

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :
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 Plaintiff, :
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 v. : 73 Civ. 2719 (WCC)
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 THE REAL ESTATE BOARD OF NEW : FINAL JUDGMENT
 YORK, INC.; and TENANT-OWNED :
 APARTMENT ASSOCIATION, INC., : Filed: Nov. 18, 1974
 :
 Defendants. : Entered: Dec. 18, 1974
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Plaintiff, United States of America, having filed its complaint herein on June 19, 1973, and Defendants having filed their answers to said complaint and Plaintiff and Defendants, 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 and without this Final Judgment constituting evidence or an admission by any party thereto with respect to any such 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

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

As used in this Final Judgment:

(A) "Defendants" shall mean The Real Estate Board of New York, Inc. and Tenant-Owned Apartment Association, Inc.;

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

(C) "Rates or Amounts of Commission or Other Fees" shall mean the rates or amounts of commissions or other fees charged for the services of brokers in connection with the sale, resale, transfer or management of cooperative apartments and cooperative buildings.

III

The provisions of this Final Judgment applicable to each of the 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 representative capacities; and, in addition, to all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Each of the Defendants, 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 amounts of commissions or other fees;

(B) Urging, recommending or suggesting that any of its members adhere to any rates or amounts of commissions or other fees;

(C) Adopting, suggesting, publishing or distributing any schedule or other recommendation concerning the rates or amounts of commissions or other fees;

(D) Including in any instructional course or other educational material any recommended or suggested rates or amounts of commissions or other fees;

(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 person in accordance with his own business judgment to agree with his client on any rates or amounts of commissions or other fees;

(F) Taking any punitive action against any person where such action is based upon that person's failure or refusal to adhere to any schedule or other recommendations concerning rates or amounts of commissions or other fees;

(G) Adopting, adhering to, maintaining or enforcing any by-law, rule, regulation, resolution, plan or program which would prohibit any member from doing business with any person where such prohibition would be contrary to or inconsistent with any provision of this Final Judgment; and

(H) Conducting, publishing, or distributing for a period of ten (10) years from the date of entry of this Final Judgment, any survey or study relating to prevailing rates or amounts of commissions or other fees or their ranges; provided however, that the Defendants may prepare surveys or studies of prevailing rates or amounts of commissions or other fees or their ranges for use in any civil or criminal action or proceeding before a court or

agency of competent jurisdiction and provided further that any such survey or study is not distributed to any of the members of said Defendants except as may be necessary or required in connection with use of a survey or study before a court or agency of competent jurisdiction.

V

Each defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Eliminate from all rules, by-laws, regulations, contracts and other forms, any schedule of rates or amounts of commissions or other fees;

(B) Insert in all contracts or forms which will require a client's signature and in which rates or amounts of commissions or other fees will be specified by the parties, a provision that rates or amounts of commissions or other fees shall be negotiable between a broker and his client;

(C) Insert in any materials for instructional courses given and other educational materials disseminated under its auspices, wherein rates or amounts of commissions or other fees are discussed, a provision that rates or amounts of commissions or other fees shall be negotiable between a broker and his client; and

(D) Publish, at least twice, in the real estate section of the Sunday New York Times an advertisement covering at least one-sixteenth (1/16) of a page in size in the form annexed hereto as Exhibit A.

VI

The Real Estate Board of New York, Inc. is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its broker and management members; provided, however, that a copy of this Final Judgment need not be mailed to individual broker and management members who are employees of a broker or management member to whom a copy of this Final Judgment is to be mailed. The Tenant-Owned Apartment Association, Inc. is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment to each of its management members. The management members of Defendant Tenant-Owned Apartment Association, Inc. are ordered and directed to mail within ninety (90) days after the date of entry of this Final Judgment a copy of this Final Judgment to the Board of Directors of each cooperative building which they manage. Thereafter, each Defendant is ordered and directed to provide a copy of this Final Judgment to any person becoming a member of its association in any of the foregoing membership classes; provided, however, that a copy of this Final Judgment need not be provided to any person becoming a member when that person is an employee of another person to whom a copy of this Final Judgment has been or will be provided. Within one hundred and twenty (120) days from the date of the entry of this Final Judgment, each Defendant is ordered and directed to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with Sections V and VI of this Decree.

VII

For a period of ten (10) years from the date of entry of this Final Judgment, each of the 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 the Defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

VIII

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 either of the Defendants, made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired:

(1) Access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of either of the Defendants relating to any matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of Defendants, and without restraint or interference from them to interview officers or employees of Defendants regarding any such matters.

Upon such written request, either of the Defendants 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 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 is retained by this Court for the purpose of 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.

Dated: Dec. 18, 1974

/s/ WILLIAM C. CONNER
UNITED STATES DISTRICT JUDGE

Buying or Selling A Cooperative Apartment?

You may benefit substantially from cooperative apartment ownership. Because cooperative apartment ownership and sale is important to you, The Tenant-Owned Apartment Association, Inc. and The Real Estate Board of New York, Inc. suggest that you get all the facts before you act. One source of information about cooperative apartments is a licensed real estate broker. A reputable broker can save you time and provide you with helpful information.

When you seek the services of a real estate broker for selling or managing a cooperative apartment, you should be aware that a broker charges a commission or fee for his services. **YOU SHOULD ALSO BE AWARE THAT THE COMMISSION RATE OR FEE FOR THESE SERVICES IS A MATTER TO BE AGREED UPON INDIVIDUALLY BETWEEN YOU AND YOUR BROKER.**

**THE TENANT-OWNED APARTMENT
ASSOCIATION, INC.**

**THE REAL ESTATE BOARD OF
NEW YORK, INC.**