

EXHIBIT 3

STEPHEN H. MURRAY, SEPTEMBER 20, 2007

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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,) Civil Action
vs.) No. 05 C 5140
NATIONAL ASSOCIATION OF)
REALTORS,)
Defendant.)

The videotaped deposition of
STEPHEN H. MURRAY, called as a witness for
examination, taken pursuant to the Federal Rules
of Civil Procedure of the United States District
Courts pertaining to the taking of depositions,
taken before PAULINE M. VARGO, a Notary Public
within and for the County of DuPage, State of
Illinois, and a Certified Shorthand Reporter of
said state, C.S.R. No. 84-1573, at Suite 3700,
One South Dearborn Street, Chicago, Illinois, on
the 20th day of September, A.D. 2007, at 9:06 a.m.

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13:09:39	1	THE VIDEOGRAPHER: We are going back on the	13:11:50	1	A. It's -- I mean by that it's beneficial
13:09:41	2	video record at the start of Tape 4 at 1:09 p.m.	13:11:55	2	to housing consumers and is beneficial to
13:09:46	3	MR. KRAMER: Thank you.	13:11:58	3	competition within the industry for those
	4	STEPHEN H. MURRAY,	13:12:03	4	consumers; that is, brokers competing to get
	5	called as a witness herein, having been previously	13:12:06	5	consumers to use them for their services.
	6	duly sworn and having testified, was examined and	13:12:09	6	Q. Would you explain how it's beneficial to
	7	testified further as follows:	13:12:14	7	consumers?
	8	EXAMINATION (Resumed)	13:12:15	8	A. Brokers employ an ever-changing mix of
	9	BY MR. KRAMER:	13:12:21	9	strategies to market properties. If essentially
13:09:47	10	Q. Mr. Murray, before we broke for lunch,	13:12:26	10	they all have exactly the same means of marketing
13:09:51	11	you were referring to ZipRealty in connection with	13:12:30	11	properties at all times, then their need to compete
13:09:54	12	opt-outs. Do you recall that?	13:12:36	12	with each other to the extent they have already may
13:09:55	13	A. Yes.	13:12:40	13	well be inhibited.
13:09:57	14	Q. Were you suggesting that ZipRealty	13:12:44	14	Example. MLS, it is a significant and
13:10:01	15	supported NAR's opt-out provisions?	13:12:48	15	superior marketing system, but in addition to that,
13:10:03	16	A. No, I don't -- I don't recall their	13:12:52	16	brokers use Homes Book, TV, billboards, direct
13:10:07	17	exact position on it at this moment, but no, I	13:12:55	17	mail, e-mail, fax, all kinds of things.
13:10:10	18	don't think -- to the best of my knowledge, they	13:13:00	18	If you take and they are required to be
13:10:12	19	are not in support of it back in 2002 and '3.	13:13:04	19	an MLS and now they are required to be on every MLS
13:10:16	20	Q. Do you know if they are any different in	13:13:07	20	site that anybody wants to put them on, then their
13:10:20	21	their views today on the 2005 policy?	13:13:11	21	need to compete in their mix of websites or
