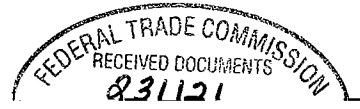


ORIGINAL

PUBLIC RECORD

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION



In the Matter of

)
)
)

Docket No. 9320

)
Stephen J. McGuire

Respondent Realcomp II Ltd. ("Respondent" or "Realcomp") hereby moves for summary decision, pursuant to 16 C.F.R. § 3.24, seeking dismissal of the complaint for failure to state a claim upon which relief can be granted. Alternatively, in the event this Court determines that the complaint should not be dismissed in its entirety, Realcomp requests a ruling that specifies: (1)

every remaining, alleged basis for relief; and (2) the controlling standard(s) for any grant of relief.

In support of its motion, Realcomp states:

1. Realcomp is a Michigan corporation that is owned by several realtor boards and associations (complaint and answer, ¶ 1).¹ Realcomp serves its members in Southeastern Michigan, including Livingston, Oakland, Macomb, St. Clair and Westland Counties. (¶ 1)

listing broker, the owner or another broker. An Exclusive Right to Sell Listing is the form of listing agreement traditionally used by listing brokers to provide full-service residential real estate brokerage services."

"An alternative form of listing agreement to an Exclusive Right to Sell Listing is an **Exclusive Agency Listing**. 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. The broker agrees to the property owner or~~

principal a right to sell the property without further assistance of the listing broker, in which case the listing broker is paid a reduced or no commission when the property is sold."

(complaint and answer, ¶¶ 8, 9, emphasis added).²

6. In or about the fall of 2003, Realcomp changed the Realcomp MLS search screen to default to Exclusive Right to Sell Listings ("Search Function Policy"). This means that Exclusive Agency listings are not included in the initial search database unless a Realcomp member selects additional listing types in the search screen (Complaint and answer, ¶ 16). Realcomp members may change the default search settings (such that Exclusive Agency listings are always included), which is described as being to make this change, and Realcomp does not prohibit this option. (See deposition of Robert Taylor, p 123, Exhibit B.)

7. Realcomp does not deny membership to brokers who choose to offer Exclusive Agency Listings to their clients. (See deposition of Craig Mincy, p 18, Exhibit C.)

restrain and eliminate competition in the provision of residential real estate brokerage services

1. Name

[Redacted]

[Redacted]

[Redacted]

[Redacted]

1.5 [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

that traditional antitrust principles justify adding the present case to the few existing exceptions

from the proposition that there is no duty to aid competitors." *Id.* at 111

axiomatic that the antitrust laws were passed for the 'protection of *competition, not competitors*' .

. . . Even an act of pure malice by one business competitor against another does not, without more,

state a claim under the federal antitrust laws; those laws do not create a federal law of unfair-

controlled by a single firm will be considered 'essential' only if control of the facility carries with it the power to *eliminate* competition in the downstream market.").

15. Complainant has identified only one witness who alleged that his business was

discontinued in Michigan allegedly because of the DeLoe rule challenged in this case. Even

worst housing market in the country in terms of the decline in sales and increase in inventory (Exhibit H, deposition, p 35).

17. Craig Mincy owns MichiganListing.com, which provides both Exclusive Rights to Sell and Exclusive Agency real estate offerings (Exhibit C, deposition, p 4). He testified that his Exclusive Right to Sell and Exclusive Agency business each increased about 30% from 2005 to 2006, and is trending upward for 2007 (*Id.*, pp 7-8). He does not notice any difference between Exclusive Right to Sell and Exclusive Agency listings with respect to the time that they

19. Complainant suggests that Realcomp precludes exclusive agency listings from getting onto Realtor.com, a national website. (12/04/06 Prehearing Tr, pp 27-28). But testimony in this case establishes that Exclusive Agents can and do take advantage of other MLSs that have less restrictive policies to have these listings placed on Realtor.com. Chris M... testified that

he is able to place his Exclusive Agency Listings onto Realtor.com through his affiliation with the Shiawassee Regional Board of Realtors (Exhibit C deposition, p 12). Similarly, [Redacted confidential material.]

