

Appeals court denies NAR rehearing request of DOJ probe

The latest order by a court of appeals in Washington, DC, means the DOJ is free to reopen its investigation into the National Association of Realtors

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Today, July 15, 2024

The U.S. Court of Appeals for the District of Columbia Circuit handed a setback to the National Association of Realtors on Friday, when it denied the organization's request for a rehearing in an ongoing dispute with the Department of Justice.

The [brief order](#) was the latest legal update in the DOJ's years-long attempt to reopen an investigation into NAR's rules, including a controversial commission rule at issue in multiple antitrust lawsuits against the trade group. The court didn't provide its reasoning for denying the request.

NAR had asked the court on May 20 for a rehearing before all judges of the appeals court. A three-judge panel ruled in April that the DOJ could reopen its investigation, which the DOJ initially indicated it had closed in November 2020.

NAR and the DOJ originally reached a settlement agreement that required NAR to increase transparency in relation to broker commissions and to stop claiming that buyer broker services are free of charge.

The DOJ withdrew from the settlement (also known as a "consent decree") in July 2021, stating that the agreed-upon terms prevented regulators from continuing to investigate other NAR policies that they felt could harm homebuyers and sellers.

That set off an ongoing legal back-and-forth that took place while NAR also fought claims by homebuyers and homesellers brought in courts across the country targeting real estate commissions.

The DOJ then sent NAR an administrative subpoena for information related to:

- The Participation Rule, which requires listing brokers to offer blanket, unilateral offers of compensation to buyer brokers in order to submit a listing to a Realtor-affiliated multiple listing service.
- The Clear Cooperation Policy, which requires listing brokers to submit a listing to their Realtor-affiliated MLS within one business day of marketing a property to the public.

Then, in September 2021, NAR filed a petition for the DOJ to either modify or pause its investigation into NAR.

In January 2023, Judge Timothy Kelly of the U.S. District Court for the District of Columbia ruled in favor of NAR, stating that the earlier settlement terms were still valid. Later that spring, the DOJ appealed the ruling and the three-judge panel heard oral arguments from NAR and the DOJ in December 2023. In April 2024, the appeals court reversed the decision of the district court, allowing the DOJ to continue its investigation.

NAR filed its rehearing petition in May 2024, stating that the court's decision contained "far-reaching and exceptionally important" errors.

The [DOJ opposed NAR's attempt](#) at obtaining a rehearing while it kept a close eye on the real estate industry.

Meanwhile, attorneys from the department's antitrust division recently met with NAR leadership, including President Kevin Sears, in Washington, D.C.

Sears described those [conversations as productive](#), and said they included the DOJ's attempt to reopen its investigation.