

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
SOUTHEASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE MULTI-LIST SERVICE OF	)	
CAPE GIRARDEAU, MISSOURI, INC.;	)	
ASHLAND REALTY COMPANY;	)	
BRIDGEPORT REALTORS, INC.;	)	
OWENS REALTY COMPANY;	)	
CENTURY 21 AMERICAN REAL ESTATE;	)	
CAPITOL HILL REALTY, INC.;	)	CIVIL ACTION
EMERALD REALTORS, INC. dba	)	
CENTURY 21 KEY REALTY;	)	NO. S 90-95C
TOWN & COUNTRY REALTY;	)	
WUNDERLICH REALTY; HEARTLAND REALTY;	)	FILED: 7/16/90
DAVID DOHRMEYER; ROGER SKINNER;	)	
FRED EGGLEY; CARL BLANCHARD;	)	
BARBARA TRAVERS; KAREN MOGELNICKY;	)	Judge Limbaugh
T. DELORES KRAUSS; BARBARA BAKER;	)	
BETTY LOU RYAN; GERALD MCELREATH;	)	
WESLEY WADE; JEANNE R. OWENS;	)	
HERBERT L. ANNIS; THELMA ANNIS;	)	
CAROL MOUTELL; CHARLES MOUTELL;	)	
CLINTON WUNDERLICH,	)	
	)	
Defendants.	)	

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 against the above-named defendants to enjoin them from engaging in a combination and

conspiracy to suppress competition in the supply of residential real estate brokerage services in Cape Girardeau County and the north half of Scott County, Missouri, and the area adjacent thereto in southern Illinois (hereinafter "Cape Girardeau area"), because the combination and conspiracy, as alleged herein, is in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

## I

### JURISDICTION AND VENUE

1. This complaint is filed under Section 4 of the Sherman Act, as amended (15 U.S.C. § 4) in order to prevent and restrain violations, as hereinafter alleged, by the defendants of Section 1 of said Act (15 U.S.C. § 1).

2. Each defendant transacts business and is found in the Eastern District of Missouri, and each company defendant maintains its principal office in the Eastern District of Missouri.

## II

### DEFENDANTS AND CO-CONSPIRATORS

3. The Multi-List Service of Cape Girardeau, Missouri, Inc. ("Cape MLS") is made a defendant herein. The Cape MLS is a not-for-profit corporation located in the Eastern District of Missouri, and organized and existing under the laws of the state of Missouri. The Cape MLS is operated and controlled by its members, which are companies and individuals actively engaged in providing real estate brokerage services, at least

in part, in Cape Girardeau County or the north half of Scott County, Missouri.

4. The Cape MLS operates a computerized listing service through which its members can quickly and efficiently exchange information about real estate properties in the Cape Girardeau area for which they have entered into agreements with the current owners to find buyers. Through the listing service, a Cape MLS member can convey to other members substantial information about the properties for which it has agreed to search for prospective buyers, including photographs, asking prices, room descriptions, sizes, and other pertinent information. Every two months, the Cape MLS compiles and distributes to its members a book providing information about each property currently listed with its service. In addition, the Cape MLS semi-annually prepares for its members books providing information about each property that has been listed in its service and sold within the prior six months. All of this information assists Cape MLS members in providing real estate brokerage services in the Cape Girardeau area.

5. The Cape MLS also provides lockboxes that its members can use to safely store keys to properties for which they are seeking buyers. The lockboxes are attached to or near the entrance of the property and can be opened with master keys issued only to agents of the Cape MLS members. The lockboxes allow Cape MLS members to show properties to prospective buyers without arranging appointments with property owners or their real estate agents.

6. Each company and each individual listed below is made a defendant herein. During all or part of the period covered by this complaint, each company defendant was a member of the Cape MLS and engaged in the business of offering residential real estate brokerage services in the Cape Girardeau area. During all or part of the period covered by this complaint, each individual defendant was associated with the corresponding company defendant or a co-conspirator company and, as such, engaged in the business of offering residential real estate brokerage services in the Cape Girardeau area. During all or part of the period covered by this complaint, each individual defendant also engaged on behalf of the defendant or co-conspirator companies in establishing, approving or implementing the operating and membership qualification requirements and other policies of the Cape MLS.

