

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

v. :

REAL ESTATE BOARD OF :
ROCHESTER, N.Y., INC., :

Defendant. :
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Civil Action No. 74-535

Filed: November. 19, 1974

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 New York.

II

DEFENDANT

3. Real Estate Board of Rochester, N.Y., Inc. (hereinafter referred to as the "Board"), a corporation organized and existing

under the laws of the State of New York and having its principal place of business at Rochester, New York, is named as the defendant herein. The Board is an association of real estate brokers, salesmen, and others engaged in the business of selling, leasing, managing, and financing real estate in Monroe County, New York. The Board has about 2,000 members licensed by the State of New York to engage in the real estate business; about 300 of these are active broker members, about 100 are associate broker members, and about 1,600 are salesmen.

III

CO-CONSPIRATORS

4. Members of the Board are not named as defendants, but are named as co-conspirators. They participated in the violation alleged herein and many of them have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. The activities of the Board 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 the Board 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 Monroe County. Thousands of parcels of real estate are sold in Monroe County each year.

7. A principal function of the Board is the operation of a Multiple Listing Service (hereinafter referred to as "MLS"). Only members of the Board may become members of MLS. Most active broker members of the Board do participate in MLS and are known as "Service members." Service members submit to MLS detailed

information concerning the listings of real estate for sale or rent located in Monroe County. MLS copies and distributes such information among all Service members. In 1972, sales of over 7,000 parcels of real property were made through MLS, totaling over \$174 million.

8. MLS provides potential sellers with maximum coverage. Because of the high incidence of sales of homes listed with MLS, MLS represents a valuable and highly desirable service for homeowners, brokers, and salesmen. For this reason, among others, membership in MLS is advantageous to brokers and salesmen doing business in Monroe County.

9. A substantial number of persons using the services of a member of the Board and MLS in connection with real estate sales are persons moving into Monroe County from places outside the State of New York and persons moving from Monroe County to places outside the State of New York.

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

V

VIOLATION ALLEGED

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 to restrain the aforesaid trade and commerce in Monroe County, New York, 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, leasing, and management of real estate in Monroe County, to arbitrarily exclude certain persons from membership in the Board, and to adopt rules and regulations restricting competition between brokers and salesmen engaged in the business of selling, leasing, and managing real estate in Monroe 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) established, adopted, distributed, and adhered to schedules of commissions to be charged for the sale of real estate in Monroe County;
- (b) 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 real estate in Monroe County;

- (c) agreed that all listings of all one, two, and three family lived-in houses in Monroe County obtained by Service members of the MLS must be listed with the MLS;
- (d) agreed that for any properties to be listed with the MLS the listing Service members must be granted the exclusive right to sell or otherwise dispose of such property; and
- (e) established arbitrary and unreasonably restrictive requirements for membership in the Board and MLS.

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 Monroe County have been raised, fixed, and maintained at artificial and non-competitive levels;
- (b) price competition among members of the Board for providing services in connection with real estate transactions has been eliminated and persons using the services of the Board's members have been denied the right to use such services at competitively determined prices;
- (c) certain licensed real estate brokers and salesmen have been unreasonably restricted and impeded in the conduct of their business and have been restrained in competing in the sale of real estate listed with the MLS;

- (d) the interstate commerce in financing, insurance, and other commodities and services necessary to real estate transactions has been adversely affected; and
- (e) competition generally between brokers and salesmen engaged in the real estate business in Monroe 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 to restrain 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 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, fixing, establishing, or maintaining any rate or amount of commissions 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 the 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 bylaws, rules, regulations, or practices which arbitrarily exclude from membership in the Board any real estate broker licensed by the State of New York.

6. That the defendant be required to abrogate, nullify, or amend such of its bylaws, rules, regulations, or practices as have contributed to the violation 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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