

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

_____)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
MULTIPLE LISTING SERVICE OF)
HILTON HEAD ISLAND, INC.,)
)
Defendant.)
_____)

PROPOSED FINAL JUDGMENT

WHEREAS, Plaintiff, United States of America, filed its Complaint on _____, and Plaintiff and Defendant, Multiple Listing Service of Hilton Head Island, Inc., by their respective attorneys, have consented to the entry of this Final Judgment (the “Final Judgment”) without trial or adjudication of any issue of fact or law, and this Final Judgment shall not be evidence against or an admission by any party regarding any issue of fact or law;

AND WHEREAS, Defendant is a multiple listing service among competing real estate brokerages, organized as a not-for-profit corporation under the laws of South Carolina, and maintains its principal place of business in Hilton Head Island, South Carolina;

AND WHEREAS, Defendant agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

AND WHEREAS, Defendant agrees to take certain actions for the purpose of remedying the loss of competition alleged in the Complaint;

AND WHEREAS, Defendant has represented to the United States that the actions required below can and will be made and that Defendant will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the provisions contained below;

NOW THEREFORE, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against Defendant under Section 1 of the Sherman Act, as amended, 15 U.S.C. § 1.

II. DEFINITIONS

As used in this Final Judgment:

- A. “Defendant” means the Multiple Listing Service of Hilton Head Island, Inc., its successors and assigns, and its members, officers, managers, committees, and employees.
- B. “Affiliate Member” means any member of the Defendant that is engaged in banking, mortgage lending, mortgage brokering, and similarly related fields.
- C. “Associate Member” means: (1) a member of the Defendant who is an ‘associated licensee’ as the term is defined in S.C. Code Ann. § 40-57-30 (2005) or any recodification thereof; and (2) a Licensee who associates with a Full Member or a Broker-in-Charge of a Full Member.

- D. “Applicant” means a person who applies for full, associate, or affiliate membership in the Multiple Listing Service of Hilton Head Island.
- E. “Appraiser” means any person who is licensed under Title 40 Chapter 60 of the South Carolina Revised Statutes or any future recodification thereof and legally can perform real estate appraisal.
- F. “Appraisal Firm” means a firm owned by or employing an Appraiser.
- G. “Broker-in-Charge” means: (1) a “broker-in-charge” as the term is defined in S.C. Code Ann. § 40-57-30 (2005) or any recodification thereof; or (2) any licensed broker who is designated as having responsibility over the actions of all its associated licensees and is affiliated with a Full Member.
- H. “Buyer’s Representation Agreement” means the contract between a Licensee and Client or any other person who is a prospective home buyer.
- I. “Client” means a person with whom a Licensee has established an agency relationship.
- J. “Compensation” means: (1) any commission or fee charged by, or rebate offered by, a Licensee to a Client or any person who is a prospective home buyer or seller; (2) any commission or payment offered to other Licensees in exchange for cooperation on a property transaction; or (3) any commission, salary, or fee exchanged between a Full Member and its affiliated or employed Licensees.
- K. “Full Member” means any member of the MLS that is a real estate brokerage firm having a Broker-in-Charge or an Appraisal firm.

- L. “Licensee” means: (1) any person who is licensed under Title 40 Chapter 57 of the South Carolina Code Annotated or any future recodification thereof; (2) any person who legally can perform acts of real estate brokerage; or (3) any person who legally can perform acts of real estate brokerage while acting under the supervision of a licensed broker.
- M. “Listing Agreement” means the contract between a Licensee and Client or any other person who is a prospective home seller.
- N. “Member MLS Database Access” means the security measures, such as a login-id and password or key token, needed to access the complete MLS database provided by Defendant to Full, Associate or Affiliate Members. Member MLS Database Access does not mean or encompass any login-id or password that a Full or Associate Member establishes for, or grants to, its customers or clients either to access the broker’s website or to access listings content provided on the broker’s website.
- O. “Method of Service” means the time, place, or manner in which a Licensee provides brokerage services to Clients or any other person who is a prospective home buyer or seller, subject to state and federal law (*e.g.*, office hours, the method by which the Licensee markets properties for sale, and the method by which the Licensee provides listings information to Clients or any other person who is a prospective home buyer or seller).

