

parties named therein pursuant to Part 3 of the Commission's Rules of Practice.

IN THE MATTER OF

TRADE CONSULTANTS OF AMERICA, INC., ET AL.

ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF THE FEDERAL
TRADE COMMISSION ACT

Docket 7350. Complaint, Jan. 6, 1959—Decision, Jan. 18, 1963

Order dismissing—for the reason that one corporate respondent and the two officers were convicted under the mail fraud statute for engaging in practices of the type alleged—complaint charging sellers of real estate advertising with using deception to obtain property listings.

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 Trade Consultants of America, Inc., and TCA South, Inc., corporations, and Max Tauchner and Florence G. Wohl, individually and as officers of said corporations, 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 Trade Consultants of America, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of New York, with its offices and principal place of business located at 347 Fifth Avenue, New York, N.Y.

Respondent TCA South, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Georgia. Its legal address and mailing address are 1734 Candler Building, Atlanta, Ga.

Respondent Max Tauchner is president and respondent Florence G. Wohl is secretary of both respondent corporations, and their office and principal place of business are those of corporate respondent Trade Consultants of America, 347 Fifth Avenue, New York, N.Y. These individuals formulate, direct and control the acts and practices of said corporate respondents. All of said respondents cooperate and act together in the performance of the acts and practices hereinafter set forth.

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' places of business in the States of New York and Georgia 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 newspaper advertising, post cards, circulars 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 their specific properties.
2. Their property would be sold within a short period of time as a result of respondents' efforts.

Complaint

62 F.T.C.

3. The property is underpriced and the asking price should be raised, and that respondents could and would sell the property at the increased price.

4. The sales representatives of respondents are bonded or insured, or are specially trained consultants.

5. Respondents would, and were able to, finance or assist in financing the purchase of the listed properties.

6. The listing fee is an advance on the selling commission and is refunded to the property owner if the property is not sold within a year.

7. The listed property would be nationally advertised in newspapers, in nationally known financial and business journals and periodicals, and through real estate brokers associated with respondents.

8. Respondents' services, in all or most instances, have resulted in the sale of listed property.

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

1. Respondents do not have prospective buyers interested in and available to purchase the specific property listed.

2. Property is seldom, if ever, sold as a result of respondents' efforts.

3. The purpose of increasing the owner's asking price for the property is not that it is underpriced but, on the contrary, to increase the fee collectible in advance and to increase the property owner's interest in respondents' services.

4. Respondents' sales representatives are not bonded or insured, nor are they trained consultants but, on the contrary, are salesmen only.

5. Respondents do not and have not financed the purchase of listed property.

6. The listing fee is not an advance on the selling commission but is a fee charged for listing the property and in most cases is not refunded.

7. Respondents do not advertise said property nationally in newspapers, nationally known financial and business journals and periodicals, but, on the contrary, respondents' advertising of said property is generally confined to grouping a number of listings together in the business opportunities classified section of a limited number of newspapers. Respondents do not have real estate brokers associated with them.

8. Respondents' services have seldom, if ever, resulted in the sale of the listed property.

PAR. 5. The use by respondents of the aforesaid acts and practices, in connection with the conduct of their aforesaid 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, because of said false, deceptive and misleading representations, 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 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.

ORDER DISMISSING COMPLAINT

Complaint having been issued against respondents herein on January 6, 1959, and the case having been placed on suspense by Commission order dated September 19, 1960, after information had been received that respondents had been named as defendants in an indictment which charged violations of the mail fraud statute; and

The Commission having now been informed that individual respondents Max Tauchner and Florence G. Wohl, and corporate respondent TCA South, Inc., have been convicted under the aforesaid statute for engaging in practices of the type alleged in the complaint herein, and having determined, therefore, that the public interest would not be served by a continuation of this proceeding and that the complaint should be dismissed:

It is ordered, That the complaint in this proceeding be, and it hereby is, dismissed without prejudice, however, to the right of the Commission to issue a new complaint or to take such further or other action against the respondents at any time in the future as may be warranted by the then existing circumstances.