

S. Ross
10/26

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. C 70-969
	)	
v.	)	
	)	
EXCLUSIVE MULTIPLE EXCHANGE; ABELSON	)	
and CARLSON, INC.; GUGGENHEIM REALTY, INC.;	)	
HACKETT and ARNOLD, INC.; HILLTOP REALTY,	)	
INC.; THE KENNY COMPANY; JOSEPH LARONGE,	)	DECREE BASED ON SETTLEMENT
INC.; JOHN P. MALONE and COMPANY; NEWTON	)	<u>AGREEMENT</u>
and TRITTON, INC.; EDITH BELL O'BOYLE,	)	
d/b/a EDITH O'BOYLE and COMPANY; THE	)	
A. B. SMYTHE COMPANY; TAYLOR SUTLIFF, INC.;	)	
W. I. WHITE COMPANY; E. G. WILKINSON, INC.;	)	
and WILLIAM E. WOODS and COMPANY;	)	
	)	JUDGE THOMAS D. LAMBROS
Defendants.	)	
	)	

On October 19, 1970, the United States initiated this action against the Exclusive Multiple Exchange (EME), a listing service and unincorporated association of real estate brokers, and its fourteen member firms. The name and address of each defendant are listed in Attachment A. The defendants conduct their real estate business primarily in twenty-nine communities in the Eastern suburbs of Cleveland. These areas are listed in Attachment B.

The primary purpose of the EME was to facilitate the sale of single and two-family dwellings by members through the operation of a listing service. Its membership was never greater than fourteen brokers, each of whom was a Class A member of the Cleveland Real Estate Board. The EME promulgated rules and regulations to govern the operations of its listing service.

The Complaint alleges that, as of the date of filing the Complaint, the defendants pursued a policy and practice of discriminating against persons

seeking housing on account of race and color. The Complaint also alleges that such conduct constituted a pattern or practice of resistance to full enjoyment of the rights secured by Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601 et seq., the fair housing provisions of federal law.

The EME and its fourteen member firms denied and continue to deny that they have violated the provisions of any federal law. They contend that they continue to abide by all provisions of the fair housing laws, both State and federal. The United States is desirous of ensuring that the defendants abide by the federal fair housing laws in their future operations. The defendants insist that they have done so in the past and will continue to do so, regardless of the outcome of this litigation. In view of these respective positions and defendants' willingness to comply with the law, the parties have agreed that no purpose would be served by litigating the issues before this Court and that the controversy should be resolved without the necessity of an extensive trial. Therefore, without a trial or an adjudication of this matter upon the merits of the cause, the plaintiff and the defendants have agreed to settle this case through the entry of this order.

The parties are in agreement that the obligations of defendants' salespersons as set forth in this Order do not affect the status of such salespersons as independent licencees and independent contractors under Ohio law.

Part I of this Order applies to all offices of defendants: Parts II through VI apply to defendants' offices located in any of the communities listed in Attachment B.

I

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Guggenheim Realty, Inc.; Hackett and Arnold, Inc.; Hilltop Realty, Inc.; The Kenny Company; Joseph Laronge, Inc.; John P. Malone and Company; Taylor Sutliff, Inc.; Edith Bell O'Boyle, d/b/a Edith O'Boyle and Company; Smythe, Cramer and Company; W. I. White Company; E. G. Wilkinson, Inc.; and William E. Woods and Company, their officers* employees, salespersons, and agents are permanently enjoined from:

* / excluding officers who are not active in the company's residential real estate business.

- (a) Discriminating against any person or group of persons on account of race, color, religion, or national origin in any aspect of the sale or rental of dwellings;
- (b) Denying or otherwise making any dwelling unavailable to any person on account of race, color, religion, or national origin;
- (c) Discriminating against any person in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.
- (d) Intentionally influencing or attempting to influence any prospective purchasers' locational choice on account of race, color, religion, or national origin.
- (e) Knowingly representing to any person on account of race, color, religion, or national origin that dwellings are unavailable when, in fact, they are available;
- (f) Making or causing to be made statements with respect to the sale or rental of dwellings indicating a preference or discrimination by owner, neighbors, or company on account of race, color, religion, or national origin;
- (g) Failing or refusing to deal with brokers on account of the race of their clients;*
- (h) Discouraging white persons from moving into areas on account of race, color, religion, or national origin of the present residents;**

* / Compliance with the procedures set forth in Attachment D will be deemed to be compliance with this provision.

