No. 25-326

IN THE

Supreme Court of the United States

REAL ESTATE EXCHANGE, INC.,
A DELAWARE CORPORATION,

Petitioner,

v.

ZILLOW GROUP, INC., A WASHINGTON
CORPORATION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR *AMICUS CURIAE* CONSUMER ADVOCATES IN AMERICAN REAL ESTATE (CAARE) IN SUPPORT OF PETITIONER

MARK J. BEUTLER
Counsel of Record
LAW OFFICES OF
MARK J. BEUTLER, P.A.
9200 South Dadeland Boulevard,
Suite 105
Miami, FL 33156
(305) 487-0942
mjb@mjbpa.com

Attorney for Amicus Curiae

386289

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Does labeling a rule "optional" shield a trade organization from antitrust liability if the rule itself is the mechanism used to signal and coordinate a conspiracy among its members?

TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Other Authorities

INTEREST OF THE AMICI CURIAE[1]

Since 2008, Consumer Advocates in American Real Estate ("CAARE") has served as the nation's only non-profit organization dedicated to exposing industry corruption and advocating for a transparent, pro-competitive, pro-consumer real estate marketplace. CAARE is committed to facilitating a truly competitive market which includes low-cost innovators such as the plaintiff in this case. The foundational principles of the Sherman Act, the integrity of America's free enterprise system, and the long-term welfare of the sellers and buyers of residential real estate are of far greater importance than the narrow business interests of the existing market participants.

Significantly, CAARE's current Executive Director, Dougles Miller, developed the legal theories and initial class action lawsuit in *Moehrl v. Nat'l Ass'n of Realtors*, 492 F. Supp. 3d 768 (N.D. Ill. 2020), and *Sitzer v. Nat'l Ass'n of Realtors*, 420 F. Supp. 3d 903 (W.D. Mo. 2019). These cases are related antitrust class action lawsuits filed against the National Association of Realtors ("NAR") and major real estate brokerages alleging that their commission rules unlawfully inflated costs for home sellers and violated federal antitrust laws. Both cases challenge NAR's cooperative compensation rule, leading to new commission structures where sellers are no longer required to pay buyer agent fees, potentially

1. Rule 37 statement: All parties received timely notice of CAARE's intent to file this brief. No party's counsel authored any part of the brief and no one other than CAARE funded its preparation or filing.

saving thousands of dollars per transaction. These cases culminated in jury verdicts against NAR and some of the largest brokers , which in turn, resulted in a nationwide $418 million class action settlement.

Miller's dual role as a public-interest advocate and market innovator provides the Court with a unique perspective on the systemic harm caused by NAR's anti-competitive rules. CAARE has documented a widespread pattern of abuse, and, through its affiliated attorneys, has acquired knowledge of and experienced with the exclusionary barriers NAR erects to suppress competition. CAARE's experience and expertise in anti-competitive conduct in the real estate brokerage area will aid the Court in considering the legal issues presently before it.

SUMMARY OF ARGUMENT

For decades, a private trade association has imposed a multi-billion-dollar surcharge on the American dream of homeownership. The National Association of Realtors ("NAR") is the largest trade association in the United States. It represents approximately 1.5 million members primarily involved in residential and commercial real estate, including brokers, agents, appraisers, property managers, and other professionals. But NAR does more than act as a trade association. As explained more fully below, NAR suppresses competition through several anti-competitive practices related mostly to the control and dissemination of property listings and commission structures in the real estate market.

The Segregation Rule which is at the heart of this case is not a standalone policy; it is a product of the

longstanding demands and practices promoted by NAR and the structure of local Multiple Listing Services ("MLSs"). The Segregation Rule is one of NAR's most effective weapons for suppressing competition. NAR and Zillow[2] cooperate in a collusive system that forces consumers to pay commission rates double or triple those in other developed countries. *See* Petition for Writ of Certiorari ("Petition"), at 24-25. These artificially inflated fees are not the product of a healthy competitive market; they are the result of a concerted scheme to systematically suppress price competition and limit consumer choice. It is no coincidence that NAR's and Zillow's conduct have been the subject of numerous lawsuits and investigations focused on antitrust concerns and competitive barriers in the real estate industry.

The Ninth Circuit's opinion provides NAR's anti-competitive operation with a green light and a loophole to escape antitrust enforcement efforts. *See* Petition App. 1a-7a. The Ninth Circuit's error was to mistake a sophisticated instrument of collusion for a simple "optional" guideline. *See* Petition App. 3a. This is a clear analytic error. The unlawful conspiracy is not formed by enforcement of the rule but, rather, by the very creation of the rule by an association of competitors. When hundreds of MLSs adopt the rule, and national portals like Zillow change their conduct to comport with the rule, they are joining in an anti-competitive scheme. *See* Petition at 6-7. It does not matter if they do so voluntarily or under some

2. The term "Zillow" as used herein shall refer to the defendant, Zillow Group Inc., and its subsidiaries that are named defendants in the proceedings below: Zillow, Inc.; Zillow Homes, Inc.; Zillow Listing Services, Inc.; and Trulia, LLC.

threat or compulsion. Unlawful agreements in restraint of trade are often entered into voluntarily. If NAR and Zillow published a recommended but optional minimum realtor's commission, that would establish a *per se* violation of the Sherman Act. But under the Ninth Circuit's holding, the fact that the rule is optional immunizes it from antitrust scrutiny. The decision below must be reversed.

By conditioning access to its near-monopolistic MLS data feeds on adherence to its rules, NAR forces the entire digital real estate ecosystem into compliance. This created a rigged, two-tiered system across every major portal, from Zillow to Realtor.com, where NAR members' listings are given prominence whereas innovative, non-member listings are systematically downgraded to a hidden, secondary tab that consumers rarely see. Without Zillow, it is impossible for non-MLS members to compete. Real Estate Exchange, Inc. ("REX"), the petitioner herein, and similar corporate innovators were not the only competitors relegated to this digital ghetto. It included all American homeowners who wished to sell their property themselves, effectively punishing them for seeking to participate in a free market.

The result is the evisceration of competition. REX, a promising low-cost innovator who challenged the NAR and Zillow realtor fee structure, saw its web traffic plummet by 80% and it was driven out of business after Zillow implemented NAR's Segregation Rule. *See* Petition at 7. This case is not merely about the fate of one company; it is about every future innovator who will be deterred from entering this market if this precedent stands.

It would be bad enough if the Ninth Circuit's rule in this case were limited to the real estate market. But there

is nothing in the decision that limits its reach to only that market. As written, the decision holds that optional trade association rules are immunized from antitrust scrutiny, even if the vast majority of industry participants accede to the "optional" rule.

The Ninth Circuit's decision creates a dangerous loophole in the Sherman Act that allows a trade organization to immunize its anti-competitive rules and policies simply by labeling them "optional." This case presents a critical opportunity for the Court to close that loophole, correct the lower court's error, and restore the promise of competition to a multi-trillion-dollar American residential real estate market.

ARGUMENT

I. Background.

NAR's "no commingling" rule, also known as the Segregation Rule, required that Realtor members' MLS listings be displayed separately from other types of properties. This meant that non-member properties like homes for sale by owner (FSBOs) or auction properties had to be placed on a different tab or in a separate search results page. This segmentation meant that consumers and buyers had to click through different tabs to see all available homes, making non-MLS listings less visible and accessible than MLS listings. The rule effectively "hid" or suppressed non-MLS and lower-cost brokerage listings by making them harder to discover, which reduced the competitive pressure on traditional MLS-driven agents and brokerages to lower brokerage rates.

Because of reduced visibility for non-MLS listings, traditional agent-driven MLS listings became the default option for most buyers. The lack of price transparency and reduced market competition allowed realtors to continue charging higher fees since buyers and sellers were less likely to view alternative, less expensive, options in the same search. This, in turn, helped maintain higher visibility and dominance for traditional brokerages, and inhibited downward pressure on commission fees. Ultimately, this reduced competition insulated agents from the normal market pressures that would have otherwise compelled them to lower their commissions and improve their services.

