

IN THE MATTER OF

METRO MLS, INC.

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

*Docket C-3286. Complaint, Apr. 18, 1990—Decision, Apr. 18, 1990*

This consent order prohibits, among other things, a Virginia Beach, Va. real estate multiple listing service from forbidding or refusing publication of exclusive agency listings on its multiple listing service. However, respondent is free to require designation of a listing as one granting an exclusive agency. Respondent is required to furnish a copy of the Commission's order to each of its current and future members; to amend its by-laws, rules, and regulations to conform to the order; and to notify the Commission of certain corporate changes.

*Appearances*

For the Commission: *Paul J. Nolan and Jacques C. Feuillan.*

For the respondent: *Stephen Story, Kaufman & Canoles, Norfolk, VA.*

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 the respondent Metro MLS, Inc., a corporation, has violated and is violating Section 5 of the Federal Trade Commission Act, 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 in that respect as follows:

PARAGRAPH 1. Respondent, Metro MLS, Inc. ("Metro"), is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its offices and principal place of business located at 2850 Ansol Lane, Virginia Beach, Virginia.

PAR. 2. Metro is now, and since 1969 has been, providing a multiple listing service for its member-owners, who are real estate brokers. Each member-owner of Metro owns one share of Metro's stock, which

is non-transferable except between the member and Metro. Only member-owners' firms may participate in Metro's multiple listing service. Each member-owner agrees to submit all of his or her firm's exclusive right to sell listings for publication on Metro's multiple listing service to the entire membership, and to share any brokerage commissions due with any member whose firm successfully locates a purchaser for any property so listed.

PAR. 3. Metro serves real estate brokers doing business, primarily, in the cities of Virginia Beach and Norfolk and the Great Bridge and Greenbriar Boroughs of the city of Chesapeake, Virginia (the "Tidewater Area"). The Tidewater Area has a population of approximately 600,000 persons. In calendar year 1987, more than 70 percent of the listings published on Metro's multiple listing service were for properties in the Tidewater Area.

PAR. 4. Approximately 80 to 90 percent of real estate brokerage firms operating in the Tidewater Area are members of Metro. In 1987, at least 72 percent of the total number of residential real estate sales in the cities of Virginia Beach and Norfolk involved listings that were published on Metro. Sales of residential real estate listings published on Metro totaled approximately \$1.6 billion in 1987. Membership in Metro significantly increases the opportunities for members' brokerage firms to enter into listings with residential property owners. Membership in Metro also significantly reduces members' costs of obtaining up-to-date and comprehensive information on listings and sales.

PAR. 5. Metro's general business practices, and the acts and practices described below, are in or affect commerce as commerce is defined in the Federal Trade Commission Act.

PAR. 6. Except to the extent that competition has been restrained as described below, Metro's members and their brokerage firms are now and have been in competition among themselves, and with other brokers and brokerage firms in the Tidewater Area, with respect to the provision of real estate brokerage services.

PAR. 7. Metro requires each member to abide by its bylaws and its rules, regulations, and official policies. If any member or any member's firm is found to be in violation of any of Metro's bylaws, rules, and regulations, or official policies, such member is subject to penalties or disciplinary action, including suspension or termination of membership in Metro.

PAR. 8. At the time of the initiation of the Commission's

investigation, Metro was acting as a combination of its members, or in conspiracy with at least some of its members, to restrain trade in the provision of residential real estate brokerage services in the Tidewater Area. Since at least 1980, Metro has maintained a policy that prohibits publication on Metro's multiple listing service of any but exclusive right to sell listings. Such listings are those in which a property owner appoints a specified broker as his or her sole agent for the sale of a property, and contracts to pay to that broker an agreed-upon commission if a ready, willing, and able buyer is procured, or if the property is sold, whether by the broker or by any other person, including the owner. By this policy, Metro has forbidden and refused publication on its multiple listing service of exclusive agency listings. That is, Metro has forbidden and refused publication of 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 purchaser (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission due to the agent broker.

PAR. 9. The purposes, effects, tendency, or capacity of the combination or conspiracy alleged in paragraph eight above and the policies, acts, or practices of Metro described in paragraph eight above, have been to restrain competition unreasonably in one or more of the following ways among others:

a. By restraining competition among brokerage firms based on willingness to offer or accept different contract terms that may be attractive and beneficial to consumers, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property through means alternative to a broker's services;

b. By limiting the ability of consumers to negotiate brokerage contract terms that may be more advantageous to them than an exclusive right to sell listing; and

c. By limiting the ability of property sellers to compete against real estate brokers in locating purchasers.

PAR. 10. The policies, acts, practices, and combination or conspiracy 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 relief herein requested is

necessary to ensure no reoccurrence of such alleged policy, or the effects thereof.

#### DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of Section 5 of the Federal Trade Commission Act; and

The respondent, its duly authorized officer, its attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such 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 respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Metro MLS is a corporation organized, existing, and doing business under and by virtue of the laws of the Commonwealth of Virginia, with its office and principal place of business located at 2850 Ansol Lane, in the City of Virginia Beach, Commonwealth of Virginia.

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

#### ORDER

#### DEFINITIONS

For the purposes of this order, the following definitions shall apply:

1. "*Multiple listing service*" shall mean a clearinghouse through which members' real estate brokerage firms exchange information on listings of real estate properties and share sales commissions with members who locate purchasers.

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

3. "*Exclusive agency listing*" shall mean 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 purchaser (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.

#### I.

*It is ordered,* That respondent Metro MLS, Inc. ("Metro"), and its successors, assigns, officers, directors, committees, agents, representatives, or employees, directly, indirectly, or through any device, in or 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 forbidding or refusing publication on Metro's multiple listing service of any exclusive agency listing, or restricting such publication in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by Metro's multiple listing service.

#### II.

*It is further ordered,* That Metro shall:

(A) Within thirty (30) days after this order becomes final, furnish a copy of this order to each of its members.

(B) Within sixty (60) days after this order becomes final, amend, if and to the extent necessary to conform to the provisions of this order,

its bylaws, rules and regulations, associated business forms, and any other of its documents that are made binding by Metro on its members, required or recommended by Metro for use by its members when transacting business with the public, or that are used by Metro itself in its business dealings with any third party or institution and shall make a copy of all conforming or conformed documents available to each of its members if it has not already done so.

(C) For a period of three (3) years after this order becomes final, furnish a copy of this order to each new member of Metro's multiple listing service, within thirty (30) days of his or her admission to membership.

(D) Within sixty (60) days after this order becomes final, submit a verified written report to the Federal Trade Commission setting forth in detail the manner and form in which Metro has complied and is complying with this order.

(E) For a period of five (5) years after 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 Metro has complied with and is complying with this order.

(F) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in Metro, 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 Metro that may affect compliance obligations arising out of this order.