

Complaint

IN THE MATTER OF

MULTIPLE LISTING SERVICE, INC.CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4215; File No. 061 0090
Complaint, March 13, 2008 – Decision, March 13, 2008

This consent order addresses charges that Multiple Listing Service, Inc., a private real estate association in the Southwest Wisconsin area, adopted a rule that limited the publication of certain listing agreements on popular real estate multiple listing service websites, in a manner that limited the ability of real estate brokers to use Exclusive Agency Listings to offer unbundled brokerage services at a lower price than the full-service package. Specifically, information about properties would not be made available on the websites unless the listing contracts were Exclusive Right to Sell Listings. The order prohibits the respondent from adopting or enforcing any rules or policies that deny or limit the ability of its participants to enter into Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. In addition, the order requires the respondent to conform its rules to the substantive provisions of the order within 30 days and to notify its participants of the order through its usual business communications and its website. The respondent is also required to notify the Commission of changes in its structure and to file periodic written reports concerning compliance with the terms of the order.

Participants

For the Commission: *Joel Christie, Mark Frankena, Stephanie Langley, David Meyer, Patrick J. Roach, and Louis Silvia.*

For the Respondent: *Alan Deutch, sole practitioner, and David Evans, Arent Fox LLP.*

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 the Multiple Listing Service, Inc. (“Respondent” or “MLS, Inc.”), a corporation, has violated Section 5 of the Federal Trade Commission Act, 15

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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 allegations as follows:

NATURE OF THE CASE

This case involves a local, private real estate association that operates a Multiple Listing Service, which is a joint venture among its participants designed to foster real estate brokerage services. MLS, Inc. adopted a rule that limits the publication of certain listing agreements on popular internet real estate websites, in a manner that limits the ability of real estate brokers to use Exclusive Agency Listings to offer unbundled brokerage services at a lower price compared to the full service package. This rule deprives such brokers and the home sellers they represent of a significant benefit afforded by the MLS. The rule discriminates on the basis of lawful contractual terms between the listing real estate broker and the seller of the property, and lacks any justification that such a rule improves competitive efficiency. Consumers are harmed by this rule because it inhibits a lower cost option to sellers and increases search costs to buyers. As such, this rule constitutes a concerted refusal to deal except on specified terms with respect to a key input for the provision of real estate brokerage services.

RESPONDENT AND ITS PARTICIPANTS

1. Respondent Multiple Listing Service, Inc., (“MLS, Inc.”) is a corporation organized, existing and doing business under and by virtue of the laws of the State of Wisconsin. Respondent’s principal place of business is 11430 West North Avenue, Wauwatosa, Wisconsin 53226. MLS, Inc. operates for the benefit of its participants.

2. MLS, Inc. has more than 6500 real estate professionals as participants, and is affiliated with the National Association of Realtors (“NAR”). The majority of MLS, Inc.’s participants hold an active real estate license and are active in the real estate profession.

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3. The large majority of residential real estate brokerage professionals in the Southeast Wisconsin Area are participants of MLS, Inc. These professionals compete with one another to provide residential real estate brokerage services to consumers.

4. A Multiple Listing Service (“MLS”) is a clearinghouse through which participating real estate brokerage firms regularly and systematically exchange information on listings of real estate properties and share commissions with other participants who locate purchasers. MLS, Inc. is now and has been providing since 1985 a MLS for the use of its participants doing business in the Southeast Wisconsin Area, and this service is known as the Metro MLS.

5. When a property is listed on the Metro MLS, it is made available to all participants of the MLS for the purpose of trying to match a buyer with a seller. Information about the property, including the asking price, address and property details, is made available to participants of the MLS so that a suitable buyer can be found.

6. Metro MLS services the Southeast Wisconsin Area, which includes the cities of Milwaukee, Racine, Kenosha and Sheboygan, Wisconsin, and the surrounding counties.

7. Metro MLS is the only MLS that services the Southeast Wisconsin Area.

JURISDICTION

8. MLS, Inc. is and has been at all times relevant to this Complaint a corporation organized for its own profit or for the profit of its participants within the meaning of Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 44.

9. The acts and practices of MLS, Inc., including the acts and practices alleged herein, have been or are in or affecting commerce

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within the meaning of Section 4 of the Federal Trade Commission Act.

