



Department of Justice

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JUSTICE DEPARTMENT SUES KENTUCKY REAL ESTATE COMMISSION FOR LIMITING COMPETITION AMONG REAL ESTATE BROKERS

Regulations Restrict Competition and Cause Consumers to Pay Higher Prices for Real Estate Services

WASHINGTON, D.C. – The Department of Justice’s Antitrust Division today filed a lawsuit against the Kentucky Real Estate Commission for limiting competition among real estate brokers in the Commonwealth of Kentucky. The Department said that the Commission’s regulations restrict competition and cause consumers to pay higher prices for certain real estate services.

The civil antitrust lawsuit, filed in the U.S. District Court for the Western District of Kentucky, challenges the Kentucky Real Estate Commission’s regulations that prohibit Kentucky real estate brokers and sales associates from offering rebates and other inducements to attract customers as a violation of Section 1 of the Sherman Act. The Department’s complaint states that real estate brokers were quoted as saying that the rebate ban “inhibits free trade” and avoids a “bidding war” among brokers that could “lessen [broker] profits,” which confirms the Department’s allegation that the ban harms home buyers and sellers.

“Restricting brokers from competing through rebates and inducements is a per se violation of the antitrust laws that, as confirmed by the brokers themselves, inflicts higher prices on Kentucky consumers,” said R. Hewitt Pate, Assistant Attorney General in charge of the Department’s Antitrust Division. “The federal antitrust laws protect consumers against restrictions on competition, even when they are adopted by state-created entities like the Kentucky Real Estate Commission.”

The state action doctrine provides immunity from federal antitrust liability for the actions of entities like the Kentucky Real Estate Commission only when there is a clearly articulated state policy to displace competition and the state actively supervises the conduct. “Here, Kentucky has neither articulated a policy to displace competition nor supervised the conduct at issue,” said Pate. This case reflects the continuing efforts of the Department to eliminate this kind of anticompetitive conduct by state-created entities that harms consumers.

According to the complaint, the policy of Kentucky is to preserve broker competition. Kentucky specifically prohibits the Kentucky Real Estate Commission from “promulgating any administrative regulation which in any way fixes prices, establishes fees, or sets the rate at which licensees are compensated.” Despite this prohibition, the Kentucky Real Estate Commission regulations prohibit real estate brokers from competing by, for example, offering cash rebates or refunds, or a free home inspection, the Department said in its court filing. Nor can they compete by taking a customer out to dinner or donating money to a charity of the customer’s choice. The Department’s suit seeks to restore this beneficial competition. As aptly put by another broker quoted in the complaint, striking down these regulations and permitting “[r]ebates and inducements will increase competition and give consumers more choices in service.”

The court will determine a pretrial schedule once the Kentucky Real Estate Commission files its response to the government’s lawsuit.

The Kentucky Real Estate Commission is headquartered in Louisville, Kentucky.

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