

IN THE MATTER OF
FLORENCE MULTIPLE LISTING SERVICE, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3228. Complaint, April 20, 1988—Decision, April 20, 1988

This consent order prohibits, among other things, a Florence S.C. firm from conspiring to exclude certain licensed real estate brokers from membership in and use of the multiple listing service, and from restricting competition among multiple listing service members in the services they individually provide to the public. Respondent is also prohibited from requiring new members to have owned and operated a business for six months before application for membership and from insisting on a vote of FMLS members as a condition of membership.

Appearances

For the Commission: *Jacques Feuillan.*

For the respondent: *John A. McInnes, Florence Multiple Listing Service, Inc., Florence, S.C. and Haigh Porter, Haigh Porter, P.C., Florence, S.C.*

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 Florence Multiple Listing Service, Inc., a corporation, 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:

PARAGRAPH 1. As used in this complaint:

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

b. "*Exclusive right to sell listing*" shall mean any listing under which a property owner appoints a specified broker as his or her exclusive agent for the sale of a property and contracts to pay to that broker an agreed commission if a ready, willing and able buyer is procured or if the property is sold, whether by the broker or by any other person, including the owner.

PAR. 2. Respondent Florence Multiple Listing Service ("FMLS") is a corporation organized, existing, and doing business under and by virtue of the laws of the State of South Carolina. FMLS's principal office and place of business is located at 121 S. Warley Street, Florence, South Carolina, in Florence County. The 1986 population of Florence County was approximately 110,000, and the 1986 population of the City of Florence (which is that County's largest city) was approximately 30,000.

PAR. 3. FMLS is now, and since 1972 has been, providing a multiple listing service for its members' real estate brokerage firms in parts of Florence County, including the city of Florence and town of Timmons-ville, and in Darlington County, including the City of Darlington ("the Florence area"). The 1986 population of the City of Darlington was approximately 8,000. The FMLS members' firms are owned and operated by real estate brokers. Each member of FMLS owns 250 shares of its stock, which are non-transferable except between the members and FMLS. Only members' firms may participate in the FMLS's multiple listing service. Each member agrees to submit his or her firm's Florence area exclusive right to sell listings for publication on the multiple listing service to the entire FMLS membership, and to share any brokerage commissions due with any member whose firm successfully locates a purchaser for any property so listed. FMLS charges its members a fee for each new listing published on its multiple listing service. Payment of the fee entitles the member to have his or her listing published for twelve successive months or until such time as the property is sold, whichever comes first.

PAR. 4. Membership in FMLS provides valuable competitive advantages in the brokering of residential real estate in the Florence area. FMLS membership significantly increases the opportunities of members' brokerage firms to enter into listings with residential property owners, as owners generally consider FMLS publication of listings to be the fastest, most effective and most convenient means of obtaining the broadest market exposure for residential property in the Florence area. FMLS membership also significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales.

PAR. 5. FMLS is the only real estate multiple listing service serving the Florence area. As of July 1986, real estate brokers at forty-one firms—approximately 65 percent of real estate brokerage firms operating in the Florence area—were members of FMLS. Nearly all of the active, full-time residential real estate brokers doing business in that area work at those brokerage firms. In calendar year 1985, at least 75 percent of the total dollar volume of residential real estate sales in Florence County that were transacted using the services of a real estate brokerage firm involved listings that were published on the

FMLS. Also during 1985, at least 85 percent of the total dollar volume of residential real estate sales in Florence City involved listings published on the FMLS. Sales of residential real estate listings published on the FMLS totaled approximately \$40 million in 1985.

PAR. 6. In the conduct of their businesses and through the policies, acts, and practices described below, FMLS and its members are involved with or affect:

- a. a substantial interstate flow of funds used in the financing of Florence area real estate;
- b. a substantial amount of Florence area real estate financing guaranteed or insured under Federal government programs;
- c. the sale by interstate insurers to Florence area property owners of a substantial amount of title and homeowners' insurance; and
- d. the franchise operations of those interstate chains of real estate brokerage firms that include one or more members of FMLS.

As a result, the policies, acts and practices of FMLS and its members are in or affect commerce within the meaning of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45.

PAR. 7. Real estate brokers doing business in the State of South Carolina must be licensed by the South Carolina Real Estate Commission pursuant to state law. The state law licensing requirements include:

- a. completion of prescribed courses of study;
- b. three years experience as a licensed salesperson; and
- c. passing a written examination.

PAR. 8. Except to the extent that competition has been restrained as described below, the FMLS members and their brokerage firms are now and have been in competition among themselves and with other brokers and brokerage firms with respect to the provision of residential real estate brokerage services in the Florence area.

PAR. 9. In adopting the policies and engaging in the acts and practices described in paragraphs 10 and 11 below, the FMLS 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 in the Florence area.

