

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civ. C-80-1861A
)	
v.)	Filed: October 28, 1980
)	
FIRST MULTIPLE LISTING SERVICE,)	
INC.,)	
)	
Defendant.)	

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 Sherman Act (15 U.S.C. § 4), in order to prevent and restrain the continuing violation by the defendant, as hereinafter alleged, of Section 1 of that Act (15 U.S.C. § 1).

2. The defendant maintains offices, transacts business, and is found within the Northern District of Georgia.

II

DEFENDANT

3. First Multiple Listing Service, Inc., (hereinafter FMLS), a corporation organized and existing under the laws of the State of Georgia and having its principal place of business in Atlanta, Georgia, is named as a defendant herein. FMLS is a stock corporation, all of whose stockholders are real estate brokers or real estate firms licensed by the Georgia Real Estate Commission. FMLS is engaged in the business of operating a "multiple listing service" for the benefit of its members.

III

CO-CONSPIRATORS

4. Various persons, firms and corporations, not named as defendants herein, have participated as co-conspirators with the defendant in the violation alleged herein and have performed acts and made statements in furtherance thereof.

IV

TRADE AND COMMERCE

5. Residential real estate brokerage firms, such as the members of FMLS, provide the service of bringing together buyers and sellers of residential real estate and also provide a wide range of other services designed to facilitate the sale of improved single family residential property. This service is provided for a commission or fee. The members of FMLS include some of the largest residential real estate brokers in the Atlanta area, which includes the counties of Fulton, DeKalb, Cobb, Gwinnett, Clayton, Douglas, Paulding, Bartow, Cherokee, Forsyth, Hall, Barrow, Walton, Rockdale, Newton, Henry, Butts, Fayette, and Coweta in the

State of Georgia. During the period covered by this complaint, members of FMLS handled sales of thousands of parcels of residential real estate in the Atlanta area, totaling in the hundreds of millions of dollars in value and resulting in millions of dollars of commissions to members of FMLS.

6. Each member of FMLS is required to submit detailed information concerning the listings of residential properties he obtains to FMLS, which in turn copies and distributes such information to all members for their exclusive use. Because of the large number of properties listed with FMLS and the high incidence of sales of those listings, FMLS provides a valuable and highly desirable service for homeowners, home buyers, brokers and salespersons. For this reason, membership in FMLS is advantageous to brokers and their affiliated sales persons doing business in the Atlanta area.

7. During the period covered by this complaint, a substantial number of persons using the services of members of FMLS were persons who resided in states other than Georgia and who moved into the Atlanta area or persons who moved from the Atlanta area to places outside of Georgia. Also, members of FMLS were associated with referral agencies through which they frequently obtained clients moving into the Atlanta area from places outside the State of Georgia and through which they referred clients moving from the Atlanta area to places outside the State of Georgia. When a member of FMLS assisted a referral from out of state in the purchase of a home in the Atlanta area, a specified percentage of the commission earned or a fee was forwarded by a member of FMLS to the referring real estate broker and to the referral agency, if the referral came through such an agency. Similarly, a specified percentage of the commission earned or a fee was forwarded to a member of FMLS when a client referred to an out of state broker or referral agency purchased a home as a result of the referral.

8. During the period covered by this complaint, members of FMLS frequently advertised their services and listings of residential real estate located in the Atlanta area in publications or other media whose circulation included states other than Georgia. Members of FMLS also provided assistance and educational and promotional presentations to persons who were relocating in the Atlanta area from locations outside of Georgia. In addition, agents and employees of members of FMLS traveled to locations outside of Georgia to provide such assistance and make such presentations.

9. During the period covered by this complaint, as part of their services, members of FMLS frequently assisted purchasers of homes in securing financing necessary for the purchase of residential real estate in the Atlanta area. A substantial number of sales handled by members of FMLS were contingent upon the purchaser's obtaining such financing. A substantial amount of the funds used in financing residential real estate transactions handled by members of FMLS moved into the State of Georgia in interstate commerce from states other than Georgia. In addition, substantial amounts of such funds were guaranteed or insured under programs of the Veterans Administration and the Department of Housing and Urban Development, agencies of the United States Government and headquartered in the District of Columbia. Also, during the period covered by this complaint, as part of their services, members of FMLS assisted their clients in securing homeowners' insurance, which is frequently required as a condition of securing financing for the purchase of residential real estate in the Atlanta area. A substantial amount of such homeowner's insurance was obtained from sources outside the State of Georgia.