MLS, INC. CONDUCT

10. In 2001, MLS, Inc. adopted and approved a rule that stated: “All active listings of all Participants are eligible for Internet publication unless . . . the listing is subject to an ‘exclusive agency’ contract as indicated on the MLS property profile sheet.” (the “Web Site Policy”). The Web Site Policy was rescinded by the MLS, Inc. Board of Directors in October 2006. MLS, Inc. participants were notified of the change on November 1, 2006.

11. The Web Site Policy prevented certain lawful residential property listings provided to Metro MLS, specifically “Exclusive Agency Listings,” from being transmitted to real estate web sites, based on the contractual relationship between the home seller and the real estate agent the seller employs to promote the property.

12. An Exclusive Agency Listing is a listing agreement under which the listing broker acts as an exclusive agent of the property owner or principal in the sale of a property, but reserves to the property owner or principal a right to sell the property without assistance of a broker, in which case the listing broker is paid a reduced or no commission when the property is sold.

13. Exclusive Agency Listings provide a means for MLS, Inc. participants to offer lower-cost, Unbundled Real Estate Brokerage Services to consumers. “Unbundled Real Estate Brokerage Services” are lawful arrangements pursuant to which a real estate broker or agent provides that a property offered for sale shall be listed on the MLS, but the listing broker or agent will not provide some or all of the services offered by other real estate brokers or will only offer such additional services on an à la carte basis.

14. Brokers offering Unbundled Real Estate Brokerage Services are able to provide home sellers with exposure of their listings

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through the MLS for a flat fee or reduced commission that is very small compared to the full commission prices traditionally charged. Exclusive Agency Listings can reserve to the home seller the right to sell the property without owing more than an agreed-to amount to the listing broker.

15. The Web Site Policy did not permit the publication of Exclusive Agency Listings on web sites approved by MLS, Inc., including (1) the NAR-operated “Realtor.com” web site; (2) the MLS-owned “wihomes.com” web site; and (3) Metro MLS participant web sites (collectively, “Approved Web Sites”).

16. The Web Site Policy had the effect of discouraging MLS, Inc. participants from accepting Exclusive Agency Listings.

MLS, INC. MARKET POWER

17. The provision of residential real estate brokerage services to sellers and buyers of real property in the Southeast Wisconsin Area is a relevant product market.

18. The publication and sharing of information relating to residential real estate listings for the purpose of brokering residential real estate transactions is a key input to the provision of real estate brokerage services, and represents a relevant input market. Publication of listings through Metro MLS is generally considered by sellers, buyers and their brokers to be the fastest and most effective means of obtaining the broadest market exposure for property in the Southeast Wisconsin Area.

19. By virtue of industry-wide participation and control over a key input, MLS, Inc. has market power in the Southeast Wisconsin Area.

20. Participation in MLS, Inc. is necessary to a broker providing effective residential real estate brokerage services to sellers and buyers of real property in the Southeast Wisconsin Area. Participation significantly increases the opportunities of brokerage

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firms to enter into listing agreements with residential property owners, and significantly reduces the costs of obtaining up-to-date and comprehensive information on listings and sales. The realization of these opportunities and efficiencies is important for brokers to compete effectively in the provision of residential real estate brokerage services in the Southeast Wisconsin Area.

APPROVED WEB SITES ARE KEY INPUTS

21. Access to the Approved Web Sites is a key input in the brokerage of residential real estate sales in the Southeast Wisconsin Area. Home buyers regularly use the Approved Web Sites to assist in their search for homes. The Approved Web Sites are the web sites most commonly used by home buyers in their home search. Many home buyers find the home that they ultimately purchase by searching on Approved Web Sites.

22. The most efficient, and at least in some cases the only, means for MLS, Inc. participants to have their properties listed on the Approved Web Sites is by having Metro MLS transmit those listings.

23. Property owners and their brokers in the Southeast Wisconsin Area generally consider publication of listings on Approved Web Sites, in conjunction with publication of listings on the Metro MLS, to be the most effective means of obtaining the broadest market exposure for residential property in the Southeast Wisconsin Area.