In 2021, Zillow implemented changes on its platform to comply with the rule, separating MLS from non-MLS listings into different tabs. Zillow claimed that its decision to separate MLS and non-MLS listings into different tabs was made to comply with certain MLSs adopting NAR's "optional" no-commingling rule.

II. The Ninth Circuit Improperly Grafted an Unwritten "Optional Rule" Exception onto the Sherman Act.

In the decision below, the Ninth Circuit found that the Segregation Rule, which required MLS listings to be displayed separately from non-MLS listings, was optional and independently adopted by individual MLSs. The panel observed that nearly a third of MLSs did not adopt the Segregation Rule. Further, Zillow's decision to redesign its website to comply with the Segregation rule was made independently, and there was no proof that Zillow and NAR committed to a common anticompetitive scheme. In sum, the Panel held that because the Segregation Rule was optional, it was not a violation of the Sherman Act.

The Ninth Circuit's ruling is contrary to the text of the Sherman Antitrust Act of 1890 (the "Sherman Act" or the "Act"). Section 1 of the Act is unambiguous: it declares illegal "[e]very contract, combination . . . or conspiracy, in restraint of trade." 15 U.S.C. § 1. The statutory text does not say "every *mandatory* contract" or "every *binding* conspiracy." It says "every." The Ninth Circuit's opinion, however, rests entirely on the premise that because NAR's Segregation Rule was "optional," it could not, by itself, form the basis of an unlawful conspiracy. *See* Petition App. 3a.

The Ninth Circuit's ruling invents a new defense to an unlawful conspiracy that appears nowhere in the statutory text. This approach exalts formalism over substance and contravenes this Court's long-standing precedent.

In fact, this Court rejected that very formalism seventy-five years ago—in a price-fixing case against this same defendant. In that case, the Court held that whether an association's rules are "non-mandatory" is not material, recognizing that "[s]ubtle influences may be just as effective as the threat or use of formal sanctions to hold people in line." *United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. 485, 489 (1950).

Trade associations often are used to perpetrate antitrust violations. Trade associations inherently are combinations among competitors and involve joint decision making among competitors. Any promulgation by a trade association of a rule or policy is inherently a product of concerted action by competitors. Any rule or policy so promulgated that adversely affects competition can be viewed as joint anticompetitive action.

The Ninth Circuit's decision creates a clear, unsupported, exception for "optional" rules that undermines the intent of the Sherman Act and defies this Court's precedent and the analysis of the Department of Justice. *See* Petition App. 53a. The ruling provides a map for any trade association to immunize its collusive conduct from attack under federal antitrust laws: simply label the incriminating rules "optional" and let market incentives and coercive pressures do the rest. This judicially crafted loophole undermines the text and intent of the Sherman Act and should be rejected.

III. NAR Leveraged its Data Monopoly to Impose the Segregation Rule on the Entire Digital Real Estate Market.

The Segregation Rule's power comes from its widespread application, which NAR enforced by controlling the lifeblood of the modern real estate market: the Multiple Listing Service ("MLS") data feed. To operate a viable search website, a portal like Zillow needs access to the comprehensive Internet Data Exchange ("IDX") feed from hundreds of regional MLSs. Access is strictly conditioned on adherence to NAR's rules. *See* Petition at 5.

Zillow's compliance was not a free choice. It joined hundreds of NAR-affiliated MLSs to get faster, more reliable, access to property data. In doing so, Zillow was required to follow the Segregation Rule, which over two-thirds of those MLSs had adopted. *See* Petition at 6-7. Zillow's subsequent implementation of a nationwide two-tiered system was a direct result of this requirement. *See* Petition at 22.

Zillow's adoption of the Segregation Rule created a rigged marketplace with two distinct tiers:

- Tier One (The Default View): The main search results page, seen by nearly every consumer, is exclusively populated with listings from the NAR-controlled MLS feed.

- Tier Two (The Hidden Tab): Listings from any other source, like innovative brokers and FSBO sellers, are relegated to a separate, obscure "other listings" tab that, as Zillow's own data showed, users rarely click. *See* Petition at 7.

This two-tiered system extended to all major portals, including Realtor.com and Redfin, because they all rely on the same NAR-controlled IDX data, creating an industry-wide digital ghetto for any listing not affiliated with the NAR syndicate.

IV. The Segregation Rule Augments and Now Replaces the Unlawful "Coupled Commissions" Model and Thereby Continues NAR's and Zillow's Stratagem of Artificially Inflating Realtor Commissions.

Zillow's implementation of the Segregation Rule was not a standalone policy; it was influenced by the longstanding demands and practices promoted by NAR and the structure of local MLSs. NAR and affiliated MLSs have historically set rules that determine how listings are distributed, accessed, and displayed on public platforms like Zillow. NAR also holds significant influence and, in many cases, direct control over MLSs across the United

States. Many local MLSs are either owned by or closely tied to local realtor associations which are themselves affiliated with NAR. NAR sets nationwide MLS policies, such as rules for listing submissions, participant eligibility, and data sharing standards, which local MLSs must follow if they are owned by local realtor associations.

NAR has a history of pressing members for policies that restrict competition, controlling not just how listing data is shared, but also who can physically access a property. For instance, MLS rules typically dictate that only member agents are allowed to show a listed home, thus barring non-members and their clients from the market. These restrictive practices have come under scrutiny in many lawsuits and investigations focused on antitrust concerns and competitive barriers in the real estate industry.

The motive behind the Segregation Rule is obvious: it protects NAR's commission-fixing scheme. For decades, the foundation of NAR's business model was its Buyer Broker Commission Rule. This rule created what is known as "coupled commissions," a system where the seller pays a single, total commission (typically 5% to 6%) at closing. This total fee is then split between the seller's agent and the buyer's agent. The arrangement is called "coupled" because the commissions for both agents are linked together and are not negotiated separately. As a result, buyers did not pay their agents directly; their agent's fee was bundled into the seller's total cost, a standard practice that has now been effectively outlawed.

This "coupled commission" model artificially inflated and standardized buyer broker fees and created pervasive

conflicts of interest. Business models like REX's, which operated outside the MLS and which decoupled buyer and seller realtor's commissions, posed a threat to NAR's business model by introducing transparent price competition. NAR's coupled commission model had been challenged as anticompetitive because it kept buyer agent commissions non-negotiable and artificially high, reduced competition among buyer agents for commissions, and obscured the true costs of agent services for buyers and sellers. In these cases, particularly the *Sitzer* and *Moehrl* litigation,[3] federal courts ruled that the coupled commission structure violated antitrust laws. As a result, NAR agreed to settlement terms that decoupled seller and buyer agent compensations, thus bringing an end to the mandatory coupling of commissions and eliminating NAR's Buyer Broker Commission Rule.

The Segregation Rule was simply a different way for NAR to accomplish the same anti-competitive objective, i.e., suppress price competition for realtor commissions. The Segregation Rule achieved its intended purpose with precision. The rule eliminated competition from REX and FSBO homeowners. By relegating REX's listings to Zillow's hidden tab, NAR's rule led to an 80% drop in page views for REX properties and was the "fatal blow" that drove the billion-dollar company out of business in just 18 months. *See* Petition at 7.

The Segregation Rule's destructive force was not limited to corporate innovators. It also served as a weapon

3. *Moehrl v. Nat'l Ass'n of Realtors*, 492 F. Supp. 3d 768 (N.D. Ill. 2020), and *Sitzer v. Nat'l Ass'n of Realtors*, 420 F. Supp. 3d 903 (W.D. Mo. 2019).

against individual American homeowners. For decades, NAR and its members have publicly denigrated the ability of owners to sell their own homes, often citing statistics that FSBO properties sell for less. The Segregation Rule was a mechanism to ensure this self-fulfilling outcome. By relegating FSBO listings on Zillow, the nation's most popular real estate platform, to a hidden, secondary tab, NAR and Zillow effected the demise of selling a home without a realtor. NAR thereby relegated FSBO listings from the central marketplace to digital outposts and then used the inevitable poor results to justify its own inflated fees, demonstrating a clear intent to harm consumers and foreclose competition from any source.

