



Department of Justice

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COURT ALLOWS DEPARTMENT OF JUSTICE ANTITRUST LAWSUIT AGAINST NATIONAL ASSOCIATION OF REALTORS TO PROCEED

Lawsuit Challenges NAR Rules that Obstruct Internet-Based Real Estate Brokers from Offering Innovative Services to Consumers

WASHINGTON — The U.S. District Court in Chicago issued a 29-page opinion yesterday allowing the Department of Justice's antitrust lawsuit against the National Association of Realtors (NAR) to proceed. The court rejected NAR's argument that last-minute changes to its policies prevented judicial scrutiny. In denying NAR's motion to dismiss the case, the court stated in its opinion that "NAR has failed, with all respect, to demonstrate that this case should be dismissed at the outset."

"The Department of Justice's Antitrust Division is committed to preserving competition in this vital sector of our nation's economy," said J. Bruce McDonald, Deputy Assistant Attorney General in the Department's Antitrust Division. "We are pleased that the court has allowed the lawsuit to proceed and we look forward to presenting our case at trial."

Background

In September 2005, the Department's Antitrust Division filed a lawsuit challenging that NAR rules limit competition from real estate brokers who use the Internet to serve their customers. In its lawsuit, the Department alleges that NAR's policy prevents consumers from receiving the full benefits of competition and threatens to lock in outmoded business models and to discourage discounting.

The brokers that NAR targeted with its rules operate password-protected Web sites through which they provide information, including property listings, to their customers, potential home buyers. These are sometimes called "virtual office websites" or "VOWs," because a broker operating such a site is able to provide customers with the same property listing information on-line that customers can obtain by visiting the "brick-and-mortar" office of a traditional broker.

Consumers who work with brokers that operate VOWs are better able to educate themselves about available properties that may meet their requirements. By working with a VOW broker, customers can search the database of local property listings on their own, using their home computers to obtain the same information other brokers provide by less convenient means, such as by hand at their office or via fax, mail or e-mail. Because VOWs enable consumers to research and learn about the marketplace at their own pace and on their own time,

brokers who provide this service can, in turn, lower their costs by reducing the time that their agents spend searching the Multiple Listing Service (MLS) database or showing homes the customer dislikes, the Department alleged. Because the Internet can be used to deliver brokerage services more efficiently – resulting in better service and lower prices to consumers – brokers who utilize the Internet represent a competitive challenge to traditional brokers, the Department said.

NAR's policy enables traditional brokers to exercise an "opt out" right to block their competitors' customers from having full on-line access to all of the MLS's listings. When exercised, the opt-out provision prevents VOW brokers from providing all MLS listings that respond to a customer's search, effectively inhibiting the new technology. The Department alleges in its lawsuit that these policies significantly alter the rules that govern MLSs by permitting traditional brokers to discriminate against other brokers based on their business model, denying them the full benefits of MLS participation. The Department's lawsuit seeks to ensure that traditional brokers cannot use NAR's policy to deprive consumers of the benefits of these new ways of competing.

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