

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

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

<p><b>In the Matter of</b></p> <p><b>REALCOMP II, LTD.,</b> <b>a corporation.</b></p>
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**Docket No. 9320**

**ORDER DENYING RESPONDENT'S MOTION  
FOR PARTIAL STAY OF FINAL ORDER PENDING APPEAL**

The Commission issued its Opinion and Final Order in this matter on October 30, 2009. The respondent's compliance is required no later

than 60 days after service. 15 U.S.C. § 45(g)(2).

Pursuant to Rule 3.56 of the Commission's Rules of Practice, 16 C.F.R. § 3.56, Respondent moved on December 8, 2009, for a partial stay of the Final Order, until the final disposition of Realcomp's appeals in the federal courts. It has failed, however, to justify such relief. All four factors set forth in the rule weigh against granting the motion. Respondent has shown neither a likelihood of success on appeal nor that it will suffer irreparable harm absent a stay. Moreover, it has not dealt at all with considerations of the public interest or injury to other parties. Accordingly, we deny the motion.

**Background**

Respondent, Realcomp, is a multiple listing service (MLS) operating in Southeastern Michigan. Most of Realcomp's members are full-service brokers who charged a flat commission for their services. As consumers increasingly used the Internet to search for new homes, new business models for providing real estate brokerage services presented competitive threats to the traditional, commission-based way of doing business. Brokers could

In our decision of October 30, 2009, we analyzed the legality of those Realcomp policies under traditional antitrust principles, using both an abbreviated and a more elaborate form of the Rule of Reason. After considering the record evidence presented by Realcomp

mere disagreement with our decision does not establish serious and substantial questions going to the merits. Here, Realcomp has not identified a factual or legal issue that establishes a likelihood of success on appeal.

First, we reject Realcomp's unsupported position that our rejection of the conclusions of the Administrative Law Judge means that serious and substantial issues exist on appeal. We have considered the ALJ's contrary conclusions in deciding Realcomp's motion, but that decision does not establish that there are substantial issues on appeal. While contrary findings of facts that are based on an ALJ's particular advantage in observing the demeanor of live witnesses at trial may sometimes warrant closer scrutiny on appeal, *see Universal Camera Corp. v. NLRB*

Turning to the equities on Respondent's side, we note first that Realcomp's motion did not include any supporting affidavits or other sworn statements to document the irreparable harm it alleges, as required by our rules. *See* 16 C.F.R. § 3.56(c). Realcomp attempted to cure this deficiency by appending to its reply a conclusory statement of its Chief Executive Officer, Karen Kage. However, "[s]imple assertions of harm or conclusory statements based on unsupported assumptions will not suffice. A party seeking a stay must show, with particularity, that the alleged irreparable injury is substantial and likely to occur absent a stay." *California Dental Ass'n*, 1996 FTC LEXIS 277, at \*6-7. Realcomp's showing of irreparable harm falls short of this standard. Realcomp asserts that confusion among its members and the marketplace will result if it were to put in place the changes required by our Order and then undo them if the Order is set aside. Mo. 12. Kage's affidavit merely repeats Realcomp's naked assertion, with no factual support. We therefore reject such reasoning. In fact, the Order cannot cause substantial irreparable harm because, in essence, it only requires Realcomp to comply with standards that are applied elsewhere in the industry, including by the National Association of Realtors.

We also reject Realcomp's assertion that it will suffer irreparable harm without a stay because it will have to incur programming and system testing costs to comply

## **Conclusion**

We find that Realcomp has not met its burden for a partial stay of the Final Order pending appeal. Accordingly,

**IT IS ORDERED THAT** the Motion of Respondent Realcomp II, Ltd. For Partial Stay of Order Pending Appeal is **DENIED**.

By the Commission.

Donald S. Clark  
Secretary

ISSUED: January 7, 2010