- P. “MLS” means any multiple listing service owned or operated by Multiple Listing Service of Hilton Head Island, Inc.
- Q. “MLS Listing” means any listing in which:
1. the Client or any other person who is a prospective home seller grants the Licensee the sole right to make an offer of compensation to cooperating brokers; and
 2. the Licensee makes an offer of compensation to other cooperating Full or Associate Members.
- R. “MLS Service Area” means the geographic area from which listings are placed in the MLS by Full or Associate Members.
- S. “Office Exclusive” means a listing in which the owner refuses to grant permission for distribution of the listing to the MLS.
- T. “Real Estate Brokerage Firm” means a firm owned by or employing a Broker-in-Charge.
- U. “Scope of Service” means the set of specific brokerage services a Licensee has agreed it will provide to a Client or such other person who is a prospective home buyer or seller as well as the set of specific services that a Licensee will allow a Client or any other person who is prospective home buyer or seller to perform herself or himself (whether or not the licensee offers to provide such services).
The Scope of Service may be set forth in a Listing Agreement, Buyers Representation Agreement, or other agreement between a Licensee and a Client or any other person who is a prospective home buyer or seller.
- V. “Trustees” means the Trustees elected by the Full Members of Defendant.

III. APPLICABILITY

This Final Judgment applies to the Defendant and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV. PROHIBITED CONDUCT

- A. Subject to the provisions of paragraph VI, Defendant is enjoined and restrained from adopting or enforcing any bylaw, rule, regulation, policy, or practice that has the purpose or effect of excluding:
1. from full membership any Real Estate Brokerage Firm that has a broker-in-charge holding an active real estate broker license issued by the appropriate State of South Carolina governmental licensing authority or any Appraisal Firm owned by or employing at least one person with an active appraiser license issued by the appropriate State of South Carolina governmental licensing authority; or
 2. from associate membership any Licensee who holds an active real estate broker, agent, or salesman license issued by the appropriate State of South Carolina governmental licensing authority.
- B. Subject to the provisions of paragraph VI, Defendant is enjoined and restrained from adopting or enforcing any bylaw, rule, regulation, policy, or practice that has the purpose or effect of:
1. failing to make available or furnish on like terms to any Full Member any and all services that Defendant now or hereafter makes available or furnishes to any of its Full Members;
 2. failing to make available or furnish on like terms to any Associate Member any and all services that Defendant now or hereafter makes available or furnishes to any of its Associate Members;

3. failing to make available or furnish on like terms to any member who is an Appraiser any and all services that Defendant now or hereafter makes available or furnishes to any of its members who are Appraisers;
4. discriminating against, disfavoring, disciplining, or expelling any Full or Associate Member based on its office location, corporate structure, level or type of Compensation, Scope of Service, or Method of Service;
5. requiring any Full or Associate Member to perform brokerage services in excess of those required by South Carolina law;
6. prescribing the terms of Listing Agreements, Buyer's Representation Agreements, or any other agreement between a Full or Associate Member and any Client or any other person who is a prospective home buyer or seller;
7. refusing to accept or place in the MLS any MLS Listing submitted by a Full or Associate Member;
8. prescribing, recommending, setting standards, or guidelines concerning Compensation;
9. requiring an Applicant or a Full Member to inform Defendant of the ownership interests that others have in such Applicant or Full Member or charging a fee for a change in ownership;
10. requiring any Full or Associate Member, Appraiser or Trustee to reside or have an office in the MLS Service Area or any particular area or location; or
11. changing its three classes of membership (Full, Associate, and Affiliate) without the prior approval of the Department of Justice.

V. REQUIRED CONDUCT

- A. Defendant is required to accept all Applicants into the Applicant's corresponding membership class (Full, Associate, or Affiliate) as follows:
 1. any Real Estate Brokerage Firm that has a Broker-in-Charge who holds an active real estate broker license issued by the appropriate State of South

Carolina governmental licensing authority shall be granted Full Membership;

- 2 any Licensee who holds an active real estate broker, agent, or salesman license issued by the appropriate State of South Carolina governmental licensing authority shall be granted Associate Membership; and
3. any Appraisal Firm with an owner or employee holding an active appraiser license issued by the appropriate State of South Carolina governmental licensing authority shall be granted Full Membership.

