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PROFESSIONAL LIABILITY BLOG

The Recent $1.8 Billion Jury Verdict Based on Long-Held Real Estate Practices

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In 2019, Missouri home sellers filed a federal class action lawsuit against the National Association of Realtors (NAR) and several corporations intimately involved in the residential real estate market like Keller Williams and Berkshire Hathaway. The lawsuit is captioned, *Burnett et al v. National Association of Realtors et al.* As the basis for the Plaintiffs' allegations of conspiracy and violations of the Sherman Antitrust Act, the class of home sellers argued the NAR's commission splitting rule constitutes a conspiracy, prevents natural price competition, and forces home sellers to pay higher commission costs than they hypothetically would have if realtor commission terms were negotiated per each unique transaction.

The NAR maintains and manages the Multiple Listing Services (MLS) databases. The MLS databases are essential to the residential real estate market because the MLS is where most home sellers list their properties for sale and where most home buyers identify properties to purchase. As a precondition to listing a home for sale on the MLS, home sellers agree to comply with the NAR's rules. In Missouri most home transactions involve realtor commissions whereby the seller's agent splits their commission with the buyer's agent pursuant to the NAR's "Cooperative Compensation Rule."

The NAR maintained the split commission model balances the interests of home buyers and sellers. Home sellers and home buyers both need knowledgeable representation and strong advocates to help them navigate the complexities of real estate transactions. For example, first time homebuyers can be vulnerable parties who need seasoned guidance through a complex process that can be intimidating for even experienced parties. Also, home sellers benefit by having the transaction process conducted in a professional efficient manner. While both home sellers and home buyers need competent representation, the core issue at trial in this case was whether the NAR's rules improperly force home sellers to pay for the home buyer's skilled representation.

On October 31, 2023, after a two-week trial in Kansas City, the jury decided the case in the Plaintiffs' favor and awarded the class of home sellers $1.8 billion in damages. The Jury decided the NAR's cooperative compensation rule is anti-competitive to the residential real estate market and found the class of home sellers was damaged by being forced to pay realtor commissions for their respective home buyers. Under Missouri state law the verdict amount is subject to treble damages which means the current damage amount of $1.8 billion may grow significantly larger.

Several defendants including the NAR and Keller Williams promised to appeal the decision. While appellate litigation appears inevitable, the ultimate impact of this decision on the residential real estate market and the home selling/buying process is unknown. A few areas to keep an eye on for potential developments or changes include: whether the plaintiffs will be granted injunctive relief; what form of injunctive relief may be granted; what impact an injunction may have on the residential real estate market; whether the standard contracts and forms realtors currently use will need to be re-written; whether any professional standards governing realtor practices may change; whether the NAR will voluntarily modify its cooperative compensation rule; and whether the MLS databases might become more accessible to home sellers without pre-conditions.