

IN THE MATTER OF

MULTIPLE LISTING SERVICE OF THE
GREATER MICHIGAN CITY AREA, INC.

also d/b/a

MULTIPLE LISTING SERVICE OF LAPORTE COUNTY, INC.

CONSENT ORDER IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT*Docket C-3163. Complaint, Sept. 11, 1985—Decision, Sept. 11, 1985*

This consent order requires an Indiana firm providing a multiple listing service to member real estate brokers doing business in LaPorte County, Ind., among other things, to cease fixing, establishing or maintaining commission rates for brokerage services; urging its members to charge the customary market rate of commission; taking adverse action against non-conforming brokers; or otherwise engage in conduct having the tendency to restrain competition in the real estate brokerage market. The company is also barred from interfering with any statement disseminated in an advertisement that truthfully refers or relates to another broker's business practices; restricting a broker from offering or accepting an exclusive agency listing, reserve clause listing or open listing; and restraining a broker's participation or involvement in a competitive organization or service. The firm is further required to publish exclusive agency listings or reserve clause listings in its multiple listing service; timely amend their by-laws, rules and regulations, and other materials to conform to the provisions of the order; and provide area real estate brokers with a prescribed statement setting forth those terms. Additionally, the order prohibits the firm from improperly denying a membership application; requires a written notice of denial together with the reasons for the denial to be provided to rejected applicants; and requires the firm to maintain records relating to membership applications for a specified period.

Appearances

For the Commission: *Alan J. Friedman* and *Oscar M. Voss*.

For the respondents: *Thomas D. Sallwasser, Sallwasser & McClain, Laporte, Ind.*

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 Multiple Listing Service Of The Greater Michigan City Area, Inc., a corporation, also trading and doing business as Multiple Listing Service Of LaPorte County, Inc., 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:

1. As used in this complaint:

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

b. *Member or member firm* shall mean any real estate brokerage firm that is entitled to participate in the multiple listing service offered by respondent Multiple Listing Service Of The Greater Michigan City Area, Inc.

c. *Applicant* shall mean any owner or co-owner of a real estate brokerage firm who is duly licensed by the Indiana Real Estate Commission as a real estate broker within the State of Indiana and who has applied on behalf of his or her firm for membership in respondent's multiple listing service.

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

e. *Exclusive right to sell listing* shall mean any listing under which the property owner agrees to pay the broker a certain commission if the property is sold, regardless of who locates the purchaser.

f. *Reserve clause listing* shall mean any exclusive right to sell listing that includes a provision reserving the property owner's right to sell the property to one or more persons individually named in the listing agreement without owing a commission to the broker.

g. *Exclusive agency listing* shall mean any listing under which the property owner agrees to pay the broker a certain commission if the property is sold through any real estate broker, but, if the owner locates the purchaser independently of any real estate broker, the owner owes a reduced commission or no commission to the broker.

h. *Open listing* shall mean any listing under which the property owner grants the broker a nonexclusive agency to locate a purchaser for the property, such that the owner is free to enter into other open listings with other real estate brokers and owes a commission only to the broker who locates the purchaser.

2. Respondent Multiple Listing Service Of The Greater Michigan City Area, Inc. ("MLS") is a corporation organized, existing and doing business under any by virtue of the laws of the State of Indiana. Respondent MLS's principal office and place of business is at 5450 North Johnson Road, Michigan City, Indiana, in LaPorte County. The population of LaPorte County is approximately 105,000 and the popu-

lation of Michigan City (the County's largest city) is approximately 40,000.

3. Respondent MLS is now and has been at all times relevant herein a corporation organized for its own profit and that of its members within the meaning of Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

4. Respondent MLS is now and has been since 1970 providing a multiple listing service for member real estate brokerage firms doing business in LaPorte 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 LaPorte County residential property listings (except for new residences in which the member has an ownership interest) 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. The MLS charges a fee to members for publishing listings on its multiple listing service only if the property is sold before the listing's expiration date; the fee is based on a percentage of the earned brokerage commission on the sale of the property. The MLS allows only exclusive right to sell listings to be published on its multiple listing service.

5. Membership in respondent MLS provides valuable competitive advantages in the brokering of residential real estate in LaPorte County. MLS membership significantly increases the opportunities of brokerage firms to enter into listings with residential property owners, as owners generally consider MLS publication of listings to be the fastest and most effective and convenient means of obtaining the broadest market exposure for residential property in LaPorte County. MLS membership 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. Respondent MLS provides the only real estate multiple listing service serving LaPorte County. About 65 percent of the active, full time residential real estate brokerage firms doing business in LaPorte County have been and are now members of the MLS. Only two of the eight largest residential real estate brokerage firms in terms of dollar sales are not currently members of the MLS. For 1982, about 65 percent of the total dollar volume of residential real estate sales in LaPorte County through brokerage firms involved listings published on the MLS's multiple listing service by current MLS members. Also for 1982, approximately 80 percent of the total dollar volume of residential real estate sales in Michigan City through brokerage firms

involved listings published on the MLS's multiple listing service by current MLS members.

6. Sales of real estate listings published on the MLS's multiple listing service totaled about \$30 million for 1981, at least \$22 million for 1982, and about \$31 million for 1983. Almost the entire dollar sales volume of MLS-published listings represents sales of residential real estate in LaPorte County.

