

EXHIBIT 2

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	Civil Action No. 05 C 5140
)	
vs.)	Judge Filip
)	
NATIONAL ASSOCIATION OF REALTORS®)	Magistrate Judge Denlow
)	
Defendant.)	

REPORT OF STEPHEN H. MURRAY

I have been retained to serve as an expert witness for the National Association of Realtors® (“NAR”) in this case concerning several issues relating to the Virtual Office Website (“VOW”) Policy that was adopted by NAR in 2003, the Internet Listing Display (“ILD”) Policy adopted by NAR in 2005, and the revised 2005 definition of who may be a “participant” in the multiple listing service (MLS). For purposes of my report, I will divide the issues on which I have been asked to provide expert testimony into two areas:

1. The procompetitive justifications for the selective opt-out and the blanket opt-out provisions of the VOW Policy¹, and the blanket opt-out provision

¹ The opt-out provisions of the 2003 VOW Policy (attached as Exhibit 3) can be found in Section I(3). That section states: “Use of MLS active listing data on a VOW is subject to the permission of the listing brokers whose listings may be available to consumers via a VOW. Unless prohibited by state law or regulation, such permission is presumed unless a listing broker ‘opts out’ by directing that its or her listings not be available for search or display on the VOWs of other participants. A listing broker may independently elect to opt-out of (i) the VOWs of all other participants in the MLS (‘Blanket opt-out’), or (ii) the VOWs of selected other participants determined independently by the listing broker (‘Selective opt-out.’)”

available. In addition to existing MLS software solutions, the Internet could easily serve as the backbone of an alternative to the MLS. Firms like Trulia, Google, Yahoo, MSN, Zillow, and others could replicate the technologies needed to run an MLS or MLS-like facility for sharing of listings and cooperation among brokers almost seamlessly. Likewise, firms like RE/MAX, Prudential, all five Realogy brands (Century 21, Coldwell Banker, Corcoran, ERA and Sotheby's), Keller Williams, Realty Executives and Help-U-Sell already have the technologies to aggregate listing information from their affiliates, and indeed many have already implemented that technology. It would not be terribly difficult for these networks to make that aggregated listing inventory available to their affiliates and those from other nationally-branded real estate organizations. The listing inventory of firms associated with the national franchise brands, together with that of leading independent non-branded firms, would in many or perhaps even most markets approach or exceed 60-65% of all listed properties.

The technology has further evolved to enable even small firms or groups of brokers to share listings or offer cooperation to one another. Brokers could enter into data sharing agreements, often referred to as "peer-to-peer arrangements," with other brokers. Such data sharing agreements would give the participating brokers access to a large percentage of available properties. Moreover, the technology to facilitate peer-to-peer data sharing arrangements is available and inexpensive. As far back as 1997, IKON Office Solutions had developed a Java application that would have created an easy to manage peer-to-peer network capability.

Today, other companies like Point2 Technologies provide accessible and convenient capability to create MLS-like systems through their custom "handshake" system, where sales professionals can agree to share listings on each others sites with but one mouse

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click, including an offer of compensation to one another.¹³ According to its website, as of April 2007, Point2NLS (which stands for “national listing service”) had almost 123,000 members sharing well over half a million listings directly with each other, and is adding over 200 new members each day.¹⁴ Without doubt there are others who either have this technology available or could quickly develop it.

For these reasons, I conclude that the threat that brokers would withdraw from MLSs in 2003 over concerns about the VOW Policy was credible, and that it was therefore reasonable and procompetitive for NAR to include the opt-out safety valve as part of the VOW Policy in order to deter such withdrawals.

c. NAR Was Correct To Conclude That Opt-Outs, While Important To Provide For, Would Rarely Be Exercised

I also conclude that NAR was correct in its assessment that the opt-out provisions were safety valves that would rarely be exercised. My conclusion is based on a number of considerations.

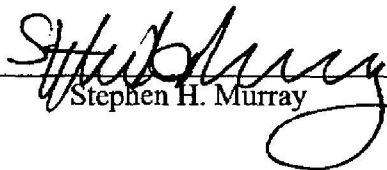
First, my conclusion is based on my personal interactions with senior executives of dozens of leading real estate brokerage firms from across the nation. Discussions with these executives in the spring of 2003 revealed a common belief that there should be both blanket and selective opt-out provisions in the VOW Policy. However, none of the executives with whom I spoke ever indicated that they planned to exercise any opt-out right, or indicated a desire to exercise the opt-out right. Rather, they emphasized the importance of the opt-out as a safety valve if a broker engaged in practices that undermined their ability to serve their clients.

¹³ <http://nls.point2.com/Content/Documents/NLS-principles-practices.pdf>.

¹⁴ <http://www.point2nls.com/Content/Statistics.asp>

Significantly, the referral rule addressed only one form of misuse or “free riding” on the MLS. As noted above, free-riding occurs whenever the MLS is used for purposes other than brokering the sale of the residential real property. Because the referral rule was under inclusive, it made sense to create a broad based rule. The NAR was also challenged in trying to draft the policy to create language that identified what behaviors they were trying to identify. The revised definition of “participant” more clearly defines and captures the fundamental purpose of the MLS. It guards against use of the MLS by those who may have a real estate license but who would use the MLS for reasons other than real estate brokering, in a straightforward effort to prevent free-riding generally.

Date: May 1, 2007


Stephen H. Murray

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