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Realty Group, Cos. Denied Early Win In Missouri Antitrust Suit

By Quinn Wilson

Law360 (December 19, 2022, 6:51 PM EST) -- A Missouri federal judge tossed the National Association of Realtors' and several broker franchisors' bid for an early win in a class action accusing them of conspiring to inflate commissions, rejecting their premise that they were indirect sellers to the homeowners.

U.S. District Judge Stephen R. Bough on Friday **denied** the defendants' **August motion for summary judgment**, and said in an order that the plaintiffs, hundreds of thousands of Midwest home sellers, presented a genuine dispute in their grievances with the real estate trade group and companies.

The realty parties asked Judge Bough to rule in their favor that the homeowners had no standing because the injuries they alleged were not caused by NAR and the companies, and that their commission rules did not constitute restraint of trade. Defendants in the suit include NAR and real estate firms Realogy Holdings Corp., HomeServices of America Inc., BHH Affiliates LLC, HSF Affiliates LLC, Re/Max LLC and Keller Williams Realty Inc.

The judge said on Friday the defendants had not put forth any evidence of negotiations or contracts between brokerages to rule in their favor, and that the plaintiffs had presented ample evidence to question the defendants' commission rules.

The homeowners filed the class action against NAR and the companies in 2019, alleging they conspired to maintain high broker fees by requiring home sellers to pay the buyer-side broker's commission, in violation of the Sherman Act, the Missouri Merchandising Practices Act and the Missouri Antitrust Law.

According to their suit, when the homeowners placed their properties on multiple listing services, they paid a 6% broker commission, half of which went to the buyer's broker, citing NAR's commission rules. The class action contends that the commission rules are a conspiracy to maintain buyer-broker commissions between 2.5% and 3%.

In April, the judge **certified three separate classes** of home sellers, including hundreds of thousands of homeowners in Missouri and portions of Kansas and Illinois. But in August, Judge Bough allowed a stay in the proceedings to pause unnamed class members' claims until the defendants submitted their appeal to his July decision to deny an arbitration option for the trade group and the companies.

This was the second time the defendants' request to arbitrate had been denied because they waived their right to do so years ago by aggressively litigating the case, according to Friday's order. When their first request for arbitration was **denied in 2020**, NAR and the realty firms were chided by the Eighth Circuit for waiting until a win did not appear imminent to request arbitration, Judge Bough said.

Representatives and counsel for the parties did not immediately respond to requests for comment Monday.

The homeowners 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 and Courtney M. Stout of Williams Dirks Dameron LLC.

The NAR is represented by Stinson LLP, Horn Aylward & Bandy LLC, Cooley LLP and ArentFox Schiff LLP.

HomeServices of America, BHH Affiliates and HSF Affiliates are represented by Lathrop GPM LLP, Foley & Lardner LLP and MacGill PC.

The case is Sitzer 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 Faith Williams, Dorothy Atkins and Christopher Cole. Editing by Covey Son.

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