

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE

UNITED STATES OF AMERICA,
Plaintiff,

v.

MEMPHIS BOARD OF REALTORS,
Defendant.

Civil Action No. 72-218

Filed: June 27, 1972

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendant, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, as amended, 15 U.S.C. § 4, commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of said Act, 15 U.S.C. § 1.

2. The defendant maintains offices, transacts business, and is found within the Western District of Tennessee.

II

THE DEFENDANT

3. Memphis Board of Realtors (hereinafter

referred to as "MBR"), an association organized and existing under the laws of the State of Tennessee and having its principal place of business in Memphis, Tennessee, is named as defendant herein. MBR is an association of real estate brokers engaged in the business of selling, leasing and managing real estate in Shelby County in the State of Tennessee, salesmen associated with such real estate brokers and others affiliated with the real estate business in Shelby County.

III

THE CO-CONSPIRATORS

4. The members of MBR are not named as defendants, but are named as co-conspirators. There are approximately 850 real estate brokers, salesmen and others affiliated with the real estate business who are members of MBR. All of these members participated as co-conspirators in the offense alleged herein and many of them performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. For a commission or fee, brokers and salesmen, including members of MBR, render the service of bringing together buyers and sellers of real estate and of negotiating and arranging the prices and terms of real estate sales in Shelby County. Thousands of parcels of real estate are sold in Shelby County each year.

6. One of the functions of MBR is the operation of a Multiple Listing Service (hereinafter referred to as "MLS"). Only members of MBR may subscribe to MLS, and many members of MBR who sell residential property are subscribing members

of MLS and submit listings of residential property to the MLS. The MLS prepares copies of all such listings and distributes them to MLS subscribing members. Sales of property through MLS were over \$49,000,000 in 1970.

7. MLS provides potential sellers with maximum coverage. If a home is offered for sale through multiple listing, all the broker members of the MLS and their sales people may join in its offering. The seller having his home multiple listed will sign a form contract distributed by the MLS binding him for a set time period at the established commission rate. Because of the high incidence of sales of listed homes, MLS represents a valuable and highly desirable service for brokers and salesmen. For this reason, among others, membership in MBR is advantageous to brokers and salesmen doing business in the Shelby County area.

8. Because the Memphis metropolitan area, of which Shelby County forms a part, extends into the States of Arkansas and Mississippi, a substantial number of persons using the services of members of MBR in connection with real estate sales are persons moving into Shelby County from places outside the State of Tennessee and persons moving from Shelby County to places outside the State of Tennessee. Brokers and salesmen, including members of MBR, attempt to attract buyers from other states by, among other things, advertising in newspapers whose circulations cover other states. Many completed sales of real estate in Shelby County involve persons from outside the State of Tennessee.

9. As an additional part of their services, brokers and salesmen, including members of MBR, often assist in securing financing, insurance and other commodities and services necessary to real estate transactions in Shelby County. By virtue of these activities substantial amounts of such financing, insurance, commodities and services move into Shelby County from outside the State of Tennessee from businesses operating in interstate commerce. Also, the commissions and fees charged by brokers and salesmen, including members of MBR, for their services have a direct and substantial effect upon such financing, insurance, commodities and services, and the businesses which provide them.

10. A substantial portion of the materials, supplies and machinery used in residential and commercial construction in Shelby County is produced outside the State of Tennessee and transported to Shelby County. Obtaining financing is frequently necessary to such construction, and if such financing is not available, such construction is restricted and the interstate movement of the materials, supplies and machinery necessary for such construction is adversely affected. The commissions and fees charged by brokers and salesmen, including members of MBR, have a direct and substantial effect on the availability of financing.

V

OFFENSE

11. For many years up to and including the date of the filing of this complaint, the defendant and co-conspirators

have been continuously engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act. Said unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

12. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action between the defendant and co-conspirators to raise, fix and maintain commissions and fees for services provided in connection with the sale, lease and management of real estate in Shelby County, to arbitrarily exclude certain persons from membership in MBR and MLS, and to adopt rules and regulations restricting competition between brokers and salesmen engaged in the business of selling, leasing and managing real estate in Shelby County.