EFFECTS OF WEB SITE POLICY

24. The Web Site Policy restricted competition by inhibiting the use of Exclusive Agency Listings in the Southeast Wisconsin Area.

25. The Web Site Policy reduced consumer choices regarding both the purchase and sale of homes and induced consumers to pay

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for real estate brokerage services that they would not otherwise have purchased.

**THE WEB SITE POLICY OFFERS NO EFFICIENCY
BENEFIT**

26. There is no cognizable and plausible efficiency justification for the Web Site Policy. The Web Site Policy is not reasonably ancillary to the legitimate and beneficial objectives of the MLS.

VIOLATION

27. In adopting the policies and engaging in the Acts and Practices described herein, MLS, Inc. has acted as a combination of its participants to restrain trade in the provision of residential real estate brokerage services within the Southeast Wisconsin Area.

28. The purposes, capacities, tendencies, or effects of the policies, acts, or practices of MLS, Inc. and its participants as described herein have been unreasonably to restrain competition among brokers, and to injure consumers.

29. The policies, acts, practices, and combinations or conspiracies described herein constitute unfair methods of competition in or affecting interstate commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this thirteenth day of March, 2008, issues its Complaint against Respondent Multiple Listing Service, Inc.

By the Commission.

Decision and Order

DECISION AND ORDER

The Federal Trade Commission (“Commission”) having initiated an investigation of certain acts and practices of the Multiple Listing Service, Inc., hereinafter sometimes referred to as “Respondent” or “MLS, Inc.,” and Respondent having been furnished thereafter with a copy of the draft Complaint that the Bureau of Competition presented to the Commission for its consideration and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondent of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of the Consent 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, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, 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 Respondent has violated the said Act, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having duly considered a public comment filed by an interested party, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34 (2008), the Commission hereby makes the following jurisdictional findings and issues the following Order:

1. Respondent Multiple Listing Service, Inc. is a corporation organized, existing and doing business under and by virtue of the

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laws of the State of Wisconsin, with its office and principal place of business at 11430 West North Avenue, Wauwatosa, Wisconsin 53226.

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**I.**

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

- A. “Respondent” or “MLS, Inc.” means Multiple Listing Service, Inc., the MLS, Inc. Board of Directors, the predecessors, successors and assigns of MLS, Inc., its divisions and wholly- or partially-owned subsidiaries, affiliates, licensees of affiliates, partnerships, and joint ventures; and all the directors, officers, committees, employees, consultants, agents, and representatives of the foregoing, when acting in such capacity. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial or total ownership or control by MLS, Inc., and is specifically meant to include Metro MLS and/or each of the MLS, Inc. Websites.
- B. “Multiple Listing Service” or “MLS” means a cooperative venture by which real estate brokers serving a common market area submit their listings to a central service which, in turn, distributes the information for the purpose of fostering cooperation in and facilitating real estate transactions.
- C. The term “Metro MLS” means any MLS owned, operated or controlled, in whole or in part, directly or indirectly, by MLS, Inc.

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- D. “Participant” means any person authorized by MLS, Inc. to access, use or enjoy the benefits of the Metro MLS in accordance with MLS, Inc.’s bylaws, policies, rules and regulations.
- E. “IDX” means the internet data exchange process that provides a means or mechanism for MLS listings to be integrated within a Website, including but not limited to IDX and/or Broker Reciprocity as defined by MLS, Inc.
- F. “IDX Website” means a Website that is capable of integrating the IDX listing information within the Website.
- G. “MLS, Inc. Websites” means any public Website operated by MLS, Inc., including but not limited to wihomes.com.
- H. “Realtor.com” means the Website operated by the National Association of Realtors that allows the general public to search information concerning real estate listings downloaded from a variety of MLSs representing different geographic areas of the country, including but not limited to real estate listings from MLS, Inc.
- I. “Approved Website” means a Website to which MLS, Inc. or Metro MLS provides information concerning listings for publication, including but not limited to Participant IDX Websites, MLS, Inc. Websites, and Realtor.com.
- J. “Exclusive Right to Sell Listing” means a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner’s stated terms, and agrees to pay the listing broker a commission when the property is sold, regardless of whether the buyer is found by the listing broker, the owner or another broker.

