

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

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UNITED STATES OF AMERICA, :
 :
 : Plaintiff, : Civil Action No. 210-73-N
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 v. : Filed: May 21, 1973
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 METRO MLS, INC., :
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 : Defendant. :
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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 Eastern District of Virginia.

II

THE DEFENDANT

3. Metro MLS, Inc. (hereinafter referred to as Metro), a corporation organized and existing under the laws of the State of Virginia and having its principal place of business at Virginia Beach, Virginia, is named as defendant herein. Metro was incorporated in December 1969. All stockholders of Metro (hereinafter referred to as "members") are real estate brokers, duly licensed by the Virginia Real Estate Commission, engaged in the business of selling, leasing, and managing real estate in the Tidewater area of Virginia (hereinafter referred to as the "Tidewater Area"), comprising Norfolk, Virginia Beach, Portsmouth, Hampton Roads and Chesapeake, Virginia. Metro is engaged in the business of operating a center or clearing house for the exchange among its members of information concerning listings of real estate for sale, a business commonly referred to as a "multiple listing service." Metro members are required to submit detailed information concerning all listings of residential properties obtained by them to Metro, which in turn copies and distributes such information to all other Metro members for their use in selling real estate.

III

THE CO-CONSPIRATORS

4. The members of Metro are not named as defendants, but are named as co-conspirators. There are approximately 50 real estate brokers and brokerage firms who are members of Metro. All members participated as co-conspirators in the violation alleged herein and many of them performed acts and made statements in furtherance thereof.

IV

NATURE OF TRADE AND COMMERCE

5. The activities of Metro and its members, as described herein, are within the flow of interstate commerce and have an effect upon that commerce.

6. For a commission or fee members of Metro 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 the Tidewater Area. Thousands of parcels of real estate are sold in this area each year. The present membership of Metro includes many of the leading real estate brokers in terms of sales volume in the Tidewater Area. During 1970 members of Metro accounted for at least \$60,000,000 in sales, a substantial portion of all residential real estate sales in the Tidewater Area.

7. Many persons residing in the Tidewater Area stay in said area for a relatively short period of time. A substantial number of persons using the services of members

of Metro in purchasing real estate move into the purchased property in the Tidewater Area from places outside of the State of Virginia: A substantial number of persons using the services of Metro in selling real estate make such sales in connection with their departure from the State of Virginia to other states.

8. Members of Metro advertise their real estate listings of property located in the Tidewater Area in newspapers and advertising journals which are circulated in states in addition to Virginia. Such advertising is intended to and does affect the aforesaid interstate movement of persons.

9. In most real estate transactions, including those handled by Metro members, one of the services performed by the real estate broker is the obtaining of financing for the purchaser. A substantial amount of the funds used in financing residential sales handled by Metro members in the Tidewater Area moves into the State of Virginia in interstate commerce from other states.

10. Substantial amounts of money also flow into the Tidewater Area from outside the State of Virginia to purchase existing mortgages on property sold by real estate brokers, including members of Metro. Some of this money is available, and is used, to finance new sales of property, including sales made by members of Metro.

11. As a part of their services real estate brokers, including members of Metro, frequently assist purchasers of

real estate in the Tidewater Area in securing fire, home-owner's and title insurance. Such insurance frequently is obtained from sources outside the State of Virginia, causing the movement in interstate commerce of insurance applications, policies, notices, checks and correspondence.

V

VIOLATION

12. From the date of its incorporation in December 1969, up to and including the date of the filing of this complaint the defendant and the co-conspirators have been continuously engaged in an unlawful combination and conspiracy to restrain the aforesaid interstate 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.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action between the defendant and the co-conspirators to raise, fix and maintain commission fees for the sale of real estate in the Tidewater Area, to restrict membership in Metro, and to adopt and enforce rules and regulations restricting competition between brokers and salesmen engaged in the business of selling real estate in the Tidewater Area.

14. In effectuating the aforesaid combination and conspiracy, the defendant and the co-conspirators have done the things which, as hereinbefore alleged, they combined

and conspired to do, including, among other things,
the following:

(a) Established, adopted, distributed and adhered to schedules of commissions to be charged for the sale of real estate in the Tidewater Area of Virginia;

(b) Agreed not to accept net listings;

(c) Increased the minimum rate of commission that Metro members may charge for sales of improved property, except for newly constructed property, from 6 percent to 7 percent;

(d) Agreed to refuse property for listing with Metro unless the listing provided for a commission rate as great as the minimum established by Metro and its members;

(e) Established, adopted, distributed, and adhered to schedules prescribing the percentages of the total commission that the listing and selling brokers should receive with respect to sales of property listed with Metro;

(f) Agreed not to advertise non-exclusive listings;

(g) Agreed that members of Metro could not belong to any other multiple listing service;

(h) Established a price of \$1,000, later increased to \$1,500, for one share of Metro stock, required to be purchased by new members;

(i) Agreed that to be eligible for membership in Metro an applicant who was not active in the operation and management of a member firm during the year immediately preceding the date of his own application must have had an established place of business other than his home for at least one year immediately preceding the date of application.

VI

EFFECTS

15. The aforesaid combination and conspiracy has had the following effects, among others;

(a) Commission rates for the sale of real estate in the Tidewater Area have been raised, fixed and maintained at an artificial and noncompetitive level;

(b) Price competition and other competition in the sale of services among the co-conspirator real estate brokers and salesmen has been eliminated;

(c) Sellers and buyers of real estate in the Tidewater Area have been denied the right to use the services of many real estate brokers and salesmen having large annual volumes of sales in the Tidewater Area at competitively determined rates of commission;

(d) Sellers of real estate in the Tidewater Area desiring to use the services of members of Metro on a non-exclusive basis have been deprived of the benefits resulting from the advertising of the seller's property by Metro members;

(e) Competition from other multiple listing services 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 the sale of real estate in the Tidewater Area 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 establishing, adopting, distributing, adhering, or agreeing or suggesting adherence to, any schedule or recommendation concerning the commission or other fees to be charged for the sale, leasing, or management of real estate, or the division of commissions between brokers.

4. That the defendant be ordered to insert in its rules, by-laws and regulations, and in the contracts and other forms provided for its members that refer to a commission rate, a statement that commission rates for the sale, lease or management of property shall be negotiable between the broker and his client.

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 Metro any real estate broker licensed by the State of Virginia.

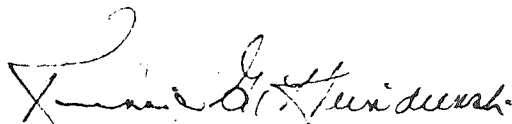
6. That the defendant, its officers, directors and agents and all other persons acting or claiming to act on its behalf, and each of its members, be enjoined and restrained from entering into, maintaining or effectuating any agreement or understanding that members of Metro refrain from advertising non-exclusive listings.

7. 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 entering into, maintaining or effectuating any agreement or understanding that members of Metro may not belong to any other multiple listing service and from taking any action to prevent members of Metro from belonging to any other multiple listing service.

8. That the defendant be required to establish fees and dues, including the price of stock in Metro issued to new members, that approximate the cost of operating defendant and the accumulation and maintenance of reasonable reserves for developing, maintaining, and improving defendant as a going concern.

9. 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.

10. That the plaintiff recover its taxable costs.



RICHARD G. KLEINDIENST
Attorney General

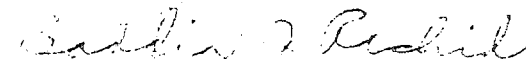
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