

NAR Litigation Impact

The recent verdict in the Sitzer/Burnett v. National Association of REALTORS® (“NAR”) lawsuit has left REALTORS® with many questions. This Quick Guide addresses some of the most common questions regarding the litigation and what it means for the real estate industry.

What is the NAR lawsuit about, and what was the jury’s verdict?

The lawsuit is a class action antitrust lawsuit filed in the federal court in Missouri. The plaintiff class includes home sellers in Missouri who sold their properties between April 29, 2015, and June 30, 2022 using one of four local multiple listing services (“MLSs”), where commission was offered from the listing agent to the buyer’s agent. In 2019, the plaintiffs sued NAR and four large brokerages. Plaintiffs claim that the defendants conspired to keep real estate commission rates high in violation of antitrust law, and NAR’s cooperative compensation rule (MLS rule requiring listing brokers to offer compensation to the buyer’s agent through the MLS) caused the sellers to pay too much in real estate commissions. On October 31, 2023, after an 11-day trial, the jury decided against the defendants and issued a verdict of nearly \$1.8 billion. This amount could be tripled to more than \$5 billion.

What Happens Next?

NAR will post the necessary bond to appeal the jury’s verdict and NAR is confident it will ultimately prevail in this case. Also, NAR will ask the court to reduce the damages awarded by the jury. NAR has stated it does not plan to raise member dues. The appeals process is very lengthy and therefore this lawsuit will probably not reach a final court decision for several more years. The trial judge hasn’t issued a final order yet on the jury’s October 31st verdict and we don’t expect one until Spring 2024. We do not know whether there will eventually be any injunctive orders that might require the defendants to alter their business practices or policies. It will take months before the defendants’ first appellate briefs are filed in the appellate court, after which C.A.R. will have better information about the specific legal arguments and grounds supporting the defendants’ appeals.

How Does the jury verdict Impact C.A.R. and its members?

C.A.R. is not a defendant in this lawsuit, nor any other lawsuits filed against NAR and the real estate brokerages. The Sitzer/Burnett defendants are the franchise brokerage companies and NAR corporate entities. Plaintiffs did not sue and are not seeking damages from individual REALTORS®.

Is there a possibility for a class action lawsuit in California?

Although it’s possible, there are factors that would probably make it more challenging to file a similar California action, including California laws that confirm the pro-consumer and competitive benefits of MLSs, and the wide variety of broker business models that give consumers many choices which promotes robust competition in the California real estate market. Still, the lawsuit and resulting verdict serve as reminders to members, whether they represent seller or buyers, that they should have open and transparent discussions with their clients about their compensation, including the fact that real estate commissions and other types of compensation are negotiable.

What impact will the antitrust cases have on the relationship between NAR and C.A.R. or between NAR and local AORs and MLSs?

Currently, there is no direct impact on the relationships between NAR, C.A.R., and local associations of REALTORS®. The case is not over yet. C.A.R. will continue to serve and support its membership by providing a vast suite of member resources and business products, in addition to strong political advocacy on behalf of California REALTORS®.

For more information see the detailed FAQ available here - <https://www.car.org/members/narlitigation>