

Complaint

106 F.T.C.

## IN THE MATTER OF

## ORANGE COUNTY BOARD OF REALTORS, INC., ET AL.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE  
FEDERAL TRADE COMMISSION ACT*Docket C-3162. Complaint, Sept. 9, 1985—Decision, Sept. 9, 1985*

This consent order requires, among other things, that an Orange County, N.Y. Board of Realtors and its wholly-owned subsidiary, which provide a multiple listing service for its member real estate brokers, cease restricting or interfering with any broker's offering or acceptance of an exclusive agency listing or with the publishing of such listing on the multiple listing service. The companies are further required to publish exclusive agency listings in a non-discriminatory manner, and to timely amend their by-laws, rules and regulations, and other materials to conform to the provisions of the order.

*Appearances*

For the Commission: *L. Barry Costilo, Jacques Feuillan and Alan J. Friedman.*

For the respondents: *James R. Loeb, Rider, Drake, Summers & Loeb, Newburgh, New York.*

## 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 respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc., have violated and are 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:

## 1. As used in this complaint:

a. *Member or member firm* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents.

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

c. *Exclusive right to sell listing* shall mean any listing under which

88

Complaint

the property owner appoints the broker as his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

d. *Exclusive agency listing* shall mean any listing under which the property owner appoints a broker as his or her exclusive agent at an agreed commission, but reserves the right to sell the property personally with no commission owed or at an agreed reduction in commission.

2. Respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of New York. Respondents' principal offices and places of business are at 50 North Church Street, Goshen, New York, in Orange County. The population of Orange County is approximately 260,000.

3. Each respondent is now and has been at all times relevant herein a corporation organized in substantial part for the profit of its members within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. Respondent Orange County Board of Realtors controls the acts and practices of its wholly-owned subsidiary, respondent Multiple Listing Service of the Orange County Board of Realtors. Only members of the Orange County Board of Realtors may be members of the Multiple Listing Service of the Orange County Board of Realtors. Respondents coordinate and act together in carrying out the business of the Multiple Listing Service of the Orange County Board of Realtors.

5. Respondents are now and have been since at least 1974 providing a multiple listing service ("MLS") for member real estate brokerage firms doing business in Orange County. The 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 related services designed to facilitate such sales. Each member firm agrees to submit all of its Orange County exclusive right to sell residential property listings for publication on the multiple listing service to the entire MLS membership and to share brokerage commissions with those member firms that successfully locate purchasers for properties it has listed. Only members may participate in the MLS.

6. Membership in respondents' multiple listing service provides valuable competitive advantages in the brokering of residential real estate in Orange County. It significantly increases the opportunities of brokerage firms to enter into listings with residential property

owners. It also significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales that is important for brokerage firms to compete effectively in the market.

7. Respondents' multiple listing service is the only real estate multiple listing service serving Orange County. The vast majority of the active, full-time residential real estate brokerage firms doing business in Orange County have been and are now members of the MLS. Approximately 105 firms are members of respondents' MLS, including the ten largest Orange County residential real estate brokerage firms in terms of dollar sales.

8. Publication of listings on respondents' multiple listing service is generally considered by sellers and their brokers to be the fastest and most effective and convenient means of obtaining the broadest market exposure for residential property in Orange County.

9. For each year since at least 1974, the vast majority of the total dollar volume of residential real estate sales in Orange County occurred through brokerage firms and involved listings published on respondents' MLS. Sales of real estate listings published on respondents' MLS totaled about \$58 million for 1982 and \$86.5 million for 1983. Almost the entire dollar sales volume of MLS-published listings represents sales of residential real estate in Orange County.

10. Except to the extent that competition has been restrained as described in Paragraph 12 below, respondents' members are now and have been in competition among themselves and with other firms in the provision of residential real estate brokerage services.

11. In adopting the policies and engaging in the acts and practices described in Paragraph 12 below, respondents have been and are now acting as a combination of their members, or in conspiracy with some of their members, to restrain trade in the provision of residential real estate brokerage services.

