

Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Memphis Board of Realtors., U.S. District Court, W.D. Tennessee, 1972 Trade Cases ¶74,056, (Jul. 27, 1972)

[Click to open document in a browser](#)

United States v. Memphis Board of Realtors.

1972 Trade Cases ¶74,056. U.S. District Court, W.D. Tennessee, Western Division. Civil Action No 72-218. Entered July 27, 1972. Case No. 2256, Antitrust Division, Department of Justice.

Sherman Act

Price Fixing—Prices for Services—Real Estate Brokerage Commissions.—An association of real estate brokers was prohibited under the terms of a consent decree from fixing any rate or amount of commissions charged by any of its members in connection with real estate transactions. Distributing or forcing adherence to rate schedules and enforcing or suggesting fee splitting are prohibited. A declaration that all commission rates shall be negotiable between the broker and his client must be included in all association contracts and forms.

Trade Association Membership—Real Estate Board—Nondiscriminatory Requirements—Part Time Brokers.—An association of real estate brokers was required to admit to membership any person duly licensed by the appropriate governmental authority including those persons who engage in the real estate business on a part time basis. Membership fees that are not related to the cost of providing and maintaining the services of the organization are prohibited.

For plaintiff: Walker B. Comegys, Acting Asst. Atty. Gen., Baddia J. Rashid, Charles F. B. McAleer, William E. Swope and Roy L. Ferree, Dept. of Justice. **For defendant:** Armstrong Allen Braden Goodman McBride and Prewitt, by Everett B. Gibson, Memphis, Tenn.

Final Judgment

MCRAE, D. J.: Plaintiff, United States of America, having filed its complaint herein on June 27, 1972 and the parties hereto, by their respective attorneys, having consented to the making and entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without admission by either party in respect to any issue;

Now, Therefore, before any testimony has been taken herein and upon consent of the parties hereto, it is hereby,

Ordered, Adjudged and Decreed as follows:

I

[Jurisdiction]

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. Section 1), commonly known as the Sherman Act.

II

[Definitions]

As used in this Final Judgment:

(A) "Board" shall mean the defendant Memphis Board of Realtors;

(B) "Multiple Listing Service" (hereinafter "MLS") shall mean any plan or program the members of which submit for common circulation listings of real properties;

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

III

[*Applicability*]

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

IV

[*Commission Rates*]

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 rate or amount of commissions or other fees to be charged by any of the members of the Board in connection with 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 rate or amount of commissions or other fees to be charged in connection with the sale, lease or management of real estate;
- (C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged by any of the members of the Board in connection with the sale, lease or management of real estate;
- (D) Taking any punitive 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 commissions or other fees to be charged in connection with the sale, lease or management of real estate;
- (E) Fixing, maintaining, suggesting, or enforcing any percentage division of commissions or other fees between the selling and listing broker;
- (F) Adopting, adhering to, maintaining or enforcing any by-law, rule, regulation, plan or program which would prohibit any member from doing business with any person;
- (G) Establishing, maintaining, or enforcing any fees for membership in the Board or its MLS which are not related to the cost of providing and maintaining the services of the organization and providing necessary and reasonable operational reserves; or
- (H) Adopting, adhering to, maintaining or enforcing any by-law, rule, regulation, plan or program relating to advertising by its members which is contrary to or inconsistent with any provision of this Final Judgment.

V

[*By-Laws*]

The defendant is ordered to insert in all by-laws, rules, regulations, contracts and other forms which previously contained a set or recommended commission rate, a provision that commission rates for the sale, lease or management of property shall be negotiable between the broker and his client.

VI

[*Membership*]

(A) The defendant is ordered and directed to admit to membership any person duly licensed by the appropriate governmental authority including such persons who engage in the real estate business on a part time basis,

provided, however, that the defendant may adopt and maintain reasonable and nondiscriminatory written requirements for membership not otherwise inconsistent with the provisions of this Final Judgment.

(B) The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its by-laws, rules and regulations by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment.

(C) Upon amendment of its by-laws, rules and regulations, as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-law, rule or regulation which is contrary to or inconsistent with any of the provisions of this Final Judgment.

(D) The defendant is ordered to file with the plaintiff, annually for a period of ten (10) years on the anniversary of the entry of this Final Judgment, a report setting forth the steps taken by the Board to advise its officers, directors, employees and all appropriate committees of the obligations and prohibitions placed upon the Board by this Final Judgment,

VII

[Notice]

The 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 within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court, an affidavit setting forth the fact and manner of compliance with this Section VII and Section V and Section VI (B) above.

VIII

[Inspection and Compliance]

For the purpose of determining or securing compliance with this Final Judgment, 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, and subject to the presence of counsel if so desired, (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 matters contained in this 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 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 this Section VIII 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.

IX

[Jurisdiction Retained]

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 of 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.