10. During the period covered by this complaint, as a part of their services, members of FMLS purchased and used numerous residential real estate listing books, comparable sales books, maps, lock boxes, and lock box keys which moved in a continuous and uninterrupted flow of interstate commerce from sources located outside the State of Georgia to members of FMLS.

11. During the period covered by this complaint, the aforesaid activities or the services provided by FMLS, its members, and prospective members were within the flow of interstate commerce or had a substantial effect on interstate commerce.

V

VIOLATION ALLEGED

12. Beginning at least as early as January 1973 and continuing until the filing of this complaint, the defendant and co-conspirators have engaged in an unlawful combination and conspiracy in unreasonable restraint of the aforesaid interstate 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.

13. The aforesaid combination and conspiracy has consisted of a continuing agreement and concert of action between and among the defendant and co-conspirators to adopt policies and engage in practices which unreasonably restrict membership in FMLS and otherwise restrict competition between and among licensed real estate brokers and other persons engaged in the business of selling real estate in the Atlanta area.

14. In effectuating the aforesaid combination and conspiracy, the defendant and co-conspirators have done the things which, as hereinbefore alleged, they combined and conspired to do, including, among other things:

- (a) established arbitrary and unreasonably restrictive requirements for stock-holding membership in FMLS, including the following:
- (i) required that each applicant for membership must have operated as a broker in the State of Georgia for at least two years immediately prior to date of application for membership;
 - (ii) required that each applicant for membership must be recommended by two members of FMLS;
 - (iii) required that each applicant for membership must submit proof that the applicant and/or the applicant's company has sold and closed sale on at least 240 residences in the two years prior to application for membership, within the defined boundaries of FMLS;
 - (iv) required that each applicant for membership must be approved for membership by at least 85% of active members; and
 - (v) required that each applicant for membership must be approved by the Board of Directors;

- (b) agreed that stockholding members of FMLS could not belong to or use the services of any other multiple listing service, wherever located;
- (c) established arbitrary and unreasonably restrictive requirements for subscribing (non-voting) membership in FMLS, including the following:
 - (i) required that each applicant for membership must have operated as a broker in the State of Georgia for at least two years immediately prior to date of application for membership;
 - (ii) required that each applicant for membership must submit proof that the applicant and/or the applicant's company has sold and closed sale on at least 240 residences in the two years prior to application for membership, within the defined boundaries of FMLS;
 - (iii) required that each applicant for membership must be approved for membership by at least 75% of active members;

- (iv) required that each applicant for membership must not be a member of, affiliated with, or utilizing the services of an organization performing essentially the same type services as FMLS, regardless of the area involved; and
- (d) established rules and regulations unreasonably restricting access to FMLS listing books and lock boxes.

IV

EFFECTS

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

- (a) real estate brokers and/or real estate firms have been denied membership in FMLS to the substantial detriment of their ability to compete for real estate business in the Atlanta area;
- (b) competition between and among real estate brokers and salespersons engaged in the real estate business in the Atlanta area has been restricted; and
- (c) buyers and sellers of real estate in the Atlanta area were deprived of the benefits of free and open competition in the purchase and sale of real estate.


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 violation of Section 1 of the Sherman Act (15 U.S.C. § 1).
2. That the defendant, its officers, directors, agents, and all other persons acting or claiming to act on its behalf, 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, be enjoined and restrained from establishing, maintaining or enforcing by-laws, rules or regulations which unreasonably restrict membership in FMLS or which arbitrarily exclude from membership in FMLS any real estate broker licensed in the State of Georgia.
4. That FMLS be required to abrogate, nullify or amend such of its charter provisions, by-laws, rules, regulations or other actions as have contributed to the violations alleged in this complaint.

5. That the plaintiff recover the costs of this suit.

6. That the plaintiff have such other, further, and different relief as the case may require and the Court may deem just and proper.


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