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- K. “Exclusive Agency Listing” means a listing agreement under which the property owner or principal appoints a real estate broker as his or her exclusive agent for a designated period of time, to sell the property on the owner’s stated terms, but also reserves to the property owner or principal a general right to sell the property without assistance from a broker, in which case the listing broker is paid a reduced commission or no commission when the property is sold.
- L. “Other Lawful Listing” means a listing agreement, other than an Exclusive Right to Sell Listing or an Exclusive Agency Listing, which is subject to the rules and regulations of MLS, Inc., and in compliance with applicable state laws and regulations.
- M. “Services of the MLS” means the benefits and services provided by the MLS to assist Participants in selling, leasing and valuing property and/or brokering real estate transactions. With respect to real estate brokers or agents representing home sellers, Services of the MLS shall include, but are not limited to:
1. having the property included among the listings in the MLS in a manner so that information concerning the listing is easily accessible by cooperating brokers; and
 2. having the property publicized through means available to the MLS, including, but not limited to, information concerning the listing being made available on wihomes.com, Realtor.com and IDX Websites.

II.

IT IS FURTHER ORDERED that Respondent directly or indirectly, or through any corporation, subsidiary, division, or other device, in connection with the operation of a Multiple Listing Service or Approved Websites in or affecting commerce, as “commerce” is defined in Section 4 of the Federal Trade

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Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from adopting or enforcing any policy, rule, practice or agreement of MLS, Inc. to deny, restrict or interfere with the ability of Participants to enter into Exclusive Agency Listings or other lawful listing agreements with the sellers of properties, including but not limited to any policy, rule, practice or agreement to:

1. prevent Participants from offering or accepting Exclusive Agency Listings;
2. prevent Participants from cooperating with listing brokers or agents that offer or accept Exclusive Agency Listings;
3. prevent Participants from publishing information concerning listings offered pursuant to Exclusive Agency Listings on Approved Websites;
4. deny or restrict the Services of the MLS to Exclusive Agency Listings or Other Lawful Listings in any way that such Services of the MLS are not denied or restricted to Exclusive Right to Sell Listings; and
5. treat Exclusive Agency Listings, or any Other Lawful Listings, in a less advantageous manner than Exclusive Right to Sell Listings, including but not limited to, any policy, rule or practice pertaining to the transmission, downloading, or displaying of information pertaining to such listings.

Provided, however, that nothing herein shall prohibit the Respondent from adopting or enforcing any policy, rule, practice or agreement that it can show is reasonably ancillary to the legitimate and beneficial objectives of the MLS. Such policies, rules, practices or agreements may include those regarding subscription or participation requirements, payment of dues, and administrative matters, and may also include, but are not limited to, rules allowing

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a Participant to make an independent decision regarding the selection of IDX listing information to be transmitted to the Participant or the display of listing information on that Participant's IDX Web Site, so long as Respondent can show that the policy, rule, practice or agreement is reasonably ancillary to the legitimate and beneficial objectives of the MLS.

III.

IT IS FURTHER ORDERED that, no later than thirty (30) days after the date this Order becomes final, Respondent shall have amended its rules and regulations to conform to the provisions of this Order.

IV.

IT IS FURTHER ORDERED that, within ninety (90) days after the date this Order becomes final, Respondent shall (1) have informed each Participant of the amendments to its rules and regulations to conform to the provisions of this Order; and (2) provide each Participant with a copy of this Order. Respondent shall transmit the rule change and Order by the means it uses to communicate with its members in the ordinary course of MLS, Inc.'s business, which shall include, but not be limited to: (A) sending one or more emails with one or more statements that there has been a change to the rule and an Order, along with a link to the amended rule and the Order, to each Participant; and (B) placing on the publicly accessible MLS, Inc. Website (www.metromls.com) a statement that there has been a change to the rule and an Order, along with a link to the amended rule and the Order. Respondent shall modify its Website as described above no later than five (5) business days after the date the Order becomes final, and shall display such modifications for no less than ninety (90) days from the date this Order becomes final. The Order shall remain accessible through common search terms and archives on the Website for five (5) years from the date it becomes final.

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V.

