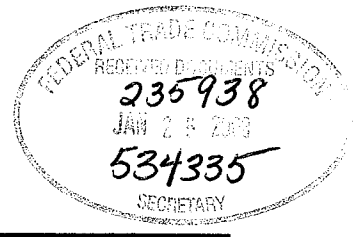


ORIGINAL



PUBLIC

UNITED STATES FEDERAL TRADE COMMISSION

Docket No. 9320

In the Matter of

Realcomp II LTD.

A CORPORATION

**Motion of
THE AMERICAN HOMEOWNERS GRASSROOTS ALLIANCE
FOR LEAVE TO FILE RESPONDING AMICUS CURIAE BRIEF ON ISSUES OF
REMEDY**

In support of the position of complaint counsel as to reversal of the Initial Decision

Bruce N. Hahn
President
American Homeowners Grassroots Alliance
6776 Little Falls Road
Arlington, VA 22213
703-536-7776

January 25, 2008

Argument

Pursuant to 16 C.F.R. 3.52(j), the American Homeowners Grassroots Alliance (“AHGA”) respectfully moves for an Order granting it leave to file the accompanying *amicus curiae* responding brief on the issue of remedy in support of the position of complaint counsel as to reversal of the Initial Decision, and in support thereof states as follows:

Interest of Amicus

The American Homeowners Grassroots Alliance (AHGA) is a grassroots advocacy organization serving the nation’s homeowners. Established in 2000, the Alliance addresses issues that have, or would have, a significant economic impact on the over 70 million U.S. homeowners. AHGA advocates on issues before the federal and state executive, legislative and judicial branches, and participates in the policy formulation process of other consumer advocacy organizations that AHGA belongs to, such as the Consumer Federation of America. One of the areas of AHGA’s policy interest is the body of laws and regulations, including federal and state laws and voluntary industry regulations that affect the process of selling and buying homes.

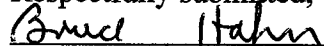
AHGA’s brief presents an independent homeowner’s perspective of the process of buying and selling homes in the Internet era that should help the Commission in fashioning a remedy. It is respectfully submitted that the AHGA’s independent status and concern for the vitality of competition in real estate services can provide a useful perspective for determining the appropriate remedy to be ordered in this case.

AHGA believes that this issue is particularly pressing given the current economic situation. Millions of homeowners owe more than their home is worth because of the subprime mortgage crisis. Many of them do not have sufficient savings to both make up the difference and pay the traditional 5-6% commission to a full service real estate broker. To the extent that this ruling limits the ability of home sellers to use discount real estate brokers, it will increase foreclosures, drive down real estate values, and increase the likelihood of a recession.

Conclusion

BASED ON THE FOREGOING, the AHGA respectfully requests an Order for leave to file the accompanying *amicus curiae* brief on the issue of remedy in support of the position of complaint counsel as to reversal of the Initial Decision. A proposed Order is attached.

Respectfully submitted,



Bruce Hahn

President

American Homeowners Grassroots Alliance
6776 Little Falls Road
Arlington, Virginia 22213

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

In the matter of)
)
Realcomp II, LTD.)
_____)

Docket No. 9320

Public Record

ORDER

Upon consideration of the Motion of the American Homeowners Grassroots Alliance for Leave to Brief *Amicus Curiae* in support of the position of complaint counsel as to reversal of the Initial Decision, the Commission finds that the proposed brief amicus curiae may assist in the determination of the matters presented by this appeal.

Accordingly, IT IS ORDERED that the American Homeowners Grassroots Alliance is hereby granted leave to file the proposed amicus curiae brief.

By the Commission

PUBLIC

UNITED STATES FEDERAL TRADE COMMISSION

Docket No. 9320

In the Matter of

Realcomp II LTD.

AMICUS CURIAE BRIEF OF
THE AMERICAN HOMEOWNERS GRASSROOTS ALLIANCE
In support of the position of complaint counsel as to reversal of the Initial Decision

Bruce N. Hahn
President
American Homeowners Grassroots Alliance
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January 25, 2008

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Interest of Amicus Curiae

The American Homeowners Grassroots Alliance (AHGA) is a consumer advocacy organization serving the nation's homeowners. Established in 2000, the Alliance addresses issues that have, or would have, a significant economic impact on the over 70 million U.S. homeowners. AHGA advocates on issues before the federal and state executive, legislative and judicial branches, and participates in the policy formulation process of other consumer advocacy organizations that AHGA belongs to, such as the Consumer Federation of America. One of the areas of AHGA's policy interest is the body of laws and regulations, including federal and state laws and voluntary industry regulations that affect the process of selling and buying homes.

