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Manhattan real estate antitrust lawsuit proceeds

Judge tosses monopolization claims in pretrial opinion

Wednesday, August 22, 2007

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A U.S. District Court judge in New York has ruled that portions of an antitrust lawsuit filed against a Manhattan real estate trade group and several brokerage firms and technology companies may proceed to trial, while invalidating other aspects of the complaint.

BrokersNYC, a real estate technology company, [charged in its 2004 lawsuit](#) that the Real Estate Board of New York trade group, several member firms and technology companies illegally blocked competition and sought to monopolize the market for Manhattan residential brokerage services and for technology services related to property listings information.

In an Aug. 6, 2007, pretrial opinion, U.S. District Court Judge Leonard B. Sand dismissed charges of monopolization while finding that BrokersNYC could proceed with other antitrust charges.

Steven Spinola, REBNY president, said in a statement, "I applaud the U.S. District Court's decision to summarily dismiss the major allegations raised in this suit. The decision reaffirms what we have said all along that this suit has no merit or legal foundation."

He added, "Although the court found that there were a few issues of fact that should be heard before a jury, we are encouraged that the court found there was no direct evidence on these issues. Should these remaining issues survive, we are fully prepared to defend ourselves and are confident that ultimately we will be victorious."

Century-old REBNY has about 365 residential brokerage firm members and 12,000 total members, including builders, property owners, bank officials, lawyers, architects and others working in real estate-related professions.

Meanwhile, Andrew B. Friedman, a lawyer representing BrokersNYC said this week, "The main part of the claim is still going forward." Friedman said the next pretrial court date is set for Sept. 4 and no date has yet been set for a trial. He also said that lawyers for the defendants in the case have filed another motion that asks the judge to reconsider whether to allow the remaining portions of the complaint to proceed.

BrokersNYC is owned by LaLa Wang, an advocate for opening up the New York City real estate market to practices common in other real estate markets across the country. Wang has clashed with industry forces in the past, and her brokerage license was suspended in 2000 over her company's online listings of rental apartments for a fee.

BrokersNYC alleges in the lawsuit that REBNY member firms agreed through the trade group that they would use one type of internal data transmission system, called ROLEX, and allowed only two technology vendors -- RealPlus and On-Line Residential Inc. (OLR).

Those vendors were approved, BrokersNYC charged, based on a so-called "25-firm policy" passed by REBNY that excluded vendors with fewer than 25 REBNY-member clients.

BrokersNYC and another vendor, VLS, "made several requests for a data interface with ROLEX on the same terms as OLR and offered to pay any costs that would be incurred in creating such an interface," the lawsuit alleges. "RealPlus ... did not create an interface and REBNY declined to do anything to encourage

RealPlus to create an interface with (BrokersNYC or VLS)."

That agreement to allow two vendors shut out competition by BrokersNYC and another vendor, the lawsuit alleges, and the judge found that the company "has raised a genuine issue of fact as to whether the brokerage defendants acted in concert to restrain trade through REBNY."

While the judge's opinion does not prove that any allegations by BrokersNYC are true, it does allow the company to attempt to prove those claims in court if the case proceeds to trial.

RealPlus is a listings management information technology vendor owned in part by Terra Holdings, which is the parent company for REBNY member-company Brown Harris Stevens and Halstead Property, according to the court filing, and OLR offered listings management services to Manhattan brokerage firm and REBNY member CitiHabitats.

Brown Harris Stevens, Terra Holdings, Halstead Property, William B. May Co., Heron Properties Realty, Fox Residential Group, Prudential Real Estate Affiliates, Stribling & Associates, Bellmarc Realty, Sotheby's International Realty and The Corcoran Group were all named as defendants in the lawsuit, though the judge ruled that Prudential Real Estate Affiliates and William B. May Co. are dismissed from the lawsuit.

The judge dismissed charges of attempted monopolization of the Manhattan real estate property listings technology market in the lawsuit because BrokersNYC "has not pointed to any evidence that RealPlus and OLR seek to form a single entity or that competition between them has diminished or that they have allocated customers."

The judge also dismissed charges that brokerage companies named in the lawsuit sought to monopolize the Manhattan residential brokerage services market because BrokersNYC "is neither a consumer nor a competitor in the relevant market," and "is too remote a party to have antitrust standing."

The complaint alleges that BrokersNYC, RealPlus and OLR each represented about a third of the market for property listings information technology services in Manhattan in 2002, prior to REBNY's adoption of the ROLEX system. By 2006, the complaint said, RealPlus' market share in Manhattan had grown to more than 70 percent while BrokersNYC's had fallen to 13 percent.

The judge states in his opinion that BrokersNYC "has offered evidence that defendants' market share in that market is over 70 percent and potential competitors face high barriers to entry. Therefore a jury reasonably could find that defendants have market power in the relevant market and from that infer that there was harm to competition," and he found that there were sufficient questions raised to proceed with this antitrust claim.

Defendants have countered that a service promoting the exchange of exclusive property listings among Manhattan brokerage firms "has substantial procompetitive effects in the residential real estate brokerage market and choosing a single transmission standard makes the exchange more efficient," the judge noted, adding, "a substantial question of fact exists as to whether defendants' purported justification for denying (BrokersNYC) and other potential competitors an interface with the ROLEX system ... outweighed its anticompetitive effects."

In March, REBNY announced that it is working with online search and marketing site Trulia.com to build a [public property-search Web portal](#) for those residential brokerage firm members who choose to supply listing information, though participation in this portal is voluntary.

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