**/ Nothing in this provision shall prohibit the defendants and their salespersons from giving specific information concerning racial or religious composition of neighborhoods in response to specific inquiries from prospects.

- (i) Honoring or giving any recognition to the validity of deed covenants, neighborhood association rules, or similar practices which have the purpose or effect of limiting or denying housing on account of race, color, religion, or national origin;*
- (j) Discriminating against any person on account of race, color, religion, or national origin in employment practices, including recruitment, hiring, assignment, transfer, promotion, suspension, and dismissal.

II

IT IS FURTHER ORDERED that the defendants shall forthwith adopt and implement the following program of compliance with the Fair Housing Act in order to insure that in the future all dwellings listed and shown by the defendants in all areas in which they do business will be made available for inspection by and sale to black persons on the same basis that they are made available for inspection by and sale to white persons:

- (a) Implement the standards, criteria, and procedures set forth in the attachments relating to the following areas by the following procedures:
 - (1) the treatment of prospective buyers.
The "Prospect Interview Record"
(Attachment C) shall be maintained with as much diligence and accuracy as possible for all black prospects;**
 - (2) providing access to listings*** to clients of other brokers through the co-broking procedures set forth in Attachment D;

*/ Nothing herein shall preclude the defendants from advising prospects of the existence of such covenants, etc.

**/ This requirement does not apply to individuals making telephone or mail contact only; with respect to prospects appearing only at open houses, name and address, if obtainable, are sufficient.

***/ "Listing" as used throughout this agreement and the attachments hereto is defined to mean "a written exclusive right to sell."

- (3) Insuring that the defendants' listings are made known to the public by advertising substantially all of their listings at least one time every two weeks in a daily newspaper of general circulation; no listings shall be withheld from advertising on the basis of race, color, religion, or national origin.
- (b) Instruct all employees and salespersons of the nondiscriminatory policies and practices of the defendants including notice of this court order. Such information shall be communicated personally by an officer of each defendant to its employees and salespersons at conferences or meetings. Each employee and salesperson shall sign a statement (Attachment E) indicating that he has been advised of the defendant's nondiscriminatory policies, that he has read or is familiar with the provisions of this order, and that he is aware that any employee or salesperson who fails or refuses to conform to these policies and practices and to this court order shall be subject to discipline, including demotion, suspension, or dismissal by the company.
- (c) Give notice of the nondiscriminatory policies of the defendants by including an appropriate statement (such as, "A Fair Housing Broker" or "Equal Housing Opportunity") in listing contracts, by posting notices in conspicuous places (one per office) on the premises of the defendants' offices, and by having available for persons with whom they deal copies of the Cleveland Area Board of Realtors open housing pamphlet.

- (d) Cooperate with and participate in the program of the Cleveland Businessmen's Interracial Committee to provide housing for minority employees (Attachment F);
- (e) When recruiting salespersons and clerical workers in residential real estate offices by advertising, make known to the Ohio State Employment Service or other sources of employment for minority groups defendants' job vacancies and requirements. Advertising used for these purposes shall be placed in publications of general circulation and shall include the phrase "Equal Opportunity Employer." In addition, within 30 days of the entry of this order, defendants shall so notify such sources of employment by letter.

III

IT IS FURTHER ORDERED that each defendant, for a period of three years from the date of this decree is entered, shall retain its listing contracts, listing sheets, day books, sale contracts, and all other business records relating to the period this decree is in effect. In addition each defendant, for the same period of time, shall retain all Attachment C forms which have been filled out by salespersons. Further each defendant shall keep a record of the name and business address of each real estate broker whose client is denied the opportunity to see a house, pursuant to the procedures set forth in Attachment D, and the date of the denial.