13. In effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done the things which, as hereinbefore alleged, they agreed and conspired to do, including among other things, the following:

- (a) agreed to uniform rates of commissions and fees;
- (b) published, circulated and adhered to the agreed upon uniform rates of commissions and fees;
- (c) agreed to standard contracts which incorporate the agreed upon rates of commissions and fees;

- (e) required the use of a uniform agency contract which incorporates the agreed upon rates of commissions on all properties listed in the MLS;
- (e) refused to accept a listing for MLS containing a rate of commission less than that recommended by MBR;
- (f) prohibited any MBR member from advertising that his services are rendered at less than customary fees;
- (g) agreed to exclude part-time brokers and salesmen from membership in MBR and MLS; and
- (h) adopted rules and regulations restricting competition between brokers and salesmen engaged in the real estate business in Shelby County.

VI

EFFECTS

14. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) commissions and fees charged for services in connection with the sale, lease and management of real estate in Shelby County have been raised, fixed and maintained at an artificial and non-competitive level;

- (b) price competition among members of MBR for providing services in connection with real estate transactions has been eliminated and persons using the services of MBR members have been denied the right to use such services at competitively determined prices;
- (c) certain brokers and salesmen have been denied membership in MBR and access to MLS to the substantial detriment of their real estate businesses;
- (d) the interstate commerce in financing, insurance and other commodities and services necessary to real estate transactions and in materials, supplies and machinery used in residential and commercial construction in Shelby County has been adversely affected; and
- (e) competition between brokers and salesmen engaged in the real estate business in Shelby County has been restricted.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendant and co-conspirators have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendant, its officers, directors and agents and all other persons acting or claiming to act on its behalf, and each of its members, be enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the combination and conspiracy hereinbefore alleged, or from engaging in any other combination, conspiracy, contract, agreement, understanding or concert of action having a similar purpose or effect, and from adopting or following any practice, plan, program or device having a similar purpose or effect.

3. That the defendant, its officers, directors and agents and all other persons acting or claiming to act on its behalf, and each of its members, be enjoined and restrained from publishing, adopting, distributing or otherwise suggesting, and from adhering to or agreeing to adhere to, any schedule of or other recommendation concerning amounts of commission or other fees for the sale, lease or management of real estate.

4. That the defendant, its officers, directors and agents and all other persons acting or claiming to act on its behalf, and each of its members, be enjoined and

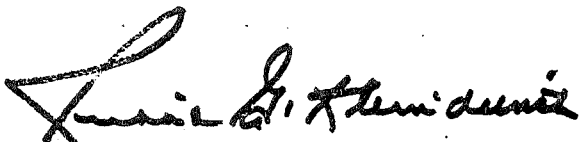
restrained from convincing or attempting to convince any person to adhere to any schedule of or other recommendation concerning amounts of commissions or other fees for the sale, lease or management of real estate.

5. That the defendant, its officers, directors and agents and all other persons acting or claiming to act on its behalf, and each of its members, be enjoined and restrained from establishing, maintaining or enforcing by-laws, rules or regulations which arbitrarily exclude from membership in MBR and MLS any real estate broker or salesman licensed by the State of Tennessee.

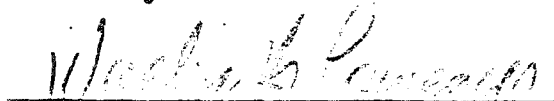
6. That the defendant be required to abrogate, nullify or amend such of its by-laws, rules and regulations as have contributed to the violations alleged in this complaint.

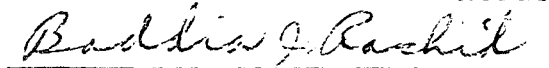
7. That the plaintiff have such other, further, general and different relief as the case may require and the Court may deem just and proper under the circumstances.

8. That the plaintiff recover its taxable costs.



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