

HERE'S THE DEALS ANSWERS THE COMPLAINT

The following Premises are quoted from the class action Complaint Burnett et al. v NAR et al.

Responses are our opinion at HERE'S THE DEAL.

Premise: "Most buyer brokers will not show homes to their clients where the seller is offering a lower adversary/buyer commission, or they will give priority to showing homes with higher adversary/buyer commission offers first. As a result, to gain the cooperation of buyer brokers, selling brokers are incentivized to offer a higher adversary/buyer broker commission as part of complying with NAR's mandatory Adversary Commission Rule."

Response: "**Most buyer brokers...!**" Name one Buyer Agent you know who does this. This does not happen. Of course, Buyer Brokers and Agents prefer listings offering higher cooperative compensation - who doesn't want more money? And obviously, a few REALTORS® might do this. How long do they last? If this is their character, they don't last long in the business. More important than selling real estate for a REALTOR® is selling themselves - their character and integrity. Most REALTORS®, especially Buyer Agents, who love helping Buyers, care primarily about finding the perfect home for their customers.

Premise: "Defendants' conspiracy has kept buyer broker commissions in the 2.5 to 3.0 percent range for many years despite the diminishing role of buyer brokers. Many home buyers no longer search for prospective homes with the assistance of a broker, but rather independently through online services. Upon information and belief, NAR and the Corporate Defendants have studied and are aware of this trend and fact. Prospective home buyers increasingly retain a buyer broker after the client has already found the home the client wishes to buy. Despite this diminishing role for buyer brokers, their percentage of commission has remained steady, due to Defendants' conspiracy. And at the same time, because housing prices have significantly increased during the last several years (far outpacing inflation) and because commissions are calculated as a percentage of the home's sale price, the actual dollar amounts have substantially risen as well."

Response: We at HERE'S THE DEAL are not saying NAR's policies were non-anti-trust violations. But let's unpack this. Home Buyers begin their search for property on the internet. Certainly, that is true. Buyers are more likely to bring a list of houses they are interested in viewing to their Buyer Agent appointment. How many tell the Agent they want to see just one house? What happens if the Seller of that one house doesn't make a deal with the Buyer? The Buyer doesn't buy a house? That's not how it typically works. Buyers share with Agents their criteria and often have a list of homes they've seen on the internet. Buyer Agents work with that information and do their own (MLS) searches to find additional houses that might fit what the Buyers describe. Together they prioritize homes to view. Until they tour the homes, neither knows the perfect home for the Buyer.

Premise: "Defendants' success in maintaining (and, in inflation-adjusted dollars, increasing) the same artificially and anticompetitively inflated commission rates despite these technological and social changes starkly contrasts with results in other industries. For example, the introduction of

the Internet and innovative or discount service providers have provided enormous financial benefits to consumers of numerous goods and services in various sectors, such as travel booking, insurance, banking, and stock brokering, as well as retailing and bookselling. Despite transaction costs dramatically decreasing in myriad other sectors and industries, real estate commission rates have persisted and remained steady in a range of 5% to 6%.”

Response: How was legal research done before the Internet? How is it done now? Imagine what it’s going to be like very soon - AI is already aiding legal research. According to the “logic” of the attorney who drafted this argument, he’s getting a pay cut soon.

Premise: “The disconnect between buyer broker costs and commissions illustrates the effect of Defendants’ conspiracy. Whether a home purchased by their client costs \$250,000 or \$2,500,000, the buyer broker’s costs are roughly similar. However, the sum received by the buyer broker as a commission is significantly greater for the more costly property. Why? Many if not most of the services that buyer brokers provide do not vary based on the sale price, so in a rational, competitive market the percentage fee should decrease as the home price increases. Instead, due to Defendants’ conspiracy and anticompetitive practices such as the Adversary Commission Rule, the commission overcharges imposed on home sellers bear little relation to the quantity or quality of the services or value allegedly provided by the brokers who are paid the commissions. This structure results from a lack of competition and makes no economic sense, except for the buyer broker.”

Response: An attorney settles a personal injury case for \$250,000 and another for \$2,500,000. The hypothetical for the Buyer Agent is the same amount of work is done. Assuming the same premise for the attorney’s two cases: ergo “...in a rational, competitive market, the attorney’s (contingency fee) should decrease as the (settlement amount) increases.” (BTW, any inverse proportionality going on with attorney fees in the Burnett et al. v. NAR et al.?) Regarding Buyer Agents, often, it’s quite the opposite. Most times, lower-priced homes involve more work for the Buyer Agents. Certainly, the ratio of cash to financed transactions favors the luxury home Buyer Agent vis a vis time on the job. Financed (especially FHA, and VA loans) transactions alone involve more work for the Buyer Agent - helping their customers navigate the process. First-time Buyers make up a larger percentage of lower-priced homes than luxury homes; obviously, they require even more assistance and involve more of the Buyer Agents’ time than experienced luxury-home Buyers.

Premise: “Moreover, another pernicious effect in the marketplace that results from and is amplified by Defendants’ anticompetitive conspiracy is the practice of “steering.” That is, given the requirement for seller brokers to make a blanket, unilateral offer of commission to buyer brokers (which is visible through the MLS system only to other realtor participants, and not to consumers), buyer brokers face strong incentives to “steer” their buyer clients toward homes where the buyer broker would receive a greater commission percentage. Indeed, economic studies have documented and confirmed the prevalence and significance of steering and further “suggest[ed] that this could limit price competition.”

Response: Again, name one REALTOR® who does this. The irony is after August 17, 2024, it will be *Buyers* who will steer their *Broker* to homes that are paying commissions and away from those not offering such incentives.

Premise: “And even assuming arguendo that in a competitive market, the seller would pay all or a portion of the buyer broker’s commission, the commission would be far less than the 2.5 to 3.0 percent that is currently and typically paid to buyer brokers.”

Response: Who does more work: the Listing Agent or the Buyer Agent who not only finally has an executed contract after showing X number of homes to the Buyer but also has to help the Buyer through the inspection, lending, etc. processes to closing?

Premise: “In addition, the requirement that the offer of compensation be “blanket” means that the Adversary Commission Rule compels home, sellers, to make this financial offer without regard to the experience or quality of the buyer-broker and without regard to the services or value being provided by that buyer broker. The same “blanket” fee must be offered to a brand-new buyer-broker with no experience as that offered to a buyer-broker with many years of experience. In a competitive and rational market, competitors with more experience and a track record of results tend to command higher prices than new entrants with no experience or track record, but the Adversary Commission Rule blocks this kind of competitive differentiation...”

Response: More irony: the brand-new inexperienced Buyer Agents (there's no such thing as an inexperienced Broker) will be the ones who will offer low rates which will attract inexperienced Buyers. This won't result in experienced Buyer Agents being paid commensurate with their expertise. Rather it will result in inexperienced Buyers getting inexperienced Agents and end up getting what they (don't) pay for.

Premise: “Moreover, because the offer is blanket and can be easily compared to the blanket offers that every other seller broker must include and publish (to fellow brokers only) on the MLS, the Adversary Commission Rule by design creates strong incentives for sellers and seller brokers to offer the high, standard commission rates to buyer brokers that the conspiracy has long sought to maintain. Seller brokers know that if they list a home and include a lower blanket offer of compensation to buyer brokers, then due to the practice of “steering” the community of buyer brokers is likely to avoid showing that home to their clients (potential home buyers).”

Response: Again, Sellers who offer higher commissions to Buyer Brokers won't be steered by the Broker Agents (for one thing, it simply doesn't happen often enough to warrant discussing). Rather, Buyers themselves will steer towards properties with offered commissions.