20. Thus, Exclusive Agency brokers are able to continue to do business selling residential real estate in Michigan, including the Realcomp Service Area. The Complaint fails to

32 The testimony produced in this case establishes that DeLooney is not an

1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

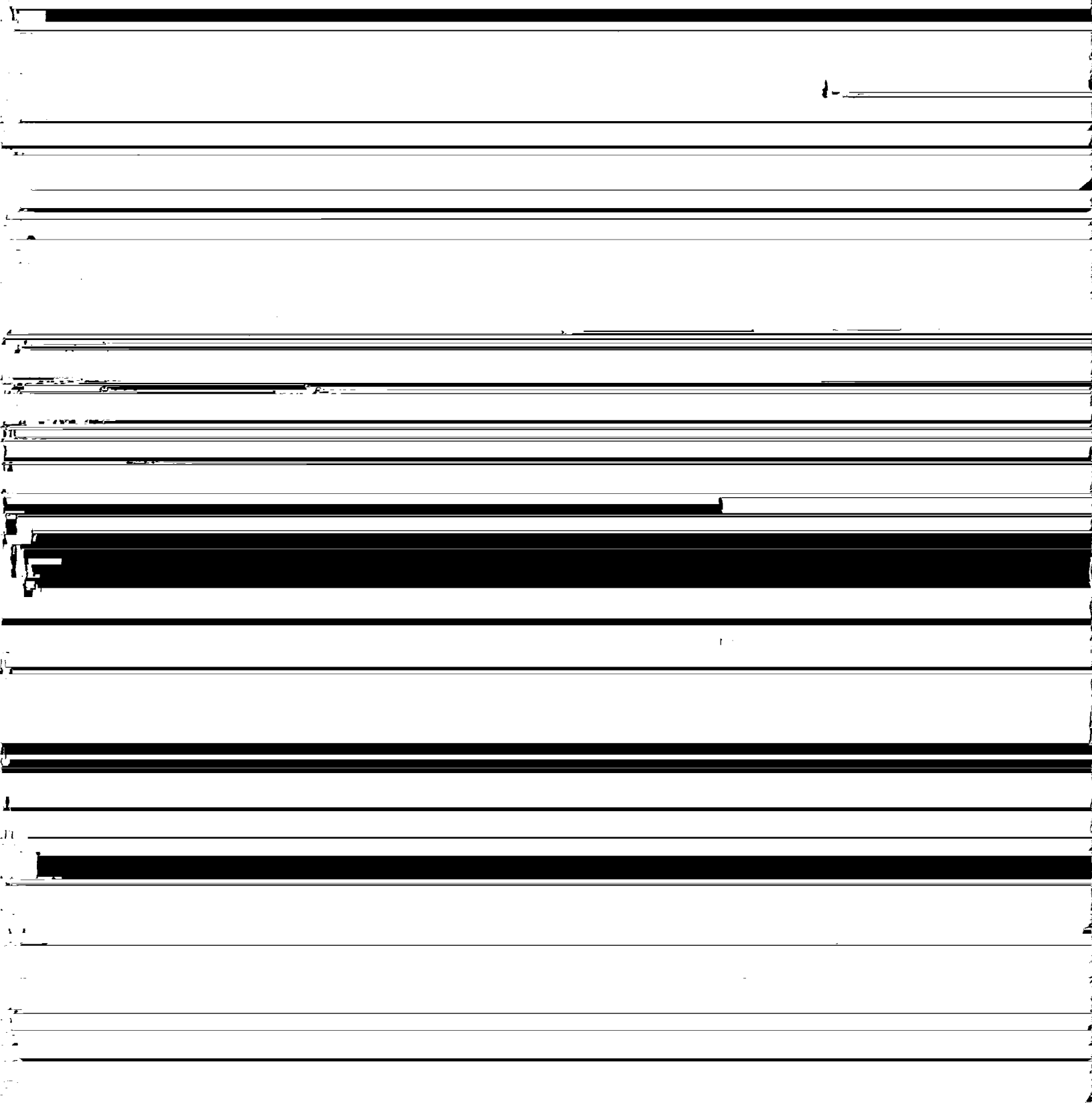
[REDACTED]

[REDACTED]

[REDACTED]

the case, without notice to the affected party, and then finding adversely to that party); *NLRB v Johnson*, 322 F2d 216 (6th Cir. 1963) (discussing complaint that failed to apprise the respondent of the issues that it was obliged to meet).

26 Realcomp similarly requests a ruling that specifies the standard(s) governing any



Certificate of Service


I hereby certify that on this 23rd day of April, 2007, I caused the original and two copies of the foregoing public record version of Respondent's Motion and Points of Authority for Dismissal to be filed with the Secretary of the Commission by overnight courier.

