

EASTERN DISTRICT OF NEW YORK

Plaintiff,

70 C 1418

Entered: August 1, 1972

## FINAL JUDGMENT

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,

I.

This Court had 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 Long Island Board of Realtors, Inc.;

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

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

(D) "Commission" shall mean any charge for the service of bringing together buyers and sellers of real estate and of negotiating and arranging the prices and terms for the sale, lease or management of real estate.

## III.

The provisions of this Final Judgment applicable to the defendant shall also apply to each of its subsidiaries, successors and assigns, to its directors, officers, agents, employees, when acting in such capacity, and, in addition, to all persons, including members, 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 rate or amount of commission;

(B) Urging, recommending, or suggesting that any of its members adhere to any schedule or other recommendation concerning any rate or amount of commission;

(C) Adopting, suggesting, publishing or distributing any schedule or other recommendation concerning any rate or amount of commission;

(D) Including in any instructional course or other educational material any recommended or suggested rate or amount of commission;

(E) 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 person engaged in the sale, lease, or management of real estate to agree with his client on his commission in accordance with his own business judgment;

(F) 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;

(G) Fixing, maintaining, suggesting, or enforcing any schedule or other recommendation concerning the percentage division of commissions between the selling and listing brokers;

(H) 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;

(I) Conducting, publishing, or distributing, for a period of ten (10) years from the date of entry of this Final Judgment, any survey or study relating to prevailing rates or amounts of commissions or ranges thereof; and thereafter where the purpose or effect of any such survey or study would be to fix, establish, stabilize or maintain any rate or amount or ranges of commissions;

(J) Establishing, maintaining, or enforcing any fees for membership in the Board or MLS which are not approximately related to the cost, including the accumulation and maintenance of reasonable reserves, of developing, maintaining, or improving the organization as a going concern;

(K) Refusing to accept for multiple listing any listing for the sale of real estate because of the rate or amount of commission set forth in such listing.

V.

The defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to:

(A) Insert in all by-laws, rules, regulations, contracts, and all forms requiring a client's signature or which previously contained a set commission rate, a provision prominently situated in all capital letters that commission rates for the sale, lease, or management of real estate shall be negotiable between each member of the Board and his client;

(B) Insert in the written material for all instructional courses given and other educational materials disseminated under its auspices, a provision prominently situated in all capital letters that commission rates for the sale, lease, or management of real estate shall be negotiable between each member and his client.

VI.

(A) Defendant is ordered and directed to admit to membership any person duly licensed to sell real estate, and MLS to admit to membership any person duly licensed as a real estate broker, 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 MLS and not otherwise inconsistent with 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, regulations, contracts, and all forms requiring a client's signature or which previously contained a set commission rate for the sale, lease or management of real estate by eliminating therefrom any provision which is

contrary to or inconsistent with any provision of this Final Judgment and to send amended copies of each such by-law, rule, regulation, contract, and form to each of its members.

(C) The defendant is ordered and directed within ninety-five (95) days from the date of entry of this Final Judgment to file with the plaintiff a true copy of its by-laws, rules, regulations, contracts, and forms, as aforesaid amended and distributed.

(D) Upon amendment of its by-laws, rules, regulations, contracts, and forms as aforesaid, defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any by-law, rule, regulation, plan or program which is contrary to or inconsistent with any of the provisions of 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 within one hundred and twenty (120) days from the aforesaid date of entry to file with the Clerk of this Court and with the plaintiff, an affidavit setting forth the fact and manner of compliance with relevant provisions of Sections V, VI and VII above.

#### VIII.

Nothing in this Final Judgment shall be deemed to prohibit:

(A) Circulation by MLS of information, in connection with bona fide efforts to sell real estate, concerning the commission which a broker has agreed upon with his client, or the percentage division thereof which a listing broker has agreed to pay a selling broker, arrived at in accordance with this Final Judgment; or

(B) Adoption and enforcement by MLS of Rules requiring (i) that neither the commission nor the percentage division

thereof, arrived at in accordance with this Final Judgment and specified for a listing not to exceed a reasonable period, may be altered without the consent of both the listing and the selling broker, and (ii) that the recipient of any such commission promptly pay over to the listing or selling broker, as appropriate, the percentage division of the commission as specified or as otherwise agreed upon by the listing and selling broker.

#### IX.

For a period of ten (10) years from the date of entry of this Final Judgment, the defendant is ordered to file with the plaintiff, on each anniversary date of such entry, 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.

#### X.

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 the office hours of defendant, who may have counsel present, 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 directors, officers, members 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 this Section X 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.

XI.

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.

Dated: August 1, 1972

/s/ JACK B. WEINSTEIN

United States District Judge