

Complaint

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IN THE MATTER OF

NEW ENGLAND LISTINGS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION ACT*Docket 7963. Complaint, June 21, 1960—Decision, Oct. 27, 1960*

Consent order requiring Boston, Mass., sellers of real estate advertising to cease using such deceptive practices as inducing property owners to raise their asking price in order to increase fees; and claiming to have prospective buyers available, affiliations with a large number of brokers, and offices throughout the nation, and that listed properties would be advertised in newspapers in various States.

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 New England Listings, Inc., a corporation, and Rose G. Marcoux and Raymond H. Marcoux, individually and as officers of said corporation, hereinafter referred to as respondents, have violated the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint, stating its charges in that respect as follows:

PARAGRAPH 1. Respondent New England Listings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. Its office and principal place of business is 53 State Street, Boston 9, Massachusetts. Prior to June 15, 1959, this corporate respondent traded and did business under the name Eastern States Inter-Business Exchange, Inc. at the same address.

Respondents Rose G. Marcoux and Raymond H. Marcoux are officers of corporate respondent New England Listings, Inc. and formulate, direct, and control the practices of said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

PAR. 2. Respondents are now, and for more than one year last past have been, engaged in the business of soliciting the listing for sale and advertising of real estate and other property. In connection with this business, respondents are and have been engaged in the operation, in commerce, of a business which offers for sale advertising in newspapers and other advertising media and other services and facilities in connection with the offering for sale, selling, buying and exchanging of business and other properties. In

connection therewith, the respondents have been and now are transmitting and receiving, through the United States mail, advertising matter, pamphlets, circulars, letters, contracts, checks, money orders and other written instruments which are sent and received between respondents' place of business in the State of Massachusetts and persons, firms, and corporations located in various states of the United States, and thereby have engaged in extensive commercial intercourse in commerce, as "commerce" is defined in the Federal Trade Commission Act.

The volume of the aforesaid business conducted by respondents has been and is substantial.

PAR. 3. In the course and conduct of their business, respondents, through the use of post cards and other written instruments circulated in various states, and through oral statements made by their solicitors or representatives, all for the purpose of obtaining listings of property for sale and collecting substantial sums of money as fees for the listing and sale of property, have represented, directly and by implication, to persons who had property for sale, that:

1. Respondents have available prospective buyers who are interested in the purchase of the properties sought to be listed or advertised by them;

2. Respondents have sold the property of others within a short period of time and will sell the property sought to be listed within a short period of time;

3. Respondents are associated or affiliated with a large number of real estate brokers who assist in the sale of the listed properties;

4. The property is underpriced by the owner and the asking price should be increased, and respondents will sell the property at the increased price;

5. Respondents have offices throughout the nation;

6. The property sought to be listed will be advertised in newspapers published in the various New England States and in other states.

PAR. 4. The aforesaid representations were, and are, false, misleading and deceptive. In truth and in fact:

1. Respondent do not have, and have never had, prospective buyers interested in, or available and ready to purchase, the properties listed or advertised;

2. Respondents' services have seldom, if ever resulted in the sale of listed properties;

3. Respondents are not affiliated or associated with any large number of brokers;

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4. The purpose of increasing the owner's asking price for the listed property is not to set a fair market value on it but to increase the property owner's interest in purchasing respondents' services and to increase respondents' fees in the event the property is sold;

5. Respondents have one office, located in Boston, Massachusetts;

6. Respondents have never advertised the property of others in newspapers published outside the State of Massachusetts.

PAR. 5. The use by respondents of the aforesaid false, misleading and deceptive representations, acts and practices, in connection with the conduct of their business, has had, and now has, the capacity and tendency to mislead and deceive a substantial portion of the public and to induce many owners of property, by reason thereof, to enter into contracts respecting the listing and advertising of their properties and to pay substantial sums of money to respondents in connection therewith.

PAR. 6. The aforesaid acts and practices of respondents, as herein alleged, were, and are, all to the prejudice and injury of the public and constituted, and now constitute, unfair and deceptive acts and practices, in commerce, within the intent and meaning of the Federal Trade Commission Act.

Mr. Berryman Davis for the Commission.

Mr. Arthur Finn, of Waltham, Mass., for respondents.

INITIAL DECISION BY EDGAR A. BUTTLE, HEARING EXAMINER

On June 21, 1960, the Federal Trade Commission issued its complaint against the above-named respondents charging them with violating the provisions of the Federal Trade Commission Act in connection with the offering for sale, selling, buying and exchanging of business and other properties. On August 12, 1960, the respondents and counsel supporting the complaint entered into an agreement containing a consent order to cease and desist in accordance with Section 3.25(a) of the Rules of Practice and Procedure of the Commission.

Under the foregoing agreement, the respondents admit the jurisdictional facts alleged in the complaint and agree, among other things, that the cease and desist order there set forth may be entered without further notice and shall have the same force and effect as if entered after a full hearing. The agreement includes a waiver by the respondents of all rights to challenge or contest the validity of the order issuing in accordance therewith; and recites that the said agreement shall not become a part of the official record unless and until it becomes a part of the decision of the Commission, and that it is for settlement purposes only and does not

constitute an admission by the respondents that they have violated the law as alleged in the complaint. The hearing examiner finds that the content of the said agreement meets all the requirements of Section 3.25(b) of the Rules of Practice.

This proceeding having now come on for final consideration by the hearing examiner on the complaint and the aforesaid agreement for consent order, and it appearing that said agreement provides for an appropriate disposition of this proceeding, the aforesaid agreement is hereby accepted and is ordered filed upon becoming part of the Commission's decision in accordance with Section 3.21 of the Rules of Practice; and in consonance with the terms of said agreement, the hearing examiner makes the following jurisdictional findings and order:

1. Respondent New England Listings, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of Massachusetts. Its office and principal place of business is 53 State Street, Boston 9, Massachusetts.

Respondents Rose G. Marcoux and Raymond H. Marcoux are officers of corporate respondent New England Listings, Inc. and formulate, direct, and control the practices of said corporate respondent. Their office and principal place of business is the same as that of the corporate respondent.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents hereinabove named. The complaint states a cause of action against said respondents under the Federal Trade Commission Act, and this proceeding is in the interest of the public.

ORDER

It is ordered, That respondents New England Listing, Inc., a corporation, and its officers, and Rose G. Marcoux and Raymond H. Marcoux, individually and as officers of said corporation, and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the offering for sale or sale of advertising in newspapers or other advertising media, or of other services or facilities in connection with the offering for sale, selling, buying or exchanging of business or any kind of property, in commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from, directly or indirectly, representing:

1. That respondents have available prospective purchasers who are interested in the purchase of specific property.

2. That property will be sold through the efforts of respondents.

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3. That real estate brokers are associated or affiliated with respondents.

4. That property sought to be listed is under-priced or that the asking price should be increased, or that respondents can or will sell the property at the increased price.

5. That respondents have more than one office or any greater number of offices than they have, in fact.

6. That the properties listed with them will be advertised in newspapers published in the New England States or in any media not actually utilized for that purpose by respondents.

DECISION OF THE COMMISSION AND ORDER TO FILE REPORT OF COMPLIANCE

Pursuant to Section 3.21 of the Commission's Rules of Practice, the initial decision of the hearing examiner shall, on the 27th day of October, 1960, become the decision of the Commission; and, accordingly:

It is ordered, That respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with the order to cease and desist.