V. It is Imperative that the Court Curtail the Defendants' Persistent Anticompetitive Conduct.

Although the Segregation Rule was repealed in June 2025, after the appellate court ruled in this case, the damage had been done. Once the primary threat to NAR's anticompetitive enterprise was eliminated, the murder weapon was put away – for now. Any potential market entrant posing a similar threat to NAR's artificially inflated commissions effectively has been warned that such threats will not be tolerated. Moreover, the Segregation Rule was not the only tool in Zillow's anticompetitive toolbox.

In a recently filed lawsuit, the Federal Trade Commission ("FTC") sued Zillow alleging that Zillow and Redfin entered into an illegal agreement that eliminated Redfin as a competitor in the market for advertising multifamily rental properties on internet listing services (ILSs). According to the FTC, Zillow paid Redfin $100

million to end Redfin's advertising contracts and to keep Redfin from competing in the multifamily rental advertising market for up to nine years. In exchange, Redfin agreed to act only as a syndicator of Zillow listings—essentially mirroring Zillow's rental ads rather than competing independently. The lawsuit claims this conduct violates Section 1 of the Sherman Act, Section 7 of the Clayton Act, and Section 5 of the FTC Act.[4] Several state attorneys general have joined the lawsuit or filed separate actions on their own.[5]

NAR has a similarly ignominious history of engaging in conduct that courts and government agencies have found to be anti-competitive. The most noteworthy examples are *Moehrl* and *Sitzer*, *supra*. But there are more as reflected in a report from a leading industry news service listing major federal antitrust litigation affecting the residential real estate market.[6] The report lists twenty-nine (29) lawsuits. In most cases, NAR was named as a defendant or, if not named, NAR was alleged to be a coconspirator. In one of the cases, NAR was the plaintiff seeking to no avail to block a Department of Justice investigation into

---

4. *See Federal Trade Commission v. Zillow Group, Inc., Zillow Inc., and Redfin Corporation*, Case No. 1:25-cv-01638, United States District Court for the Eastern District of Virginia, filed September 30, 2025.

5. *See* Jonathan Stempel, "US States Sue Zillow, Redfin over Rental Listings", Reuters, October 1, 2025, https://www.reuters.com/world/five-us-states-file-antitrust-lawsuit-against-zillow-redfin-2025-10-01/, accessed October 2, 2025.

6. *See* RIS Media Staff, "Industry News, A Comprehensive Index of Every Antitrust and Commission Lawsuit", December 13, 2024 (Appendix "A"), accessed October 2, 2025.

NAR's anticompetitive conduct. *See Nat'l Ass'n of Realtors v. United States*, 97 F.4th 951 (D.C. Cir. 2024), *cert. denied*, 145 S. Ct. 1050 (2025).

The Segregation Rule is simply another iteration of NAR's and Zillow's game of whack-a-mole. As each new and clever scheme to limit competition and artificially inflate realtors' commissions is abolished, either by an enforcement action or by "voluntary" abandonment upon threat of an enforcement action, another scheme is deployed to do the same work. What makes the panel's ruling in the case below so pernicious is that it provides an immunity to any of these or similar schemes simply by making the offending rule "voluntary".

The ultimate victims of these anticompetitive schemes are American consumers who are forced to pay commission rates double or triple those in other developed countries. *See* Petition, at 24-25.[7] This anti-consumer outcome is no accident; it is codified in standardized fee agreements mandated by state REALTOR® associations, which are designed to divert any negotiated savings away from clients and back to the brokerages.[8]

---

7. *See also* Appendix "B". Appendix "B" is a screenshot of a property search result from a REALTOR®-affiliated MLS prior to the *Moehrl/Sitzer* settlement. It demonstrates the "blanket, unilateral" offers of compensation mandated by NAR's Buyer Broker Commission Rule. As shown, multiple competing properties from different sellers and brokers all offer an identical buyer broker commission, illustrating a market devoid of typical price competition.

8. *See* Appendices "C" and "D". Appendix "C" is an excerpt from a standardized Buyer Representation Contract created and distributed by a state REALTOR® association. This or a

The Segregation Rule is the foreseeable and intended result of NAR's long-standing pattern of using its rules, often disguised as "ethics" or "best practices," to eliminate competition and protect its members' fee structure. This pattern of exclusionary conduct includes: (i) the Clear

---

substantively similar form was widely used before the *Moehrl/Sitzer* settlement. The highlighted clause reflects how the standard fee agreement was drafted to the consumer's detriment. Realtor Association standard fee agreements are the standard in the industry. The form leads buyers to believe that they can negotiate their buyer broker's fee. However, the boilerplate in the form nullifies any negotiated fee and allows the buyer broker to collect whatever the listing broker or seller is offering. This language contractually prevented negotiated savings on the buyer-broker fee from being passed to the consumer, thus solidifying the inflated fee structure and ensuring brokers could potentially be paid by both parties for the same transaction. Form agreements like this still exist today.

Appendix "D" is an excerpt from a standardized listing contract created and distributed by a state REALTOR® association for use after the *Moehrl/Sitzer* settlement. This contract language demonstrates how the industry has adapted its forms to continue protecting inflated commissions in the post-settlement environment. The clauses are structured to divert any potential commission savings away from the consumer (the seller) and back to the listing broker. The contract states that if the seller pays the buyer's broker directly, the seller's total obligation to his or her own broker is only "reduced by the amount paid up to 2.7%" Thus, the contract language eliminates any incentive for the buyer to negotiate a lower commission as any savings will have to be turned over to the seller's agent. Thus, the market forces that would ordinarily create a more efficient and cost minimizing commission structure are disabled.

Cooperation Policy ("CCP"),[9] implemented as an 'ethics' rule to force innovators onto the MLS and subject them to NAR's commission rules; and (ii) restricting access to essential transaction forms to REALTOR® members to marginalize attorneys and DIY consumers (*See* Appendix "E").[10]

9. The CCP is a rule established by NAR requiring that any property publicly marketed by a REALTOR® be listed on an MLS within one business day. Several antitrust lawsuits claim the CCP is a form of collusion that suppresses competition and consumer choice in violation of federal antitrust law. The CCP dissuades sellers from attempting to bypass MLSs knowing that they will be barred thereafter from using an MLS if they try, thereby coercing use of MLSs and reinforcing NAR's and MLSs' dominance.

10. Appendix "E" is a screenshot from a local REALTOR® association's website. It explicitly states that the standardized purchase agreements and other transaction forms are for "member use only and cannot be shared." This is a powerful exclusionary tool. By copyrighting and restricting access to these essential forms, REALTOR® associations create a significant barrier to entry for non-member competitors such as attorneys and FSBO sellers. In many markets, REALTOR® members will refuse to accept offers written on non-standard forms, thus preventing non-members from participating in a transaction. This tactic ensures that nearly all market participants are forced to use a REALTOR®, thereby protecting the cartel's dominance and high-commission structure from outside competition.

CONCLUSION

For the foregoing reasons, Amicus Curiae Consumer Advocates in American Real Estate respectfully requests that the Court grant the petition for a writ of certiorari, set the matter for hearing, and reverse the Ninth Circuit's decision in this case.

Respectfully submitted,

MARK J. BEUTLER
Counsel of Record
LAW OFFICES OF
MARK J. BEUTLER, P.A.
9200 South Dadeland Boulevard,
Suite 105
Miami, FL 33156
(305) 487-0942
mjb@mjbpa.com

Attorney for Amicus Curiae

APPENDIX

TABLE OF APPENDICES

APPENDIX A — A COMPREHENSIVE INDEX OF EVERY ANTITRUST AND COMMISSION LAWSUIT— RISMEDIA

10/9/25, 5:23 PM

RisMedia™

A COMPREHENSIVE INDEX OF EVERY ANTITRUST AND COMMISSION LAWSUIT

Cases included in industry lawsuit guide are updated as of Dec. 12, 2024.