IT IS FURTHER ORDERED that each defendant shall, at four regular intervals* each year for two years,** file with the Court and serve on the United States a report for the period since the previous report, or since the filing of this order, containing the following information:

*/ The first report shall cover the period December 1, 1973 - February 28, 1974. All reports shall be filed not later than one calendar month after the period covered by the report has ended.

**/ The duration of the reporting period may be modified by agreement of the parties or order of the court after appropriate hearing.

- (a) The name and new address of each black person and the address of each white person who was sold a house through the services of a defendant;
- (b) The name, address, position and date of hire for each black salesperson and clerical worker employed;*
- (c) The name and position of any employee or salesperson against whom any disciplinary action was taken in the application of Part II, paragraph (b) above;
- (d) A brief covering letter describing all steps taken to comply with Part II, paragraphs (b), (c), and (d), above, and any other steps taken which bear on the subject matter of this order, attaching thereto representative copies of any letters, advertisements, correspondence, documents, or other papers prepared, distributed, or sent in connection therewith;
- (e) A description of any significant revision in the standards, criteria, or procedures set forth in Attachments C and D;
- (f) The addresses of all homes withheld from advertising in the newspapers, with a brief description of the reason(s) for withholding of advertising.

IT IS FURTHER ORDERED that, during the period of this decree, representatives of the United States shall be permitted to inspect and copy all pertinent records of the defendants by appointment with principal broker or his designee for that purpose at any reasonable time, provided, that the Government shall endeavor to minimize any inconvenience to the defendants and that the Government shall not inspect the records of any defendant more than once every 90 days unless pursuant to a complaint of violation of this Order..

*/ The parties recognize that the only obligations with respect to employment imposed upon the defendants under this agreement are those specified in Subparts I(j) and II(e) above.

All reports filed by the defendants with the court shall be sealed by the court and shall remain sealed and in the custody of the clerk in his vault, provided, however, that they may be unsealed and utilized in connection with any proceedings commenced by the United States to enforce the provisions of this order, where such reports are deemed by the United States to be relevant to the purpose of those proceedings.

IT IS FURTHER ORDERED that the United States shall retain exclusive possession of those copies of reports which the defendants file with the United States. The United States, its officers, agents, and employees are hereby restrained and enjoined from utilizing or permitting to be utilized the said reports, from disclosing their contents, and from copying or permitting to be copied any reports or the contents thereof, except in connection with the further proceedings of this case and of this order.

IV

In order to assure that each prospective purchaser has complete information regarding the availability of homes in all areas and to assure that prospects are afforded a realistic opportunity to purchase in neighborhoods where members of a race other than their own predominate or may be concentrated, defendants shall place a map, in each of their residential real estate sales offices, in a conspicuous place and of sufficient size and clarity to be easily read and understood, containing at a minimum the following information:

- (a) A depiction of all residential areas in which the defendants have homes available for sale;
and
- (b) A notice stating, "WE CAN FIND YOU A HOME ANYWHERE ON THIS MAP. JUST ASK," or words of similar import.

V

IT IS FURTHER ORDERED that no contempt proceeding shall be initiated against any broker for the illegal acts of any salesperson if the broker:

- (1) has given the salesperson instructions as to the nondiscriminatory policy of the company;
- (2) had no knowledge of the illegality prior to its occurrence;

and (3) has taken appropriate steps to deter a re-occurrence of such behavior.

VI

IT IS FURTHER ORDERED that this decree shall terminate three years from the date of entry unless the duration of the decree is modified during its existence by agreement of the parties or by order of the court after appropriate hearing.

IT IS FURTHER ORDERED that, with respect to any further proceeding in this action initiated by any party to this decree, each defendant shall be treated as responsible solely for the acts of its own officers, salespersons, and employees as set forth hereinabove.

