

Press Release, For Immediate Release

October 30, 2008

**GEORGE R. SIMPSON PUBLISHES A SERIOUS PAPER ON
ROUTINE LAW-BREAKING IN THE HAMPTONS REAL ESTATE
INDUSTRY BY MANY, MANY AGENTS AND MANAGERS**

According to George R. Simpson, serious violations of federal antitrust law are rampant in the Hamptons. Attached is a nine page "White Paper" detailing these allegations, titled:

***"Small Business Owners, Home Owners, and Home Buyers Cheated
by Hamptons Real Estate Industry.
Court Fines and Damage Awards for Antitrust Violations Could Top
\$Billion"***

Download at: www.EastEndListings.com/cobroke.pdf

Simpson says that certain real estate agencies in the Hamptons, and their agents, systematically, and deliberately, exclude other agencies from participating in the sale (co-broking) of property listings. Such "selective co-broking" violates Federal Antitrust Law.

In the report Simpson singles out abuses by the larger firms in the Hamptons, including Corcoran Group, Prudential Douglas Elliman, Brown Harris Stevens, Sotheby's International, and Town & Country Real Estate, but lists twenty other firms as offenders, also.

Particular emphasis is placed upon a service, used by those listed agencies, named "RealNet/O.R.E.X." which functions as a Multiple Listing Service (MLS), but violates the laws, which regulate such services. Simpson says that this "RealNet/O.R.E.X." service is priced at ten to fifteen times the fair price of other competitive MLS services (judged by the courts to be illegal), an action by the larger and more financially capable agencies to exclude smaller brokers.

In concluding paragraphs of the "Co-broke White Paper" Simpson says:

"This extensive exclusion activity must stop. I believe agencies that use the RealNet/O.R.E.X. system must switch to a legal system like the MLS services offered by HANFRA or LIBOR. Agents whose agencies refuse to stop the antitrust activity should go to an agency that is law-abiding.

Agents should be cautioned and reminded of the laws they were required to learn and abide by as licensed agents, and the consequences, if they violate the Antitrust Law. Individual agents, themselves, who are found guilty of antitrust crimes, may spend up to 3 years in jail, and/or be fined up to \$300,000.

Buyers and Sellers should demand that the real estate agencies and agents they deal with abide by the law. The seller of each property should demand that the real estate agency/agent, contracted for their Exclusive Listing, distribute accurate and complete information and Co-Broke with all competitor agencies/agents."

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Small Business Owners, Home Owners, and Home Buyers Cheated by
Hamptons Real Estate Industry
Court Fines and Damage Awards for Antitrust Violations Could Top \$Billion

By: George R. Simpson

The Hamptons became my new home thirteen years ago, and I've been working in the Real Estate industry on the East End for all these years.

Complaints by real estate agents made me aware of the significant and frequent antitrust violations in the East End Real Estate industry. Initially, a selective fax "Co-Broke" process was the key vehicle for breaking the law, but recently the violations have expanded, due to the advent of the online exclusion vehicle, O.R.E.X. automated Co-Broke system.

Real estate agencies in the Hamptons routinely excluded and continue to exclude "small" competitors from knowing about and participating in the sale of their "Exclusive Listing" properties through "Co-Brokes". Such behavior is in restraint of trade, and a violation of antitrust law, punishable by years in jail and treble damages.

Using market sales for the last ten years, it is my opinion that the larger firms in the Hamptons have damaged smaller firms (some have been forced out of business by this practice) by **over five hundred million dollars -- with treble damages of \$1.5 Billion.**

Every real estate agent and broker, to obtain a New York State Real Estate license, go through a 75 hour training course. Quoting from the training manual used to prepare New York State licensed real estate salespersons:

"The purpose of the **Sherman Antitrust Act**, enacted July 2, 1890, was to preserve a system of free economic enterprise and *to protect the public against the activities of monopolies, contracts, or other combinations that tend to be an unreasonable restraint of trade.* The focus of the act was to allow small businesses to compete with larger companies..."

The practice of excluding agencies is not only detrimental to agencies being excluded, but, for property sellers, it greatly diminishes exposure for the sale of their properties, versus what it would be if the agent and agency followed the law.

