

SIDNEY I. LEZAK
United States Attorney
District of Oregon
Box 71, 506 U. S. Courthouse
Portland, Oregon 97207
(Telephone: (503) 226-3361, Ext. 1531)

MARQUIS L. SMITH
JAMES E. FIGENSHAW
Antitrust Division
Department of Justice
450 Golden Gate Avenue - Room 16432
Box 36046
San Francisco, California 94102
(Telephone: (415) 556-6300)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,

Plaintiff,

v.

MULTIPLE LISTING SERVICE;
PORTLAND BOARD OF REALTORS;
WASHINGTON COUNTY BOARD OF REALTORS; and
CLACKAMAS COUNTY BOARD OF REALTORS,

Defendants.

Civil No. 72-68

Filed: January 26, 1972

C O M P L A I N T

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 defendants 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 defendants, as hereinafter alleged, of Section 1 of said Act (15 U.S.C. § 1).

2. Each of the defendants maintains an office, transacts business and is found within the District of Oregon.

II

THE DEFENDANTS

3. Multiple Listing Service (hereinafter referred to as "MLS") is made a defendant herein. MLS is a nonprofit corporation organized and existing under the laws of the State of Oregon and having its principal place of business in Portland, Oregon. MLS is engaged in the business of providing multiple listing services to real estate brokerage firms, as hereinafter described.

4. Portland Board of Realtors (hereinafter referred to as "PBR"), is made a defendant herein. PBR is a nonprofit corporation organized and existing under the laws of the State of Oregon and having its principal place of business in Portland, Oregon. PBR is a member board of the National Association of Real Estate Boards and is composed of approximately 268 active members whose principal places of business are located in Multnomah County, Oregon. Said members of PBR are real estate brokers engaged in the business of selling, leasing, managing and financing real estate.

5. Washington County Board of Realtors (hereinafter referred to as "WCBR") is made a defendant herein. WCBR is a nonprofit corporation organized and existing under the laws of the State of Oregon and having its principal place of business in Washington County, Oregon. WCBR is a member board of the National Association of Real Estate Boards and is composed of approximately 78 active members whose principal places of business are located in Washington County, Oregon. Said members of WCBR are real estate brokers engaged in the business of selling, leasing, managing and financing real estate.

6. Clackamas County Board of Realtors (hereinafter referred to as "CCBR") is made a defendant herein. CCBR is an unincorporated

association organized and existing under the laws of the State of Oregon and having its principal place of business in Lake Oswego, Oregon. CCBR is a member board of the National Association of Real Estate Boards and is composed of approximately 70 active members whose principal places of business are located in Clackamas County, Oregon. Said members of CCBR are real estate brokers engaged in the business of selling, leasing, managing and financing real estate.

III

THE CO-CONSPIRATORS

7. Various other persons, firms and corporations, not made defendants herein, including but not limited to the members and officers of each of the defendants, have participated as co-conspirators with the defendants in the offense alleged herein and have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

8. The activities of the defendants and co-conspirators, as described herein, are within the flow of interstate commerce and have an effect upon that commerce.

9. For a commission or fee, members of MLS, PBR, WCBR and CCBR 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. Thousands of parcels of real estate are sold each year by said members. For the year 1969 the aggregate sales of properties listed with MLS and sold by MLS members were about \$124,000,000.

10. A substantial number of the persons using the services of members of MLS, PBR, WCBR and CCBR in connection with real estate sales are persons moving into the counties of Multnomah, Washington, and Clackamas (hereinafter referred to as the "three-county area") from places outside the State of Oregon and persons

moving from said area to places outside Oregon. Members of MLS, PBR, WCBR and CCBR attempt to attract buyers from other states and, in fact, many completed sales of real estate in the three-county area involve persons residing outside the State of Oregon.

11. The cities of Portland, Oregon and Vancouver, Washington, separated geographically by the Columbia River, constitute, for many purposes, a single metropolitan area. Multnomah County embraces the City of Portland and the counties of Washington and Clackamas are immediately contiguous and adjacent thereto.

12. As a part of their services, members of MLS, PBR, WCBR and CCBR advertise their listings of real estate located in Oregon in newspapers published in cities located outside the State of Oregon whose circulations cover other states than Oregon. Such advertising is intended to and does affect the interstate movement of persons and the sale of real estate in the three-county area.

13. As an additional part of their services, members of MLS, PBR, WCBR and CCBR assist in securing financing and title insurance necessary to the purchase of real estate in the three-county area. By virtue of the activities of the members of MLS, PBR, WCBR and CCBR, substantial amounts of such financing and title insurance move into the three-county area from outside the State of Oregon from companies operating in interstate commerce.

14. Substantial amounts of money flow into the three-county area from outside the State of Oregon as secondary mortgage money as a result of completed transactions in the sale of real estate by members of MLS, PBR, WCBR and CCBR, said transactions being secured by conventional, FHA insured, and VA guaranteed mortgages.

