or limits the right of any property owner to an exclusive listing of said owner's property;

- (I) Boycotting or otherwise refusing to do business with any property owner or any person licensed to sell real estate;
- (J) Establishing, maintaining, or enforcing any fees or dues for membership in Consenting Defendant which are not approximately related to the cost, including the accumulation and maintenance of reasonable reserves for developing, maintaining, or improving it as a going concern;
- (K) Refusing to accept for membership any real estate broker because said broker is not a member of any local, state or national realty board or association;
- (L) Refusing to accept for multiple listing any listing for the sale of real estate because of the rate or amount of commission set forth in such listing;
- (M) Establishing or organizing any other person to do any of those acts prohibited in (A) through (L) above.

V

[*Membership*]

- (A) The Consenting Defendant is ordered and directed to admit to membership any person duly licensed as a real estate broker under the laws of the State of Oregon; provided, however, that the Consenting Defendant may adopt and maintain reasonable and non-discriminatory written requirements for membership not otherwise inconsistent with the provisions of this Partial Final Judgment.
- (B) The Consenting Defendant is ordered, and directed within ninety (90) days from the date of entry of this Partial Final Judgment to amend its by-laws, rules, regulations, contracts, and all forms requiring a client's signature or which previously contained a set commission rate for the sale, lease, or management of real estate by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Partial Final Judgment and to send amended copies of each such bylaw, rule, regulation, contract, and form to each of its members.
- (C) The Consenting Defendant is ordered and directed within ninety-five (95) days from the date of entry of this Partial Final Judgment to file with the plaintiff a true copy of its by-laws, rules, regulations, contracts, and forms, as aforesaid amended and distributed.
- (D) Upon amendment of its by-laws, rules, regulations, contracts, and forms as aforesaid, the Consenting Defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-law, rule, regulation, plan or program which is contrary to or inconsistent with any of the provisions of this Partial Final Judgment.

VI

[*Notice of Judgment*]

The Consenting Defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Partial Final Judgment, a copy thereof to each of its members and within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court and with the plaintiff, an affidavit setting forth the fact and manner of compliance with Sections V and VI above.

VII

[*Reports*]

For a period of ten (10) years from the date of entry of this Partial Final Judgment, the Consenting Defendant is ordered to file with the plaintiff, on each anniversary date of such entry, a report setting forth the steps which it has taken during the prior year to advise the Consenting Defendant's appropriate officers, directors, employees, and members of its and their obligations under this Partial Final Judgment.

VIII

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this Partial Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Consenting Defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (A) access during the office hours of the Consenting Defendant, who may have counsel present, to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of Consenting Defendant relating to any matters contained in this Partial Final Judgment, and (B) subject to the reasonable convenience of Consenting Defendant, and without restraint or interference from it to interview governors, directors, officers, members or employees of Consenting Defendant, who may have counsel present, regarding any such matters; and upon such request, the Consenting Defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Partial Final Judgment as may from time to time be requested. No information obtained by the means provided in this Section VIII 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 of America is a party for the purpose of securing compliance with this Partial Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Partial 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 this Partial Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.