

admission by any party with respect to any such issue;

And whereas the defendants have agreed to be bound by the provisions of the Final Judgment pending its approval by the Court;

Now, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby ORDERED, ADJUDGED AND DECREED as follows:

I

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "~~Cape MLS~~" means ~~the defendant, the Multi-List Service~~ of Cape Girardeau, Missouri, ~~Inc.~~

(B) "Multiple listing service" or "MLS" shall mean any plan or program to which members of the plan or program submit real property listings for common circulation among members.

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

(D) "Real estate agent" shall mean any person licensed by the Missouri Real Estate Commission as a real estate broker or real estate salesperson.

(E) "Reasonable MLS charges" means such fees, dues and other assessments levied on a member of a MLS as will:

- (1) for each utilized service, approximate the cost to the MLS of providing that service to the member; and
- (2) when combined with fees, dues and assessments collected from all members, allow the MLS to cover all reasonable expenses and to accumulate reasonable reserves.

(F) "Utilized services" means those services and goods provided to a member by a MLS, including but not limited to providing lock boxes, lock box keys, listing books, computer services and the processing of listings.

III

(A) This Final Judgment applies to the defendants and to defendants' officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

(B) Each defendant shall require, as a condition of the sale of all or substantially all of its assets or stock, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

(A) Defendants are hereby ordered to delete from the Cape MLS Bylaws:

(1) Cape MLS Bylaw 3.01 which states:

Application for membership shall be made by a company, corporation or individual actively engaged as the broker-owner of or as a broker-employee, or broker-salesperson, of a real estate brokerage firm or company in Cape Girardeau or North Scott County, Missouri. They shall have been in business in the State of Missouri for a one-year period before filing such application for membership.

(2) Cape MLS Bylaw 3.02 which states:

The application shall be in writing and must be accompanied by a certified check, cashier's check or money order in the sum of \$2500.00. Annual dues and assessments shall be determined by the board of directors and may vary from year to year in accordance with the financial condition of the corporation. Dues and assessments shall be determined by a simple majority of the entire board of directors.

(3) Cape MLS Bylaw 3.03 which states:

New applications for membership must also be accompanied by fifteen six-month listings, these to exclude lots and to be within Cape Girardeau County or the North half of Scott County. Listings owned by applicants or any member of the applicant organization will not qualify.

(4) Cape MLS Bylaw 3.04 which states:

Upon receipt of an application for membership, the board shall immediately mail five days before voting upon such application for membership, notice of such application to every member firm, requesting that each present to the board of directors any adverse information bearing upon the professional qualifications of the applicant to become a member. Membership will be allowed by a majority vote of the entire board of directors.

(5) Unnumbered Cape MLS Bylaw 1, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(1) No member of this corporation shall take unfair advantage over other members of this corporation and should conduct his business as to avoid controversies with other members.

(6) Unnumbered Cape MLS Bylaw 2, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(2) A member should conduct his business to eliminate in his community any practice which would be damaging to the public or bring discredit to the real estate profession or the Multi-List Service of Cape Girardeau.

(7) Unnumbered Cape MLS Bylaw 3, passed at a Special Cape MLS Board Meeting on March 9, 1988, which states:

(3) All property listed through the MLS Service must be shown with a licensed real estate agent present with their customer. At no time shall a customer be allowed to negotiate directly with the seller of property listed through the MLS service.

(B) Defendants may enact and enforce new bylaws to replace the Cape MLS bylaws that must be deleted in accordance with Section IV(A), but defendants must comply with all of the requirements set forth in Section V in the enactment and enforcement of any new bylaw.

V

Each defendant is hereby enjoined and restrained from directly or indirectly:

(A) Enforcing, or causing or inducing the enforcement of, any Bylaw required to be deleted from the Cape MLS Bylaws in accordance with Section IV(A);

(B) Adopting, maintaining or enforcing, or participating in any way in the adoption, maintenance or enforcement of, any rule, bylaw, regulation, policy or decision of the Cape MLS or any other MLS that, for any of the reasons described in (1) - (5) of this section, would (i) allow membership in the MLS to be denied, suspended or terminated; (ii) allow the imposition of any sanction, fine or other penalty on any member or applicant of the MLS; or (iii) allow the MLS to discriminate among its members in the provision of any service or in the imposition of fees therefor--

- (1) The applicant or member has not been in business for a specified period of time;
- (2) The applicant or member has not obtained a specified number of listings;
- (3) The applicant or member has declined to pay the full amount of any fees, dues, or other assessments that, in the case of an applicant, are greater than the actual cost of processing the application and admitting the applicant into membership in the MLS, or, in the case of a member, are greater than reasonable MLS charges;

(4) The applicant or member has not been approved by or has not otherwise received a favorable vote from any specified number of members of the MLS, its governing board or any other persons;

(5) The applicant or member has provided, offered or advertised any particular rate, service or product or otherwise has engaged in any particular activity in connection with the real estate business that the Missouri Real Estate Commission, any other regulatory authority, or any state or federal court has not specifically ordered the applicant or member to cease;

(C) Associating, affiliating or combining with, or becoming a member or continuing as a member in, any MLS that has any rule, bylaw, regulation, policy or decision that does not comply fully with all of the limitations on rules, bylaws, regulations, policies and decisions set forth in Section V(B);

(D) Participating in any combination, conspiracy, agreement or understanding among two or more real estate agents (not partners, employees, or salepersons of the same corporation or firm) fixing, establishing or maintaining:

(1) any fees, commissions, or other prices to be charged for any real estate service, provided, that agents representing parties to a single transaction may agree on the division of fees or commissions to be paid by the parties to that transaction;

(2) the nature, type, or amount of services to be offered or performed, or not to be offered or performed, by any real estate agent;

(3) any terms or other conditions on which any real estate agent will deal or refuse to deal with any other real estate agent or its customers;

(4) any boycott or refusal to deal with any real estate agent.

VI

Defendant Cape MLS shall notify all present and future members and applicants for membership of the terms of the Final Judgment by providing them with a copy of it. Present members shall be so notified within 30 days of the entry of this Final Judgment. Applicants for membership shall be notified within 30 days of the time of their application for membership.

VII

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the applicable defendants at their principal offices, be permitted:

- (1) Access during office hours to inspect and copy all books, ledgers, accounts, correspondence and other records and documents in the possession or under the control of the notified defendants, who may have counsel present, regarding any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such notified defendants and without restraint or interference from any of them, to interview officers, employees and agents of such defendants, who may have counsel present, regarding any such matters.

(B) Upon the written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the applicable defendants at their principal offices, the notified defendants shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

(C) No information or documents obtained by the means provided in this Section VII shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

(D) If at the time information or documents are furnished by a defendant to plaintiff, such defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then 10 days notice shall be given by plaintiff to such defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII

This final Judgment shall remain in effect until 10 years from the date of entry.

IX

Jurisdiction is retained by the Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of its provisions, for its enforcement or compliance, and for the punishment of any violation of its provisions.

X

Entry of this Final Judgment is in the public interest.

Entered: 11 December 1990

A handwritten signature in cursive script, appearing to read "R. J. ...", written over a horizontal line.

UNITED STATES DISTRICT COURT JUDGE