PAR. 10. FMLS requires each member to abide by its bylaws, rules and regulations. If any member or member's firm is found to be in violation of any FMLS rule or other FMLS policy, the member is subject to penalties or disciplinary action, including suspension or termination of membership.

PAR. 11. Since at least 1985, FMLS has:

- a. maintained a bylaw that requires applicants for membership to

have "owned a real estate business" for at least six months prior to application;

b. maintained a bylaw providing that applicants who satisfy all other conditions of membership cannot become members unless they also receive an affirmative vote for admission from two-thirds of the FMLS members who choose to vote on the question;

c. maintained a bylaw that requires a member to agree that neither the member's firm nor any one in the member's firm join any multiple listing service or other real estate information exchange service that competes with FMLS;

d. maintained a bylaw that prohibits publication on the FMLS of information relating to any property offered for sale unless the seller has first agreed to grant the listing broker an exclusive right to sell listing; and

e. maintained a policy that, as a condition of membership in the FMLS, an applicant agree that neither the applicant's firm nor any one in the applicant's firm will own or operate a business that competes with real estate brokerage by, for example, assisting homeowners to market their homes without the traditional full array of brokerage services.

PAR. 12. The purposes, effects, tendency or capacity, of the combination or conspiracy alleged in paragraph 9 above and the policies, acts or practices of the FMLS described in paragraphs 10 and 11 above, have been and are to restrain competition unreasonably in one or more of the following ways, among others:

a. restraining or deterring the entry of new brokerage firms, and of new joint ventures or shared brokerage or multiple listing services, in competition with the FMLS multiple listing service;

b. limiting consumers' ability to choose among a variety of brokerage firms competing on the basis of price, contract terms and services;

c. restraining competition among brokerage firms based on willingness to offer or accept different contract terms that may be attractive and beneficial to consumers, such as terms that allow the property owner to pay a reduced commission or no commission if the owner sells the property through means alternative to a broker's services;

d. limiting the ability of consumers to negotiate lower prices for brokerage services or brokerage contract terms that may be more advantageous for them than an exclusive right to sell listing; and

e. limiting the ability of residential property sellers to compete with real estate brokers in locating purchasers.

PAR. 13. The policies, acts, practices, and combinations or conspiracies described above constitute unfair methods of competition or unfair acts or practices in violation of Section 5 of the Federal Trade

Commission Act, 15 U.S.C. 45. The alleged acts and practices, or the effects thereof, are continuing in nature and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission, having initiated an investigation of certain acts and practices of the Florence Multiple Listing Service, Inc. ("FMLS"), and FMLS having been furnished thereafter with a copy of a draft of complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

FMLS, its duly authorized officer, its attorney, and counsel for the Federal Trade Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all of the jurisdictional facts set forth in the aforesaid complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that the complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedures prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. FMLS is organized, existing, and doing business under and by virtue of the laws of the State of South Carolina, with its offices and principal place of business located at 121 South Warley Street, in the City of Florence, State of South Carolina.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

Definitions

For the purposes of this order, the following definitions shall apply:

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

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

3. "*Exclusive agency listing*" shall mean any listing under which a property owner appoints a broker as exclusive agent for the sale of the property at an agreed commission, but reserves the right to sell the property personally to a direct purchaser (one not procured in any way through the efforts of any broker) at an agreed reduction in the commission or with no commission owed to the agent broker.

4. "*FMLS*" shall mean the Florence Multiple Listing Service, Inc. and its successors, assigns, officers, directors, committees, agents, representatives, members or employees.

I.

It is ordered, That respondent FMLS, directly, indirectly or through any device, in or in connection with the operation of a multiple listing service in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44, shall cease and desist from:

(A) Adopting, maintaining or enforcing any bylaw, rule, regulation, policy, agreement or understanding, or taking any other action that has the purpose or effect of:

(1) Conditioning membership in FMLS or use of its multiple listing service on the length of time any applicant has owned, operated or maintained a real estate brokerage firm or other business;

(2) Requiring as a condition of FMLS membership or use of its multiple listing service that applicants who satisfy FMLS's other conditions of membership receive the approval by vote of any portion of FMLS members; or

(3) Conditioning membership in FMLS or use of its multiple listing service on any person's refraining or withdrawing from ownership, operation or other association with any lawful business.

(B) Forbidding publication through respondent FMLS's multiple listing service of any exclusive agency listing, or restricting such publication in any way other than by requiring designation of the listing as one granting an exclusive agency or by imposing terms applicable to all listings accepted for publication by the FMLS multiple listing service.

II.

It is further ordered, That FMLS shall:

(A) Within ninety (90) days after this order becomes final, amend its policies, bylaws, guidelines, rules and regulations, and any other of its instructive or suggestive materials to conform to the provisions of this order.

