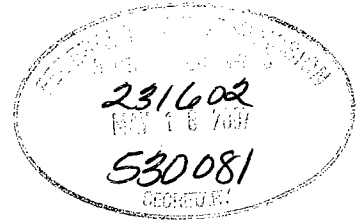


ORIGINAL

UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION



In the Matter of

REALCOMP II LTD.,

a corporation.

Docket No. 9320

Public

**COMPLAINT COUNSEL'S MOTION *IN LIMINE* TO BAR LAY OPINION  
TESTIMONY REGARDING SUPPOSED COMPARISONS OF SOUTHEASTERN  
MICHIGAN WITH OTHER LOCALES.**

Complaint Counsel respectfully submit this Motion *in limine* for an Order barring testimony, whether live or by deposition, by Douglas Hardy, Dale Smith, Kelly Sweeney, Douglas Whitehouse, and any other Respondent witnesses without personal knowledge of the matters testified to, regarding any comparison of the market for residential real estate in southeastern Michigan with any other market or locale, for the reasons set forth in Complaint Counsel's accompanying Memorandum in support of its Motion.

Respectfully submitted,

Sean Gates  
Peggy Bayer Femenella  
Joel Christie  
Linda Holleran  
Christopher Renner

*Counsel Supporting the Complaint*





















<b>Tab Number</b>	<b>Document Title</b>	<b>Document Date</b>
Tab 3	Deposition Transcript excerpts of Dale Smith	01/16/07
Tab 4	Deposition Transcript excerpts of Kelly Sweeney	03/01/07
Tab 5	Weir Manuel Areas of Service	03/01/07
Tab 6	Deposition Transcript excerpts of Douglas Whitehouse	02/22/07

I declare under penalty of perjury that the foregoing is true and correct. (28 U.S.C. § 1746).

Executed on May 18, 2007.

  
\_\_\_\_\_  
Peggy Bayer Femenella

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**In the Matter of**  
**REALCOMP II LTD.,**  
**a corporation.**

**Docket No. 9320**

**Public**

**[PROPOSED] ORDER**

On May 18, 2007, Complaint Counsel moved *in limine* to limit the trial and deposition testimony of Douglas Hardy, Dale Smith, Kelly Sweeney, Douglas Whitehouse, and any other Respondent witnesses without personal knowledge of the matters testified to, regarding any comparison of the market for residential real estate in southeastern Michigan with any other market or locale.

Accordingly, upon due consideration of the parties' submissions, it is hereby

**ORDERED** that Douglas Hardy, Dale Smith, Kelly Sweeney, Douglas Whitehouse, and any other Respondent witnesses without personal knowledge of the matters testified to, are precluded from testifying, whether live or by deposition, regarding any comparison of the market for residential real estate in southeastern Michigan with any other market or locale.

**ORDERED:**

Date:

\_\_\_\_\_  
Stephen J. McGuire  
Chief Administrative Law Judge

**CERTIFICATE OF SERVICE**

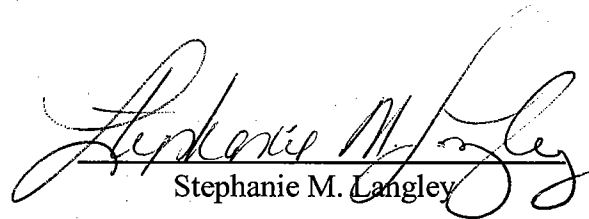
This is to certify that on May 18, 2007, I caused a copy of the attached Complaint Counsel's Motion in Limine to Bar Lay Opinion Testimony Regarding Supposed Comparisons of SouthEastern Michigan with Other Locales, the Memorandum in Support of its Motion *In Limine*, a Declaration of Peggy Bayer Femenella and Exhibits to be served upon the following persons:

by hand delivery to:

The Honorable Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

and by electronic transmission and overnight courier to:

Scott Mandel, Esq.  
Foster, Swift, Collins & Smith P.C.  
313 South Washington Square  
Lansing, MI 48933-2193

  
Stephanie M. Langley





concern with forwarding EA listings and treating them in the manner sought by Complainant's Counsel as that would be requiring Realcomp members to pay for and promote the means and method that will undercut their own business activity and be inconsistent with cooperation and compensation. Mr. Whitehouse is expected to explain how the proposed relief would set up a system where prospective purchasers, through promotion and advertisements paid by Realcomp members, would be placed in a position of dealing directly with homeowners who, for purposes of transaction at issue would be akin to being in the position of a for sale by owner, negotiating and handling the sale of their residential property directly with prospective purchasers with no commission to be paid to any cooperating broker. Mr. Whitehouse is also expected to offer testimony concerning the residential real estate market in Southeastern Michigan and how that compares to other markets. Mr. Whitehouse is also expected to offer testimony concerning exclusive agents and the problems they pose not only for ERTS agents but also the public. Mr. Whitehouse is also expected to offer testimony about IDX feeds and the broker's own position if they are forwarded EA listings by Realcomp as well as the ability of EAs to forward their own listings, use alternate websites and compete in Southeastern Michigan. Mr. Whitehouse is also expected to offer testimony concerning MiRealSource and its availability to EAs. Mr. Whitehouse is also expected to offer testimony concerning the efficiencies of Realcomp's search default function. Mr. Whitehouse is also expected to offer testimony consistent with the deposition testimony taken in this case and all exhibits from his deposition.

