

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
COLUMBIA DIVISION**

UNITED STATES OF AMERICA,	)	
	)	Civil Action No.
Plaintiff,	)	
	)	<b>COMPLAINT FOR EQUITABLE</b>
v.	)	<b>RELIEF FOR VIOLATION OF</b>
	)	<b>SECTION 1 OF THE SHERMAN ACT,</b>
	)	<b>15 U.S.C. § 1</b>
<b>CONSOLIDATED MULTIPLE</b>	)	
<b>LISTING SERVICE, INC.,</b>	)	
	)	
Defendant.	)	

The United States of America, by its attorneys acting under the direction of the Attorney General, brings this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. § 4, against Defendant Consolidated Multiple Listing Service, Inc. (“CMLS”), to obtain equitable and other relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. § 1.

The United States complains and alleges as follows:

**I. INTRODUCTION**

1. The United States brings this action to prevent CMLS from enforcing rules, regulations, by-laws, policies, and procedures (collectively “Rules”) that unreasonably restrain competition among real estate brokers in Columbia, South Carolina and the surrounding areas (“Columbia Area”).

2. CMLS is a joint venture comprised of brokers who compete with each other to sell brokerage services in the Columbia Area. CMLS, like other multiple listing services, provides services to its members, including an electronic database of information relating to past and

current home listings in the Columbia Area. The database serves as a clearinghouse for the members to communicate information among themselves, such as descriptions of the listed properties for sale and offers to compensate other members if they locate buyers. In addition, the database allows members who represent buyers to search for nearly all the listed properties in the area that match the buyer's needs. By providing an efficient means of exchanging information on home listings, multiple listing services benefit buyers and sellers of real estate, and in turn, buyers of real estate brokerage services, in their service areas.

3. However, that same role makes access to CMLS's database – and therefore membership in CMLS – critically important for any broker seeking to serve clients efficiently in the Columbia Area. Access to the services provided by CMLS is key to being a successful broker, and CMLS is the only provider of such services in the Columbia Area. Therefore, brokers seeking to provide brokerage services in the Columbia Area need to be members of CMLS.

4. CMLS, its Board of Trustees ("Board"), and its members have adopted Rules that govern the conduct and business practices of its approximately 370 members and set standards for the admission of new members. Through these Rules, CMLS's Board and its members have unreasonably inhibited competition over the method of providing brokerage services to consumers in the Columbia Area and have stabilized the price those consumers pay for brokerage services. For example, CMLS's Rules prevent members from providing a set of brokerage services that includes less than the full array of services that brokers traditionally have provided – even if a consumer prefers to save money by purchasing less than all of such services. Additionally, CMLS's Rules require members to use a standard, pre-approved contract that, among other things,

prevents its members from offering to a home seller the option of avoiding paying the broker a commission if the seller finds the buyer on her own.

5. CMLS's Rules also require members to conform other aspects of their brokerage businesses in the manner that the group demands. CMLS Rules impose unreasonable objective criteria for membership and contain subjective standards for admission to membership that allow CMLS representatives to deny membership to brokers who might be expected to compete more aggressively or in more innovative ways than CMLS's members would prefer, thereby excluding such brokers or deterring them from seeking membership.

6. Taken together, CMLS's Rules limit competition among brokers, artificially stabilize the price of brokerage services, and deter innovation and the emergence of new brokerage business models. By adopting and enforcing such Rules, CMLS has violated and continues to violate Section 1 of the Sherman Act, 15 U.S.C. § 1.

## **II. DEFENDANT CMLS, ITS BOARD, AND ITS MEMBERS**

7. CMLS is organized as a nonprofit corporation under the laws of the State of South Carolina. Its principal place of business is in Columbia, South Carolina, and its service area encompasses the counties of Richland, Lexington, Saluda, Kershaw, Calhoun, Newberry and Fairfield. CMLS is a joint venture comprised of over 370 competing brokers in the Columbia Area. Affiliated with those CMLS members are over 3,100 other licensed real estate professionals doing business in the Columbia Area.