By RISMedia Staff December 13, 2024 Reading Time: 30 mins read 1

Appendix A

Editor's note: This story was originally published on Dec. 27, 2023. It was updated on Jan. 30, 2024, and again on Dec. 12 to reflect extensive new developments in existing litigation, and to add newly filed lawsuits.

In just over a year, the saga of antitrust lawsuits facing the industry appears to be entering its epilogue—or at the very least, a later chapter. The National Association of REALTORS® (NAR) recently ***received final court approval for its landmark deal***, which grants broad immunity from seller (and some buyer) claims regarding how broadly followed rules and policies inflated commissions. Most of the "pile-on lawsuits" (NAR's term for Burnett copycats) were paused pending that decision, and at least some ***are expected to be dismissed or otherwise resolved*** in relatively short order.

Does this mean that legal challenges or court-mandated changes to industry practices are no longer a daily occurrence? Maybe. Does it mean the end of court drama and lawsuits that have the potential to upend your business? Definitely not.

Even as most agents and brokers seek to move on from this era, it remains vitally important to stay ahead of the changes that loom over real estate—a lesson that hopefully most practitioners learned from the original commission lawsuits, which many initially dismissed or ignored. As new lawsuits—some focused on commissions, others aimed at MLS access and still others targeting Clear Cooperation—continue to propagate and advance,

there is no excuse for not keeping up with the latest legal threats to the industry.

All cases are federal unless otherwise noted.

* * *

Case title: *Sitzer et al v. National Association of Realtors et al* (also known as Burnett/Sitzer, or Burnett)

Status: Trial completed in October 2023, ***jury verdict in favor of plaintiffs*** (full damages awarded, $1.8 billion). All defendants subsequently settled and have received final approval by court. Multiple appeals of settlements pending before the Eighth Circuit.

Jurisdiction and judge: Western District of Missouri; Judge Stephen R. Bough

Defendants: NAR, Keller Williams, HomeServices of America, RE/MAX and Anywhere

Plaintiffs: Homesellers who used five Missouri-based NAR-affiliated MLS between 2015 and 2022

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically focused on the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Burnett was the first of the major lawsuits to go to trial, and will likely serve as a bellwether for other commission cases. The two-week, often contentious trial ended with a jury verdict in just over two hours. More lawsuits with similar claims were filed quickly in the wake of the verdict. Keller Williams, HomeServices and NAR settled over the next six months, with the total amount paid by defendants in the case reaching around $1 billion. The DOJ has issued a "statement of interest" in the case, saying it has "concerns" about allegedly anticompetitive practices allowed by or included in the NAR settlement.

* * *

Case title: *Gibson v. National Association of Realtors et al*

Status: Set for trial in 2027. Certain defendants settled.

Jurisdiction and judge: Western District of Missouri; Judge Stephen R. Bough

Defendants: NAR, Compass, eXp World Holdings (the parent company of eXp), Redfin, Weichert, United Real Estate, Howard Hanna, Douglas Elliman

Plaintiffs: Recent homesellers who used NAR-affiliated MLSs anywhere in the United States

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically focused on the "participation rule," which mandates offers

of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: An identical suit to Burnett, Gibson was ***filed by the same attorneys within hours of the verdict in that case***. This suit makes an identical complaint, but names several other large real estate companies and expands the class to cover the whole country.

Gibson was later consolidated with the Umpa case, and in July 2024, ***a trial was set for 2027***.

In October, Judge Bough approved settlement for nine defendants: Compass, The Real Brokerage, At World Properties, Douglas Elliman, Redfin, Engel & Volkers, Realty One Group, HomeSmart Holdings and United Real Estate. The total settlement amounted to about $110.6 million.

Defendant Baird & Warner has also reached a settlement in the case, while both eXp and Weichert settled in the smaller Hooper case and attempted to use this settlement to be dismissed from the Gibson case; both eXp and Weichert were denied by Judge Bough.

* * *

Case title: *Moehrl v. National Association of Realtors*

Status: All defendants settled, final court approval not yet issued, but defendants and plaintiffs "do not anticipate... any further litigation being needed."

Appendix A

Jurisdiction and judge: Northern District of Illinois; Judge LaShonda Hunt

Defendants: NAR, Keller Williams, HomeServices of America, RE/MAX and Anywhere

Plaintiffs: Homesellers who used 20 NAR-affiliated MLSs during a four-year period leading up to the filing of the lawsuit.

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Similar but not identical in substance to Burnett, it was originally filed in 2019. Plaintiffs had estimated potential damages around $13 billion compared to the $1.8 billion judgment in Burnett. Settlements agreed to in Burnett explicitly included claims in this case. Formerly overseen by Judge Andrea Wood, who recused herself in September 2024 due to a personal conflict. The case had previously been scheduled for a trial in early 2025, but appears to be fully resolved with all defendants having settled. In the latest joint status report (filed September 2024), defendants and plaintiffs said they "do not anticipate at this time any further litigation being needed for the claims at issue in the case."

* * *

Appendix A

Case title: *Batton v. The National Association of Realtors et al* (formerly known as *Leeder v. The National Association of Realtors et al*, or Leeder)

Status: Paused for some defendants, trial not yet scheduled and class not certified. Parties have acknowledged previous settlement discussions.

Jurisdiction and judge: Northern District of Illinois; Judge LaShonda Hunt

Defendants: NAR, Keller Williams, RE/MAX, Anywhere, Long & Foster

Plaintiffs: Homebuyers who used NAR-affiliated MLSs across the country from 1996 to the present (damages demanded for buyers in around 25 states, Washington, D.C., and Puerto Rico)

Complaint: That NAR conspired with big brokerages to create rules that inflate commission for buyers, including the participation rule requiring offers of buyer compensating on the MLS, and rules disallowing MLSs from displaying commission offers to consumers.

The big picture: Initially dismissed because the lead plaintiff did not have standing to sue in his state, ***the case was refiled with new plaintiffs***. Notably, Batton is the first suit alleging that *buyers* rather than sellers are harmed by the current structure of real estate commission sharing, who are "indirect purchasers" under relevant antitrust laws. The suit is also notable for attempting to

certify a class going all the way back to the creation of the "participation rule" in 1996, which would significantly increase potential damages. The states where damages are sought are those which allow "indirect purchasers" like homebuyers to seek damages from antitrust violations.

In January 2024, ***this case was loosely consolidated*** with *Batton et al v. Compass, Inc. et al.* Plaintiffs are currently appealing the approval ruling in the Burnett settlements which excluded buyers who also sold from being part of the class. Formerly overseen by Judge Andrea Wood, who recused herself in September 2024 due to a personal conflict.

* * *

Case title: *Batton et al v. Compass, Inc. et al*

Status: Loosely consolidated with *Batton v. The National Association of Realtors et al*, paused for some defendants. Class not certified, trial not yet scheduled. Settlement discussions have taken place between some parties.

Jurisdiction and judge: Northern District of Illinois; Judge LaShonda Hunt

Defendants: Compass, eXp, Redfin, Weichert, United Real Estate, Douglas Elliman

Plaintiffs: Homebuyers who used NAR-affiliated MLSs across the country from 1996 to present (damages being demanded in 33 states, Washington, D.C., and Puerto Rico)

Complaint: That NAR conspired with big brokerages to create rules that inflate commission for buyers, including the participation rule requiring offers of buyer compensating on the MLS, and rules disallowing MLSs from displaying commission offers to consumers.

The big picture: Filed shortly after the Burnett verdict, the second Batton case is mostly identical to the first, except ***it names several other large real estate companies*** similar to Gibson's expansion of the claims in Burnett. The suit is also notable for attempting to certify a class going all the way back to the creation of the "participation rule" in 1996, which would significantly increase potential damages. The states where damages are sought are those which allow "indirect purchasers" like homebuyers to seek damages from antitrust violations.