B. Defendant is ordered to delete from its Bylaws and Rules and suspend enforcement of:

1. The language in Bylaw Article II, Section II stating:

“Any realty or appraisal firm whose Broker in Charge or Head Appraiser applies for membership and which is owned as a subsidiary or affiliate of a realty firm which has its headquarters a state other than South Carolina must comply with the following additional regulations: . . . (2) it must have an office located within the Multiple Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties); (3) the broker in charge or head appraiser of such realty or appraisal firm must be a resident of the Multiple Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties); and (4) all licensees of the realty firm or appraisal firm must hold their South Carolina license as their primary license.”

2. The language in Bylaw Article V, Section I stating:

“The Board of Trustees of MLS shall consist of persons who are residents of the counties served by MLS, including Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg, South Carolina,”

3. The language in Bylaw Article VII, Section II stating:

- i. “and shall consist of the brokers-in charge or Head appraiser of realty and appraisal firms who qualify for membership based upon the following criteria: (a) the firm has established and maintained a specific place of business in any of the following counties served by MLS: Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg, which office is available to the public during reasonable business hours;” and

ii. “Membership of internet only members are subject to restrictions set by the Board of Trustees.”

4. The language in Bylaw Article VII, Section III stating:

“which: (a) have established and maintained a specific place of business within the Multiple Listing Service Area (which includes Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton and Orangeburg counties) that is available to the public during reasonable business hours;”

5. The language in Bylaw Article VII, Section IV stating:

i. “to obtain or make credit checks or”; and

ii. “and applications may require that the applicant supply various information and recommendations, including but not limited to:

(a) Three (3) separate character references from three (3) presently qualified Full Members; and

(b) In the case of Full Members, a history of business experience and employment information concerning all persons, including all partners and shareholders, who have any ownership interest in the applicant ...Any such party acquiring an ownership interest of any kind after acceptance of the realty firm as a Full Member must submit all information required by this Section within ten (10) days after acquisition of the ownership interest and must be approved by the Board of Trustees.”

6. The Bylaw Article VII, Section X stating:

“In the event of any change of ownership of a member firm as determined by the Board of Trustees in accordance with the provisions of the Rules and Regulations, the Board of Trustees, at its option, may terminate the membership of such firm and require the firm to reapply for membership and pay the then current initiations fees in MLS as if said firm had never been a member of MLS.”

7. The language in Bylaw Article XI, Section I stating:

“The listing Full Member shall specify a commission split or other compensation which would be reasonably expected to encourage cooperation by other

Full Members. It is to the advantage of the listing Full Member, and, consequently the owner, to establish compensation which will encourage other MLS Full Members to devote time and energy to the sale of the owner's listing with the expectation of reasonable compensation for the member's efforts. The Board of Trustees may adopt compensation guidelines that it deems sufficient to encourage such devotion of time and energy. Any Full Member which the Board of Trustees, in its sole discretion, believes is consistently establishing compensation which would discourage the intended cooperation by other Full Members may have its membership terminated by a majority vote of the Board of Trustees."

8. The language in Rules and Regulations Section II, stating:

i. "A.1.c. Establish and maintain a specific place of business in Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton, Orangeburg Counties, which is available to the public.";

ii. "A.2.c. Submit letters of recommendation from the Broker-In-Charge/Head Appraiser of three (3) firms who are members in good standing with the MLS of Hilton Head Island, Inc.";

iii. "A.2.g. Submit statement of Residence of Owners and Broker-In-Charge/Head Appraiser";

iv. "A.2.h. . . . (2) address of the New Firm's office located within the Multiple Listing Service area (Beaufort, Jasper, Allendale, Bamberg, Barnwell, Colleton, Hampton, [and] Orangeburg Counties); (3) the address of the Broker-In-Charge/Head Appraiser to confirm that he/she is a resident of the Multiple Listing Service area; and (4) confirmation that all licensees of the New Firm hold their South Carolina licenses as their primary license and are residences of the aforementioned area"; and

v. "B. Board of Trustees must be notified of any ownership changes within 10 days of said change and all changes of ownership fees paid. Notification must be in writing and signed by the BIC/Head Appraiser. A new Membership Agreement and Principals Audit must be fully executed and signed by the BIC/Head Appraiser and submitted to the MLS office along with notification. (Forms may be obtained on the MLS website www.hiltonheadmls.com and selecting Members Only.)"

