

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Multiple Listing Service, Realtors of Portland, Washington County Board of Realtors, and Clackamas County Board of Realtors., U.S. District Court, D. Oregon, 1973-1 Trade Cases ¶74,515, (Jun. 29, 1973)

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

1973-1 Trade Cases ¶74,515. U.S. District Court, D. Oregon. Civil No. 72-68. Entered June 29, 1973. Case No. 2210, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Real Estate Commissions—Real Estate Boards in Portland, Oregon— Consent Decree.—Three boards of realtors in the Portland, Oregon area were prohibited by a consent decree from fixing rates of commission.

Exclusive Dealing—Real Estate Brokers—Consent Decree.—Three boards of realtors were prohibited by a consent decree from restricting or limiting the right of any of its members to disclose the member's own listing to whomever he wishes and to engage in cooperative transactions with whomsoever he wishes. Restrictions on membership in multiple listing services also are barred by the decree.

For plaintiff: Bruce B. Wilson, Acting Assistant 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 defendants: Davis, Jensen, De Franco & Holmes, Portland, Ore. and Brobeck, Phleger & Harrison, San Francisco, Calif.

Final Judgment Against Defendants Realtors of Portland, Washington County Board of Realtors, and Clackamas County Board of Realtors

SKOPIK, D. J.: Plaintiff, United States of America, having filed its complaint herein on January 26, 1972, the defendants having filed their answers to said complaint, the defendant Multiple Listing Service having heretofore consented to a Partial Final Judgment which has been duly entered [[1972 TRADE CASES ¶ 74,221](#)], and the remaining parties by their respective attorneys having consented to the making and entry of this 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 parties hereto. The complaint states claims upon which relief may be granted against the defendants 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

[*Definitions*]

As used in this Final Judgment:

- (A) "Consenting defendants" means defendants Realtors of Portland (named in the complaint herein as Portland Board of Realtors), Washington County Board of Realtors, and Clackamas County Board of Realtors, or any one or more of them acting singly or in concert;
- (B) "Real estate broker" means any person holding a real estate broker's license from the State of Oregon;
- (C) "Cooperative transaction" means a sale, lease, or management contract respecting real estate that has been listed with one real estate broker and the transaction consummated by another;
- (D) "Rates or amount of commissions or other fees" means the total of any rates, commissions, or other fees for the purchase, sale, lease, or management of real estate, and in addition means any rates, commissions, or other fees payable to either the selling or the listing real estate broker on a cooperative transaction, or any percentage split or division of the total commission between the listing and selling broker;
- (E) "Person" shall mean any individual, partnership, firm, association, corporation, or other business or legal entity.

III

[*Applicability*]

The provisions of this Final Judgment applicable to each of the consenting defendants shall also apply to each of their respective subsidiaries, successors, and assigns; to each of their directors, officers, agents, and employees, when acting in such respective capacities; and, in addition, to all persons, including members, in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

[*Commission Rates*]

Each of the consenting defendants, whether acting unilaterally or in concert or agreement with any person, is enjoined and restrained from:

- (A) Fixing, establishing, or maintaining any rates or amount of commissions or other fees;
- (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;
- (C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rates or amount of commissions or other fees;
- (D) Including in any instructional course or other educational material any recommended or suggested rates or amount of commissions or other fees;
- (E) Adopting, adhering to, maintaining, enforcing, or claiming any rights under any bylaw, 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 commissions or other fee;
- (G) Adopting, adhering to, maintaining, enforcing, or claiming any rights under any bylaw, 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 and to engage in cooperative transactions with whomsoever he wishes;
- (H) Adopting, adhering to, maintaining, or enforcing any bylaw, rule, regulation, plan, or program which would prohibit any member from doing business with any person;

(I) Adopting, adhering to, maintaining, or enforcing any bylaw, rule, regulation, plan, or program which would prohibit any member from joining or belonging to any multiple listing service or which would require any of its members to withdraw from any multiple listing service.

V

[*Contracts and Bylaws*]

(A) Each of the consenting defendants is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its bylaws, 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 which is contrary to or inconsistent with any provision of this Final Judgment and to send, amended copies of each such bylaw, rule, regulation, contract, and form to each of its members.

(B) Each of the consenting defendants is ordered and directed within ninety-five (95) days from the date of entry of this Final Judgment to file with the plaintiff a true copy of its bylaws, rules, regulations, contracts, and forms, as aforesaid amended and distributed.

(C) Upon amendment of its bylaws, rules, regulations, contracts, and forms as aforesaid, each of the consenting defendants is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which is contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

[*Notification*]

Each of the consenting defendants is ordered and directed to mail within sixty (60) days after the date of entry of this 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 Section V above and with this Section VI.

VII

[*Reports*]

For a period of ten (10) years from the date of entry of this Final Judgment, each of the consenting defendants 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 said consenting defendant's appropriate officers, director, employees, and members of its and their obligations under this Final Judgment.

VIII

[*Inspection and Compliance*]

For the purpose of determining or securing compliance with this 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 any consenting defendant, made to its principal office, be permitted subject to any legally recognized privilege, (A) access during the office hours of any consenting defendant to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of said consenting defendant relating to any matters contained in this Final Judgment, and (B) subject to the reasonable convenience of said consenting defendant, and without restraint or interference from it to interview governors, directors, officers, members or employees of said consenting defendant, who may have counsel present, regarding any such matters; and upon such request, said 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 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 Final Judgment or as otherwise required by law.

IX

[*Jurisdiction Retained*]

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