

Feds probe real estate agents

Money magazine investigation shows Justice Dept. looking into anticompetitive practices.

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By Jon Birger, Money Magazine

NEW YORK (CNN/Money) - Did you pay your real estate broker too much? The U.S. Department of Justice may be set to turn Tulsa, Okla. into a test-case for ending the stranglehold 6 percent commissions have over the real estate brokerage business.

MONEY has learned that Justice's Antitrust Division is gathering information on the bully tactics that full-commission brokers in Tulsa allegedly use against their discount rivals to discourage commission-cutting. The probe follows other recent efforts to spur competition in the real estate industry.

According to a copy of a Justice Department subpoena obtained by MONEY, federal investigators are seeking information on "possible anticompetitive conduct in the provision of real estate services in the Tulsa area" as well as "documents related to refusal to cooperate on real estate transactions." An Antitrust Division spokeswoman confirmed the existence of the investigation but declined to provide additional details.

Al Unser, executive director of the Greater Tulsa Association of Realtors said: "We received a CID [civil investigative demand] from the Justice Dept. and we have responded."

Economists who study real estate, such as the University of Cincinnati's Norm Miller, believe anti-competitive behavior is the primary explanation for the persistence of the 6 percent commission.

J.D. Smith and Bob Meyer are two Tulsa discount real estate agents who say they were interviewed by federal investigators. They say the investigators wanted information on full-commission agents' alleged refusal to show home-buying clients properties listed by discount brokers -- a tactic known as boycotting.

Boycotting exploits the one major weakness of the multiple listing service.

The MLS's upside is that it centralizes all homes for sale in a single electronic marketplace that can be accessed by all agents -- and these days by Web-savvy consumers as well.

The downside is that brokers must depend on one another to help sell their homes, and that discourages them from undercutting each other's commissions.

While boycotting the listings of discounters is generally considered an antitrust violation -- if undisclosed, it's also a breach of fiduciary duty to clients -- industry insiders are well aware that boycotting goes on, even if they claim not to condone it.

For Smith, the Feds' investigation comes a year or so too late. His realty business on the brink of ruin, Smith recently abandoned discount brokerage and went back to charging 6 percent. "In one week," Smith said, "I've had more showings and more offers from other realtors than I had in the previous two months."

The Tulsa investigation is part of an ongoing Antitrust Division foray into the sharp-elbowed realty world. In March, the Antitrust Division sued the Kentucky Real Estate Commission over a state law that prohibits real estate brokers from offering commission rebates to consumers.

More recently, Assistant Attorney General R. Hewitt Pate sent letters to lawmakers and regulators in Oklahoma and Texas, urging them to reject proposals that would effectively prohibit brokers from engaging in limited-service or fee-for-service realty -- such as listing a home for sale on the multiple listing service for a flat fee of \$500.

Bruce Hahn, chairman of the American Homeowners Grassroots Alliance, argues that state prohibitions on rebates and fee-for-service discourage competition and inflate commissions paid by consumers. "We've talked to Justice, and we think what they're doing is tremendous," he said.

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