

**Trade Regulation Reporter - Trade Cases (1932 - 1992), United States v. Real Estate Board of Rochester, N. Y., Inc., U.S. District Court, W.D. New York, 1974-2 Trade Cases ¶75,355, (Dec. 20, 1974)**

Federal Antitrust Cases

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United States v. Real Estate Board of Rochester, N. Y., Inc.

1974-2 Trade Cases ¶75,355. U.S. District Court, W.D. New York. Civil Action No. 74-535. Entered December 20, 1974. Case No. 2413, Antitrust Division, Department of Justice.

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**Headnote**

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**Sherman Act**

**Price Fixing—Real Estate Boards—Fees, Practices, Membership—Consent Decree.**—A Rochester, New York real estate board was barred by a consent decree from fixing fees for the sale, lease, and management of real estate in Monroe County; prohibited from establishing fees or dues for membership in the board or multiple listing service not reasonably related to the costs of the board; and ordered to admit to membership any person licensed to sell real estate and to admit to membership in the multiple listing service any person licensed as a real estate broker, subject to reasonable and nondiscriminatory membership requirements not inconsistent with the decree. Exclusive dealing practices also were covered by the decree.

**For plaintiff:** Thomas E. Kauper, Asst. Atty. Gen., Baddia J. Rashid, Bernard M. Hollander, Bernard Wehrmann, Philip F. Cody, Paul D. Sapienza, and William E. Swope, Attys., Dept. of Justice, John T. Elfvin, U. S. Atty., Gerald Houlihan, Asst. U. S. Atty.

**For defendant:** Elliott Horton, of Harris, Beach and Wilcox, Rochester, N. Y., C. Richard Cole, of Wiser, Shaw, Freeman, Van Graafeiland, Harter & Secrest, Rochester, N. Y.

**Final Judgment**

BURKE, D. J.: Plaintiff, United States of America, having filed its Complaint herein on Nov. 19, 1974, 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 and without this Final Judgment constituting evidence or an admission by any party hereto with 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

[ *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. § 1), commonly known as the Sherman Act.

II

[ *Definitions*]

As used in this Final Judgment:

- (A) "Board" shall mean the Defendant Real Estate Board of Rochester, N. Y., Inc.;
- (B) "Multiple Listing Service" shall mean any plan or program for the circulation of real property listings among brokers;
- (C) "Person" shall mean any individual, partnership, firm, association, corporation, real estate agency, member of Defendant or other business or legal entity.

III

[ *Applicability*]

The provisions of this Final Judgment shall apply to the Defendant and to each of its subsidiaries, successors and assigns, to its directors, officers, agents, and employees, when acting in such capacity, and, in addition, to all its members and other persons in active concert or participation with them who receive notice of this Final Judgment by personal service or otherwise.

IV

[ *Restrictive Practices*]

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

- (A) Fixing, establishing or maintaining any rate or amount of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (B) Urging, recommending or suggesting that any of its members adhere to any schedule or other recommendation concerning the rates or amounts of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (C) Adopting, suggesting, publishing or distributing any schedule or other recommendation concerning the rates or amounts of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (D) Conducting, publishing or distributing any survey or study relating to rates or amounts of commissions or ranges thereof or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (E) Including in any instructional course or other educational material any recommended or suggested rates or amounts of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (F) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program which restricts or limits the right of any of its members or any other person engaged in the business of real estate in accordance with his own business judgment to agree with his client on any commissions or fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (G) Taking any punitive action against any of its members where such action is based upon the member's failure or refusal to adhere to any rate, or amount of commission or fee for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (H) Fixing, maintaining, suggesting or enforcing any division or split between a selling broker and a listing broker of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate;
- (I) 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;

(J) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program that requires members or any group of members to accept only exclusive rights to sell or exclusive agencies;

(K) Adopting, adhering to, maintaining, enforcing or claiming any rights under any bylaw, rule, regulation, plan or program that requires any member to file that member's listings only with the Defendant's Multiple Listing Service or any other Multiple Listing Service;

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

(M) Establishing or organizing any other person to do any of those acts prohibited in (A) through (L) above.

## V

### [ *Membership* ]

Defendant is ordered and directed to, upon application made, admit to membership in the Board any person duly licensed to sell real estate and to membership in any Multiple Listing Service any person duly licensed as a real estate broker by the appropriate governmental authority; provided, however, that the Board may adopt and maintain reasonable and nondiscriminatory written requirements for membership in the Board and any Multiple Listing Service, not otherwise inconsistent with the provisions of this Final Judgment.

## VI

### [ *Notice* ]

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

(A) Insert in all bylaws, rules, regulations, contracts, and forms requiring a client's signature, a provision, prominently situated in all-capital letters, that rates of commissions or other fees for the sale, exchange, rental, lease, management, or mortgage of real estate shall be negotiable between a broker 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 rates of commissions and other fees for the sale, exchange, rental, lease, management, or mortgage of real estate shall be negotiable between a broker and his client.

## VII

### [ *Constitution and Bylaws* ]

(A) Defendant is ordered and directed within ninety (90) days from the date of entry of this Final Judgment to amend its constitutional provisions, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts, and all forms by eliminating therefrom any provision which is contrary to or inconsistent with any provision of this Final Judgment and send amended copies of each such constitutional provision, bylaw, rule, regulation, code of ethics, professional standards of practice, contract, and form to each of its members.

(B) 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 constitution, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts and forms as aforesaid amended and distributed.

(C) Upon amendment of its constitution, bylaws, rules, regulations, code of ethics, professional standards of practice, contracts and forms as aforesaid, Defendant is thereafter enjoined and restrained from adopting, adhering to, enforcing or claiming any rights under any constitutional provision, bylaw, rule, regulation, code of ethics, professional standard of practice, contract or form which is contrary to or inconsistent with any of the provisions of this Final Judgment.

## VIII

[ *Notification* ]

Defendant is ordered and directed to mail within sixty (60) days after the date of entry of this Final Judgment, a copy of this Final Judgment 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 Sections VI (A)-(B) and VII (A) above.

**IX**

[ *Reports* ]

For a period of ten (10) years from the date of entry of this Final Judgment, 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, agents, employees, members and all appropriate committees of its and their obligations under this Final Judgment.

**X**

[ *Inspection and Compliance* ]

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, 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 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 Defendant regarding any such matters.

Upon such written 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**

[ *Retention of Jurisdiction* ]

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.