

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

THE CLEVELAND REAL ESTATE BOARD,  
Defendant.

Civil Action No. C 70-731

(Judge Thomas D. Lambros)

Filed: June 6, 1972

Entered: July 17, 1972

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 29, 1970, and defendant having filed its answer to said complaint and plaintiff and defendant by their respective attorneys having consented to the making and entry of this Final Judgment without admission by either party in respect to any issue;

NOW THEREFORE, before any testimony has been taken herein, 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 over the subject matter of this action and of the parties hereto. The complaint states claims upon which relief may be granted against the defendant under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Board" shall mean the defendant The Cleveland Real Estate Board;

(B) "Exclusive Right to Sell" shall mean any contract or agreement between a broker and a seller of property whereby the seller gives the broker the right to act as exclusive agent to sell his property within a specified period of time and during this specified period of time the broker is guaranteed his commission if the property is sold by the agency of the broker or anyone else;

(C) "Person" shall mean any individual, partnership, firm, association, corporation, member of the Board or other business or legal entity;

(D) "Rate or amount of commission" shall mean the consideration paid or agreed to be paid the real estate broker by his principal.

### III

The provisions of this Final Judgment applicable to the Board shall also apply to each of its directors, officers, trustees, all its members, agents, employees, subsidiaries, successors and assigns, and to other persons in active concert or participation with any of them who receive notice of this Final Judgment by personal service or otherwise.

### IV

The Board, whether acting unilaterally or in concert or agreement with any other person, is enjoined and restrained from:

(A) Fixing, establishing or maintaining any rates or amounts of commission for the sale, lease or management of real estate;

(B) Urging, recommending or suggesting that any of the members of the Board adhere to any schedule or other recommendation concerning the rates or amount of commissions or fees for the sale, lease or management of real estate;

(C) Adopting, suggesting, publishing or distributing any schedule or other recommendation concerning the rates or amount of commissions or other fees for the sale, lease or management of real estate;

(D) Adopting, adhering to, maintaining, enforcing or claiming any rights under any by-law, rule, regulation, plan or program which restricts or limits the right of any of its members or any other real estate broker to seek any commission or fee in accordance with his own business judgment;

(E) Taking any action against any person where such action is based upon the person's failure or refusal to adhere to any schedule or other recommendation concerning the rate or amount of commission or other fees to be charged in connection with the sale, lease or management of real estate or where such action is based upon anything which is contrary to or inconsistent with any provision of this Final Judgment;

(F) Adopting, enforcing or claiming any rights under any by-law, rule or regulation providing that all members or any group of members must accept only exclusive rights to sell.

V

The defendant is ordered to insert in all rules, constitution and by-laws, code of ethics, professional standards of practice, regulations, contracts, and other forms which previously contained a set commission rate, a provision that commission rates for the sale, lease or management of property and the matter of taking exclusive rights to sell shall be negotiable between the broker and his client.

## VI

(A) The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its constitution and by-laws, rules, code of ethics, professional standards of practice and regulations, contracts or other forms by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment;

(B) Upon amendment of its constitution and by-laws, code of ethics, professional standards of practice, rules and regulations, and contracts and other forms, as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any constitution and by-law, code of ethics, professional standards of practice, rule or regulation, and contracts and other forms which is contrary to or inconsistent with any of the provisions of this Final Judgment;

(C) Defendant is ordered and directed within ninety (90) days from the date of this Final Judgment to include in its constitution or by-laws a provision requiring it to enforce the provisions of this Final Judgment among those of its members who are subject to this decree and to establish and maintain a procedure for the imposition of disciplinary sanctions upon those of its members who are subject to this decree and who are found by the defendant to be engaging in conduct inconsistent with any provision hereof;

(D) Defendant is ordered and directed to admit to membership any person duly licensed by the appropriate governmental

authority who meets and satisfies reasonable and non-discriminatory written requirements for membership which shall be adopted and maintained by the defendant and not otherwise inconsistent with this Final Judgment.

#### VII

Defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy thereof to each of its members and to its Executive Vice President and publish this Final Judgment in the bulletin which the Board sends to its members and within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court, with a copy to the Plaintiff herein, an affidavit setting forth the fact and manner of compliance with this Section VII and Section VI (A) above.

#### VIII

For a period of ten (10) years from the date of entry of this Final Judgment, the defendant is ordered and directed to file with the Plaintiff, on each anniversary date, a report setting forth the steps which it has taken during the prior year to advise the defendant's appropriate officers, directors and employees of its and their obligations under this Final Judgment.

#### IX

For the purpose of determining or securing compliance with this Final Judgment, and for no other purpose, duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in Charge of the Antitrust Division, and on

reasonable notice to defendant, made to its principal office, be permitted, subject to any legally recognized privilege (A) access during its office hours to all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession of or under the control of the defendant relating to any matter contained in the Final Judgment, and (B) subject to the reasonable convenience of defendant, and without restraint or interference from it to interview officers or employees of the defendant, who may have counsel present, regarding any such matters; and upon such request, defendant shall submit such reports in writing, under oath if so requested, to the Department of Justice with respect to any of the matters contained in this Final Judgment as may from time to time be requested. No information obtained by the means provided in the Section IX 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 plaintiff, except in the course of legal proceedings to which the United States of America is a party for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

X

Jurisdiction is retained by this 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 and directions as may be necessary or appropriate for the construction or carrying out this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

/s/ THOMAS D. LAMBROS  
United States District Judge

Dated: 7/17/72