15. Real estate brokers located in and licensed by the State of Oregon may obtain licenses from the State of Washington to negotiate and sell real estate located in Washington. As of June 1969, there were approximately 98 active real estate brokers located in the City of Portland, Oregon who were licensed to

negotiate and sell real estate located in the State of Washington. Approximately 21 of these brokers are the designated representatives of real estate firms belonging to MLS. As of April 1970, there were current MLS listings of real estate properties located in the State of Washington having an aggregate selling price of approximately \$750,000.

16.- Real estate brokers located in and licensed by the State of Washington may obtain a license from the State of Oregon to negotiate and sell real estate located in Oregon. As of September 1969, there were approximately 16 active real estate brokers located in the City of Vancouver, Washington who were licensed to negotiate and sell real estate located in the State of Oregon.

17. For many years, local real estate boards have operated multiple listing services in the geographical areas, usually counties, in which their members reside. In some instances, such as in the three-county area, multiple listing services have been separately incorporated. The function of a multiple listing service is to prepare copies of and distribute among its members listings of the real estate properties that are listed with all members and to permit each of its members to attempt to sell any of such listed properties. Such sales, known in the industry as "cooperative sales," are an important aid to the business of a real estate broker. Real estate brokers that do not have access to multiple listing services are at a significant disadvantage in competing with real estate brokers that do have such access. A multiple listing service also assists buyers and sellers of real estate properties by permitting wider dissemination of information regarding real estate properties that are for sale.

18. Prior to August 1949, the Portland Realty Board, the corporate predecessor of PBR, operated a multiple listing service known as the Multiple Listing Division. In August 1949, this Division was incorporated separately as the defendant MLS. At the

same time, defendant MLS entered into an agreement with said Board which provided that MLS would operate a multiple listing service exclusively for real estate firms having one or more members belonging to the Board and that the Board would not compete with MLS by operating any multiple listing service of its own. This agreement is currently outstanding between defendants MLS and PBR and was amended in 1952 to permit real estate firms having one or more members belonging to either WCBR or CCBR to join MLS without first having to join PBR. MLS is governed by a nine-man Board of Trustees composed of three trustees from each of the three local county boards, PBR, WCBR and CCBR.

19. Persons engaged in business as real estate brokers in the three-county area must be duly accredited and licensed by the State of Oregon.

V

OFFENSE CHARGED

20. Beginning prior to the year 1970, the exact date to the plaintiff unknown, and continuing up to and including the date of the filing of this Complaint, the defendants 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 (15 U.S.C. § 1). Said unlawful combination and conspiracy is continuing and will continue unless the relief hereinafter prayed for is granted.

21. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action among the defendants and co-conspirators to raise, fix and maintain commissions for providing brokerage services in connection with the sale of real estate and to restrict access by competing non-member real estate brokers to real estate listings obtained by members of MLS.

22. In effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators have done the things which, as

hereinbefore alleged, they combined and conspired to do, including, among other things, the following:

(a) established a fixed minimum rate of commission for the selling broker in connection with cooperative sales through MLS;

(b) established a fixed percentage split of commissions between the listing and selling broker in connection with cooperative sales through MLS;

(c) required that all listings of certain types of properties obtained by members of MLS be listed with MLS exclusively and not be made available to real estate brokers that were not members of MLS;

(d) established arbitrary and unreasonably restrictive membership requirements for MLS, including the following:

(1) required that applicants for membership in MLS be members in good standing of PBR, WCBR or CCBR and be approved by the Board of Trustees of MLS;

(2) required that applicants for membership in MLS pay an initiation fee of \$1,000; and

(3) required that applicants for membership in MLS operate their own real estate brokerage firms in the three-county area for a period of six months or more before acting on an applicant's request for membership.

EFFECTS

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

- (a) Commission rates for the sale of real estate in the three-county area have been raised, fixed and maintained at artificial and noncompetitive levels;
- (b) Sellers of real estate have been denied the right to use the services of real estate brokers and salesmen at competitively determined rates of commission;
- (c) licensed real estate brokers in the three-county area have been arbitrarily and unreasonably denied the opportunity to compete in the sale of real estate listed with MLS; and
- (d) competition generally between brokers and salesmen engaged in the real estate business in the three-county area has been restricted.

PRAYER

WHEREFORE, plaintiff prays:

1. That the Court adjudge and decree that the defendants 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 each of the defendants, 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 each of the defendants, 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, adopting, suggesting, publishing, adhering to or agreeing to adhere to any schedule of or other recommendation concerning amounts or rates of commissions or other fees for the sale, lease or management of real estate.

4. That each of the defendants, 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, adopting, suggesting, publishing, adhering to or agreeing to adhere to any rule, regulation, by-law, provision, agreement or understanding which arbitrarily or unreasonably excludes from membership in defendant or any similar organization any real estate broker licensed by the State of Oregon.

5. That each of the defendants 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.

6. 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.

7. That the plaintiff recover its taxable costs.

John N. Mitchell
JOHN N. MITCHELL
Attorney General

Richard W. McLaren
RICHARD W. McLAREN
Assistant Attorney General

JAMES E. FIGENSHAW
Attorney, Department of Justice

Baddia J. Rashid
BADDIA J. RASHID

MARQUIS L. SMITH

ANTHONY E. DESMOND

Attorneys, Department of Justice

SIDNEY I. LEZAK
United States Attorney