8. Whenever this Complaint refers to any act or deed of CMLS, it means CMLS engaged in the act or deed by or through its members, officers, directors, Board, committees,

trustees, employees, staff, agents, or other representatives while they were actively engaged in the management, direction, or control of CMLS's business or affairs.

9. Various persons and entities, not named as defendants in this action, have participated as conspirators with CMLS in the offense alleged in this Complaint, and have performed acts and made statements to further the conspiracy.

### **III. JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. § 4, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

11. Venue is proper in this District and this Division under 15 U.S.C. § 22, 28 U.S.C. § 1391(b), and Civil Local Rule 3.01 because CMLS maintains its principal place of business, transacts business, and is found within this District and this Division.

### **IV. EFFECT ON INTERSTATE COMMERCE**

12. The activities and the violations by CMLS alleged in this Complaint affect consumers located in South Carolina and in other states. CMLS members have provided and continue to provide residential brokerage services to in-state and out-of-state residents seeking to buy or sell real estate in the Columbia Area. In 2005, CMLS members facilitated the sale of real property worth more than \$2 billion and they collected commissions of over \$125 million for their services. Many of the real properties sold in transactions involving CMLS members are purchased with mortgages from out-of-state lenders and mortgage payments often are made across state lines. CMLS's activities and violations are in the flow of, and have a substantial effect on, interstate commerce.

#### **V. CONCERTED ACTION**

13. CMLS is a combination or conspiracy among its members, who are brokers that compete with one another in the Columbia Area. The members of CMLS, as a group and through the Board they elect and the staff they indirectly employ, have agreed to, adopted, maintained, and enforced Rules affecting the method of members' provision of brokerage services, participation in CMLS, and access to CMLS's services, including access to the electronic listings database. CMLS's Rules are therefore the product of agreements and concerted action among its members.

#### **VI. RELEVANT MARKETS**

14. The provision of brokerage services to sellers of residential real property and the provision of brokerage services to buyers of residential real property are relevant service markets within the meaning of the antitrust laws.

15. The brokerage business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions. Likewise, most buyers seek to purchase real estate in a particular city, community, or neighborhood, and typically prefer to work with a broker who has knowledge of the area in which they have an interest. The geographic coverage of CMLS's service area establishes the outermost boundaries of the relevant geographic market, although meaningful competition among brokers may occur in narrower local areas.

## **VII. BACKGROUND OF THE OFFENSES**

### **Industry and Market Power**

16. The vast majority of prospective real estate sellers and buyers engage the services of a broker. Brokers in the Columbia Area are in direct competition with each other to provide brokerage services to consumers.

17. CMLS is the only multiple listing service for the Columbia Area. Among other services that CMLS provides its members is the pooling and dissemination of information on the vast majority of properties available for sale in the Columbia Area. CMLS combines its members' real estate listings information into an electronic database and makes these data available to all brokers who are members of CMLS. By listing information about a property for sale with CMLS, a broker can market it efficiently to a large number of potential buyers. A broker representing a buyer likewise can search the CMLS database to provide the buyer with information about the vast majority of the properties for sale in the Columbia Area.

18. CMLS members use the database to, among other things: communicate to other members the listings information relating to real estate that they have for sale; offer to compensate other members as cooperating brokers if they locate buyers for those listings; and locate real estate for prospective buyers.

19. CMLS also provides records of sold real estate, which are used by brokers working with sellers to set the real property's listing price and to determine what offers to accept. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for real estate.

20. Access to CMLS is critical for brokers who wish to serve buyers or sellers successfully in the Columbia Area, and CMLS members account for virtually 100 percent of the real estate brokerage services provided to home buyers and sellers in the Columbia Area. Accordingly, CMLS has market power in the market for real estate brokerage services in the Columbia Area.

### **Alternative Brokerage Models**

21. Brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the real estate. Some brokers outside of the Columbia Area offer alternatives to the traditional methods of providing brokerage services. If brokers offering these alternatives were not restricted from competing in the Columbia Area, they would provide consumers of brokerage services with competitive options and, in the process, would place downward pressure on the prices charged by brokers offering traditional methods of providing brokerage services. However, CMLS's actions have unreasonably restricted such competition in the Columbia Area, thereby depriving consumers of these options and artificially stabilizing prices.