In January 2024, ***this case was loosely consolidated*** with *Batton v. The National Association of Realtors et al.* Formerly overseen by Judge Andrea Wood, who recused herself in September 2024 due to a personal conflict.

* * *

Case title: *Lutz v. HomeServices of America, Inc. et al*

Status: Pending motions to dismiss, no class certified.

Jurisdiction and judge: Florida Southern District; Judge K. Michael Moore

Defendants: HomeServices of America

Appendix A

Plaintiffs: Homebuyers who used NAR-affiliated MLSs across the country.

Complaint: That NAR conspired with HomeServices to create rules that inflate commission for buyers, including the participation rule requiring offers of buyer compensating on the MLS, and rules disallowing MLSs from displaying commission offers to consumers.

The big picture: Filed only a few days after HomeServices was dismissed from *Batton v. NAR* due to lack of jurisdiction, the lawsuit makes identical claims in a new district to bypass that technicality.

* * *

Case title: *Davis v. Hanna Holdings, Inc*

Status: Pending motions to dismiss, no class certified.

Jurisdiction and judge: Pennsylvania Eastern District; Judge Wendy Beetlestone

Defendants: Hanna Holdings, parent company of Howard Hanna

Plaintiffs: Homebuyers who used NAR-affiliated MLSs across the country.

Complaint: That NAR conspired with Howard Hanna and others to create rules that inflate commission for buyers, including the participation rule requiring offers of buyer

compensating on the MLS, and rules disallowing MLSs from displaying commission offers to consumers.

The big picture: Filed only a few days after Howard Hanna was dismissed from *Batton v. Compass* due to lack of jurisdiction, the lawsuit makes identical claims in a new district to bypass that technicality.

* * *

Case Title: Tuccori v. At World Properties, LLC

Status: Ongoing mediation, settlement to be finalized

Jurisdiction and judge: Northern District of Illinois; Judge Lindsay C. Jenkins

Defendants: @properties Christie's International Real Estate

Plaintiffs: Anyone who bought a home that was listed on an MLS using an @properties agent between March 17, 2000 and today.

Complaint: That the defendant engaged in "inflating and concealing commissions paid to real estate brokers," and that these high commissions are harming homebuyers by increasing "home prices and unnecessarily high costs."

The big picture: While similar to many other commission based lawsuits among the industry, this one is actually filed on the buyer's side rather than the seller's—joining

the ranks of Batton and only a few others. In addition, while @properties is the only defendant named, the suit alleges that NAR is a co-conspirator since @properties is both a member and "heavily intertwined" with the organization, and thereby has benefited from its rules and policies.

In June 2024, the defendants and plaintiffs attended a "productive" mediation session and are in the process of finalizing a settlement agreement, although the company had previously ***settled in the Gibson case***.

* * *

Case title: *The PLS.com, LLC v. The National Association of Realtors et al*

Status: Preliminary settlement agreed to with three defendants; NAR dropped from lawsuit without prejudice.

Jurisdiction and judge: Central District of California; Judge John. W. Holcomb

Defendants: NAR, Bright MLS, California Regional MLS (CRMLS), Midwest Real Estate Data, LLC

Plaintiffs: A pocket-listing service startup called ThePLS.com (now operating as TheNLS.com)

Complaint: That NAR and large MLSs monopolized online residential property listing services, and have sought to drive competitors out of the market in violation

of antitrust statutes, primarily through adoption of the "Clear Cooperation" policy.

The big picture: Not a class-action suit and not directly focused on commissions, this suit is notable for directly naming large MLSs as defendants, as most other lawsuits have treated them as ancillary players in a larger conspiracy. Similar but not identical to *Top Agent Network, Inc. v. NAR*, the case was initially dismissed in 2021, but an appeals court revived it almost a year later. ***The Supreme Court declined to hear a further appeal from NAR***. This case also addresses Clear Cooperation and the role of MLSs in alleged antitrust actions directly, and targets MLS operations broadly, claiming that the industry is inefficient and full of redundancies. In January 2024, the ***MLS defendants came to a preliminary settlement agreement with the plaintiffs***, seemingly ending the lawsuit. But a lawyer for NAR later revealed that the organization ***had struck a "tolling" agreement*** with plaintiffs, extending the statute of limitations for the alleged illegal conduct and the time period for plaintiffs to restart their claims.

* * *

Case title: *Top Agent Network, Inc. v. NAR, et al*

Status: Trial set for November 3, 2025

Jurisdiction and judge: California Northern District; Judge Vince Chhabria

Appendix A

Defendants: NAR

Plaintiffs: A pocket-listing startup called Top Agent Network based in San Francisco, California

Complaint: That NAR specifically blacklisted Top Agent Network, and used the Clear Cooperation policy to monopolize real estate listing services in violation of antitrust statutes.

The big picture: Not a class-action and ***not directly focused on commissions***, this suit is similar but not identical to *The PLS.com, LLC v. NAR et al.* It makes Clear Cooperation a main focus, alleging that policy is harming consumers and competitors in violation of antitrust statutes. Notably, this suit cites the continued practice of so-called "office exclusive" listings as evidence that NAR's stated goal in the Clear Cooperation policy (ensuring broad dissemination of listings) is questionable. The case was initially dismissed, but revived in 2023 by an appeals court. The San Francisco Association of REALTORS® was originally a defendant as well, but was dropped later based on an agreement between TAN and NAR regarding jurisdiction.

* * *

Case title: *National Association of Realtors v. United States of America et al*

Status: Dismissed by D.C. District Court, overturned and remanded by D.C. Circuit, currently appealed to the Supreme Court

Appendix A

Jurisdiction and judge: D.C. District Court; Judge Timothy Kelly

Defendants: United States Department of Justice (DOJ), Antitrust Division

Plaintiffs: NAR

Complaint: That the DOJ should not be allowed to reopen a civil antitrust inquiry into NAR rules and practices, after closing that investigation in late 2020.

The big picture: The DOJ began seeking to restart its investigation into NAR in early 2021, after initially agreeing to close the inquiry. NAR sued to block the DOJ almost immediately, with Judge Kelly's ruling for NAR and preventing the DOJ from continuing to scrutinize NAR—focused on many of the same rules and practices at issue in the privately filed lawsuits. A panel of three judges in the D.C. Circuit Court ***overturned Kelly's decision in April 2024***, allowing the DOJ to continue its inquiry, but NAR quickly appealed that decision to the Supreme Court, which has not yet indicated whether it will take up the case. A key factor in the investigation is the new presidential administration, with new personnel at the DOJ potentially choosing to alter or drop the inquiry.

* * *

Appendix A

Case title: *Nosalek v. MLS Property Information Network, Inc. et al*

Status: Partially settled, MLS Property Information Network (also known as MLS PIN) agreed to pay $3 million and change practices; final approval of settlement pending a DOJ intervention.

Jurisdiction and judge: Massachusetts District Court; Judge Patti Saris

Defendants: MLS PIN, Anywhere, RE/MAX, HomeServices of America, Keller Williams

Plaintiffs: Recent homesellers who utilized MLS PIN

Complaint: That big brokerages, NAR and MLS PIN conspired to inflate commissions paid by sellers, mostly through the "participation rule," requiring mandatory offers of compensation to buyer agents.

The big picture: Notable as the first commission-focused case to settle, that agreement is now in doubt after the DOJ specifically asked the judge to wait on approving the settlement. The ***DOJ rejected proposed amendments to the original settlement agreement***, saying they would file a formal "statement of interest" in April 2024—the Council of Multiple Listing Services (CMLS) and Northwest Multiple Listing Service (NWMLS) ***responded with amicus briefs*** on behalf of the defendants.

The Nosalek case was stayed from February to April while a judicial panel on multi-district litigation reviewed a consolidation request of commission-focused lawsuits. ***After that panel denied the request in April 2024***, the HomeServices defendants filed a motion to reopen the case—which was granted later that month.

