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Midwest Homeowners Win Cert. In Realtors Antitrust Suit

By **Dorothy Atkins**

Law360 (April 22, 2022, 9:01 PM EDT) -- A Missouri federal judge on Friday certified multiple classes comprising hundreds of thousands of Midwest home sellers who allege that the National Association of Realtors and major broker franchisors conspired to inflate broker commissions, finding that common issues predominate in part because sellers were bound by the same NAR rules regardless of their location.

In a 41-page **opinion**, U.S. District Judge Stephen R. Bough certified three classes of home sellers, which include hundreds of thousands of class members in Missouri and portions of Kansas and Illinois.

The three certified classes differ based on whether the class members assert claims under the Sherman Act, Missouri's antitrust statute or the Missouri Merchandising Practices Act.

In reaching the decision, the judge rejected the defendants' arguments that the six lead plaintiffs aren't typical of all class members, including those who listed their homes on multiple listing services outside their geographical region.

"The subject MLSs are bound by the same challenged rules regardless of location. ... The language does not differ based on the MLS," the judge wrote.

Although typicality has been met, the judge gave the plaintiffs 14 days to amend their complaint and add additional plaintiffs in different regional markets.

The class certification ruling is the latest development in a proposed class action that class counsel filed on behalf of Kansas City, Missouri, residents Joshua Sitzler and Amy Winger in April 2019, and later amended to replace them with Scott and Rhonda Burnett, Ryan Hendrickson, Jerod Breit, Scott Trupiano and Jeremy Keel as lead plaintiffs.

The suit accuses the National Association of Realtors and the broker franchisors — Realogy Holdings Corp., HomeServices of America Inc., BHH Affiliates LLC, HSF Affiliates LLC, RE/MAX LLC and Keller Williams Realty Inc. — of keeping broker fees artificially high through the national association's industrywide commission rules requiring sellers to pay brokers representing buyers commissions.

The plaintiffs claim the rules amount to price-fixing and result in non-negotiable commission rates for buyers' brokers.

In April 2020, Judge Bough **rejected** HomeServices' bid to send the dispute to arbitration, ruling that the firm lacks the authority to enforce the arbitration clauses because it is not a party to the contract signed by the consumers who are taking the brokers to court.

As HomeServices **appealed** the ruling, in May of last year, the homeowners filed a sealed motion seeking class certification, which the defendants opposed in a sealed filing.

On Friday, the court rejected the defendants' arguments against certification across the board and certified three classes of homeowners who listed their property through one of the defendant's brokers and paid a commission to the buyer's broker.

Two of the classes — dubbed the "Subject MLS Class" and the "Missouri Antitrust Law-Subject MLS Class" — apply to homeowners who listed the properties since April 29, 2015, but the third class, called the MMPA Class, applies to those who listed their properties since April 29, 2014.

The judge concluded that plaintiffs have shown that "common issues, capable of being answered with common evidence, predominate any individualized issues regarding an antitrust impact."

Counsel and representatives for the parties did not immediately reply to requests for comment Friday.

The classes are represented by Brandon J.B. Boulware, Jeremy M. Suhr and Erin D. Lawrence of Boulware Law LLC, Michael S. Ketchmark, Scott A. McCreight and Ben H. Fadler of Ketchmark & McCreight PC, and Matthew L. Dameron, Eric L. Dirks, Amy R. Jackson and Courtney M. Stout of Williams Dirks Dameron LLC.

Realty Holdings Corp. is represented by Armstrong Teasdale LLP and Morgan Lewis & Bockius LLP.

The National Association of Realtors is represented by ArentFox Schiff LLP.

HomeServices of America is represented by Lathrop GPM LLP, Foley & Lardner LLP and MacGill PC.

Keller Williams is represented by Holland & Knight LLP and Brown & James PC.

RE/MAX is represented by Horn Aylward & Bandy LLC and Jones Day.

The case is Joshua Sitzler et al. v. National Association of Realtors et al., case number 4:19-cv-00332, in the U.S. District Court for the Western District of Missouri.

--Additional reporting by Christopher Cole, Bryan Koenig, Anne Cullen and Andrew McIntyre. Editing by Rich Mills.