IT IS FURTHER ORDERED that Respondent shall notify the Commission at least thirty (30) days prior to:

- A. any proposed dissolution of such Respondent;
- B. any acquisition, merger or consolidation of Respondent; or
- C. any other change in the Respondent, including, but not limited to, assignment and the creation or dissolution of subsidiaries, if such change might affect compliance obligations arising out of the Order.

VI.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

VII.

IT IS FURTHER ORDERED that this Order shall terminate on March 13, 2018.

By the Commission.

Analysis to Aid Public Comment

**ANALYSIS OF CONSENT ORDER TO AID PUBLIC
COMMENT**

The Federal Trade Commission has accepted for public comment an agreement containing consent order with Multiple Listing Service, Inc. (“MLS, Inc.” or “Respondent”). Respondent operates a multiple listing service (“MLS”) that is designed to facilitate real estate transactions by sharing and publicizing information on properties for sale by customers of real estate brokers. The agreement settles charges that MLS, Inc. violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through particular acts and practices of the MLS. The proposed consent order has been placed on the public record for thirty (30) days to receive comments from interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed order final.

The purpose of this analysis is to facilitate comment on the proposed consent order. This analysis does not constitute an official interpretation of the agreement and proposed order, and does not modify its terms in any way. Further, the proposed consent order has been entered into for settlement purposes only, and does not constitute an admission by proposed Respondent that it violated the law or that the facts alleged in the complaint against the Respondent (other than jurisdictional facts) are true.

I. The Respondent

MLS, Inc. is a Wisconsin corporation that provides multiple listing services to each of the local associations of real estate professionals based in the Milwaukee metropolitan area and surrounding counties. It is owned by several realtor boards and associations, and has more than 6500 members. Respondent serves the great majority of the residential real estate brokers in its service area, and is the sole MLS serving that area. MLS, Inc. also owns and

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operates a web site, wihomes.com, that provides listing information directly to consumers over the internet.

II. The Conduct Addressed by the Proposed Consent Order

In general, the conduct at issue in this matter is largely the same as the conduct addressed by the Commission in six other consent orders involving MLS restrictions in the past year.¹ A general discussion of industry background and the Commission's reasoning is contained in the Analysis to Aid Public Comment issued in connection with five of those consent orders in the "real estate sweep" announced in October 2006.²

A. The Respondent Has Market Power

MLS, Inc. serves residential real estate brokers in the Milwaukee metropolitan area and surrounding counties in Wisconsin. These professionals compete with one another to provide residential real estate brokerage services to consumers. Membership in MLS, Inc. is necessary for a broker to provide effective residential real estate brokerage services to sellers and buyers of real property in this area.³ By virtue of broad industry participation and control over a key input, MLS, Inc. has market power in the provision of residential real estate brokerage services to sellers and buyers of real property in southeast Wisconsin.

¹ *Information and Real Estate Services, LLC*, FTC File No. 061-0087; *Northern New England Real Estate Network, Inc.*, FTC File No. 051-0065; *Williamsburg Area Ass'n of Realtors, Inc.*, FTC File No. 061-0268; *Realtors Ass'n of Northeast Wisconsin, Inc.*, FTC File No. 061-0267; *Monmouth County Ass'n of Realtors, Inc.*, FTC File No. 051-0217; *Austin Bd. of Realtors*, FTC File No. 051-0219. See generally <http://www.ftc.gov/opa/2006/10/realestatesweep.shtm>.

² See <http://www.ftc.gov/os/caselist/0610268/0610268consentanalysis.pdf>.

³ As noted, the MLS provides valuable services for a broker assisting a seller as a listing broker, by offering a means of publicizing the property to other brokers and the public. For a broker assisting a buyer, it also offers unique and valuable services, including detailed information that is not shown on public web sites, which can help with house showings and otherwise facilitate home selections.