22. *Fee-For-Service Models.* Some brokers outside of the Columbia Area contract with home buyers and sellers to provide a subset of brokerage services charging only for the services that consumers wish to purchase. Many of these brokers offer their services for a flat fee rather than a percentage of the home's sales price and typically their fees are lower than what traditional brokers charge. One popular service offered by fee-for-service brokers is known as an "MLS listing only," whereby a broker, in exchange for a fee, lists a property on the multiple listing service database, while allowing the seller to handle all other aspects of the transaction.

Another fee-for-service package available to consumers outside of the Columbia Area involves the broker handling all aspects of the transaction, except for attending the closing. This is attractive to home sellers who are capable of performing all the necessary closing services themselves, or who have separately retained assistance with the closing, and would prefer not to pay a broker to attend. Through such packages, buyers and sellers can save money by purchasing only the services that they want their broker to provide.

23. *Exclusive Agency Listings.* Outside of the Columbia Area, brokers also are able to offer consumers the opportunity to save money on commissions and fees by offering an “Exclusive Agency Listing,” which is an agreement under which the seller pays no commission or fee to his broker if the seller finds the buyer himself.

24. While these and other competitively significant alternatives to the traditional method of providing brokerage services are available to consumers outside of the Columbia Area, CMLS’s actions have unreasonably restricted such competition in the Columbia Area.

#### **VIII. RESTRAINTS ON COMPETITION**

25. CMLS has harmed competition among brokers in the Columbia Area to the detriment of consumers. As a result of CMLS’s Rules, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer alternatives regarding the method of providing those brokerage services.

26. CMLS achieves these adverse effects by adopting and enforcing the following Rules, among others:

a. CMLS’s Rules prohibit its members from competing with one another by offering consumers the sort of fee-for-service brokerage options described in Paragraph 22 above.



For example, CMLS's Rules require that its members have "active involvement" in all aspects of the transaction, including "in the marketing, sale, and closing of the property." CMLS By-laws, Art. IV. *See also* CMLS Rules, Rule 1(a) (requiring that members only use CMLS's pre-approved contract, which includes Article IV's active involvement language). The Rules also require that "[o]ffers on properties included in the CMLS shall be made in written form to the Selling Company and not directly to the Owner," thereby precluding brokers and home sellers in the Columbia Area from entering into contracts whereby the brokers would let the sellers handle the offers in return for a reduced commission. CMLS Rules, Rule 2. These Rules prohibit brokers and home sellers from negotiating brokerage service terms and, consequently, harm consumers in the Columbia Area because they have fewer brokerage service models from which to choose.

b. CMLS's Rules prohibit its members from competing with one another by offering alternative contractual terms to consumers, such as the Exclusive Agency Listings contract described in Paragraph 23 above. CMLS requires that "[e]ach listing submitted by a Member shall be in writing on the Exclusive Right to Sell Form as approved by the Board from time to time. No alteration of any kind to the provisions of the Listing Agreement shall be allowed." CMLS Rules, Rule 1(a). That same Rule forbids CMLS's members and consumers from "mak[ing] any agreement . . . which varies, in any way, the provisions of the Listing Agreement." This Rule, for example, prevents brokers and home sellers in the Columbia Area from agreeing to an Exclusive Agency Listing whereby the seller would pay no commission or fee to her broker if the seller finds the buyer herself. Consequently, through CMLS, brokers in the Columbia Area have stabilized the commissions and fees they collect, at the expense of Columbia Area consumers.