Multiple pages of the real estate salesperson training course material are devoted to the subject of antitrust law. The "New York Real Estate for Salespersons" (Spada) manual's section on "antitrust law" begins:

"In general, antitrust violations are any business activity in which there is *a monopoly, a contract, a conspiracy, or a combination* that negatively impacts an individual's or a company's ability to do business. This negative impact is called restraint of trade."

Agents are taught the importance of abiding by Antitrust Law. They are taught that failure to follow the law could result in heavy fines/court awards (fines of up to \$300,000 per salesperson), and even jail time (up to three years in prison) for breaking the law.

Breaking antitrust laws not only damages those real estate agencies and agents being discriminated against, but also hurts real estate buyers and sellers (owners). The unfair practices delay the selling of properties and cause incomplete exposure of properties to the marketplace. Brokers have a fiduciary responsibility to the public to promote properties to maximize the price and sell the properties in a short time.

The larger agencies in the Hamptons have most of the "Exclusive Listings" for houses and vacant land. The smaller agencies cannot fairly compete without knowing about and "Co-Broking" these listings. When a real estate broker prevents his competitor from participating in the sale of a real estate property, that's like taking goods off the shelves in a store, or preventing key suppliers of products from delivering to a store, thereby limiting what the store has to sell.

Until recent years, Brokers faxed invitations to selected competitors to attend open houses and to Co-Broke their "Exclusive Listings". Each real estate office had pre-recorded lists of the fax numbers of the selected real estate agencies. When they put a new "Exclusive Listing" on the market, faxes were sent only to the agency offices on the fax list, inviting them to "open houses", where real estate agents see the property and receive the Co-Broke agreement. This faxed "invitation to Co-Broke" allowed those selected brokers/agents to participate in finding prospective buyers for the properties and thereby participate in receiving a certain part of the commission for selling the property. *Those agencies not selected for their fax list were excluded from participating in the sale of the property, from finding buyers for the property.*

With the fax system, certain agency offices had more than one list to which Co-Broke listings were sent. At these agencies, the multi-million dollar house listings were sent to an even more limited list of brokers. Unpopular and smaller agencies were routinely, and obviously deliberately, left off the fax list, or sent faxes only for the lower priced properties.

I once heard Peter Turino (a prior owner of Dunemere and now minor owner and VP of Brown Harris Stevens) say that smaller agencies like Harold Shepherd and Main Street Properties don't have the capability to sell the "high end" homes.

Both Harold Shepherd and Main Street Properties were long established and respected brokerages in East Hampton.

When Prudential Long Island Realty set up an office in Southampton, they had trouble getting on the fax list at Sotheby's and Alan M. Schneider (AMS, now part of Corcoran). For about a year, the Southampton office of AMS (run by Tim Davis, whom they believe was unhappy with Prudential's entry into the market) simply refused to add the Southampton office of Prudential to the AMS fax list. This was in spite of many requests from individual agents and Prudential local and HQ management. Without the ability to view, Co-Broke, and sell Alan M. Schneider exclusive listings, agents at Prudential were prevented from participating in a substantial percentage of the market during that period. Home owners (sellers) were deprived of the efforts of Prudential agents selling their properties.

New York State offers a course in Antitrust in Real Estate. The caption advertising the early November 2008 course is given below:

"Antitrust and Real Estate 19.5 hours: NYS Course No. M-8664
The consequences of federal and state antitrust violations by real estate licensees in their conduct of business can be financially costly and also result in jail sentences. This course is intended to alert the real estate licensee to the many situations that could result in antitrust violations in the course of everyday business."

Today, the larger agencies in the Hamptons, and about twenty other agencies, use O.R.E.X -- an automated Co-Broke system run by RealNet, a listing system in the Hamptons. The great majority of the real estate agencies in the Hamptons do not use O.R.E.X. O.R.E.X consists of an email-based service, which is used by these subscribing agencies to invite competitors to Co-Broke listings and to attend open houses for the O.R.E.X. subscribers' Exclusive Listings. The fax list system was and is abused, but because of the design and use of the more automated system, the O.R.E.X. system abuse is much worse.

