

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 REAL ESTATE BOARD OF)
 METROPOLITAN ST. LOUIS,)
)
 Defendant.)

CIVIL ACTION

No. 72 C 793 (3)

Filed: October 19, 1973

Entered: November 21, 1973

FINAL JUDGMENT

PLAINTIFF, United States of America, having filed its complaint herein on December 22, 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

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 I of the Act of Congress of July 2, 1890, as amended (15 U.S.C. Section 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Board" shall mean the Real Estate Board of Metropolitan St. Louis;

(B) "Cooperative sale" means a sale of real property that has been listed with one real estate broker and sold by another:

(C) "Rates or amount of commissions or other fees" means any rates, commissions or other fees for the appraisal, sale, rental, lease, or management of real estate, including any rates, commissions, or other fees payable to either the selling or the listing real estate broker on a cooperative sale, or any percentage split or division thereof;

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

III

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, 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, maintaining, or enforcing any rate or amount of commissions or other fees to be charged;

(B) Urging, recommending, or suggesting that any person, including any member of the Board, adhere to any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged;

(C) Adopting, suggesting, publishing, or distributing any schedule or other recommendation concerning the rate or amount of commissions or other fees to be charged;

(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 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;

(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; provided, however, that the defendant may adopt and maintain prohibitions against any member (i) from unlawfully dividing with an unlicensed broker the rates, commissions, or other fees on a cooperative sale; and (ii) from participating, directly or indirectly, in a cooperative sale in violation of any person's civil rights;

(G) Establishing, maintaining, or enforcing any fees for membership in the Board which are not related to the approximate cost, including reasonable reserves, of maintaining the organization as a going concern;

(H) Fixing, establishing, maintaining, suggesting, or enforcing any percentage division of commissions or other fees between the selling and listing broker;

(I) 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 or listings for a specified period of time.

V.

The defendant is ordered to abrogate all contracts or other forms which conflict with any of the provisions of this Final Judgment and to notify each of its members to cease the use of any such contracts or other forms. The defendant

is further ordered to cause each of its members to insert in any contract or form used by them, containing a set commission rate and bearing the endorsement of the Board, a provision that commission rates for the sale, lease or management of property or for obtaining financing in real estate transactions shall be negotiable between the broker and his client.

VI

(A) The defendant is ordered and directed to admit to membership any person duly licensed by the appropriate governmental authority as a real estate broker or a salesman, 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, further providing that such requirements may provide that the member must maintain telephone service and a mailing address where he may be reached by the public.

(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, members, and all appropriate committees of its and their obligations under the prohibitions placed upon them by this Final Judgment.

VII

The defendant is ordered and directed to mail within sixty (60) days after the date of the 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

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 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.

/s/ JOHN F. NANGLE

United States District Judge

Dated: November 21, 1973