13:10:22	22	A. I don't know. I don't know what their	13:13:13	22	features of those websites might necessarily be
13:10:24	23	position is at this time.	13:13:16	23	reduced. So their need to compete for those
13:10:26	24	Q. Before the break also, did I understand	13:13:19	24	listings and offer special services to sellers
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13:10:29	1	you to say that it would be suicide for a broker to	13:13:22	1	could be inhibited. That's what I mean.
13:10:33	2	take their listings off a broker's VOW?	13:13:26	2	Q. How would their need to compete for
13:10:38	3	A. It could be, yes.	13:13:29	3	listings could be inhibited?
13:10:39	4	Q. And would that generally be your view?	13:13:32	4	A. Well, as an example, a broker right now
13:10:42	5	A. Yes.	13:13:36	5	can choose in addition to various broker websites
13:10:43	6	Q. If that is your general view, would it	13:13:42	6	today, they can choose multiples -- there may be --
13:10:46	7	also be a general view that it would be suicide	13:13:48	7	I don't know exactly how many. There may be 50
13:10:49	8	even more so for brokers to withdraw from an MLS	13:13:50	8	other websites of some nature that are out there
13:10:54	9	over their listings appearing on a VOW?	13:13:53	9	right now. If any operator could grab those
13:10:56	10	A. It would be very difficult, yes. It	13:13:56	10	listings, then at any time my guess would be most
13:11:02	11	could be, again, very harmful to their business.	13:14:00	11	of them would -- pardon me -- most of them would,
13:11:06	12	Q. And as a general proposition would you	13:14:03	12	and at that point the broker says, well, they are
13:11:08	13	expect that it would be very harmful to their	13:14:06	13	already on all 50 leading real estate sites, so,
13:11:10	14	business?	13:14:09	14	you know, that's it. I don't really need to do
13:11:11	15	A. Yes, I do.	13:14:11	15	anything more.
13:11:22	16	Q. Would you agree that allowing brokers to	13:14:13	16	I mean, right now there is an infinite
13:11:24	17	make individual decisions about their listings --	13:14:16	17	variety of brokers choosing whether to be, for
13:11:30	18	excuse me. Strike that, please.	13:14:18	18	instance, on Point 2 or Trulia or Google or Yahoo
13:11:33	19	Would you agree that allowing brokers to	13:14:23	19	or PropSmart, and I could go down this huge list,
13:11:35	20	make individual decisions about how their listings	13:14:26	20	but that's an individual broker decision.
13:11:37	21	may be used is procompetitive in its own right?	13:14:28	21	If it is required that they must make
13:11:42	22	A. Yes.	13:14:30	22	all their listings available to anybody with a
13:11:45	23	Q. What do you mean when you use the word	13:14:32	23	broker's license who wants them, then I could
13:11:48	24	"procompetitive" in that context?	13:14:36	24	almost assure you every one of those sites will go