Company Defendant

Individual Defendant

Ashland Realty Company  
" " "

Herbert L. Annis  
Thelma Annis

Bridgeport Realtors, Inc.  
" " "

Roger Skinner  
David Dohrmeyer

Capitol Hill Realty, Inc.  
" " " "

Carol Moutell  
Charles Moutell

Century 21 American Real Estate

Wesley Wade

Emerald Realtors, Inc. dba  
Century 21 Key Realty

Barbara Travers  
Karen Mogelnicky

Heartland Realty

Gerald McElreath

Company Defendant

Individual Defendant

Owens Realty Company

Jeanne R. Owens

Town & Country Realty

Barbara Baker

Wunderlich Realty

Clinton Wunderlich

Fred Eggley  
T. Delores Krauss  
Carl Blanchard  
Betty Lou Ryan

7. Various companies and individuals, not made defendants in this complaint, participated as co-conspirators in the offense charged and performed acts and made statements in furtherance thereof.

8. Whenever this complaint refers to any act, deed or transaction of any company, it means that the company engaged in the act, deed or transaction by or through its officers, directors, agents, employees or other representatives while they were actively engaged in the management, direction, control or transaction of its business or affairs.

III

TRADE AND COMMERCE

9. Real estate firms and their agents, including the defendants named in paragraph 6 of this complaint, provide brokerage services to facilitate and expedite real estate sales transactions, including residential real estate transactions. These services include publishing information about properties that are being offered for sale, attempting to locate potential

buyers; providing suggestions to owners for improving the value and salability of their properties; providing sellers with relocation information and referring them to real estate firms in other geographic areas; locating potential properties for prospective buyers and arranging for prospective buyers to inspect properties; providing prospective buyers with pertinent information about a community such as relative property values, most recent selling prices, schools, parks and recreation facilities, cultural events, fire and police protection, restaurants, shopping, mass transportation, property taxes and real estate practices; apprising potential buyers of possible financing alternatives; assisting in the formation and negotiation of offers, counter offers, and acceptances; and helping to schedule and prepare for closings of real estate transactions.

10. Real estate firms and their agents charge fees or commissions for their brokerage services, which are generally paid by sellers at the closings of real estate transactions. Commissions are usually split between real estate firms and agents that enter into agreements with sellers to advertise properties and search for potential buyers ("listing agents") and real estate firms and agents that find the ultimate buyers ("selling agents").

11. Real estate firms and their agents compete with one another to become listing agents and selling agents. This competition allows property owners to attempt to contract with

listing agents that will supply the desired range of brokerage services at the lowest possible fee and for prospective buyers to enlist the assistance of selling agents that are most responsive to their needs.

12. Residential real estate brokerage services constitute a relevant product market. Most real estate firms serve as listing agents and selling agents and offer the vast majority of brokerage services desired by most prospective home sellers and buyers. Because of state licensing requirements and for other reasons, real estate firms generally are the only firms capable of offering a full range of residential real estate brokerage services. Most home owners and prospective buyers could not obtain and would not seek comparable substitute brokerage services from other firms or individuals in the event of a small but significant nontransitory increase in the fees charged for residential real estate brokerage services.

13. The Cape Girardeau area constitutes a relevant geographic market for the provision of residential real estate brokerage services. Prospective home sellers and buyers in the area typically seek the brokerage services of real estate firms and agents located in the area. Real estate firms and agents located outside the Cape Girardeau area generally would not have the time or sufficient knowledge about the Cape Girardeau area to provide competitive residential real estate brokerage services in the area. Most prospective home sellers and buyers would not seek brokerage services from real estate firms and

agents located outside the Cape Girardeau area in the event of a small but significant nontransitory increase in the fees charged for residential real estate brokerage services in the Cape Girardeau area.

14. Qualifications and standards of conduct for individuals who provide or desire to provide real estate brokerage services in the Cape Girardeau area are specified by the states of Missouri (for application in the Missouri portion of the Cape Girardeau area) and Illinois (for application in the Illinois portion of the area). State laws prohibit unlicensed individuals from providing real estate brokerage services. Real estate commissions established by state law administer the licensing process and are responsible for ensuring that applicants to whom licenses are granted have fulfilled various specified character, age, education, and/or experience criteria. The state real estate commissions are also responsible for enforcing rules that regulate the conduct of individuals who are licensed to provide real estate brokerage services.

15. The defendants named in paragraph 6 and their co-conspirators employ almost all of the real estate agents in the Cape Girardeau area that receive a significant portion of their income from commissions earned on residential sales transactions. Those defendants and their co-conspirators are the listing agents or selling agents in the vast majority of residential real estate transactions in the Cape Girardeau



area. The vast majority of residential properties offered for sale in the Cape Girardeau area are listed by those defendants and their co-conspirators in the Cape MLS's listing service.