The exhibit at the right shows the Co-Broke selection screen, which is used by O.R.E.X subscribers. Any individual real estate agent is allowed to exclude any agency **"at will"**. Real Estate law allows only one reason for exclusion: *that of a property owner directing the exclusion, without prompting by the real estate agency*, i.e. "I don't want Sotheby's to sell my house".

Note that the verbiage above the check boxes on the O.R.E.X agency selection screen says: **"Please uncheck or deselect those who you do not wish to include"**. There is no warning that such exclusion is a serious Antitrust Law violation, and, thus a crime. Nor is there any review or supervision of the "deselect" process.

Further, each agent is allowed to make the decision as to which listings are put on the O.R.E.X. system. This allows one more opportunity for unsupervised discrimination against some real estate agencies.

Worse even than allowing individual agents the unlimited "right to exclude", there seems to be an almost random criterion as to which agencies are even selected to be **included** within a real estate agency's O.R.E.X. system. The Corcoran O.R.E.X. system selection screens for Flanders and Shinnecock Hills do not include "James R. McLauchlen Real Estate", an established agency in Southampton Village, which actively practices real estate in both Flanders and Shinnecock Hills. McLauchlen is also left off of the list in Corcoran's East Quogue screen, one of McLauchlen's active markets.

Hamptons Fine Homes, an established broker in the overall Hamptons marketplace, does not appear on any check off screen in the Corcoran O.R.E.X. system, even though the name "Hamptons Fine Homes" appears on the "Co-Tri Excl With:" drop down list used for the identification of their "Co Tri-broke partners". (See Exhibit) Hamptons Fine Homes, like many other brokers, is therefore excluded from learning about and Co-Broking Corcoran Exclusive Listings.

In the Brown Harris Stevens (BHS) O.R.E.X system, Main Street Properties and Tina Fredericks Realty, both established East Hampton brokers, do not appear for inclusion as Co-Brokers in the East Hampton market selection screen. (Earlier, I reported that BHS VP Peter Turino said these firms were not capable of selling the "high end" listings). In fact, ***not one small agency, which is not an O.R.E.X subscriber, is on the selection screens for any market on the East End in the Brown Harris Stevens O.R.E.X. system.***

For instance, the BHS O.R.E.X. Southampton market selection screen does not even include the small number of smaller agencies, which **are** contained on the Corcoran Southampton market selection screen:

Hampton Country, Hampton Realty World, James R. McLauchlen, Mansfield North America, McCoy & McCoy, Pat O'Donoghue Real Estate, Seashell Real Estate, South Fork Realty, and We Lead the Hunt.

Both BHS and Corcoran O.R.E.X. systems exclude many other agencies, which are not O.R.E.X. customers.

The agencies not listed on the BHS and/or Corcoran O.R.E.X. selection screens for Co-Broking the Exclusive Listings are put at a disadvantage to those on the list. As important, the sellers and prospective buyers of properties are cheated, because their options have been limited.

My study of the O.R.E.X system at four of the largest Hamptons real estate agencies indicates that Brown Harris Stevens is the worst selective Co-Broking offender. The practices of all the agencies discussed here are terrible, leaving out most of the smaller real estate firms from the process of receiving Exclusive Listing Co-Broke notices.

Individual agents at Brown Harris Stevens are allowed to send "Co-Broke" faxes, if they wish (to whom they wish), but the fax communication is missing many valuable photos, which are sent with the O.R.E.X emails. There is no management control or system in place to make sure that faxes and O.R.E.X. emails are sent in accordance with the law.

On the Town & Country Real Estate selection screen for the Southampton market, there are only two non-O.R.E.X. subscriber agencies (compared to the eight listed on Corcoran's screen) invited to Co-Broke their Exclusive Listings:

McLaughlin, We Lead the Hunt (McLauchlen is spelled incorrectly on the screen)

Town & Country, therefore, also hurts those competitor agencies not listed on their Southampton list and puts their buyers and sellers at a marketplace disadvantage.

I looked at the Prudential O.R.E.X system, and it is similarly discriminatory, as are the O.R.E.X. systems maintained by BHS, Corcoran, and Town & Country mentioned above. For instance, Main Street Properties does not appear as an option in Prudential's O.R.E.X. East Hampton market selection screen. James R. McLauchlen Real Estate, in Southampton Village for three generations, does not appear on Prudential's list to receive open house/Co-Broke invitations in the Southampton, Flanders, Hampton Bays, or Shinnecock Hills market segments.