(B) For a period of five (5) years after this order becomes final:

(1) provide to any applicant who has been denied membership prompt and clear written notice of the denial, specifying the membership requirements not met and explaining in what manner the requirements are not met; and

(2) maintain in one separate file, segregated by the names of the applicants, all documents and correspondence that discuss, refer, or relate to any denied or approved application.

(C) For a period of three (3) years after this order becomes final furnish promptly, by first-class mail, a copy of the announcement in the form shown in Appendix A to any person who inquires about, or who submits an application for, membership in the FMLS.

(D) For a period of three (3) years after this order becomes final furnish promptly, by first-class mail, a copy of this order to any person who requests a copy.

III.

It is further ordered, That FMLS shall:

(A) Within thirty (30) days after this order becomes final, mail an announcement in the form shown in Appendix A, and a copy of the Complaint and Decision and Order to each member of FMLS.

(B) Within ninety (90) days after this order becomes final, submit a written report to the Federal Trade Commission setting forth in detail the manner and form in which FMLS has complied and is complying with this order.

(C) Notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in FMLS, such as dissolution, assign-

ment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any change in its incorporation that may affect compliance obligations arising out of this order.

Commissioner Bailey not participating.

APPENDIX A

ANNOUNCEMENT

As you may be aware, the Florence Multiple Listing Service, Inc. ("FMLS") has entered into a consent agreement with the Federal Trade Commission that has now become final. Acceptance of this agreement is for settlement purposes and does not constitute an admission that the FMLS has violated the law. The following is a brief summary of the provisions of the order issued pursuant to the consent agreement:

1. Eligibility for membership: The FMLS no longer requires, as a condition of membership, that a broker have owned and operated a business for a six-month period or any other time period. In addition, the FMLS no longer requires that any applicant or member who satisfies FMLS's other conditions of membership receive the approval by vote of any portion of FMLS members. Specific eligibility or membership requirements are set forth in official FMLS bylaws and policies. If any membership application is denied, the FMLS promptly will provide to the applicant a written explanation of the specific reasons for the denial.

2. Property listings that limit or differ from an exclusive right to sell arrangement: The FMLS will not prohibit members from entering exclusive agency listings—listings in which the broker and owner contract that the owner will owe a reduced commission or no commission to the agent broker if the owner locates the purchaser entirely independent of the services of any real estate broker. The FMLS will publish all listings of this type but may give notice that the listing is an exclusive agency listing rather than an exclusive right to sell listing.

3. Broker's development of or participation in organizations, services, businesses or ventures that compete with one another or with the MLS: The FMLS will not prohibit members from operating or joining any lawful business.

The FTC does not endorse any practice of the FMLS. For more specific information, you should refer to the FTC order itself. [A copy of the order is attached.]¹

President

Florence Multiple Listing
Service, Inc.

¹ The sentence enclosed in brackets is required to be included in this Announcement only when the Announcement is sent to members of respondent Florence Multiple Listing Service as required by Part III(A) of the proposed order to which this Announcement is attached as an appendix.

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Complaint

IN THE MATTER OF

NEC HOME ELECTRONICS (U.S.A.), INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF SEC. 5 OF
THE FEDERAL TRADE COMMISSION ACT

Docket C-3229. Complaint, May 11, 1988—Decision, May 11, 1988

This consent order requires, among other things, a Delaware computer corporation, with its principal office in Wood Dale, Ill., to provide consumer redress and to contact each consumer who purchased a 32K board. The consent order also prohibits the respondent from falsely claiming that any of its computer hardware products currently has a stated memory capacity or other capability and from claiming that purchasers of its products have access to a stated memory capacity or other capability, unless the respondent has substantiation for the claim.

Appearances

For the Commission: *Jock K. Chung.*

For the respondent: *William Blumenthal and D.E. Rosenthal, Sutherland, Asbill & Brennan, Washington, D.C.*

COMPLAINT

The Federal Trade Commission, having reason to believe that NEC Home Electronics (U.S.A.), Inc., a corporation ("respondent"), has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. For the purposes of this complaint, the following definition shall apply:

1. "RAM" means random access memory, and refers to the memory capacity of a computer. RAM is measured in small, basic units of storage or memory called "bytes" or in K bytes (K = 1024 bytes).

PAR. 2. NEC Home Electronics (U.S.A.), Inc., is a Delaware corporation with its principal office or place of business at 1255 Michael Drive, Wood Dale, Illinois.

PAR. 3. Respondent imports, advertises, offers for sale and sells computer hardware and software products and accessories, including the NEC PC-8000 Series microcomputer system.

PAR. 4. From 1981 to 1984, respondent imported, advertised, offered for sale, sold and distributed the NEC PC-8001A microcomputer, the NEC PC-8012A input/output ("I/O") Unit and PC-8012A-02 32K