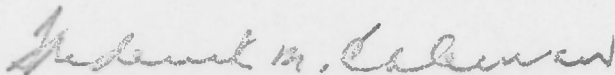
IT IS FURTHER ORDERED that no costs shall be assessed against the defendants in light of their agreement to take the affirmative steps described above. The court shall retain jurisdiction of this action for all purposes until the termination of this order.

ORDERED this day of , 1973.

UNITED STATES DISTRICT JUDGE

The undersigned consent to the entry of this Order:

For the Plaintiff



FREDERICK M. COLEMAN
United States Attorney

ALEXANDER C. ROSS
CHARLES D. BENNETT, JR.
MICHAEL L. BARRETT
HARVEY L. HANDLEY, III
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Department of Justice

For the Defendants

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JOHN P. MALONE, JR.
Attorneys for Defendants

EDITH BELL O'BOYLE, d/b/a
EDITH O'BOYLE and COMPANY

GUGGENHEIM REALTY, INC.

SMYTHE, CRAMER and COMPANY

HACKETT and ARNOLD, INC.

TAYLOR SUTLIFF, INC.

HILLTOP REALTY, INC.

W. I. WHITE COMPANY

THE KENNY COMPANY

E. G. WILKINSON, INC.

JOSEPH LARONGE, INC.

WILLIAM E. WOODS and COMPANY

JOHN P. MALONE and COMPANY

ATTACHMENT A

1. Abelson and Carlson, Inc. *
3101 Mayfield Road
2. Guggenheim Realty, Inc.
29425 Chagrin Blvd. (Main Office)
5414 Mayfield Road
3. Hackett and Arnold, Inc.
12417 Cedar Road (Main Office)
Landerwood Plaza
4. Hilltop Realty, Inc.
5035 Mayfield Road
3938 Mayfield Road
6151 Wilson Mills Road
8334 Mentor Avenue
30800 Lake Shore (Willowick)
5. The Kenny Company
2260 Warrensville Center Road
28749 Chagrin
5646 Mayfield Road
6. Joseph Laronge, Inc.
Citizens Building (Main Office)
24500 Chagrin
5380 Mayfield Road (Mayfield-Green Office)
5333 Northfield Road (Southeast Office)
7. John P. Malone and Company
13125 Shaker Square
La Place Shopping Center, Cedar at Richmond
8. Newton and Tritton, Inc. *
3534 Mayfield Road
9. Edith O'Boyle and Company
12800 Cedar Road
10. The A. B. Smythe Company **
1304 Investment Plaza (Main Office)
20100 Chagrin Boulevard (Heights Office)
3101 Mayfield Road (Cleveland Heights Office)
Chagrin River Road (Gates Mills Office)
30650 Pinetree Road (Pepper Pike Office)
19141 Hilliard (Rocky River Office)
41 North Main Street (Chagrin Falls Office)
7630 Chippewa Road (Brecksville)
Aurora Village Commons (Aurora)
20111 Lake Road (Rocky River)
23844 Lorain Road (North Olmstead)
Westgate Shopping Center (Fairview Park)
14716 Detroit Avenue (Lakewood)
6594 Mentor Avenue (Mentor)
6587 Pearl Road (Parma Heights)

* No longer in existence

** Now Smythe, Cramer and Co.

11. Taylor Sutliff, Inc.
13124 Shaker Square
30650 Pinetree Road (Pepper Pike)
12. W. I. White Company
3570 Warrensville Center Road (Main Office)
Landerwood Plaza (Pepper Pike Office)
13. E. G. Wilkinson, Inc.
2495 Lee Boulevard
14. William E. Woods and Company
24800 Chagrin Boulevard

ATTACHMENT B

Aurora
Bainbridge
Beachwood
Bentleyville
Chagrin Falls
Chesterland
Cleveland (Shaker Heights School District)
Cleveland Heights
Forest Hill
Gates Mills
Highland Heights
Hunting Valley
Kirtland
Lyndhurst
Mayfield Heights
Mayfield Village
Moreland Hills
Orange Village
Pepper Pike
Richmond Heights
Russell
Shaker Heights
Solon
South Euclid
South Russell
University Heights
Waite Hill
Warrensville Heights
Woodmere