In June, Judge Sarris opted to await final ruling on the NAR settlement before proceeding with the case.

* * *

Case title: *Phillips et al v. The National Association of Realtors et al*

Status: Ongoing, certain defendants dismissed from case

Jurisdiction and judge: Northern District of Georgia; Mark H. Cohen

Defendants: NAR, HomeServices of America, RE/MAX, Keller Williams, Sotheby's International Real Estate and five local affiliate or independent real estate companies

Plaintiffs: Recent homesellers who used NAR-affiliated MLSs in Georgia from approximately 2019 to 2023

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Filed in the weeks after the Burnett verdict, this case is similar but not identical to Burnett and Moehrl. Plaintiffs are broadly following the same strategy and lines of argument as those cases, limiting the class to the state of Georgia (as Burnett limited their case to Missouri) and focusing on NAR and big brokerages as guilty of an antitrust conspiracy in the state. Notably, Phillips i***s seemingly the first major suit to name smaller affiliate companies as defendants***, including affiliates of companies that settled Moehrl and Burnett, as well as independents.

On November 21, 2024, defendants Christie's International Real Estate, Engel & Volkers, Redfin, HomeSmart, Solid Source Realty, Palmerhouse Properties and Ansley Atlanta Real Estate were dismissed from the case—with plaintiffs' consent—as the complaint against them was covered under the Gibson case settlement.

The complaint against the remaining defendants remains ongoing.

* * *

Case title: *Spring Way Center, LLC et al v. West Penn Multi-List, Inc, et al*

Status: Dismissed with prejudice, currently appealed to Third Circuit

Jurisdiction and judge: Western District of Pennsylvania; Judge William Stickman, referred from Judge Christy Wiegand

Appendix A

Defendants: West Penn MLS and eight local brokerages

Plaintiffs: Recent Pennsylvania homesellers

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Largely a copycat of the Burnett case, this lawsuit ***is notable for naming the MLS as a defendant***, unlike Burnett. It is also notable for directly citing the Burnett verdict, which other lawsuits have shied away from doing. The class is limited to those sellers who used West Penn MLS in the last four years, so its scope would be roughly the same size as Burnett. Also notable, plaintiffs in this case have voiced objections to consolidating this case with the many other commission-focused class-action lawsuits filed in the wake of the Burnett verdict.

On October 7, 2024, Judge Stickman granted a motion filed by the defendants in June to dismiss the case. The plaintiffs subsequently appealed in November, taking the case to Third Circuit Appeals Court.

* * *

Appendix A

Case Title: Willsim Latham, LLC v. Metrolist Services, Inc. et al

Status: Paused while the approved NAR settlement hears appeals

Jurisdiction and judge: Eastern District of California; Judge Kimberly J. Mueller

Defendants: MetroList Services and nine local REALTOR® associations involved in the organization, RE/MAX, Anywhere, Keller Williams, eXp and six other regional brokerages

Plaintiffs: Willsim Latham, LLC, and "all others similarly situated"

Complaint: The defendants adopted and enforced rules from MetroList, which have homesellers pay buyer brokers instead of buyers, and have inflated commissions for the buyer brokers.

The big picture: This is a suit from the seller's side, similar to Burnett and its copycat suits. However, this suit takes more direct aim at MetroList—which is an MLS—rather than a REALTOR® association or brokerage, using a similar approach to cases like Spring Way Center vs. West Penn Multi-List. In addition, this is another suit in which NAR isn't named as a defendant, but is referenced as a co-conspirator. As some defendants are involved in NAR's settlement, proceedings are stayed as the settlement hears appeals from objectors.

Appendix A

* * *

Case title: *Grace v. National Association of Realtors et al*

Status: Paused for all NAR-affiliated defendants and those with settlement agreements until "resolution or exhaustion of the appeals" of those agreements.

Jurisdiction and judge: Northern District of California; Judge Susan van Keulen

Defendants: NAR, Anywhere, Keller Williams, RE/MAX, Compass, Windermere, eXp, one local MLS and five local REALTOR® associations

Plaintiffs: Homesellers who used BARELS MLS in the last four years

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Largely a copycat of the Burnett case, this lawsuit is ***notable in that it names an MLS that is partially broker-owned***. It is also somewhat more explicit in targeting the MLS industry as a lynchpin in the alleged conspiracy to inflate commissions, and cites mainstream media coverage of real estate commissions, including the Wall Street Journal and CNN. Notably, the judge paused

this case for two companies—eXp and Windermere—before either had reached settlements.

* * *

Case title: *Umpa v. National Association of Realtors et al*

Status: Consolidation into Gibson v. National Association of Realtors et al

Jurisdiction and judge: Western District of Missouri; U.S. District Judge Stephen R. Bough

Defendants: NAR, HomeServices of America, Inc., Douglas Elliman, eXp, Redfin, Weichert, At World Properties, HomeSmart, Realty ONE

Plaintiffs: Anyone who, from December 27, 2019 to present, used a listing broker affiliated with any of the defendants for the sale of a home listed on an MLS and who then paid an "inflated" commission rate.

Complaint: Alleges antitrust violations by NAR due to its control of MLS data and ability to "leverage" that in support of its rules, such as the buyer-broker commission rule. Large brokerages named as defendants are accused of furthering the supposed anticompetitive "conspiracy" using their franchise power and voice within NAR. Conduct by individual agents is also cited as supporting evidence, such as alleged "steering" of buyers to listings with higher commissions.

The big picture: The case echoes many of the complaints in Burnett/Sitzer (which is classified as a related case)—it was also filed in the same district, with the same presiding judge. It was filed by the same attorneys behind Moehrl. However, unlike that case (which was limited to Missouri), this case's complaint includes transactions throughout the United States (for instance, class representative Daniel Umpa is from Maryland, and the transaction where he paid the "inflated" commission unfolded in that state). The initial complaint notes the defendants have maintained business within the Missouri district's confines, hence the court having jurisdiction. The Umpa case pinpoints the MLS industry as the lynchpin of the alleged conspiracy. Umpa is also the case that some plaintiffs used as a springboard to ***petition for broad consolidation of these commission lawsuits***. Umpa has now been consolidated into the Gibson case, and will continue as one set of proceedings under the Gibson banner.

* * *

Case title: *QJ Team, LLC, et al., v. Texas Association of Realtors, Inc., et al.*

Status: Paused for NAR-affiliated defendants and others who have settlement agreements in separate cases, pending final court approval of those agreements.

Jurisdiction and judge: Eastern District of Texas; Judge Sean D. Jordan

Appendix A

Defendants: Fathom Realty, Keller Williams, HomeServices of America, Texas Association of REALTORS®, four other local REALTOR® associations, 23 local brokerages

Plaintiffs: Homesellers who used any Texas MLS over the last four years

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Largely a copycat of the Burnett case, this lawsuit is more explicit in pinning the blame for the alleged conspiracy on NAR—even though NAR is not a named defendant—calling the national association the "core" of a "concealed conspiracy." It also names Anywhere and RE/MAX as "co-conspirators," rather than defendants in the suit.

* * *

Case title: *Martin, et al., v. Texas Association of Realtors, Inc., et al.*

Status: Consolidated into QJ Team, LLC, et al., v. Texas Association of Realtors, Inc., et al.; Pursuant to QJ Team's proceedings

Appendix A

Jurisdiction and judge: Eastern District of Texas; Judge Sean D. Jordan

Defendants: A total of 47 brokerages, REALTOR® associations and franchisors that operate in Texas

Plaintiffs: Homesellers who used any Texas MLS over the last four years

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: A carbon copy of the QJ Team lawsuit—and therefore, largely following the Burnett playbook—this suit was filed by the same lawyers as the QJ Team suit, with different plaintiffs and a huge number of new defendants. NAR and some other big brokerages offered this district as a venue for consolidating all the commission-focused lawsuits together. This case has now been consolidated with the QJ Team case, and any proceedings are now pursuant to proceedings in QJ Team.