12. Through MLS regulations in effect since at least 1974, respondents have been refusing to publish any exclusive agency listing on their multiple listing service, restricting the multiple listing service to only exclusive right to sell listings. These regulations have effectively prevented property owners and brokers from arranging a brokerage contract that allows the owner to pay less or no commission if the owner locates the buyer independently of any broker.

13. The purposes or effects, and the tendency and capacity, of the policies, acts, and practices of respondents as described in Paragraph 12 above have been and are to unreasonably restrain competition in one or more of the following ways, among others:

- a. restrain price competition among brokerage firms;
- b. restrain competition among brokerage firms based on willingness

to accept different contract terms that may be attractive and beneficial to consumers;

c. substantially limit the ability of consumers to negotiate lower prices for brokerage services and brokerage contract terms that may be more advantageous than an exclusive right to sell listing;

d. substantially limit the ability of residential property sellers to compete with real estate brokers in locating purchasers; and

e. substantially limit consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms, and services.

14. In the conduct of their businesses and through the policies, acts, and practices described in Paragraph 12 above, respondents and their members involve or affect:

a. a substantial interstate flow of funds used in the financing of Orange County real estate;

b. a substantial amount of Orange County real estate financing guaranteed or insured under federal government programs;

c. the sale of a substantial amount of title and homeowners' insurance by interstate insurers to Orange County property owners;

d. the franchise operations of those interstate chains of real estate brokerage firms that include one or more members of respondents' MLS; and

e. the interstate or international sale of computer services to respondents' MLS.

As a result of these and other events and effects, the policies, acts, and practices of respondents and their members as described in Paragraph 12 above are in or affecting commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

15. The policies, acts, practices, and combinations or conspiracies described in Paragraph 12 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 is continuing in nature and will continue in the absence of the relief requested.

#### DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents 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 respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all 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 respondents 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 the respondents have violated the said Act, and that 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 procedure 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. Each respondent is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York. Respondents' offices and principal places of business are located at 50 North Church Street, in the City of Goshen, State of New York.

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

#### ORDER

##### *Definitions*

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

1. *Member* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondents Orange County Board of Realtors, Inc., and Multiple Listing Service of the Orange County Board of Realtors, Inc.

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 right to sell listing* shall mean any listing under which the property owner appoints the broker as his or her exclusive agent for the sale of the property and agrees to pay the broker an agreed commission if the property is sold, whether by the broker or any other person including the owner.

4. *Exclusive agency listing* shall mean any listing under which the

property owner appoints a broker as his or her exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally with no commission owed or at an agreed reduction in the commission.

#### I.

*It is ordered,* That each respondent and its directors, officers, committees, representatives, agents, employees, subsidiaries, successors, and assigns, directly or 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:

##### A. Restricting or interfering with:

1. any broker's offering or acceptance of any exclusive agency listing; or
2. the publishing on respondents' multiple listing service of any exclusive agency listing of a member.

B. Publishing on respondents' multiple listing service any exclusive agency listing:

1. in any manner different from the publishing of any exclusive right to sell listing; or
2. in any category separate from exclusive right to sell listings;

*provided, however,* that nothing contained in subparts I.A. or I.B. shall prohibit respondents from: (a) including a simple designation, such as a code or symbol, that a published listing is an exclusive agency listing; and (b) applying reasonable terms and conditions equally applicable to, and not discriminatory in their impact upon, the publication of any listing, whether exclusive agency or exclusive right to sell.

#### II.

*It is further ordered,* That each respondent shall:

A. Within sixty (60) days after this order becomes final, amend its by-laws and rules and regulations and any other of its materials to conform to the provisions of this order.

B. For a period of five (5) years after this order becomes final, furnish promptly a copy of this order to any person who requests a copy.

C. For a period of ten (10) years after this order becomes final, make

available to the Federal Trade Commission staff for inspection and copying, upon reasonable notice, all documents that relate to determining whether either respondent has been and is complying with this order.

### III.

*It is further ordered,* That respondents shall jointly:

A. Within thirty (30) days after this order becomes final, furnish a copy of this order to each member of the multiple listing service.

B. Within sixty (60) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which respondents have complied and are complying with this order.

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