**4. Douglas H. Hardy  
Century 21 Today-Farmington Hills  
28544 Orchard Lake  
Farmington Hills, MI 48334**

Mr. Hardy is expected to offer testimony concerning the importance of the Realcomp Rules at issue as they relate to the underpinnings of the MLS of cooperation and compensation. It is expected that Mr. Hardy will explain the concern with forwarding EA listing and treating them in the manner sought by Complainant's Counsel as that would be requiring Realcomp members to pay for and promote the means and method that will undercut their own business activity and be inconsistent with cooperation and compensation. Mr. Hardy is expected to explain how the proposed relief will set up a system by which prospective purchasers, through promotion and advertisements paid for by Realcomp members, would akin to be dealing directly with homeowners, who for purposes of transaction at issue, would be akin to a for sale by owner, negotiating and handling the sale of their residential property directly with prospective purchasers with no commission to be paid to any cooperating broker. Mr. Hardy is also expected to offer testimony concerning the residential real estate market in Southeastern Michigan and how that compares to other markets. Mr. Hardy is also expected to offer testimony concerning exclusive agents and the problems they pose not only for ERTS agents but also the public. Mr.













**CERTIFICATE OF SERVICE**

This is to certify that on May 15, 2007, I caused a copy of the attached Respondent's Final Proposed Witness List to be served upon the following persons by Electronic Transmission and overnight delivery:

Sean P. Gates, Esq.  
601 New Jersey Ave., N.W.  
Rm. NJ-6219  
Washington, DC 20001

And two courtesy copies of same hand delivered to:

Hon. Stephen J. McGuire  
Chief Administrative Law Judge  
Federal Trade Commission  
600 Pennsylvania Ave., NW  
Washington, DC 20580



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Lorri A. Rosier

**ATTORNEY COPY**  
**OFFICIAL TRANSCRIPT PROCEEDING**

**FEDERAL TRADE COMMISSION**

**MATTER NO. D09320**

**TITLE REALCOMP, II, LTD.**

**PLACE FOSTER SWIFT COLLINS & SMITH, P.C.  
32300 NORTHWESTERN HIGHWAY, SUITE 2300  
FARMINGTON HILLS, MICHIGAN**

**DATE FEBRUARY 21, 2007**

**PAGES 1 THROUGH 142**

**TESTIMONY OF DOUGLAS HARDY**

**CONTAINS RESTRICTED AND CONFIDENTIAL PORTIONS**

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**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

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1 through our rules and regs.

2 Q. Why? I guess that's what I don't understand, why?

3 A. Because the seller can claim that they found their own  
4 buyer because the buyer knocked on their door and said  
5 let's make a deal.

6 Q. Okay. So if I understand correctly, this is still kind  
7 of coming down to a procuring cause issue?

8 A. Procuring cause is only good between realtor and  
9 realtor. I mean, that's the only rules we can enforce.  
10 We can't force the -- we can't enforce the seller to  
11 have to pay anything. That would require the selling  
12 broker taking legal action against the seller.

13 Q. Can't you enforce against the listing broker and make  
14 the listing broker go after the seller?

15 A. What the rules state is if the listing broker can prove  
16 through no fault of their own they did not collect,  
17 then they may not be responsible for having to pay the  
18 selling side of the commission.

19 Q. Through no fault of their own. So if they contracted a  
20 certain way, does that constitute no fault of their  
21 own?

22 A. It would just depend on the circumstances. You know, I  
23 don't know. It would depend on the circumstances.

24 Q. Okay. So you have answered this already, but I forgot  
25 the answer. Has this happened? Have you had to deal

# ATTORNEY COPY

## OFFICIAL TRANSCRIPT PROCEEDING

### FEDERAL TRADE COMMISSION

**DOCKET NO.** 9320

**TITLE** REALCOMP II, LTD.

**PLACE** FOSTER SWIFT COLLINS & SMITH, P.C.  
313 SOUTH WASHINGTON SQUARE  
LANSING, MICHIGAN

**DATE** JANUARY 16, 2007

**PAGES** 1 THROUGH 124

**DALE SMITH**

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**FOR THE RECORD, INC.  
10760 DEMARR ROAD  
WHITE PLAINS, MD 20695  
(301)870-8025**

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1 Association of Realtors now, and I was there for 15  
2 years. And in that capacity, I was a CEO of that  
3 association, the administrator of an MLS, and the  
4 corporate secretary of a regional MLS.

5 Q. Is it fair to say you're very familiar with how an MLS  
6 is operated?

7 A. Yeah, I think so.

8 Q. And in your understanding, what's the general purpose  
9 of an MLS?

10 A. The MLS, from our point of view, is an offer for the  
11 facility to make an offer of compensation and  
12 cooperation with other brokers.

13 Q. Can you explain for me further what you mean by the  
14 offer of compensation and cooperation for other  
15 brokers?

16 A. There's quite a few brokers that are out in the  
17 marketplace right now that don't belong to a  
18 standardized Multiple Listing Service. What we try to  
19 do through a Multiple Listing Service is give them a  
20 vehicle for marketing their properties to someone, so  
21 that's making the offer, and also to make an offer of  
22 compensation if somebody should bring a client to you.

23 Q. Just in terms of the offer of compensation, is it your  
24 understanding that that compensation that's being  
25 offered to cooperating brokers, that information is



