* * *

Case title: *Parker Holding Group Inc. v. Florida Association of REALTORS et al.*

Status: Paused pending approval of the NAR settlement

Appendix A

Jurisdiction and judge: Florida Circuit Court for the Eleventh District (State court); Judge Lisa Walsh
Defendants: Florida Association of REALTORS®,15 local brokerages

Plaintiffs: Homesellers who paid buyer commission on MLSs in Florida over the past four years

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering

The big picture: As this suit was filed in state court, it will be state antitrust and consumer protection laws applied to what are ***essentially the same claims as most of the other suits filed by sellers***. This case also directly cites the Burnett verdict, unlike the vast majority of suits filed in its aftermath.

* * *

Case title: *Burton v. National Association of REALTORS et al*

Status: Paused while the approved NAR settlement hears appeals

Jurisdiction and judge: South Carolina District Court; Judge Jacquelyn D. Austin

Appendix A

Defendants: NAR and Keller Williams

Plaintiffs: Homesellers who used Keller Williams agents and South Carolina-based MLSs in the last four years

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically the "participation rule," which mandates offers of compensation to buyer agents. Plaintiffs also alleged broad anti-competitive practices, including price-fixing and steering.

The big picture: Largely a copycat of the Burnett case, this suit only focuses on Keller Williams agents. Otherwise, the lawsuit mirrors the allegations and strategy of Burnett. Both NAR and Keller Williams have settled their homeseller commission lawsuits—which may or may not grant them immunity in this case—and both settlements have received final approval. The case remains stayed as the approved NAR settlement is appealed by objectors.

* * *

Case title: *March v. Real Estate Board of New York et al*

Status: Paused for some defendants, others requesting pause pending appeal of NAR settlement by plaintiffs.

Jurisdiction and judge: Southern District of New York; Judge Jessical G.L. Clarke and Magistrate Judge Robert W. Lehburger

Appendix A

Defendants: Real Estate Board of New York (REBNY), Brown Harris Stevens, Christie's, Compass, Douglas Elliman, Engel & Volkers, Keller Williams, Homesnap, The Corcoran Group, The Agency, Sotheby's, RE/MAX and 15 other local brokerages

Plaintiffs: Recent homesellers who used the REBNY listing services (known as the RLS) during the last four years and paid a buyer agent commission

Complaint: That defendants conspired to create rules that inflated commissions paid by sellers, specifically rules which mandate offers of compensation to buyer agents.

The big picture: While broadly mirroring the Burnett case, this lawsuit is fundamentally different in important ways. REBNY is not associated with NAR, meaning plaintiffs are seeking to prove that an entirely separate organization implemented a similar illegal scheme using similar mechanisms. This suit extensively cites the Burnett, MLS PIN and Moehrl cases, and also notes that ***REBNY changed its buyer compensation rules*** right before the Burnett trial. Notably, this suit covers a very small, urban geographic region (Manhattan), as opposed to nearly all the other commission suits, which sprawl across rural, urban and suburban landscapes. Plaintiffs in the case have appealed the NAR settlement approval ruling to the Eight Circuit, arguing their lawsuit should be allowed to go forward based on the unique and separate nature of the New York City real estate landscape.

* * *

Appendix A

Case title: *Friedman v. Real Estate Board of New York et al*

Status: Paused for some defendants, others requesting pause pending appeal of NAR settlement by plaintiffs.

Jurisdiction and judge: U.S. District Court for the Eastern District of New York; Senior Judge Frederic Block

Defendants: The Real Estate Board of New York (REBNY), Douglas Elliman, Christie's, Corcoran, Sotheby's, Brown Harris Stevens, Serhant Company, Anywhere Real Estate, Engel & Volkers New York Real Estate

Plaintiffs: Anyone who sold residential real estate in Brooklyn neighborhoods covered by REBNY from December 29, 2019, to the present.

Complaint: The Real Estate Board of New York's buyer-broker commission rule constitutes an anticompetitive conspiracy to inflate commissions—REBNY controls access to listings via its RLS and defendants brokerages, who sell in Brooklyn neighborhoods overseen by the RLS, must abide by REBNY rules.

The big picture: While broadly mirroring the Burnett case, this lawsuit is fundamentally different in important ways. REBNY is not associated with NAR, meaning plaintiffs are seeking to prove that an entirely separate organization implemented a similar illegal scheme using

similar mechanisms. This suit extensively cites the Burnett, MLS PIN and Moehrl cases, and also notes that ***REBNY changed its buyer compensation rules*** right before the Burnett trial. Notably, this suit covers a very small, urban geographic region (Brooklyn), as opposed to nearly all the other commission suits, which sprawl across rural, urban and suburban landscapes. Plaintiffs in the case have appealed the NAR settlement approval ruling to the Eight Circuit, arguing their lawsuit should be allowed to go forward based on the unique and separate nature of the New York City real estate landscape.

* * *

Case Title: *Whaley v. National Association of Realtors et al*

Status: Paused pending final approval of the NAR settlement and separate settlements struck by defendants in other cases.

Jurisdiction and judge: Nevada District Court; Judge Anne R. Traum

Defendants: NAR, Opendoor, eXp, Redfin, 12 local/regional brokerages, two regional MLSs and six regional/local REALTOR® associations

Plaintiffs: Anyone who listed properties on one of the MLSs listed and paid a buyer broker commission from January 15, 2020 to the present

Complaint: The defendants have conspired together to keep commissions artificially inflated at 4.5% to 6% and have sellers pay costs that would typically fall on a buyer, based on rules specifically put in place by NAR.

The big picture: This is another case on the list of seller filings amongst this list, essentially a copycat of Burnett but for the Nevada region. Similar to QJ Team, LLC vs. Texas Association of Realtors, the complaint specifically names the anticompetitive rules that NAR is under fire for in several other suits, which were also a main point in Burnett. Paused in July based on settlements in other cases, with a status report due after the appeal period expires for the NAR settlement.

* * *

Case title: *Masiello v. Arizona Association of Realtors et al*

Status: Paused pending settlement negotiations and the opt-in of some defendants to NAR's settlement

Jurisdiction and judge: United States District Court District of Arizona; Judge Douglas L. Rayes

Defendants: The Arizona Association of REALTORS®, the Phoenix Association of REALTORS®, the Scottsdale Area Association of REALTORS®, West and Southeast REALTORS® of the Valley Inc., Tucson Association of REALTORS®, My Home Group Real Estate, LLC, Realty Executives LLC, Corduroy IP LLC, Silverleaf Realty

LLC, West USA Realty, Inc., Walty Danley Local Luxury Christie's International Real Estate, Roy H. Long Realty Company, Tierra Antigua Realty LLC

Plaintiffs: Anyone who sold real estate via an Arizona MLS and paid a buyer-broker commission from January 5, 2020 to present.

Complaint: The buyer-broker commission rule, enforced nationally by "co-conspirator" NAR, is an anticompetitive practice, and major associations within Arizona have furthered the "damage" to consumers by mandating members be part of NAR/follow their bylaws. Arizona homesellers are seeking restitution for this alleged conspiracy.

The big picture: Similar to Friedman v. REBNY, the case makes the same allegations of anti-competitiveness against the buyer-broker rule and against statewide associations. Unlike that case, the Masiello complaint document mentions the Burnett case as supporting evidence of the complaint and also names NAR as a co-conspirator (though not a defendant). The case was stayed so that defendants My Home Group LLC, West USA Realty Inc., Tierra Antigua Realty LLC and Realty Executives LLC may negotiate settlements and/or opt-in to NAR's approved settlement.

* * *

Case title: *Gael Fierro et al v. National Association of Realtors et al*

Status: Stayed for all defendants covered by the NAR settlement pending approval of that agreement; stayed for eXp pending separate approval of its settlement.