c. These examples are not exhaustive. Other CMLS Rules have similar anticompetitive effects. CMLS's Rules, coupled with the need to be a CMLS member in order to compete effectively in the Columbia Area, allow brokers who are members of CMLS to prevent innovative or aggressive brokers from competing by denying them membership in CMLS, and to restrict the ways in which existing Columbia Area brokers do business by disciplining existing members who compete too aggressively or in a manner inconsistent with the wishes of other CMLS members. For example, CMLS's Rules require that members be "primarily in the real estate business within primary areas served by the CMLS." CMLS By-laws, Art. III, § 1. CMLS also refuses to admit brokers who do not have a commercial offices in the Columbia Area. CMLS Rules, Rule 5(b). These Rules exclude brokers located outside of the Columbia Area or that engage primarily in a business other than real estate, even if such brokers are fully licensed by the State of South Carolina to serve as real estate brokers. Moreover, CMLS provides its Board and officers unfettered discretion to reject applicants for membership, CMLS Rules, Rule 5(c), while simultaneously requiring those potential competitors to provide information about their proposed brokerage models and competitive histories. CMLS By-laws, Art. III, §§ 6-7. In addition to maintaining unfettered discretion over membership decisions, CMLS imposes an excessive initial fee on new members, well above its costs of adding them to the membership. *See* CMLS Rules, Rule 5(b). And, CMLS maintains unfettered discretion to expel or discipline members. CMLS By-laws, Art. III, § 4. Consequently, through CMLS, brokers in the Columbia Area have precluded the entry of aggressive competitors and stifled aggressive competition between members.

27. On April 17, 2008, after the United States informed CMLS of its intention to bring this action, CMLS's counsel told counsel for the United States that it had voted to amend some of its Rules. CMLS's counsel told counsel for the United States that the amendments affect some of the Rules listed in Paragraph 26, but that other of the rules about which the United States complains have not been changed. CMLS has not identified for the United States the precise changes that CMLS made to its Rules despite requests that it do so. Even if CMLS has changed some of its rules, those rules may well continue to violate the antitrust laws. Furthermore, even if CMLS, in the face of this lawsuit, has in fact brought some of its rules into conformity with the antitrust laws, CMLS retains complete discretion to make further changes to those rules that would unduly restrict competition and thus violate the federal antitrust laws.

28. Taken individually or in conjunction with each other, the Rules restrain trade, and are not reasonably necessary to make a multiple listing service more efficient or effective nor to achieve any other procompetitive benefits. Therefore, the Rules are anticompetitive and, as a result, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer choices among types of brokers and the method of providing the brokerage services they offer.

#### **IX. VIOLATION ALLEGED**

29. CMLS's adoption and enforcement of the Rules described above constitutes a contract, combination, or conspiracy among CMLS and its members that unreasonably restrains competition in the Columbia Area brokerage markets in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

30. The aforesaid contract, combination, or conspiracy has had and will continue to have anticompetitive effects in the relevant markets including: stabilizing the price of broker commissions and fees; reducing competition on the method of providing brokerage services; raising barriers to entry; and suppressing innovation.

31. This contract, combination, or conspiracy is not reasonably necessary to accomplish any of CMLS's legitimate goals.

#### **X. REQUEST FOR RELIEF**

WHEREFORE, the United States prays that final judgment be entered against CMLS declaring, ordering, and adjudging that:

a. The aforesaid contract, combination, or conspiracy unreasonably restrains trade and is illegal under Section 1 of the Sherman Act, 15 U.S.C. § 1;

b. CMLS, its members, officers, directors, Board, committees, trustees, employees, agents, representatives, successors, and assigns and all other persons acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing or attempting to engage in, carry out or renew the contract, combination, or conspiracy alleged herein, or any other contract, combination, or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

c. CMLS eliminate and cease enforcing any and all Rules that unreasonably restrain trade and be prohibited from otherwise acting to unreasonably restrain trade; and

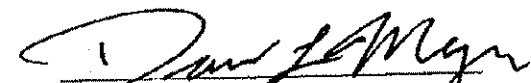
d. The United States be awarded its costs of this action and such other relief as may be appropriate and as the Court may deem just and proper.

Dated: May 2, 2008

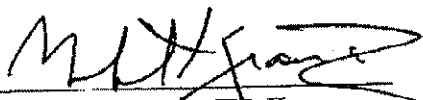
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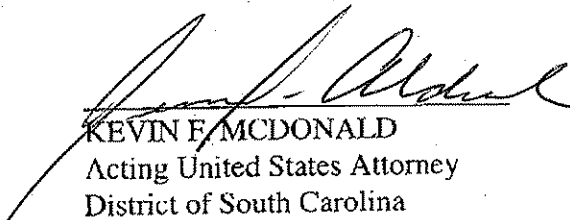


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