ATTACHMENT C

PROSPECT INTERVIEW RECORD

Date of Last
Follow Up

[illegible]

Name _____ Address _____
Home Phone _____ Bus. Phone _____ Occupation _____

Type of Home _____

No. in Family _____ Present Employer _____

No. of Bedrooms _____ Baths _____ Family Rm. or Den _____

Lot Size _____ Basement _____ Other _____

Location Desired _____ Schools _____

Owns Home _____ Rents _____ Lease Expires _____ Other _____

PRICE RANGE \$ _____ Down Payment \$ _____

Monthly Payment Range _____ Possession _____

REMARKS: _____

Source of Inquiry _____ Information taken by _____

Date _____ (Record of Properties submitted on back side)

Properties Submitted

(A) Property Described Only
(B) Property shown by sales
man

[illegible]

ATTACHMENT D

Whenever a company which is a member of the Cleveland Area Board of Realtors seeks the cooperation of one of the defendant companies to show a defendant company listing* to one of its own clients, the defendant company will insure that the client has the opportunity to be shown, and, if appropriate, buy the house, as follows:**

a. In those cases where the defendant company and the other real estate company can agree as to the amount of the division of the real estate commission between the two companies, the defendant company will arrange showing of the house and take whatever other steps are necessary towards completion of a sales transaction on a co-broking basis with the defendant company.

b. In those cases where the defendant company and the other real estate company cannot agree as to the amount of the division of the real estate commission between the two companies, the defendant company will make the house available to the other company's client by offering to show the house itself, and, if a sale results, pay the other company a referral fee in the amount of ten percent of the gross company commission.

All arrangements referred to in this attachment shall be made on a broker-to-broker basis with the understanding that, in the absence of the broker, arrangements may be made through the person then in charge of the office.

*/ "Listing" as used in this agreement is defined to mean "a written exclusive right to sell."

**/ Nothing herein shall be construed to limit the right of a defendant company to qualify the prospect in accordance with standard real estate practices or require a defendant company to service prospects who they have substantial reason to believe are not bona fide homeseekers.

ATTACHMENT E

This agreement, made this _____ day of _____, 197_ by and between _____ hereinafter referred to as Broker/Company, and _____ hereinafter referred to as Salesperson.

The undersigned Salesperson hereby acknowledges that he has read the Cleveland Real Estate Board Open Housing Pamphlet, and has been instructed of the nondiscriminatory policies and practices of the Broker, including notice of Court Order entered in United States v. Exclusive Multiple Exchange, et al., Civil Action No. C 70-969. Such information has been communicated personally by an officer of the Company to the undersigned Salesperson at conferences or meetings.

The undersigned Salesperson further acknowledges that he is aware that any Salesperson or employee who fails or refuses to conform to these policies and practices and to said Court Order shall be subject to discipline, demotion, suspension, or dismissal by the Company.

BROKER: _____

SALESPERSON: _____

ATTACHMENT F.

PROCEDURE FOR COOPERATION BETWEEN EMPLOYERS
AND
BROKERS TO ENCOURAGE FAIR HOUSING

1. A list will be made naming industrial and other employers who adopt a policy of actively promoting observance of the Fair Housing Laws by encouraging their employees to list their property with real estate brokers whose policy it is to show property on an open basis. These employers in their own real estate transactions also will deal with such brokers. Every employer in the Cleveland Metropolitan Area adopting such policy and desiring to be named in the list will be included therein.
2. Real estate brokers will be encouraged to adopt a policy of showing all available homes which meet the purchasers' requirements, in the respective areas which they service, without regard to race, color, creed or national origin, and to record this commitment with the employers for whom they wish to provide real estate service and for referral to the latter's employees.
3. In case an employer is interested in the sale or purchase of a property by an employee, by reason of an employer-initiated transfer or otherwise, the employer will furnish the employee with the names of cooperating brokers.