7. Approximately thirty firms are members of the MLS's multiple listing service. Each member owns one share of MLS stock, entitling each firm to one vote in the operation of the multiple listing service. Only members may own MLS stock and participate in the MLS's multiple listing service.

8. The MLS requires each member to pledge adherence to MLS regulations and other MLS policies. Members found to be in violation of any MLS regulation or other MLS policy are subject to fine or to suspension or termination of membership.

9. Real estate brokers doing business in the State of Indiana must be licensed by the Indiana Real Estate Commission pursuant to state law. The state law licensing requirements include:

- a. completion of prescribed courses of study;
- b. one year experience as a licensed salesperson for a licensed real estate broker or equivalent experience; and
- c. passing a written examination.

10. Except to the extent that competition has been restrained as described in Paragraphs 12 through 22 below, the MLS 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 Paragraphs 12 through 22 below, the MLS has been and is now acting as a combination of its members, or in conspiracy with some of its members or others, to restrain trade in the provision of residential real estate brokerage services.

12. Upon the formation of the MLS in 1970, the MLS adopted regulations requiring that members charge for brokerage services "only such fees as are . . . in accordance with local practice in similar transactions" and that "any listing filed with [the MLS] shall provide for payment of a commission in accordance with the customary practices within [LaPorte County]." These regulations are still in effect. Almost all of the LaPorte County brokerage firms, including almost all of the current MLS members, have been and are now customarily charging commission rates of six or seven percent of the gross sales price of residential property.

and elsewhere, most or all of the brokerage firms serving Michigan City, including most or all of the member firms of the MLS at that time, jointly determined to raise the customary commission rate for brokering residential property in Michigan City from six percent to seven percent of the gross sales price of the property. Within about six months after this joint determination was made, the predominant commission rate on the sale of residential property in Michigan City increased from six to seven percent, and seven percent continues to be the predominant rate charged by Michigan City brokerage firms.

14. The MLS, in conspiracy with some MLS members, has obstructed truthful comparative advertising, including truthful advertising of low commission rates. An MLS code of ethics requirement in effect since the MLS's formation in 1970 states that a member "shall never publicly criticize a competitor" During July to September 1978 or thereabouts, an MLS member became the first LaPorte County brokerage firm since at least 1970 to advertise a commission rate below six percent and to refer in advertising to its costs and services in comparison with other area firms. Despite the truthfulness of this advertising, the president of the MLS and other MLS members charged that this firm's advertising constituted improper public criticism of a competitor and, through the MLS, jointly coerced the advertising member to stop this conduct. Since this incident, no MLS member has attempted to advertise in a similar fashion.

15. Since at least 1978, and in order to deter the entry of new competitors and to impede price competition, respondent MLS has been and is now requiring any duly licensed real estate broker seeking MLS membership on behalf of his or her firm to have owned and operated a real estate brokerage business in LaPorte County for one year immediately preceding the date of application. In addition, the MLS has been requiring that the applicant, for this one year period (and that each member to retain membership):

- a. derive the major or principal portion of earned income from full time practice of real estate brokerage; and
- b. operate from an established place of business in LaPorte County at a nonresidential location.

In one instance, in 1980, the MLS denied membership to a brokerage firm that had been regularly charging a four percent commission rate. Even though this firm had operated in LaPorte County under the same ownership since at least 1975, it was denied membership on the ground that it did not have a business office located in a non-residential location in LaPorte County for the requisite one year period.

16. In addition, the MLS has required some brokerage firms that

met the one year waiting periods described in Paragraph 15 above to wait for membership substantial additional periods of time. In 1980, the MLS notified one applicant that met the MLS's one year waiting period to reapply in about three months as no applications would be considered until that time. In 1978, before the above-described one year waiting periods were required, the MLS refused to process a membership application of a brokerage firm that had been operating full time in LaPorte County from a non-residential location for a number of years. About three or four months after receipt of this application, and only upon inquiry by the applicant, the MLS told the applicant that no new members were being accepted at that time and that no information could be provided on when new membership would be available.

17. Through the policies, acts, or practices described in Paragraphs 15 and 16 above, and since 1978, the MLS has unreasonably prevented or delayed the membership of at least eight firms by denying membership, failing to act upon applications, or deterring the submission of applications. At least six of these firms were new entrants and at least three of the eight, as of their dates of application or during their first year of operation, had regularly or frequently charged commission rates below six percent.

18. The MLS has been and is now prohibiting any member from entering into any exclusive agency listing, and the MLS has been and is now refusing to publish any exclusive agency listing on its multiple listing service.

19. The MLS has been and is now prohibiting any member from entering into any reserve clause listing with an individual residential property owner, and the MLS has been and is now refusing to publish any such listing on its multiple listing service.

20. The MLS has been and is now prohibiting any member from entering into any open listing with a residential property owner.

21. Respondent MLS has been and is now prohibiting any member from participating, without the approval of the MLS, in any organization that competes with the MLS's multiple listing service.

22. The MLS has been and is now unreasonably restricting the ability of members and property owners to cancel residential listings before the listing's expiration date. The MLS, through a regulation in effect since the MLS's formation in 1970, prohibits any member from entering into any agreement with a property owner to cancel a residential listing before the listing's expiration date without prior approval of the MLS. Although the MLS has approved a number of cancellations that release the member from further obligation to provide brokerage services under the listing (such as when the owner is

