

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Jon Leibowitz, Chairman**
 Pamela Jones Harbour
 William E. Kovacic
 J. Thomas Rosch

)	
In the Matter of)	
)	
REALCOMP II, LTD.,)	Docket No. 9320
a corporation.)	
)	

FINAL ORDER

The Commission has heard this matter on the appeal of Counsel Supporting the Complaint from the Initial Decision and on briefs and oral argument in support of and in opposition to the appeal. For the reasons stated in the accompanying Opinion of the Commission, the Commission has determined to reverse and vacate the Initial Decision and enter the following order. Accordingly,

I.

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

- A. “Respondent” or “Realcomp” means Realcomp II Ltd., a corporation organized, existing and doing business under and by virtue of the laws of the State of Michigan, with its office and principal place of business at 28555 Orchard Lake Road, Suite 200, Farmington Hills, Michigan 48334. The term also means the Realcomp Owners, Board of Directors, its predecessors, successors, assigns, divisions and wholly or partially owned subsidiaries, committees, affiliates, licensees of affiliates, partnerships, and joint ventures; and all the directors, officers, shareholders, participants, employees, consultants, agents, and representatives of the foregoing. The terms “subsidiary,” “affiliate” and “joint venture” refer to any person in which there is partial or total ownership or control by Realcomp, and is specifically meant to include Realcomp MLS and/or each of the Realcomp Websites.

- B. “Owners” means the current and future Boards and Associations of Realtors that are the sole shareholders of Realcomp, which included the Dearborn Board of REALTORS, Detroit Association of REALTORS, Livingston Association of

REALTORS, Metropolitan Consolidated Association of REALTORS, North Oakland County Board of REALTORS, Eastern Thumb Association of REALTORS and Western-Wayne Oakland County Association of REALTORS at the time of entry of this order.

- C. “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 and offering compensation in and facilitating real estate transactions.
- D. “Realcomp MLS” means the Realcomp MLS or any other MLS owned, operated or controlled, in whole or in part, directly or indirectly, by Realcomp, any of its Owners, predecessors, divisions and wholly or partially owned subsidiaries, affiliates, and all the directors, officers, employees, agents, and representatives of the foregoing.
- E. “Realcomp Member” means any person authorized by Realcomp to use or enjoy the benefits of the Realcomp MLS, including but not limited to Members and Subscribers as those terms are defined in the Realcomp Rules and Regulations.
- F. “IDX” means the internet data exchange process that provides a means or mechanism for MLS listings to be integrated within a Website.
- G. “IDX Website” means a Website that is capable of integrating the IDX listing information within the Website.
- H. “Moveinmichigan.com” means the Website owned and operated by Realcomp that allows the general public to search information concerning real estate listings from Realcomp.
- I. “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 Realcomp.
- J. “Approved Website” means a Website to which Realcomp or Realcomp MLS provides information concerning listings for publication including, but not limited to, Realcomp Member IDX Websites, Moveinmichigan.com, and Realtor.com.
- K. “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 broker a commission when the property is sold,

whether by the broker, the owner or another broker, and any additional definition that Realcomp ascribes to the term “Exclusive Right to Sell Listing.”

- L. “Exclusive Agency Listing” means a listing agreement that authorizes the listing broker, as an exclusive agent, to offer cooperation and compensation on a blanket unilateral basis, but also reserves to the seller a general right to sell the property on an unlimited or restrictive basis, and any additional definition that Realcomp ascribes to the term “Exclusive Agency Listing.”

- M. “Services of the MLS” means the benefits and services provided by the MLS to assist Realcomp Members 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 Moveinmichigan.com, Realtor.com and IDX Websites.

- N. “Full Service” means a listing broker will provide all of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on behalf of the seller(s) in negotiations leading to the sale of the listed property.

- O. “Other Lawful Listing” means a listing agreement, other than an Exclusive Right to Sell Listing or Exclusive Agency Listing, which is in compliance with applicable state laws and regulations, including but not limited to, Limited Service listings and MLS Entry Only listings.

- P. “Limited Service Listing” means a listing agreement in which the listing broker will not provide one or more of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on behalf of the seller(s) in negotiations leading to the sale of the listed property.

- Q. “MLS Entry Only Listing” means a listing agreement in which the listing broker will not provide any of the following services: (1) Arrange appointments for cooperating brokers to show listed property to potential purchasers; (2) Accept and present to the seller(s) offers to purchase procured by cooperating brokers; (3) Advise the seller(s) as to the merits of offers to purchase; (4) Assist the seller(s) in developing, communicating, or presenting counteroffers; and (5) Participate on behalf of the seller(s) in negotiations leading to the sale of the listed property.

II.

IT IS FURTHER ORDERED that Respondent Realcomp, 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 Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from adopting or enforcing any policy, rule, practice or agreement of Realcomp that denies, restricts or interferes with the ability of Realcomp Members 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 that:

1. prevents Realcomp Members from offering or accepting Exclusive Agency Listings or any Other Lawful Listings;
2. prevents Realcomp Members from cooperating with listing brokers or agents that offer or accept Exclusive Agency Listings or any Other Lawful Listings;
3. prevents Realcomp Members, or the sellers of properties who have entered into lawful listing agreements with Realcomp Members, from publishing information concerning listings offered pursuant to Exclusive Agency Listings or any Other Lawful Listings on the Realcomp MLS and Approved Websites;
4. denies or restricts the Services of the MLS to Exclusive Agency Listings or any Other Lawful Listings in any way that such Services of the MLS are not denied or restricted to Exclusive Right to Sell Listings;
5. as pertaining to the searching, sorting, ordering, transmission, downloading, or displaying of information pertaining to such listings, treats 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, practice or agreement that:
 - a. discriminates against Exclusive Agency Listings or Other Lawful Listings in the property search functions in the Realcomp MLS by defaulting to another listing type;

- b. defaults the searches in the Realcomp MLS to Exclusive Right to Sell/Full Service Listings and Unknown listings; or
 - c. associates Exclusive Right to Sell Listings with Full Service, and/or that does not allow Exclusive Right to Sell/Limited Service Listings and Exclusive Right to Sell/MLS Entry Only Listings; or
6. in any other respect, treats Exclusive Agency Listings, or any Other Lawful Listings, in a less advantageous manner than Exclusive Right to Sell Listings or any Other Lawful Listing.

Provided, however, that nothing herein shall prohibit the Respondent from adopting or enforcing any policy, rule, practice or agreement regarding subscription or participation requirements, payment of dues, administrative matters, or any other policy, rule, practice or agreement, that it can show is reasonably ancillary to the legitimate and beneficial objectives of the MLS.

III.

IT IS FURTHER ORDERED that Respondent shall, no later than thirty (30) days after the date this Order becomes final, amend 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) inform each Realcomp Member of the amendments to its rules and regulations to conform to the provisions of this Order; and (2) provide each Realcomp Member 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 Realcomp'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 Realcomp Member whose email address is known to Realcomp; (B) mail to any Realcomp Member whose email address is unknown 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; and (C) placing on the publicly accessible Realcomp Website (www.Realcomp.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.

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 proposed 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 October 30, 2019.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: October 30, 2009