I also certify that on this same date I served a copy of the foregoing document by electronic mail and first class mail upon:

Sean P. Gates, Esq.
601 New Jersey Ave., N.W.
Rm NI-6219
Washington, DC 20001

I also certify that I caused two paper copies of the foregoing document to be hand delivered by overnight courier to:

Hon. Stephen J. McGuire
Chief Administrative Law Judge
Federal Trade Commission


Lorri A. Rosier

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

_____)	
In the Matter of)	Docket No. 9320
)	
REALCOMP II LTD.,)	Chief Administrative Law Judge
)	Stephen J. McGuire
Respondent.)	
_____)	

EXHIBITS A I

TO
RESPONDENT REALCOMP II, LTD.'S
MOTION AND POINTS OF AUTHORITY FOR DISMISSAL

1

UNITED STATES OF AMERICA

2

FEDERAL TRADE COMMISSION

[REDACTED]

1 0 Are you familiar with the Realcomp rules that contain

1 help us, you know, facilitate our business, which is
2 real estate brokerage _____

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4

5 IN THE MATTER OF:

6 REALCOMP, II, LTD.,

7 Docket No. 9320
8 _____
9

10 RESTRICTED CONFIDENTIAL PORTIONS

1 A No

To the Members of the [redacted]

1 Q Let me go back because I'm just not understanding.

2 A Okay.

3 Q The 140 listings refers to what year?

1 A Yeah. Again, 2004 we were --

2 Q Just starting?

3 A -- we were only open a couple months. So...

4 Q And 2007 so far this year, is it trending upward or --

... ..

[REDACTED]

1 Q And you indicated you had a partner there; is that
2 correct?

3 A Also Gary McCririe, yeah.

4 I wasn't a partner in Help-U-Sell. I joined
5 Help-U-Sell, became a partner, and we bought Realty
6 Executives.

7 Q I understand that you've got the secondary membership
8 with the Shingassoo board. Correct?

1 A Price.

2 Q -- is that right?

3 A Yes.

4 Q I'm talking about time on market. Do you notice any
5 difference between your limited-service listings and
6 your full-service listings as to the --

7 A I really don't. I really don't.

8 Q From your experience, what are the primary factors that
9 drive the actual sale of residential real estate? What

BEFORE FEDERAL TRADE COMMISSION

In the Matter of

interrogatory as overly broad and unduly burdensome to the extent it calls for information protected by the attorney work product doctrine. Subject to these objections and the General Objections, Complaint Counsel responds as follows:

operates a MLS with over 14,500 real estate professionals or members with a license and...

Interrogatory No. 5:

Identify all witnesses with knowledge regarding internet-based websites and other means available to brokers offering Exclusive Agency Listings or Unbundled Pool

Re: State Services to enter and execute...

Southeastern Michigan during the relevant time period.

Response to Interrogatory No. 5:

In addition to the General Objections, Complaint Case 1...

[Redacted]

[Redacted]