Robert Scribner is a veteran real estate broker and executive. He set up and managed the Prudential office in Westhampton Beach, and now runs his own agency, "Real Hamptons Real Estate.com". His company does not appear on any of the O.R.E.X. check off screens at Corcoran, Prudential, Town & Country, or Brown Harris Stevens in any of his primary markets (Westhampton, Westhampton Beach, West Hampton Dunes, and Quogue), excluded by all of those agencies from hearing about and receiving Co-Brokes for their listings.

I believe that real estate agents who use the O.R.E.X system should realize that they are opening themselves up for possible criminal prosecution and civil penalties for just using the dangerous system. The management of firms who subscribe to O.R.E.X. are even more liable, I believe.

Three of the real estate executives at the top of two of the larger firms are lawyers (Rick Hoffman of Corcoran, Ed Reale and Aspasia G. Comnas of Sotheby's). Are they not afraid of going to jail for the practices that they tolerate

and support? I was unable to get access to the Sotheby's O.R.E.X. system, but from my interviews with their competitors I believe that their discriminatory practices with O.R.E.X. are like those described here at Prudential, Brown Harris Stevens, Town & Country, and Corcoran.

Paul Brennan, the VP who runs the Prudential offices in the Hamptons, has been a high producer, agency owner, and a key manager for the last two decades. How can he knowingly tolerate the serious lawbreaking under his watch? Why does he continue to expose himself, his company, and their agents to criminal and civil penalties and court awards by using the O.R.E.X. system? Dottie Herman, the CEO of Prudential, is very familiar with MLS systems and with the RealNet/O.R.E.X system. It is hard to believe that she is not totally aware of this lawbreaking going on in the Hamptons by her company and her agents.

Judi Desiderio, founder and CEO of Town & Country Real Estate, is an experienced real estate broker and owner. She was formerly an owner of Cook Pony Farm, which became part of Corcoran. Like the other real estate executives mentioned above, it is hard to believe that she isn't fearful of the illegality of the O.R.E.X system of selective Co-Broking or the serious consequences that may fall upon her, her agents, and her company.

Thus far in this article I have discussed the tragic antitrust lawbreaking on the South Fork, but how about the North Fork? The North Fork is predominantly MLS (Multiple Listing Service), which is designed to prevent the discriminatory practices, which are actually enabled by O.R.E.X used on the South Fork.

Any MLS listing system (including those on the East End -- LIBOR and HANFRA) is designed to prevent the type of selective Co-Broking currently rampant in the Hamptons.

Nick Khuri, the owner of RealNet, HREO, and O.R.E.X., is guilty, I believe, of enabling the unfair competitive practices among his customer base. I believe the business arrangement between RealNet/O.R.E.X. and their customers is against the law. The O.R.E.X. system functions as a Multiple Listing Service, but it is priced far above the market price for such a service. Such high prices are out of reach of most small real estate agencies, and they are left out of the game. According to my market intelligence, RealNet/O.R.E.X is priced at *10 to 15 times the price of the MLS services offered by HANFRA and LIBOR*, whose services are functionally comparable to RealNet/O.R.E.X.

The law requires that brokers must have access to an MLS in order to compete effectively. A supplier of the MLS service that is priced multiples above other competitive services certainly prices many agencies out of the game. In addition, no agency should have to pay more than the law requires. I believe that the O.R.E.X service is a conspiracy of twenty-five agencies in restraint of trade, violating the law requiring fair access to the "MLS".

In *United States v. Realty Multilist, Inc.*, (U.S.D.C. 1982), the Court found that when a broker is excluded from an MLS without reasonable justification, the broker and the public are harmed. The Court also held:

- 1) *MLS charges are to be equal to the cost of setting up the participant in the MLS.*
- 2) *The cost of operations are to reflect the pro rata share of operating expenses including accumulation and maintenance of reasonable reserves.*

Charging 10 to 15 times the going price falls outside of this ruling.