Analysis to Aid Public Comment

B. Respondent's Conduct

The complaint accompanying the proposed consent order alleges that Respondent has violated the FTC Act by adopting rules and policies that limit the publication and marketing of certain sellers' properties, but not others, based solely on the terms of their respective listing contracts. Listing contracts are the agreements by which property sellers obtain services from their chosen real estate brokers. The restrictions challenged in the complaint accompanying the proposed order state that information about properties will not be made available on popular real estate web sites unless the listing contracts follow the traditional format approved by the MLS. When implemented, these restrictions prevent properties with non-traditional listing contracts from being displayed on a broad range of public web sites, including the "Realtor.com" web site operated by the National Association of Realtors, the local web site "wihomes.com" operated by MLS, Inc., and web sites operated by brokers or brokerage firms that are MLS members. The complaint alleges that the conduct was collusive and exclusionary, because in agreeing to keep non-traditional listings off the MLS and from public web sites, the brokers enacting the rules were, in effect, agreeing among themselves to limit the manner in which they compete with one another, and withholding valuable benefits of the MLS from real estate brokers who did not go along.

As was the case with the other MLSs that agreed to consent orders with the Commission, the contract favored by Respondent here is known as an "Exclusive Right to Sell Listing," and is the kind of listing agreement traditionally used by listing brokers to provide the full range of residential real estate brokerage services. Among the contracts disfavored by the Respondent is the kind known as an "Exclusive Agency Listing," which brokers can use to offer limited brokerage services to home sellers in exchange for set fees or reduced commissions.

Respondent adopted the challenged rules and policies in May 2001. In October 2006, prior to agreeing to the proposed consent order and prior to the Commission's acceptance of the consent order

Analysis to Aid Public Comment

and proposed complaint for public comment, the Board of Directors of MLS, Inc. voted to rescind the restriction. The members of the MLS affected by these rules were notified in November 2006 of the Board's intention to change its rules.

C. Competitive Effects of the Respondent's Rules and Policies

MLS, Inc.'s rules and policies have discouraged its members from offering or accepting Exclusive Agency Listings. Thus, the restrictions impede the provision of unbundled brokerage services, and may make it more difficult and costly for home sellers to market their homes. Furthermore, the rules and policies have caused home sellers to switch away from Exclusive Agency Listings to other forms of listing agreements. By prohibiting Exclusive Agency Listings from being transmitted to popular real estate web sites, the MLS, Inc. restrictions have adverse effects on home sellers and home buyers. When home sellers switch to full-service listing agreements from Exclusive Agency Listings that often offer lower-cost real estate services to consumers, the sellers may purchase services that they would not otherwise buy. This, in turn, may increase the commission costs to consumers of real estate brokerage services. In particular, the rules deny home sellers choices for marketing their homes and deny home buyers the chance to use the internet easily to see all of the houses listed by real estate brokers in the area, making their search less efficient.

D. There is No Competitive Efficiency Associated with the Web Site Policy

The Respondent's rules at issue here advance no legitimate procompetitive purpose. As a theoretical matter, if buyers and sellers could avail themselves of an MLS system and carry out real estate transactions without compensating any of its broker members, an MLS might be concerned that those buyers and sellers were free-riding on the investment that brokers have made in the MLS and adopt rules to address that free-riding. But this theoretical concern

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does not justify the restrictions adopted by the Respondent here. Exclusive Agency Listings are not a credible means for home buyers or sellers to bypass the use of the brokerage services that the MLS was created to promote, because a listing broker is always involved in an Exclusive Agency Listing, and other provisions in MLS, Inc.'s rules ensure that a cooperating broker – a broker who finds a buyer for the property – is compensated for the brokerage service he or she provides.

Under existing MLS rules that apply to any form of listing agreement, the listing broker must ensure that the home seller pays compensation to the cooperating selling broker (if there is one), and the listing broker may be liable himself for a lost commission if the home seller fails to pay a selling broker who was the procuring cause of a completed property sale. The possibility of sellers or buyers using the MLS but bypassing brokerage services is already addressed effectively by the Respondent's existing rules that do not distinguish between forms of listing contracts, and does not justify the series of exclusionary rules and policies adopted by MLS, Inc. It is possible, of course, that a buyer of an Exclusive Agency Listing may make the purchase without using a selling broker, but this is true for traditional Exclusive Right to Sell Listings as well.

