

FILED / PRODUIT

Date: February 9, 2012

CT- 2011-003

Chantal Fortin for / pour
REGISTRAR / REGISTRAIRE

OTTAWA, ONT.

106

CT-2011-003

COMPETITION TRIBUNAL

IN THE MATTER OF the *Competition Act*, R.S.C. 1985, c. C-34, as amended;

IN THE MATTER OF an application by the Commissioner of Competition pursuant to section 79 of the *Competition Act*;

AND IN THE MATTER OF certain rules, policies and agreements relating to the residential multiple listing service of the Toronto Real Estate Board.

B E T W E E N :

COMMISSIONER OF COMPETITION

Applicant

AND

THE TORONTO REAL ESTATE BOARD

Respondent

AND

**THE CANADIAN REAL ESTATE ASSOCIATION and
REALTYSELLERS REAL ESTATE INC.**

Intervenors

NOTICE OF MOTION

TAKE NOTICE THAT The Toronto Real Estate Board will make a motion to the Competition Tribunal, at a date, time, location and in a manner directed by the Competition Tribunal.

THE MOTION IS FOR:

1. An Order requiring the Commissioner to deliver forthwith an accurate and complete Affidavit of Documents;
2. Without limiting the scope of requested Order 1, an Order requiring the Commissioner to provide further and more detailed description of the documents over which public interest privilege is claimed, including but not limited to:
 - a) an Order requiring further explanation or description of the documents currently described as "Recording", "Meetings" or "Script" under the "Doc Type" field of Schedule B of the Commissioner's Affidavit of Documents sworn January 20, 2012 (the "Affidavit");
 - b) an Order requiring the Commissioner to provide a document date for productions numbers one to 229 (inclusive) of Schedule B of the Affidavit;
3. An Order requiring the Commissioner to produce in Schedule A, documents currently listed in Schedule B of the Affidavit in respect of which The Toronto Real Estate Board was the author or the recipient;
4. An Order requiring the Commissioner to produce in Schedule A documents currently described as "Court Filing" under the "Doc Type" field of Schedule B, and any other documents that are publicly available;
5. An Order requiring the Commissioner to produce in Schedule A, all documents currently listed in Schedule B of the Affidavit that were produced or provided to the Commissioner by Realtysellers Real Estate Inc., Realtysellers (Ontario) Limited, a predecessor entity, or an officer or director of any of them (together "Realtysellers");
6. An Order requiring the Commissioner to provide summaries of all third party communications;
7. An Order requiring the Commissioner to disclose the number of different third parties that are referenced in Schedule B of the Affidavit and the documents of those third parties over which public interest has been claimed;
8. The costs of the motion on a solicitor and client basis; and
9. Such further and other relief as counsel may request and the Tribunal may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The descriptions provided by the Commissioner in the Affidavit with respect to documents over which public interest privilege is claimed are inadequate to allow the Respondent to form a view as to the validity of such claims.
2. The Respondent is entitled to understand the factual basis of the claim made against it.
3. The Commissioner pleads in her Amended Notice of Application and Reply that the Respondent has discriminated against various third parties in the implementation and enforcement of various of the Respondent's Rules and Policies. The Respondent is entitled to know the identities of the third parties that are alleging to have been the subject of this discrimination.
4. Realtysellers has been granted intervenor status in the proceedings. To the extent the documents described in Schedule B as authored or received by a third party, are those authored or received by or from Realtysellers, there can be in the circumstances no basis upon which such documents should be protected by public interest privilege.
5. Sections 8(1) and 8(2) of the *Competition Tribunal Act*.
6. Rules 60(1) and 60(2) of the *Competition Tribunal Rules*.
7. Rules 225, 227, 400 and 401 of the *Federal Court Rules*.
8. Such further and other grounds as counsel may advise and the Tribunal may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Pleadings herein;
2. The Affidavit of Documents sworn January 20, 2012 by Nadia Brault, Senior Competition Law Officer;
3. Such further and other materials as counsel may advise and the Tribunal may permit.

DATED AT Toronto, this 9th day of February, 2012.


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