

Trade Regulation Reporter, United States of America, Plaintiff v. Greater Pittsburgh Board of Realtors, East Suburban Multilist Real Estate Brokers, Inc., South Hills Multilist, Inc., North Suburban Multilist, and Greater Pittsburgh Multilist Council, Defendants., U.S. District Court, W.D. Pennsylvania, 2005-2 Trade Cases ¶74,963, (Sept. 21, 2005)

Federal Antitrust Cases

72-499

Trade Regulation Reporter ¶74,963

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United States of America, Plaintiff v. Greater Pittsburgh Board of Realtors, East Suburban Multilist Real Estate Brokers, Inc., South Hills Multilist, Inc., North Suburban Multilist, and Greater Pittsburgh Multilist Council, Defendants.

2005-2 Trade Cases ¶74,963. U.S. District Court, W.D. Pennsylvania. Civil No. 72-499. Entered September 21, 2005.

U.S. No. 2253, Antitrust Division, Department of Justice.

Sherman Act

Headnote

Department of Justice Enforcement: U.S. Consent Decrees: Price Fixing: Real Estate: Sales Fees, Commissions: Consent Decree Modification: Publication of Fees, Commissions.—

Upon consent of the parties, a U.S. consent decree prohibiting a board of realtors and its members from fixing commission rates was modified to add a provision explicitly permitting the board to publish information about real estate commissions and fees set by an individual broker. Also, a provision requiring each of the defendants to file an annual report with the government setting forth the steps it undertook that year to notify their officers, directors, agents, and employees of its and their obligations under the consent decree was stricken because its period of applicability had expired.

See ¶4650 , ¶8840 .

Modifying [1973-1 TRADE CASES ¶74,454](#) .

For plaintiff: Erika L. Meyers & Joan Hogan, Litigation III, U.S. Dept. of Justice, Washington, DC; Christy Criswell Wiegand, Asst. U.S. Attorney, Pittsburgh, PA. **For defendants:** Vincent J. Grogan of Grogan Graffam, P.C., Pittsburgh, PA.

MODIFIED FINAL JUDGMENT

MCVERRY, D.J.: Plaintiff, United States of America, having filed its Complaint herein on June 21, 1972, and Plaintiff and Defendants ^[1] by their respective attorneys, having consented to the making and entry of the original Final Judgment, without admission by any party in respect to any issue and without this Final Judgment constituting evidence or an admission by any party hereto with respect to any such issue;

NOW, THEREFORE, before any testimony has been taken herein, without trial or adjudication of any issue of fact or law herein, and upon the consent of the parties, it is hereby

ORDERED, ADJUDGED and DECREED as follows:

I

For the purposes of this case, this Court has jurisdiction over the subject matter of this action and of the parties hereto. For purposes of this case, the Complaint states claims upon which relief may be granted against the Defendants under Section 1 of the Act of Congress of July 2, 1890, as amended ([15 U.S.C. Sec. 1](#)), commonly known as the Sherman Act.

II

As used in this Final Judgment:

- (A) "Multiple Listing Service" shall mean any plan or program operated by a Defendant for the circulation of real property listings among members of such Defendant; and
- (B) "Person" shall mean any individual, partnership, firm, association, corporation, real estate agency, member of the Defendants or other business or legal entity.

III

The provisions of this Final Judgment applicable to each of the Defendants shall also apply to each of their respective subsidiaries, successors and assigns; to each of their directors, officers, agents and employees, when acting in such respective capacities; and, in addition, to all persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Each of the Defendants, 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 for the sale, lease or management of real estate;
- (B) Urging, recommending or suggesting that any of its members or any other person adhere to any rate or amount of commissions or other fees for the sale, lease or management of real estate;
- (C) Adopting or suggesting any rate or amount of commissions or other fees for the sale, lease or management of real estate; provided, however, that surveys and studies may be conducted, published and distributed where not forbidden by Paragraph D of this Section IV of this Final Judgment;
- (D) Conducting, publishing or distributing any survey or study relating to rates or amounts of commissions or other fees for the sale, lease or management of real estate or ranges thereof 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 or other fees for the sale, lease or management of real estate;
- (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 real estate dealer in accordance with his own business judgment to agree with his client on any commissions or fees for the sale, lease or management of real estate;
- (F) 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 commissions or fees for the sale, lease or management of real estate;
- (G) Interfering with or limiting its members from maintaining part-time salesmen in their employ, or interfering with the terms of the relationship between its members and their salesmen where to do so would be contrary to or inconsistent with any provision of this Final Judgment;
- (H) Fixing, maintaining, suggesting or enforcing any division or split between a selling broker and listing broker of commissions or other fees for the sale, lease or management of real estate;

(I) Refusing to receive, process or distribute a listing of any real estate by any member in a Multiple Listing Service because of the rate or amount of commissions or other fees for the sale, lease or management of real estate thereon; and

(J) (1) Boycotting, agreeing to boycott, or threatening to boycott any person; and/or (2) refusing to do business with any person where such refusal would be contrary to or inconsistent with any provision of this Final Judgment.

V

Each Defendant is ordered to eliminate from all rules, by-laws, regulations, contracts and other forms, any schedule of rates or amounts of commissions or other fees for the sale, lease or management of real estate and any provision requiring or suggesting a fixed division of such fees between a listing broker and a selling broker. Each Defendant is also ordered to insert in all rules, by-laws, regulations, contract and other forms a statement, prominently situated in all capital letters, that rates of commissions or other fees for the sale, lease or management of real estate shall be negotiable between a broker and his client.

VI

(A) Defendant Greater Pittsburgh Board of Realtors shall, upon application made, admit to membership any person duly licensed by the appropriate governmental authority to sell real estate in Pennsylvania as a real estate salesman or as a real estate broker and each of the other Defendants shall, upon application made, admit to membership any person duly licensed by the appropriate governmental authority to sell real estate in Pennsylvania as a real estate broker; provided, however, that the Defendants may adopt and maintain reasonable and nondiscriminatory written requirements for membership, not otherwise inconsistent with the provisions of this Final Judgment;

(B) Each of the Defendants 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; and

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

VII

Each of the Defendants 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 to the persons listed in Schedule (A) attached to this Final Judgment and within one hundred and twenty (120) days from the aforesaid date of entry to file with Clerk of this Court, an affidavit setting forth the fact and manner of the compliance with this Section VII and Sections V and VI (B) above.

VIII

Nothing in this Final Judgment shall be deemed to prohibit:

(A) The publication or circulation by a Multiple Listing Service 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) The adoption and enforcement by a Multiple Listing Service 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; or

(C) The publication of advertisements that include the commission rates of individual brokers, provided that the Defendants shall not adopt or suggest rates as proscribed in Section IV(C).

IX

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 a defendant made to its principal office, be permitted, subject to any legally recognized privilege, and subject to the presence of counsel if so desired:

- (1) 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 such defendant relating to any matters contained in this Final Judgment; and
- (2) Subject to the reasonable convenience of such defendant, and without restraint or interference from it to interview officers or employees of such defendant regarding any such matters.

Upon such written request, each 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 IX 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.

X

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.

Footnotes

- ¹ Defendant Greater Pittsburgh Board of Realtors now being known as REALTORS® Association of Metropolitan Pittsburgh.