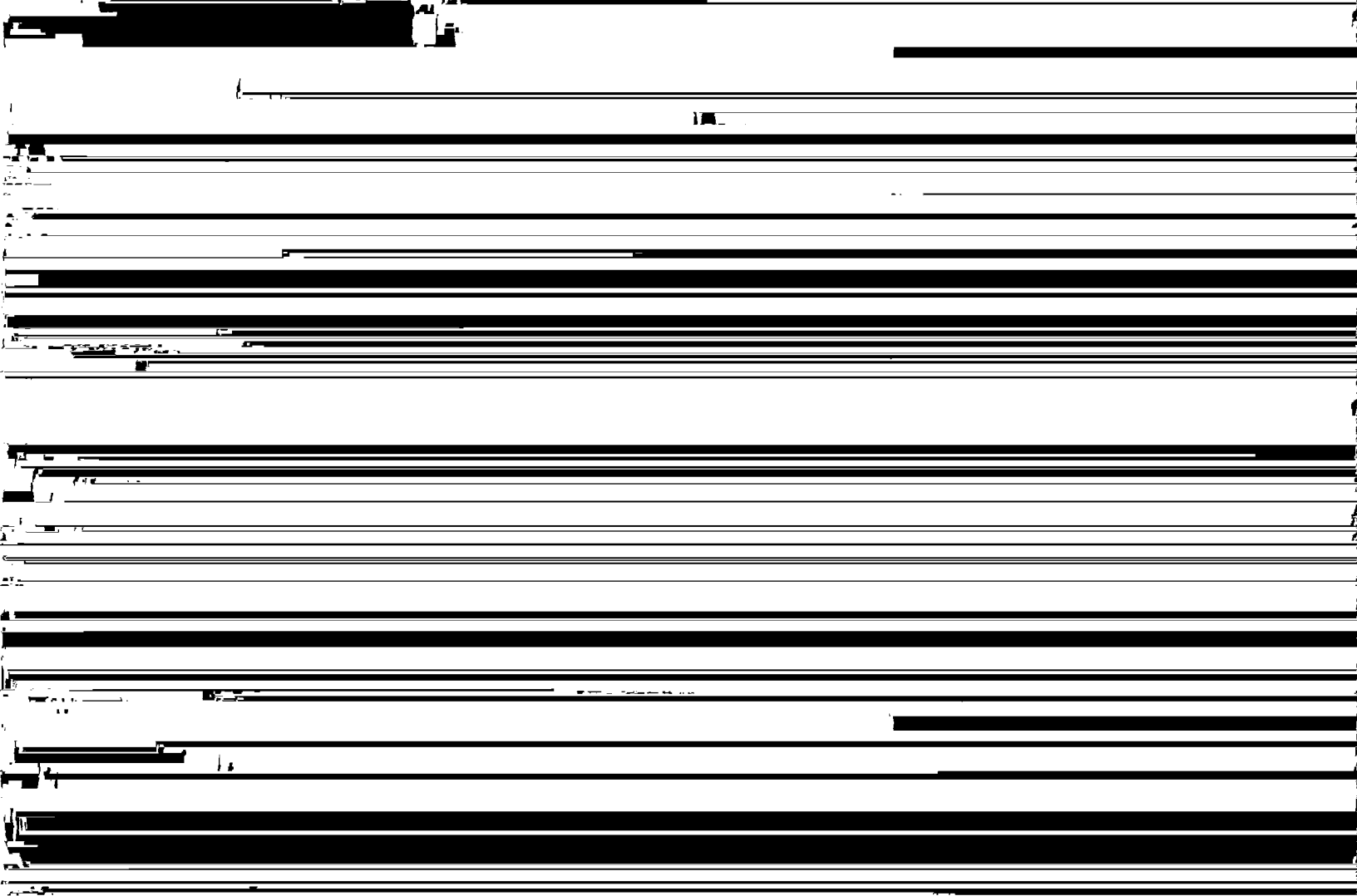
1 So, he puts it onto the MLS, and boom, that listing
2 is -- can be seen by all these other brokers in the
3 area, which we'll show is critical and necessary for a
4 broker in that area to compete.

5 JUDGE MCGUIRE: Now, wasn't this also accessed
6 by consumers as well? You said brokers, but --

7 MR. GATES: Yes, it is -- consumers cannot
8 directly access the multiple listing service. They
9 always have to go through a broker.

10 JUDGE MCGUIRE: Okay, okay, all right.

11 MR. GATES: And that's right about the



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

IN THE MATTER OF

[REDACTED]

1 to answer them truthfully?

2 A. No problem.

3 Q. Okay. Where are you presently

1

A. We kept nationwide statistics of

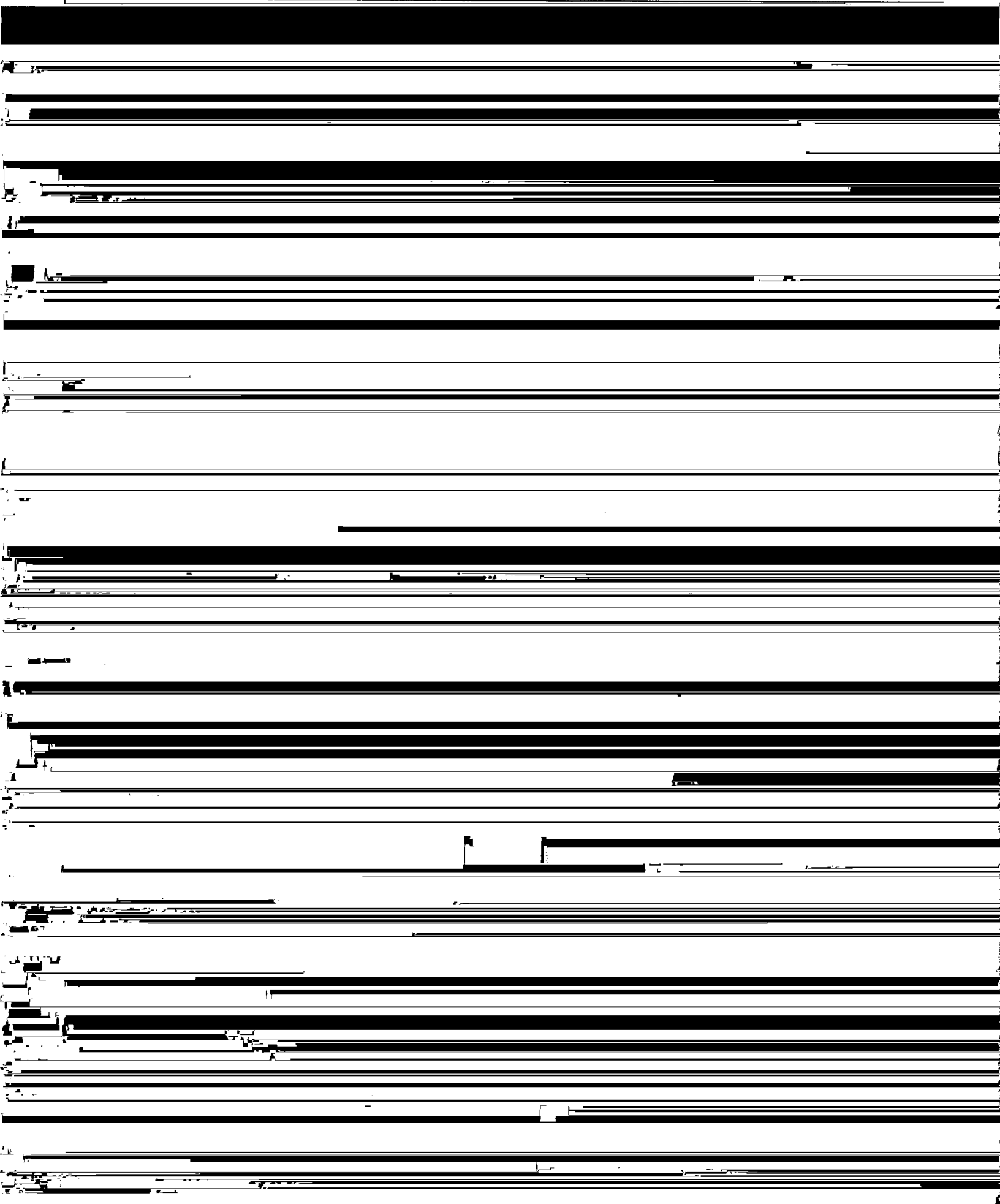
1 A. It was due to the fact that
2 Realcomp prevented us from performing our
3 business model.