III. The Proposed Consent Order

Despite the recent decision by Respondent's Board of Directors to remove the challenged restrictions, it is appropriate for the Commission to require the prospective relief in the proposed consent order. Such relief ensures that MLS, Inc. cannot revert to the old rules or policies, or engage in future variations of the challenged conduct. The conduct at issue in the current case is itself a variation of practices that have been the subject of past Commission orders; in the 1980s and 1990s, the Commission condemned the practices of several local MLS boards that had banned Exclusive Agency Listings entirely, and several consent orders were imposed.⁴

⁴ See, e.g., *In the Matter of Port Washington Real Estate Bd., Inc.*, 120 F.T.C. 882 (1995); *In the Matter of United Real Estate Brokers of Rockland, Ltd.*, 116 F.T.C. 972 (1993); *In the Matter of Am. Indus. Real Estate Assoc.*, Docket No. C-

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The proposed order is designed to ensure that Respondent does not misuse its market power, while preserving the procompetitive incentives of members to contribute to the joint venture operated by MLS, Inc. The proposed order prohibits Respondent from adopting or enforcing any rules or policies that deny or limit the ability of MLS participants to enter into Exclusive Agency Listings, or any other lawful listing agreements, with sellers of properties. The proposed order includes examples of such practices, but the conduct it enjoins is not limited to those five enumerated examples. In addition, the proposed order states that, within thirty days after it becomes final, Respondent shall have conformed its rules to the substantive provisions of the order. MLS, Inc. is further required to notify its participants of the order through its usual business communications and its web site. The proposed order requires notification to the Commission of changes in the Respondent's structure, and periodic filings of written reports concerning compliance.

The proposed order applies to Respondent and entities it owns or controls, including MetroMLS and any affiliated web site it operates. The order does not prohibit participants in the MLS, or other independent persons or entities that receive listing information from Respondent, from making independent decisions concerning the use or display of such listing information on participant or third-party web sites, consistent with any contractual obligations to Respondent.

The proposed order will expire in 10 years.

3449, 1993 WL 1thirty (30)09648 (F.T.C. Jul. 6, 1993); *In the Matter of Puget Sound Multiple Listing Serv.*, Docket No. C-3390 (F.T.C. Aug. 2, 1990); *In the Matter of Bellingham-Whatcom County Multiple Listing Bureau*, Docket No. C-3299 (F.T.C. Aug. 2, 1990); *In the Matter of Metro MLS, Inc.*, Docket No. C-3286, 1990 WL 10012611 (F.T.C. Apr. 18, 1990); *In the Matter of Multiple Listing Serv. of the Greater Michigan City Area, Inc.*, 106 F.T.C. 95 (1985); *In the Matter of Orange County Bd. of Realtors, Inc.*, 106 F.T.C. 88 (1985).

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IN THE MATTER OF

GOAL FINANCIAL, LLCCONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATIONS
OF THE GRAMM-LEACH-BLILEY SAFEGUARDS RULE AND PRIVACY
RULE AND SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-4216; File No. 072 3013
Complaint, April 9, 2008 – Decision, April 9, 2008

This consent order applies to practices of Goal Financial, LLC, in regard to personal information it collects from or about consumers in connection with its student loan and related services. The respondent's practices in storing the information failed to provide reasonable and appropriate security for consumers' sensitive personal information, leading to the transfer of consumer files to third parties and the potential exposure of personal information through sale of the company's hard drives. The order requires that Goal Financial not misrepresent the extent to which it maintains and protects the privacy, confidentiality, or integrity of any personal information collected from or about consumers. The order requires Goal Financial to establish and maintain a comprehensive information security program in writing that is reasonably designed to protect the security, confidentiality, and integrity of personal information it collects from or about consumers. In addition, Goal Financial must obtain, on a biennial basis for 10 years, an assessment and report from a qualified, objective, independent third-party professional, certifying that Goal Financial has in place a security program that provides protections that meet or exceed the protections required by the order; and that its security program is operating with sufficient effectiveness to provide reasonable assurance that the security, confidentiality, and integrity of nonpublic personal information has been protected. The respondent is required to retain documents relating to its compliance and to disseminate the order now and in the future to persons with responsibilities relating to the subject matter. Additional provisions of the order relate to notifying the Commission of changes in corporate status and submitting compliance reports to the Commission.

Participants

For the Commission: *Loretta Garrison, Marc Groman, Jamie Hine, Jessica Rich, Alain Sheer, and Joel Winston.*

For the Respondent: *Alysa Z. Hutnik and Lewis Rose, Kelley Drye Collier Shannon.*