Jurisdiction and judge: California Central District Court; Mark C. Scarsi (presiding judge) and Brianna Fuller Mircheff (referral judge)

Defendants: NAR, Compass, eXp, Berkshire Hathaway, California Regional MLS, California Association of REALTORS®

Plaintiffs: Everyone who sold real estate via an MLS and paid a commission in Los Angeles, Madera and/or Fresno counties from January 17, 2020, to the present.

Complaint: Alleging anticompetitive practices that harm consumers by NAR through the buyer-broker commission rule. Similar to Masiello, the case names local real estate associations as defendants, and like Grace and Umpa, pinpoints the MLS industry (and NAR's control of MLS data) as the deciding factor by which the "conspiracy" has been carried out.

The big picture: The scope of the case is limited to central California and the three counties named in the complaint. Notably, local MLSs are also named as defendants. Paused like many other copycats pending resolution of the NAR settlement, though parties disputed whether companies who did not opt in to the NAR deal should also have deadlines paused.

Appendix A

***

Case title: *Hardy et al v. National Association of Realtors et al*

Status: Initial complaint filed.

Jurisdiction and judge: Michigan Eastern District; Judge Jonathan J.C. Grey

Defendants: NAR, the Michigan Association of REALTORS®, three local REALTOR® associations and one MLS

Plaintiffs: Two brokers and one agent in Michigan.

Complaint: That requiring membership in multiple REALTOR® associations to access the MLS violates antitrust laws and constitutes an unfair restraint on trade. Plaintiffs specifically claimed that the NAR settlement made REALTOR® membership less valuable due to no longer having a "guarantee of commission" on the MLS.

The big picture: The lawsuit is seeking class-action status but is also not a novel legal theory, like the original commission lawsuits (Burnett and Moehrl). Courts have issued split rulings on whether REALTOR® associations can restrict MLS access to members. This lawsuit is seeking to end that practice, citing the "overwhelming economic power and market dominance" of the defendants in the listing service space.

Appendix A

***

Case title: *Muhammad v. National Association of REALTORS et al*

Status: Initial complaint filed

Jurisdiction and judge: Eastern District of Pennsylvania; Judge Joseph Leeson

Defendants: NAR, Pennsylvania Association of REALTORS®, one local MLS and 10 local brokers individually

Plaintiffs: Pennsylvania-based broker Maurice Muhammad

Complaint: That NAR and local associations are violating antitrust laws and engaging in "monopolistic practices" by requiring membership to access MLS, and that these organizations have engaged in a "pattern of discriminatory practices against minority real estate professionals" through "selective enforcement" of rules, along with other civil rights violations.

The big picture: Representing himself, Muhammad has provided minimal details to back up his accusations so far, but like the Hardy case, is seeking to eliminate mandatory REALTOR® membership for MLS access. Specifically, he asked the court to order NAR to establish alternative MLS systems for non-members, as well as reforming how disputes and bias complaints are handled. Muhammad

claimed that his MLS access was revoked after he filed the lawsuit, damaging his business.

***

Case title: *Wang v. National Association of REALTORS et al*

Status: Paused pending NAR appeal

Jurisdiction and judge: Southern District of New York; Judge Jessica G.L. Clarke

Defendants: NAR, REBNY and seven companies operating in the New York City region

Plaintiffs: Haozhe Wang

Complaint: That defendants together conspired to inflate commissions paid by Wang during several real estate transactions, preventing commission negotiations and enforcing rules that violated state and federal antitrust laws.

The big picture: Representing himself, Wang is not seeking class-action status, but is essentially making the same claims as the class-action plaintiffs based on his individual experiences buying and selling homes, during which he claims he was coerced into paying inflated commissions. Notably, Wang objected to the NAR settlement, and unlike most objectors, attended

the hearing in-person, where he characterized the new policies as discriminatory and anti-consumer.

***

Case title: *Homie Technology, Inc. v. National Association of Realtors et al*

Status: Multiple pending motions to dismiss

Jurisdiction and judge: Utah District Court; Judge Dale Kimball

Defendants: NAR, Anywhere, HomeServices, Keller Williams and RE/MAX

Plaintiffs: Discount brokerage Homie Technology

Complaint: That defendants together conspired to suppress competition through keeping commissions stable and illegally monopolizing the listing service market.

The big picture: Homie, a discount brokerage based in Utah, makes many of the same claims as the class-action plaintiffs regarding mandatory offers of compensation and control of the MLS, but as a competing business rather than a consumer. Homie claims these practices prevented it from making inroads in the real estate market, citing multiple clients who reported REALTORS® were blacklisting Homie listings.

***

Appendix A

Case title: *Maslanka et al v. Baird & Warner, Inc*

Status: Pending settlement which would resolve the case if approved.

Jurisdiction and judge: Northern District of Illinois; Judge Lindsay Jenkins.

Defendants: Baird & Warner

Plaintiffs: Homebuyers and homesellers who transacted in Illinois with a Baird & Warner agent over the last 19 years.

Complaint: That Baird & Warner conspired with NAR and others to inflate commissions in violation of state and federal antitrust laws.

The big picture: Notable due to seeking to certify a class of both buyers and sellers, as well as only naming one company, this lawsuit was originally filed in state court but was moved to the federal level before any major litigation occurred. Also uncertain is how this case might eventually resolve, as settlement agreements struck so far have all been negotiated with seller plaintiffs. Baird & Warner agreed to settle in the Gibson case, and it is not clear how that will affect the buyer claims (or a separately negotiated settlement) in this case.

APPENDIX B — ZILLOW LISTINGS

List #	Photo	$	DOM	Closed Date	Buyer Broker Comp
6018386		$	4	08-10-2021	2.7%
6016693		$	0	08-10-2021	2.7%
6016431		$	1	08-10-2021	2.7%
6014511		$	3	08-10-2021	2.7%
6014241		$	17	08-10-2021	2.7%
6013935		$	5	08-10-2021	2.7%

APPENDIX C — BUYER REPRESENTATION CONTRACT: EXCLUSIVE

BUYER REPRESENTATION CONTRACT: EXCLUSIVE Minnesota Realtors

2. Buyer shall pay Broker, as Broker's compensation, _____ percent (%) of the selling price or $_____, whichever is greater, when Buyer closes the Purchase, if:

The Old Buyer Compensation Clause

Broker is authorized to negotiate and receive compensation paid by seller, or broker representing or assisting seller, if Broker informs Buyer in writing before Buyer signs an offer to Purchase the property. Any compensation accepted by Broker from seller, or broker representing or assisting seller, ☐ **SHALL** ☐ **SHALL NOT** reduce any obligation of Buyer ------*(Check one)*------

APPENDIX D — LISTING AGREEMENT

Seller shall pay Broker, as total Broker's compensation, __6__ percent (%) of the selling price or $_____. whichever is greater, if Seller sells or agrees to sell the Property during the term of this Contract. **COOPERATING BROKER COMPENSATION:** Of the total Broker's compensation, as specified on lines 119-121, Broker ☒ **SHALL** ☐ **SHALL NOT** offer compensation to cooperating brokers. If **SHALL**, the compensation to cooperating brokers shall be as follows: ☒ __2.7__ % of the selling price or $ _____, whichever is greater, to cooperating brokers representing buyer. If Seller agrees to pay buyer broker's compensation directly to buyer broker, then Seller's obligation to pay Broker's compensation, as specified on lines 119-120, shall be reduced by the amount paid up to __2.7__ % or $ _____ of the selling price.

APPENDIX E — MLS SUBSCRIBERS FORM

FORMS USE FOR MLS SUBSCRIBERS

May 18, 2023

MLS Subscribers:

As a reminder, both FMR forms and MNR forms (and soon ND forms) are for **member use only** and **cannot be shared**. Local and State associations have expended significant time and expense in developing standardized and approved real estate forms. Forms are protected by US copyright laws and legal action may be taken for unauthorized reproduction and distribution. Violators are subject to discipline. For a full copy of the MNR and FMR policies regarding forms, please contact our staff.