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14:21:09	1	Q. And is it also your view that threats	14:23:50	1	make our threat credible.
14:21:12	2	of withdrawal from the MLS as a result of the VOW	14:23:52	2	Q. And why was that?
14:21:16	3	policy were reasonable, as you also stated, in	14:23:54	3	A. It was a number that seemed to get MLS's
14:21:20	4	connection with the concern that withdrawal would	14:23:58	4	attention or Board of Realtors' attention when we
14:21:22	5	have been harmful to competition?	14:24:01	5	had that kind of market share sitting on one side
14:21:24	6	A. Yes. I mean, based also on the --	14:24:03	6	of the table saying, "If you don't lower your
14:21:32	7	particularly the now-rapid expansion of	14:24:06	7	charges to our agents, we are going to form our own
14:21:34	8	alternatives to MLS, on which I have commented	14:24:09	8	MLS and reduce costs."
14:21:36	9	earlier today.	14:24:11	9	Q. And why would the figure of 60 percent
14:21:38	10	I do want to correct one impression I	14:24:14	10	or so get the attention of an MLS, is what I am
14:21:40	11	think earlier, and I hope I didn't misstate this	14:24:17	11	trying to get at?
14:21:44	12	too badly. I think you asked me about the	14:24:19	12	A. Sir, it just seemed to be the around
14:21:46	13	withdrawal. We talked about the definition of	14:24:22	13	that number. It could be 55, it could be 70, but
14:21:48	14	what you and I meant to be absolute withdrawal.	14:24:25	14	in or around that number seemed -- I mean, if it
14:21:51	15	Q. Yes, sir.	14:24:28	15	was 45, it didn't seem to get the same attention.
14:21:51	16	A. When I talk about the threat of	14:24:31	16	I guess that is the contrast I want to make.
14:21:53	17	withdrawal, I am really talking about a group, and	14:24:34	17	Q. So what I am saying, what I am trying to
14:21:58	18	I meant that in that context all along. I really	14:24:36	18	get at, sir, is, given a number that would get the
14:22:03	19	truthfully don't see any one individual broker	14:24:38	19	attention, what I am trying to understand is why
14:22:07	20	withdrawing from the MLS entirely as a reasonable	14:24:41	20	would that number get the attention?
14:22:14	21	expectation.	14:24:42	21	A. I can't answer it from their side of the
14:22:15	22	Q. Why would you not expect to see that,	14:24:43	22	table. I don't know why it took that number to
14:22:17	23	sir?	14:24:45	23	seem to get their attention, but that's roughly
14:22:19	24	A. Regardless of their market share, one	14:24:47	24	what it took.
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14:22:24	1	broker withdrawing from the MLS, and, if you will,	14:24:49	1	Q. You can't answer with your experience of
14:22:28	2	we used the term "going naked," the damage done to	14:24:51	2	working with MLSs?
14:22:34	3	their ranks of real estate agents who are wedded,	14:24:53	3	A. Well, obviously it's more than half,
14:22:38	4	you know, who are fairly embedded with the MLS or	14:24:56	4	but, I mean, whether it was 60 or 80 didn't seem to
14:22:41	5	an MLS-type program, that the damage to any one	14:24:59	5	make much difference.
14:22:46	6	firm trying to do that by itself would be very,	14:25:01	6	Q. When you use the term "withdrawing" or
14:22:48	7	very harmful to that brokerage company.	14:25:04	7	"going naked," is that the equivalent of the phrase
14:22:50	8	Q. You used the term earlier "economic	14:25:09	8	"absolute withdrawal" that you used earlier?
14:22:54	9	suicide." Would you view it as that?	14:25:11	9	A. I believe you and I would agree --
14:22:55	10	A. I do. And so when I referred to in	14:25:13	10	that's what I wanted to make sure we knew.
14:22:58	11	these statements that NAR was right to perceive the	14:25:15	11	Absolute -- I used the term "naked," which is what
14:23:03	12	threat, I wanted to clarify. In that context I am	14:25:17	12	we talk about in the industry, but the absolute
14:23:06	13	always talking about a group of "X" number or more	14:25:19	13	withdrawal is one firm leaving MLS and not joining
14:23:12	14	that develop -- and I think I said earlier today,	14:25:22	14	another one.
14:23:14	15	develop an alternative to MLS, and I meant a group.	14:25:25	15	Q. If a group of --
14:23:22	16	I didn't mean one. I just wanted to be sure I	14:25:27	16	A. Go ahead.
14:23:24	17	communicated that clearly with you.	14:25:28	17	Q. If a group of brokers that represented
14:23:26	18	Q. And when you say a group, what would you	14:25:31	18	60 to 70 percent of the brokers in an MLS
14:23:28	19	view it, a critical mass to be to make that type of	14:25:34	19	threatened to withdraw from the MLS if the MLS did
14:23:34	20	withdrawal viable, please, in your view?	14:25:37	20	not adopt a VOW opt-out policy, would you view that
14:23:36	21	A. In my work in the past where we would	14:25:40	21	threat to be a procompetitive threat?
14:23:40	22	gather brokers to try to compel change in an MLS,	14:25:44	22	MR. BIERIG: Objection to the form of the
14:23:44	23	we always felt like we had to have at least 60	14:25:46	23	question in the absence of any statement as to the
14:23:47	24	percent of the listings in a given marketplace to	14:25:51	24	reasons.