STATEMENT OF THE CASE

This case is about whether a Detroit-area multiple listing service (MLS), Realcomp II, is illegally restricting competition by failing to share information about a category of properties with public real estate web sites of its 14,000 member brokers and agents and through its own public web site. Public web sites are used in home searches by over 80% of home buyers today. Prospective home sellers also often search local public websites in order to get a sense of pricing of homes for sale in their neighborhood and to identify brokers with significant market presence in that neighborhood that they might consider as their listing broker. At issue is whether the Initial Decision contained errors in assessing the record and in analysis by the administrative law judge.

The Realcomp and six related FTC investigations have focused on MLS restrictions that discriminate against a long established form of listing agreement known as exclusive agency (EA), under which a seller is not obligated to pay a commission to a broker in the sale of a property if the seller finds a buyer without the assistance of the broker. Under the alternative type of listing agreement, Exclusive Right to Sell (ERTSs), a commission is owed in all cases if the house is sold, even if the real estate broker and/or agent had nothing to do with the sale. Efforts of real estate organizations to prohibit EA listings prior to the Internet era were found to be in violation of the nation's antitrust laws. EA listing agreements are most frequently used by and favored by companies that offer alternatives to traditional full-service real estate brokerage business models. Among these new "discount" business models are flat-fee, limited-service, low-cost and/or unbundled real estate services.

I. THE NATURE OF BUYING AND SELLING HOMES IN THE INTERNET ERA

Homeowners and other consumers have benefited greatly from the emergence of Internet commerce, and its influence continues to grow rapidly. Despite a flat season of holiday sales overall, Internet sales were up 20% in the 2007 holiday season over the same period last year. One of the areas most transformed by Internet commerce is the brokerage industry. Many brokerage companies in sectors have embraced the changes in the marketplace caused by Internet commerce. In the course of adapting to Internet commerce, other brokerage sectors have achieved great cost savings and have also found it necessary to alter their business models to succeed the new Internet economy. In real estate brokerage, changes that improve the efficiency of brokerage businesses have also been embraced, but market driven modifications to traditional

business models that should or could result in any of those savings from being passed on to consumers have been thwarted and/or undermined in many instances by a variety of protectionist tools.

In addition to real estate, other brokerage sectors where a consumer's decision factors are very complex and financially significant have been substantially altered by Internet commerce. Investments in securities, like the purchase of a home, have a very significant impact on the economic future of consumers, and the factors involved in evaluating stocks, mutual funds, and other investments are extremely complex. This explains why financial services professional certifications/designations require many hours of study and high minimum educational background qualifications. These standards are much higher than real estate license standards, which require as little as 30 hours of classroom study and only a GED (high school equivalency degree) in some states.

Despite the complexities and the unquestioned and substantial value of the advice and counsel of financial service professionals, discount Internet-based stock brokers quickly drove substantial costs out of securities trades. Much of the information only financial service professionals could provide until several decades ago is available free today on the Internet, as is the case in real estate as well. Today a consumer can trade securities of virtually unlimited size over the Internet for as little as \$10 in a brokerage sector where the standard selling commission had previously been 1%. Because there was little market restriction on Internet commerce in the securities brokerage sector, nimble Internet stockbrokers quickly garnered 30% of the market before many of the large, traditional securities brokerages decided that it was better to join them than fight them. Today, many of the nation's largest stockbrokers provide their clients the choice of full service, full commission trading and discounted Internet trading, and as a result large full service stockbrokers have regained much of the business lost to the pure discounters. Despite the many similarities of the two sectors, none of the major real estate companies has as of yet adopted the type of business models that are at issue in this case as an alternative for their clients. If these alternative business models are successful, as Realcomp argues, why aren't their large members making them available to their clients, along with full service alternatives?

In the real estate brokerage sector, Internet commerce is saving real estate brokers and agents large amounts of time and money. By voluntarily permitting MLS members to share much of the content of the actual MLS listings on their own public websites and the public websites of other MLS member brokers and agents, the MLS dramatically increases the dissemination of those listings in this age of Internet commerce, and accordingly benefits buyers and sellers as well as MLS members. Because of the ease of Internet searches and plethora of local public websites with information and pictures of homes for sale, far fewer home buyers today trudge to real estate broker offices in order to wait while an agent prints out a list of all the complete MLS listings from the MLS database, which is accessible only through real estate agents and brokers. Instead, today's typical home buyer has already done home searches on the public websites of local brokers and agents and completed many of the other steps in the process before the buyer contacts a real estate agent, thanks to all the free information on the Internet.

