NAR files motion to dismiss 'bombshell' buyer-side lawsuit

The National Association of Realtors (NAR) announced over the weekend it has asked a judge to dismiss the bombshell class-action lawsuit that accuses both the trade group and major real estate companies of conspiring to determine buyers' agents' compensation.

In a statement, NAR explained that it wants the suit thrown out because it "misrepresents" the organization's rules that govern multiple listing services (MLSs). The statement argues these rules "have long been recognized by the courts across the country as protecting consumers and creating competitive, efficient markets."

John Smaby

NAR President John Smaby added in the statement that members of the organization and MLSs "promote a pro-consumer, pro-competitive market for home buyers and sellers, contrary to the baseless claims of these class action attorneys."

Home seller Christopher Moehr filed the lawsuit in March. In addition to NAR, it accuses real estate heavyweights Realogy, HomeServices of America, RE/MAX and Keller Williams of violating the Sherman Antitrust Act. The problem, according to the suit, is that NAR and these various firms all require brokers to make a "blanket, non-negotiable offer of buyer broker compensation."

"The conspiracy has saddled home sellers with a cost that would be borne by the buyer in a competitive market," Moehr's complaint goes on to argue. "Moreover, because most buyer brokers will not show homes to their clients where the seller is offering a lower buyer broker commission, or will show homes with higher commission offers first, sellers are incentivized when making the required blanket, non-negotiable offer to procure the buyer brokers' cooperation by offering a high commission."

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However, in its request that the lawsuit be dismissed, NAR argues that mischaracterizing the rules led Moehr's attorneys "to 'dream up' purportedly anticompetitive rules that simply do not exist in NAR's Handbook or Code of Ethics."

NAR also argues that it directs listing brokers and their clients to determine the amount of compensation to offer buyers' agents. Moreover, NAR continues, a buyer's agent "is free to negotiate a commission from the listing broker that is different from what appears in the MLS listing."

"Ultimately, these rules create a system of highly competitive markets where consumers receive superior service," NAR added in its statement.

NAR ultimately refers to Moehr's lawyers as "career class action attorneys" and describes the suit as sitting on "shaky legal grounds" that disregard "legal precedents that have upheld the pro-competitive benefits represented by the MLS system."

Smaby added that NAR's filing "shows the lawsuit is wrong on the facts, wrong on the economics and wrong on the law."

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