

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,)	
Plaintiff,)	CIVIL ACTION NO.
v.)	210-73-N
METRO MLS, INC.,)	Filed: July 2, 1974
Defendant.)	Entered: <u>August 5, 1974</u>

FINAL JUDGMENT

PLAINTIFF, United States of America, having filed its complaint herein on May 21, 1973, and the defendant having filed its answer to such complaint denying the substantive allegations thereof, and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by either party in respect to any issue;

NOW, THEREFORE, before any testimony has been taken 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 defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. Section 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Member" shall mean any person, including all holders of stock of defendant, entitled to list real estate properties with defendant or to receive from defendant copies of the listing information filed with said defendant;

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

III

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its directors, officers, agents, employees, subsidiaries and successors, and, in addition, to all persons, including members, in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

IV

The defendant, Metro MLS, Inc., whether acting unilaterally or in concert or agreement with any other person as defined herein, is enjoined and restrained from:

(A) Fixing, establishing or maintaining any rate or amount of commission or fees for the sale, lease or management of real estate;

(B) Urging, recommending, or suggesting that any of the members of defendant adhere to any schedule or other recommendation concerning the rate or amount of commissions or fees to be charged in connection with the sale, lease or management of real estate;

(C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged by any of the members of defendant in connection with the sale, lease or management of real estate;

(D) 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 recommendation concerning the rate or amount of commissions or other fees to be charged in connection with the sale, lease or management of real estate;

(E) Fixing, maintaining, suggesting, or enforcing any percentage division of commissions or other fees between the selling and listing broker;

(F) Establishing, maintaining or enforcing any fees for membership in defendant, including the purchase price of stock in defendant, that are not related to the approximate cost of maintaining the organization as a going concern and the maintenance of reasonable reserves;

(G) Adopting, adhering to, maintaining, or enforcing any by-law, rule, regulation, plan or program that would prohibit any member or stockholder of defendant from joining or belonging to any multiple listing service, or that would require any of its members to withdraw from any multiple listing service;

(H) Adopting, adhering to, maintaining or enforcing any by-law, rule or regulation that prohibits, or places any limitation upon the advertising by members of defendant of their own listings of property;

(I) Adopting, adhering to, maintaining or enforcing any by-law, rule or regulation that requires that an applicant, or member, duly licensed by the appropriate governmental authority as a broker to sell real estate within the Commonwealth of Virginia, must have an established place of business at a location other than his home;

(J) Adopting, adhering to, maintaining or enforcing any by-law, rule or regulation that requires that an applicant, duly licensed by the appropriate governmental authority of the Commonwealth of Virginia, must have been engaged in the real estate business before applying for membership in defendant;

(K) Adopting, adhering to, maintaining or enforcing any by-law, rule or regulation that prohibits or places any limitation upon the acceptance by members, or the filing with defendant, of listings that state the sale price of property in terms of the dollar return to the client, provided that the listing may contain the listing broker's suggested selling price;

(L) Adopting, adhering to, maintaining or enforcing any by-law, rule, or regulation that requires any member to file that member's listings only with the defendant.

V

(A) The defendant is ordered and directed to admit to membership and to allow participation in its services to any person duly licensed by the appropriate governmental authority as a broker to sell real estate within the Commonwealth of Virginia provided such person or member meets

and satisfies reasonable and nondiscriminatory written requirements for such membership or participation adopted and maintained by the defendant, and which are not otherwise inconsistent with this Final Judgment, including a requirement to purchase stock in, and pay fees to, defendant that is not inconsistent with Section IV(F) of this Final Judgment.

(B) The defendant is ordered to insert in its rules or regulations, or if it should have no rules or regulations, in its by-laws, and in all its listing forms and other forms, a provision placed in a prominent position as follows:

"The commission rate for the sale, lease or management of real estate is negotiable between each Metro MLS, Inc. member and its client."

(C) The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its by-laws and rules and regulations by eliminating therefrom any provision, if any there be, that is contrary to or inconsistent with any provision of this Final Judgment;

(D) Upon amendment of its by-laws and rules and regulations, as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-laws, rules or regulations which are contrary to or inconsistent with any of the provisions of this Final Judgment.

VI

Defendant 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 members and within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of the Court an affidavit setting forth the fact and manner of compliance with this Section and with Sections V(B) and V(C) above.

VII

For the purpose of determining or securing compliance with this Final Judgment in this cause, 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 defendant, made to its principal office, be permitted, subject to any legally recognized privilege, (A) 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 the defendant relating to any matter contained in the Final Judgment, and (B) subject to the reasonable convenience of defendant and without restraint or interference from it, to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, 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. Information obtained pursuant to the provisions of this Section VII shall not 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.

VIII

Jurisdiction is to be retained by this Court for the purpose of enabling either 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.

/s/ JOHN A. MacKENZIE
United States District Judge

Dated: August 5, 1974