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14:59:55	1	alternatives would be to MLS.	15:02:36	1	There are a wide number of discussions I
15:00:00	2	Q. There is some talk about forming another	15:02:38	2	have had with brokerages all over the country with
15:00:02	3	MLS?	15:02:41	3	frustration with MLS that has nothing to do with
15:00:03	4	A. Yeah. It's likely the answer is yes.	15:02:45	4	opt-out. At this time they are looking for also
15:00:15	5	Q. As I understand it, none of the brokers	15:02:47	5	alternatives because of that frustration.
15:00:17	6	that communicated personally to you that they might	15:02:49	6	Q. Are you aware of any brokerage in the
15:00:20	7	withdraw from their respective MLSs also told you	15:02:51	7	country that has withdrawn from an MLS over
15:00:23	8	that they would try to continue in business without	15:02:56	8	frustration with any policy and not gone into
15:00:25	9	being in an MLS?	15:03:01	9	another MLS?
15:00:27	10	A. I did not hear that from anybody, that	15:03:02	10	A. No, not at this time.
15:00:30	11	someone would leave the MLS and just do without any	15:03:06	11	Q. Did you think that the brokers you
15:00:34	12	MLS-type function. I have not heard that.	15:03:08	12	communicated with about the possibility of their
15:00:46	13	Q. Is it your opinion that brokers would	15:03:10	13	withdrawing from their respective MLSs if the VOW
15:00:48	14	really leave an MLS without an opt-out provision	15:03:14	14	policy were not adopted with an opt-out would
15:00:51	15	and stay out of the MLS without trying to set up a	15:03:19	15	likely withdraw from their respective MLSs?
15:00:55	16	new MLS?	15:03:22	16	A. As I have said, I think the first thing
15:00:59	17	MR. BIERIG: I object to the form of the	15:03:24	17	they would do is develop alternatives and then
15:01:00	18	question. It also has been asked and answered.	15:03:28	18	determine if in fact not having an opt -- if there
15:01:01	19	BY THE WITNESS:	15:03:31	19	was no opt-out, the first thing they would do would
15:01:02	20	A. It's my position that no one single	15:03:34	20	be probably develop alternatives, and then they
15:01:04	21	broker would leave and try to go totally without	15:03:36	21	would look to see if in fact not having an opt-out
15:01:07	22	MLS. It's my position that a group of brokers	15:03:39	22	harmed their business.
15:01:10	23	might leave and try to replace many of the MLS	15:03:42	23	I think that if there is -- if there is
15:01:13	24	functions on another platform.	15:03:46	24	no opt-out and absolutely nothing happens, it's
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15:01:27	1	BY MR. KRAMER:	15:03:52	1	detrimental to business. They don't end up with,
15:01:28	2	Q. Did you think that the brokers you	15:03:55	2	by my prior example, Citigroup taking every listing
15:01:31	3	communicated with about the possibility of their	15:04:00	3	in the country and plopping it on their site
15:01:34	4	withdrawing from their respective MLSs if the VOW	15:04:01	4	without a broker's permission and getting the
15:01:34	5	policy did not include an opt-out provision would	15:04:02	5	advertising value of that listing content. I mean,
15:01:41	6	actually withdraw from their respective MLSs?	15:04:05	6	if nothing along those lines happened, they may not
15:01:42	7	A. Over time it was possible. I think what	15:04:09	7	leave MLS at all.
15:01:44	8	I really thought would happen initially was they	15:04:14	8	Q. Is it your understanding that there
15:01:47	9	would first develop alternatives and they would	15:04:16	9	have been problems with VOWs' operations and in
15:01:51	10	make sure those were working and functioning before	15:04:20	10	conjunction with the MLS that would cause brokers
15:01:53	11	they contemplated leaving an MLS.	15:04:22	11	to want to leave the MLS or opt-out if they could?
15:01:55	12	Q. So they would continue to stay in the	15:04:27	12	MR. BIERIG: I object to the form of the
15:01:58	13	MLS they were in?	15:04:28	13	question.
15:01:59	14	A. While they built an alternative. Pardon	15:04:30	14	BY MR. KRAMER:
15:02:01	15	me.	15:04:33	15	Q. Is it your understanding that VOWs have
15:02:02	16	Q. Which brokerages in particular do you	15:04:37	16	created problems with the use of listing brokers'
15:02:05	17	have in mind that were of that viewpoint?	15:04:37	17	listings that have -- I lost my train of thought.
15:02:11	18	A. I have had conversations with dozens of	15:04:45	18	MR. KRAMER: Let's take a break at this point.
15:02:13	19	brokers around that topic. In some cases it's not	15:04:47	19	THE VIDEOGRAPHER: We are going off the video
15:02:18	20	even the discussion of opt-out or leaving MLS.	15:04:48	20	record at the end of Tape 5 at 3:04 p.m.
15:02:21	21	It's there a possibility to use one of these	15:22:07	21	(WHEREUPON, a recess was had.)
15:02:24	22	companies as the future MLS platform and that in	15:22:21	22	THE VIDEOGRAPHER: We are going back on the
15:02:30	23	some cases their frustration with their MLSs has	15:22:25	23	video record at the start of Tape 6 at 3:22 p.m.
15:02:33	24	nothing to do with opt-out.	15:22:25	24	BY MR. KRAMER:

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