

Jury Hits Realtors With \$1.8B Verdict Over Commission Rule

By **Matthew Perlman**

Law360 (October 31, 2023, 3:29 PM EDT) -- A jury in Missouri sided with a class of home sellers on Tuesday, finding that the National Association of Realtors and a pair of brokerages inflated commissions paid on home sales through the trade group's rules, causing \$1.8 billion in damages to the sellers.



The jury found that NAR conspired to inflate commissions in a conspiracy that cost the home sellers nearly \$1.8 billion in damages, a figure that could be tripled under federal antitrust law. (Photo by Smith Collection/Gado/Getty Images)

The jury issued the verdict after 12 days of **testimony** overseen by U.S. District Judge Stephen R. Bough in the Western District of Missouri. The jury found that NAR conspired with HomeServices of America and Keller Williams to inflate commissions through rules that force home sellers to pay the commissions of brokers representing the buyers.

The jury found the conspiracy cost the home sellers nearly \$1.8 billion in damages through higher commissions, a number that could be tripled under federal antitrust law. The home sellers also **reached a \$139 million settlement** with Realogy Holdings Corp., now called Anywhere Real Estate Inc., and Re/Max, ahead of trial in September.

In a statement on Tuesday, Mantill Williams, the vice president of communications for NAR, said the rules at issue prioritize consumers, support market-driven pricing and promote competition. Williams also contended that NAR's guidance for multi-listing services is meant to ensure consumers get transparent and reliable information about homes and that "brokerages of any size, service or pricing model get a fair shot at competing."

The statement also said the trade group plans to appeal the verdict, saying the matter is "not close to being final."

"In the interim, we will ask the court to reduce the damages awarded by the jury," Williams said in the statement. "We will continue to focus on our mission to advocate for homeownership and always put consumer interests first. It will likely be several years before this case is finally resolved."

Darryl Frost, a representative for Keller Williams, said in a statement on Tuesday that the brokerage disagrees with the verdict but respects the "jurors who decided the case based on the issues in front of them." Frost contended the court did not allow the jury to hear key evidence showing that the rule at issue is permitted under Missouri law.

"This is not the end," Frost said, adding that the brokerage is assessing its options, including avenues of appeal. "Keller Williams followed the law regarding cooperative compensation and stands by the evidence presented on the 100-year-old practice of sellers' agents offering commissions to other agents who help market and sell homes."

A representative for HomeServices said in a statement Tuesday that it too is disappointed with the ruling and intends to appeal. The decision, the statement said, means buyers will face even more obstacles in an already challenging real estate market while sellers will have a harder time realizing the value of their homes.

"It could also force homebuyers to forgo professional help during what is likely the most complex and consequential financial transaction they'll make in their lifetime," the statement said. "HomeServices of America believes that home buyers and sellers deserve fairness and transparency."

Berkshire Hathaway-owned HomeServices asked the judge to declare a mistrial in the case after the home sellers showed the jury an "ambush video" they hadn't disclosed during discovery. The video shows a podcast interview with an executive of Berkshire Hathaway Home Services suggesting brokers should use crude language and profanity when responding to requests to reduce their commission.

But the judge denied the request after finding the video was used properly to impeach a witness during the trial.

The verdict comes as NAR and the real estate companies **face similar allegations** from home sellers in a suit in the Northern District of Illinois. The settlements with Anywhere Real Estate and Re/Max covered the claims against them in that case too and also included agreements for the companies to change their business practices.

The changes include agreeing to not set any minimum commission requirements and to remove software that allows the companies to filter home listings by a broker's compensation. Anywhere and Re/Max have also agreed to make clear that broker commissions are negotiable and not set by law and to remind agents of their obligation to show properties regardless of the commission.

They will also not require their franchisees and affiliated agents to join NAR or follow its code of ethics or multiple listing service handbook, according to the settlements.

NAR's rules have sparked the concern of enforcers with the U.S. Department of Justice before, with the trade group **reaching a settlement** with the agency in November 2020 that included changes to several rules and policies that allegedly restrained competition.

The DOJ later looked to pull out of the agreement and re-open an investigation, but a D.C. federal court **blocked the effort** in January after finding the government is still bound by the prior settlement. The DOJ **has appealed** that ruling to the D.C. Circuit.

Representatives for the home sellers did not immediately respond to a request for comment Tuesday.

The homeowners are represented by Brandon J.B. Boulware, Jeremy M. Suhr and Erin D. Lawrence of Boulware Law LLC, Michael S. Ketchmark and Scott A. McCreight of Ketchmark & McCreight PC, and Matthew L. Dameron and Eric L. Dirks of Williams Dirks Dameron LLC.

The NAR is represented by Stinson LLP and Cooley LLP.

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

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

The case is Sitzer et al. v. The 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 David Holtzman and Lauraann Wood. Editing by Emily Kokoll and Karin Roberts.

Update: This story has been updated with more information on the case and comments from some of the parties.

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