16. During the period covered by this complaint, the defendants named in paragraph 6 and co-conspirators jointly operated the Cape MLS. Prospective home sellers and buyers received considerable benefits from the listing and lockbox services made available through the Cape MLS.

17. A primary goal of home owners who are considering enlisting the brokerage services of a real estate firm is to obtain maximum exposure of property as quickly as possible. In the Cape Girardeau area, this goal is best satisfied by listing property in the Cape MLS's listing service. No other mechanism exists for quickly conveying comparable information to the largest possible pool of prospective buyers at comparable costs. For this reason, many home owners in the Cape Girardeau area will not contract for brokerage services with a real estate firm that is not a member of the Cape MLS.

18. Prospective home buyers who are considering using the brokerage services of a real estate firm want the firm to be able to identify properties in which they may be interested and arrange for inspections of those properties. A real estate firm that quickly identifies a large number of potentially acceptable properties for a prospective buyer to inspect will significantly increase the prospects for arranging a sale.

19. Real estate agents with access to the Cape MLS's listing service have a significant competitive advantage in locating potential homes for prospective buyers because they can use the listing service as a screening tool to select quickly potential homes for inspection by prospective buyers. The agents can also obtain from the Cape MLS information to advise prospective home sellers and buyers on property values, and can use the Cape MLS's lockbox service to permit inspections of properties at the most convenient times for prospective buyers.

20. Only Cape MLS members and their employees are entitled to use Cape MLS services. Because of the importance to prospective home sellers and buyers of the services provided by the Cape MLS, real estate firms and agents that are denied access to those services are at a significant competitive disadvantage relative to members of the Cape MLS and their employees, including the defendants named in paragraph 6 and their co-conspirators. Nonmember real estate firms and their employees either could not provide, or would need to spend significantly more time and money to provide, prospective home sellers and buyers with services comparable to those offered by the real estate firms and agents that have access to the Cape MLS.

21. During all or part of the period covered by this complaint, the defendants and their co-conspirators adopted and enforced various bylaws for the Cape MLS which established

unreasonable conditions and procedures for obtaining membership in the Cape MLS and which in practice unreasonably restricted the conduct of Cape MLS members and their employees. Exhibit A attached to this complaint sets forth the text of Cape MLS bylaws 3.01, 3.02, 3.03 and 3.04, and unnumbered bylaws 1, 2 and 3, which were passed at a special Cape MLS Board meeting on March 9, 1988.

22. Certain of the defendants named in paragraph 6 and their co-conspirators have obtained franchises from firms that have established national networks of real estate brokerage franchises or have become associated with nationwide referral organizations by which prospective buyers moving into the Cape Girardeau area from other states are referred to Cape Girardeau area real estate firms and by which Cape Girardeau area real estate firms refer home sellers who are moving to other states to real estate firms in those states. Many residential real estate transactions in the Cape Girardeau area involve buyers or sellers who are moving across state lines. The Cape Girardeau area includes portions of Missouri and Illinois, and properties from both states are listed in the Cape MLS's listing service. Certain of the defendants named in paragraph 6 and their co-conspirators are licensed in both Missouri and Illinois and travel across state lines to Illinois to help to sell property located there. A significant number of residential real estate transactions in the Cape Girardeau area involve financing insured by federal programs administered

across state lines by agencies such as the Veterans Administration and the Federal Housing Authority. Part of the financing for loans for residential real estate transactions arranged by Cape MLS members in the Cape Girardeau area comes from sources in other states, and residential real estate loans made by local banks in connection with those transactions are often resold in interstate commerce.

23. The activities of the defendants and co-conspirators, which are the subject of this complaint, were within the flow of, and substantially affected, interstate trade and commerce.

V

VIOLATION ALLEGED

24. Beginning at least as early as the 1970's and continuing at least into 1990, the exact dates being unknown to the United States, the defendants and others engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce, in violation of Section 1 of the Sherman Act. The violation may recur unless the relief hereinafter prayed for is granted.

25. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding and concert of action among the defendants and co-conspirators, the substantial terms of which were:

- (a) To exclude from membership in the Cape MLS a real estate firm that offered discount brokerage services in the Cape Girardeau area;

- (b) To refrain from providing certain discount brokerage services in which prospective home sellers in the Cape Girardeau area would be free to show their homes to prospective buyers without having a real estate agent present;
- (c) To refrain from engaging in certain unspecified, potentially competitive conduct that was not unlawful or prohibited by the applicable state real estate commissions;
- (d) To impose unreasonable restrictions on membership in the Cape MLS; and
- (e) To permit current Cape MLS members to vote against applications for membership in the Cape MLS, and therefore unreasonably deny such applications, for any reason they chose.

26. For the purpose of forming and carrying out the aforesaid combination and conspiracy, the defendants and co-conspirators did those things that they combined and conspired to do, including, among other things:

- (a) Conducting meetings and engaging in conversations to discuss means to retaliate against and minimize the competition from a real estate firm that offered discount brokerage services in the Cape Girardeau area;

- (b) Excluding the real estate firm that offered discount brokerage services from membership in the Cape MLS for no legitimate reason, in a vote taken in March 1988, pursuant to Cape MLS bylaw 3.04;
- (c) Enacting and adhering to Cape MLS bylaws 3.01 and 3.03, which imposed conditions on applicants for membership in the Cape MLS that were more restrictive than the criteria specified by the applicable state real estate commission for obtaining a license to provide real estate brokerage services, and in particular, which required an applicant both to remain in business in Missouri for one year before filing its membership application (bylaw 3.01) and to submit with the application fifteen qualifying properties to be listed with the Cape MLS's listing service (bylaw 3.03);
- (d) Enacting and adhering to Cape MLS bylaw 3.02, which required applicants for membership into the Cape MLS to pay fees that significantly exceeded the costs of processing their applications and admitting them to membership;

- (e) Enacting and adhering to Cape MLS bylaw 3.04, which required applicants for membership into the Cape MLS to receive a favorable vote on their applications from a majority of the current Cape MLS members, and allowed current members to vote against applications for any reason they chose;
- (f) Enacting in March 1988 unnumbered Cape MLS bylaw 3, which prohibited Cape MLS members from offering discount brokerage services in which property listed with the Cape MLS's listing service could be shown to a prospective buyer without having a real estate agent present; and
- (g) Simultaneously with the exclusion from membership in the Cape MLS of the real estate firm that offered discount brokerage services and the enactment of unnumbered Cape MLS bylaw 3, enacting unnumbered Cape MLS bylaws 1 and 2, which prohibited Cape MLS members from engaging in certain unspecified, potentially competitive conduct that was not unlawful or prohibited by the applicable state real estate commissions.

## VI

### EFFECTS

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

- (a) competition in the provision of residential real estate brokerage services in the Cape Girardeau area has been restrained through the imposition of unreasonable restrictions on membership in the Cape MLS and on the conduct of real estate firms that are members of the Cape MLS;
- (b) sellers and buyers and prospective sellers and buyers of residential real estate in the Cape Girardeau area have been denied the benefits of free and open competition in the provision of residential real estate brokerage services.

PRAYER

WHEREFORE, plaintiff prays:

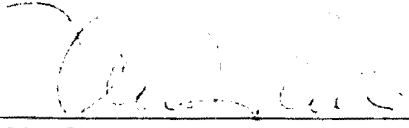
1. That the Court adjudge and decree that each of the defendants and co-conspirators has engaged in the alleged combination and conspiracy in unreasonable restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act.
2. That the defendants be ordered to delete from the Cape MLS bylaws those provisions of the bylaws set forth on Exhibit A.
3. That each defendant, its successors, assignees, officers, directors, employees and agents be enjoined and restrained from:
  - (a) enforcing or causing or inducing the enforcement of any bylaw required to be deleted from the Cape MLS bylaws;

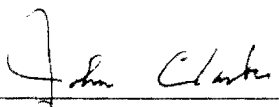


- (b) participating in any way in the adoption, maintenance or enforcement of any rule, bylaw, regulation, policy or decision of the Cape MLS or any other real estate multiple listing service that is comparable in competitive effect to the bylaws set forth on Exhibit A; and
- (c) participating in any combination or conspiracy to fix, establish or maintain:
  - (1) fees for real estate brokerage services;
  - (2) the brokerage services to be offered or performed or not to be offered or performed by any real estate agent;
  - (3) any terms or 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.

4. That the plaintiff have such other relief as the Court may deem just and proper.

5. That the plaintiff recover the cost of this action.

  
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