

Complaint

115 F.T.C.

IN THE MATTER OF

REALTY COMPUTER ASSOCIATES, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3405. Complaint, Nov. 23, 1992--Decision, Nov. 23, 1992

This consent order prohibits, among other things, Realty Computer Associates, Inc., d/b/a Computer Listing Service, a Missouri-based real-estate multiple listing service (MLS), from refusing to publish exclusive-agency listings, or restricting its members from offering such listings. In addition, the respondent is prohibited from requiring, as a condition of membership or use of its MLS, that any applicant or member engage in real-estate brokerage full time, or that any applicant or member maintain an office located on commercially zoned property or within the respondent's service area.

Appearances

For the Commission: *Michael T. Miller and C. Steven Baker.*

For the respondent: *Michael P. Keleher, Keleher & Eastman,*
Gladstone, MO.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that respondent Realty Computer Associates d/b/a Computer Listing Service ("CLS"), a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

PARAGRAPH 1. As used in this complaint:

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Complaint

(1) "*Multiple listing service*" means a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" means any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" means any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" means any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" means any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*Exclusive right to sell listing*" means any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, and agrees to pay the broker an agreed commission if the property is sold, whether the purchaser is located by the broker or any other person, including the owner.

PAR. 2. Realty Computer Associates, Inc., is a Missouri corporation d/b/a Computer Listing Service with its office and principal place of business located at 6651 N. Oak Trafficway, No. 1, Gladstone, Missouri.

PAR. 3. CLS is and has been at all times relevant to this complaint a corporation organized for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

PAR. 4. In the course and conduct of their businesses, and through the policies, acts, and practices described below, CLS and its members are in or affect commerce, as "commerce" is defined in the Federal Trade Commission Act.

PAR. 5. CLS is, and for some time has been, providing a multiple listing service for member real estate brokerage firms. CLS

maintains a computerized database of residential real estate available for sale in Clay and Platte counties, Missouri area and its surroundings (CLS's "service area"). It distributes the information to its members through online terminals and frequent publication of books containing property listings.

PAR. 6. CLS's member firms are owned and operated by real estate brokers who, for a commission, provide the service of bringing together buyers and sellers of residential real estate as well as other services designed to facilitate sales of these properties. Each CLS member agrees to submit all of its exclusive right to sell listings for residential real estate located within CLS's service area for publication to the entire membership of the multiple listing service, and to share commissions with those member firms that successfully locate purchasers for properties it has listed. Only members may participate in the multiple listing service.

PAR. 7. Membership in CLS's multiple listing service provides valuable competitive advantages in the brokering of residential real estate sales in CLS's service area. Membership significantly increases the opportunities for brokerage firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining current and comprehensive information on listings and sales.

PAR. 8. Publication of listings through CLS's multiple listing service generally is considered by sellers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for residential property in CLS's service area.

PAR. 9. CLS is the predominate multiple listing service in the Clay and Platte County area. The vast majority of brokers that deal in residential real estate in this area are members of CLS. The vast majority of broker-assisted sales of residential real estate in this area go through CLS. Sales of residential real estate listings published by CLS totaled about \$284 million in 1990.

PAR. 10. Except to the extent that competition has been restrained as described herein, CLS members are and have been in competition among themselves in the provision of residential real estate brokerage services within CLS's service area.

PAR. 11. In adopting the policies and engaging in the practices described in paragraphs twelve through fourteen below, CLS has

been and is acting as a combination of its members, or in conspiracy with some of its members, to restrain trade in the provision of residential real estate brokerage services within CLS's service area.

PAR. 12. CLS has been and is now refusing to publish any exclusive agency listing through its multiple listing service.

PAR. 13. CLS has been and is now requiring that each member broker or applicant for membership maintain a real estate office in a commercially zoned property located within the confines of CLS's service area.

PAR. 14. CLS has been and is now requiring that each member broker's or applicant for membership's primary business concern must be that of listing or selling real estate.

PAR. 15. The purpose, capacity, tendency, or effect of the combination or conspiracy described in paragraphs twelve through fourteen above has been, and continues to be, to restrain competition among brokers and to injure consumers by, *inter alia*:

(1) Discouraging or inhibiting brokers from accepting exclusive agency listings or similar contractual terms, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property other than through the broker, thereby restraining competition among brokers based on their willingness to offer or accept different contract terms that may be attractive and beneficial to consumers;

(2) Substantially reducing the ability of residential property owners to compete with real estate brokers in locating purchasers;

(3) Restraining competition from brokerage firms located outside of CLS's service area;

(4) Impeding new membership in CLS by part time or less than full time real estate brokers and impeding entry into the residential real estate business in CLS's service area.