4 Q. When did Realcomp begin preventing
5 YourIgloo from performing its business model?

6 A. I believe it was 2003. I don't
7 recall the month.

8 Q. How did Realcomp prevent YourIgloo
9 from performing its business model?

10 A. Well, they did this in two ways.
11 They did this because our sellers were able
12 to sell the house on their own, and we used
13 an exclusive agency listing agreement. And
14 they prevented those types of agreements from
15 uploading to public web sites such as
16 Realtor.com. And in addition to that, as far
17 as the MLS restriction, based on the -- based
18 on the default that a buyer's broker would



[REDACTED]

1

our rules relating to not transmitting

1

Q. When you say your "mind is always

1

you've given to Gary Moody since you stopped

[REDACTED]

Within the past few months?

1 the broker. in this case Gary Moody And

1

Q. What is your business address?

2

A. Our main computer is 1 1

[Redacted]

[Redacted]

1 those options haven't been available as a
2 referral broker long enough to really get a
3 sense for growth or how they are doing

Albert Hepp

February 14, 2007

1 A. Right.

2 Q. I'm asking about the state

1 time and likelihood of success being lower.

2 We don't rank the markets we are in. So

3 it's really you know, to get it out that

Albert Hepp

February 14, 2007

[Redacted]

[Redacted]

FEDERAL TRADE COMMISSION

I N D E X

WITNESS:	EXAMINATION:	PAGE
STEVE MURRAY	BY MR. MANDEL	4
		101
	BY MS. HOLLERAN	96

EXHIBIT:	DESCRIPTION	FOR ID
Number RX-154	Expert Report of Charles H. M.	96

1 UNITED STATES OF AMERICA
2 FEDERAL TRADE COMMISSION
3 OFFICE OF ADMINISTRATIVE LAW JUDGES
4

5 In the Matter of:)
6 REALCOMP II, LTD.,) Docket No. 9320
7 Respondent.)
8 -----)

9 Tuesday, April 17, 2007

10
11 Room 6201
12 Federal Trade Commission
13 601 New Jersey Avenue, N.W.
14 Washington, D.C. 20001
15

16 The above-entitled matter came on for
17 deposition, pursuant to notice, at 9:05 a.m.
18
19
20
21
22

[REDACTED CONFIDENTIAL MATERIAL]



UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION

In the Matter of

REALCOMP II LTD.,

Respondent.

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)

Docket No. 9320

~~ALL DISCLOSURE ORDER ON AVOIDING DISCLOSURE~~

MOTION AND POINTS OF AUTHORITY FOR DISMISSAL

~~The complaint is dismissed with prejudice.~~