9. The language in Rules and Regulations Section II, Subsection E referring to principals.

10. The language in Rules and Regulations Section VI, Subsection 2 stating:
“Only MLS Exclusive Right to Sell Listing Agreements are accepted.”

C. Defendant is ordered to delete the term “Exclusive Agency” in Rules and Regulations Section VI, Subsection 7 and replace it with “Office Exclusive.”

VI. PERMITTED CONDUCT

Notwithstanding the above, nothing shall prohibit Defendant from:

- A. Requiring Applicants or Full, Associate, or Affiliate Members to pay:
1. a fee equal to the reasonable set-up costs of preparing to make Defendant's services available to the Applicant, Full, Associate, or Affiliate Member;
 2. a reasonable security deposit, to secure against any unpaid claims or charges that may be asserted by Defendant against the Applicant, Full, Associate, or Affiliate Member; and
 3. fees for use of Defendant's services that are non-discriminatory and reflect the reasonable expenses of Defendant's operations.
- B. Adopting or enforcing any bylaw, rule, regulation, policy practice, or agreement that is required for the MLS not to violate South Carolina law.
- C. Publishing or making available illustrative Listing Agreements, Buyer's Representation Agreements, and any other written agreements, or contracts that Full or Associate Members may choose to use or modify, provided any such agreements leave blank the Compensation terms.
- D. Adopting or enforcing any bylaw, rule, regulation, policy, practice, or agreement that prohibits Full, Associate, or Affiliate Members from enabling a third party to make use of its Member MLS Database Access.
- E. Requiring a Full Member to notify the MLS of a change in or departure of its

Broker-in-Charge, or the departure of any Associate Member.

- F. Requiring a Full Member to provide the MLS with the name of a designated contact person to whom the MLS may direct correspondence and inquiries.

VII. COMPLIANCE AND INSPECTION

- A. Within sixty (60) days after the date of entry of this Final Judgment, Defendant shall: (1) provide each of its members, trustees, and employees with notice of the amendments to its bylaws, rules, regulations and policies to conform to the provisions of this Order; (2) provide each of its members, trustees, and employees with a copy of this Order via its member-only Internet page; (3) inform all persons who are known to have inquired about membership in the last two years but who are not members of the amendments to its bylaws, rules, regulations and policies to conform to the provisions of this Order; (4) inform all persons under subsection (3) that they may apply or reapply for membership and that Defendant will grant membership if the applicant meets the requirements of the bylaws, rules, regulations and policies as revised by this Order; and (5) place on its home page of its publicly accessible web site (currently www.hiltonheadmls.com) a notice of the Final Judgment with a link to the Final Judgment.
- B. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the United States Department of Justice, including consultants

and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to Defendant, be permitted:

1. access during Defendant's office hours to inspect and copy, or at Plaintiff's option, to require Defendant to provide copies of, all books, ledgers, accounts, records and documents in the Defendant's possession, custody, or control, relating to any matters contained in this Final Judgment; and
2. to interview, either informally or on the record, Defendant's trustees, officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by Defendant.

- C. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, for the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, Defendant shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.
- D. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an 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 (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment,

or as otherwise required by law.

VIII. RETENTION OF JURISDICTION

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to extend the duration of the Final Judgment, to enforce compliance, and to punish violations of its provisions.

IX. EXPIRATION OF FINAL JUDGMENT

This Final Judgment will expire ten (10) years from the date of its entry.

X. NOTICE

For purposes of this Final Judgment, any notice or other communication shall be given to the person at the address set forth below (or such other addresses as the recipient may specify in writing):

John R. Read, Chief
Litigation III Section
U.S. Department of Justice
Antitrust Division
325 Seventh Street, N.W., Suite 300
Washington, D.C. 20530

XI. PUBLIC INTEREST DETERMINATION

Entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures
of Antitrust Procedures and Penalties
Act, 15 U.S.C. § 16

UNITED STATES DISTRICT JUDGE