PAR. 16. The policies, acts, practices, and combination or conspiracies described above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The alleged conduct, or the effects thereof, are continuing and will continue or recur in the absence of the relief requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of Realty Computer Associates, Inc., a corporation, d/b/a Computer Listing Service ("CLS") and CLS having been furnished with a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge CLS with violation of the Federal Trade Commission Act; and

CLS, its attorney, and counsel for the Commission having executed an agreement containing a consent order, an admission by CLS of all the jurisdictional facts set forth in the draft of complaint, a statement that the signing of the agreement is for settlement purposes only and does not constitute an admission by CLS that the law has been violated as alleged in the complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that CLS has violated the Federal Trade Commission Act, and that a complaint should issue stating its charges in that respect, and having accepted the executed consent agreement and placed that agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission issues its complaint, makes the following jurisdictional findings, and enters the following order:

(1) Respondent CLS is a Missouri corporation with its principal office and place of business at 6651 N. Oak Trafficway, No. 1, Gladstone, Missouri.

(2) The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

The following definitions shall apply to this order:

(1) "*Multiple listing service*" means a clearinghouse through which member real estate brokerage firms regularly exchange information on listings of real estate properties and share commissions with other members.

(2) "*Listing agreement*" means any agreement between a real estate broker and a property owner for the provision of real estate brokerage services.

(3) "*Listing broker*" means any broker who lists a real estate property with a multiple listing service pursuant to a listing agreement with the property owner.

(4) "*Selling broker*" means any broker, other than the listing broker, who locates the purchaser for a listed property.

(5) "*Exclusive agency listing*" means any listing under which a property owner appoints a broker as exclusive agent for the sale of the property, at an agreed commission, but reserves the right to sell the property personally to a direct buyer (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

(6) "*CLS*" means Realty Computer Associates, Inc., d/b/a Computer Listing Service and its successors, assigns, directors, officers, committees, agents, representatives, members, and employees.

I.

It is ordered, That respondent CLS, directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, shall cease and desist from:

A. Restricting or interfering with:

(1) The publication on CLS's multiple listing service of any exclusive agency listing of a member; or

(2) Any member's offering or accepting any exclusive agency listing;

Provided, however, That nothing contained in this subpart shall prohibit respondent from: (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; or (b) applying reasonable terms and conditions equally applicable to the publication of any listing by CLS.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time;

(2) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property; or

(3) Conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office located within the confines of CLS's service area;

Provided, however, That nothing in this subpart shall prohibit respondent from adopting, maintaining, or enforcing any reasonable and nondiscriminatory policy to assure that its members are actively engaged in real estate brokerage and that listings published on respondent's multiple listing service are adequately serviced.

II.

It is further ordered, That CLS shall:

A. Within thirty (30) days after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each member of CLS.

B. Within sixty (60) days after the date this order becomes final, amend its bylaws, rules and regulations, and all other of its materials to conform to the provisions of this order, and provide each member with a copy of the amended bylaws, rules and regulations, and other amended materials.

C. For a period of three (3) years after the date this order becomes final, furnish an announcement in the form shown in Appendix A to each new member of CLS within thirty (30) days of the new member's admission.

III.

It is further ordered, That CLS shall:

A. Within ninety (90) days after the date this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which CLS has complied and is complying with this order.

B. In addition to the report required by Paragraph III (A), annually for a period of three (3) years on or before the anniversary date on which this order becomes final, and at such other times as the Federal Trade Commission or its staff may by written notice to CLS require, file a verified Written report with the Federal Trade Commission setting forth in detail the manner and form in which CLS has complied and is complying with this order.

C. For a period of five (5) years after the date this order becomes final, maintain and make available to the Commission staff for inspection and copying, upon reasonable notice, all documents that relate to the manner and form in which CLS has complied with this order.

D. Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in CLS, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in CLS that may affect compliance obligations arising out of this order.

APPENDIX A

[CLS's Regular Letterhead]

As you may be aware, the Federal Trade Commission has entered into consent decrees with several multiple listing services in order to halt certain multiple listing service practices that have been alleged to be unlawful restraints of trade. To avoid litigation, Realty Computer Associates, Inc., d/b/a Computer Listing Service ("CLS") has entered into such a consent agreement. The agreement is not an admission that CLS or any of its members has violated any law. For your information, CLS is prohibited from the following practices:

A. Restricting or interfering with:

- (1) the publication on CLS's multiple listing service of any exclusive agency listing of a member; or
- (2) any member's offering or accepting any exclusive agency listing.

B. Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

- (1) requiring as a condition of CLS membership or use of its multiple listing service that any applicant or member engage in real estate brokerage full time; or
- (2) conditioning membership in CLS or use of its multiple listing service on any applicant or member maintaining a real estate office in a commercially zoned property located within the confines of CLS's area map.