It is not only the five bigger players in the Hamptons Real Estate industry who are involved in unfair practice. All agencies who use the O.R.E.X system and/or fax to only selective agencies, are no less responsible.

The other agencies using RealNet/O.R.E.X include:

91 Jobs Lane Realty, Agawam Albertson Realty, Atlantic Beach Realty Group, Coldwell Banker Prestigious Properties, Devlin McNiff, Engel & Voelker Real Estate, Hampton Homes, Inc., Keeshan Real Estate, Lamb Agency, Marketplace Realty, Morley Agency, Norma Reynolds Sotheby's Int'l Realty, Perspective Properties, Project Real Estate, First Hampton Realty, Rosehip Partners, LLC, Saunders & Associates, Strough Real Estate Associates, Simon Harrison Real Estate, Syma Joffe Gerard.

We should not lull ourselves into thinking that all unfair competitive activities are harmless. It is not like going 65 MPH along 495. The antitrust activity of real estate agents and brokers has caused agencies to go out of business, caused real estate agents and the owners of agencies to make far less money than they would have had the playing field been level. I believe the financial woes caused by these unfair competitive practices has caused lives to be ruined.

And the use of the O.R.E.X. system, which creates an incomplete exposure of a property to the marketplace, tramps upon the rights of property owners and the rights of prospective buyers. Real estate brokers have a fiduciary responsibility to the public to promote properties to maximize the price, in the least time. Most sellers continue to be hurt by the extended length of time it takes to sell their properties, because the right to help sell the property (Co-Broke) was not offered to a wide list of brokers.

This extensive exclusion activity must stop. I believe agencies that use the RealNet/O.R.E.X. system must switch to a legal system like the MLS services offered by HANFRA or LIBOR. Agents whose agencies refuse to stop the antitrust activity should go to an agency that is law-abiding.

Agents should be cautioned and reminded of the laws they were required to learn and abide by as licensed agents, and the consequences if they violate the Antitrust Law. Individual agents, themselves, who are found guilty of antitrust crimes, may spend up to 3 years in jail, and/or be fined up to \$300,000.

Buyers and Sellers should demand that the real estate agencies and agents they deal with abide by the law. The seller of each property should demand that the real estate agency/agent, contracted for their Exclusive Listing, distribute accurate and complete information and Co-Broke with all competitor agencies/agents.

Real Estate professionals and others interested in learning about and contributing ideas to this important topic should contact me (in confidence if you prefer) at info@suffolkresearch.com

George R. Simpson is President of Suffolk Research Service, Inc., and Office Management Systems Corp. real estate software and data firms.

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|---|---|
| <input checked="" type="checkbox"/> Add to O.R.EX. (Open RealNet Exchange) | Town: <input type="text" value="Southampton"/> |
| These are the brokerages who will receive your co-broke data in RealNet. Please uncheck or deselect those who you do not wish to include. | These are the brokerages who will be emailed your co-broke data. Please uncheck or deselect those who you do not wish to include. |
| <input checked="" type="checkbox"/> 91 Jobs Lane Realty | <input checked="" type="checkbox"/> Devlin McNiff |
| <input checked="" type="checkbox"/> Agawam Albertson Realty | <input checked="" type="checkbox"/> Prudential Douglas Elliman |
| <input checked="" type="checkbox"/> Atlantic Beach Realty Group | <input checked="" type="checkbox"/> Town & Country Real Estate |
| <input checked="" type="checkbox"/> Brown Harris Stevens | <input checked="" type="checkbox"/> Century 21 Agawam Albertson |
| <input checked="" type="checkbox"/> Coldwell Banker Prestigious Properties | <input checked="" type="checkbox"/> Engel & Volkers |
| Co-Broking Information For Our Exclusive: <input type="text"/> | ***Selling Broker Commission: <input type="text" value="3.00"/> % AKA Co-Broke Commission (The % commission offered to the Selling Co-operating Broker by the Exclusive Listing Broker) |
| <input type="checkbox"/> Co/Tri-Exclusive | Co/Tri-Exclusive Agent: <input type="text"/> |
| Co/Tri-Excl With: <input type="text" value="Hamptons Fine Homes, LLC"/> & <input type="text" value="Please Select"/> | |
| Exclusive Comments: <input type="text"/> | |

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