

## AGENT

### DOJ can reopen its investigation into NAR, appeals court rules

In another loss for the National Association of Realtors, the court ruled the US Department of Justice can reopen its investigation into rules around commission sharing



BY [TAYLOR ANDERSON](#)

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The U.S. Department of Justice can reopen its investigation into the National Association of Realtors' commissions rule, according to a Friday ruling from the U.S. Court of Appeals for the District of Columbia.

The DOJ began an investigation into NAR's Cooperative Compensation Rule, also known as its Participation Rule five years ago.

The DOJ and NAR agreed to a [proposed settlement](#) of the investigations in 2020, and the DOJ sent NAR a letter saying it had closed its investigation of the two rules. But after the presidential administration changed hands, the [DOJ withdrew](#) from the settlement in July 2021 and [resumed its investigation](#) into the rules.

NAR had successfully [asked a lower court](#) to set aside the subpoena. That ruling was overturned by a split ruling on Friday.

"The district court granted NAR's petition, concluding that the new subpoena was barred by a validly executed settlement agreement. We disagree," [the court ruled](#). "We therefore reverse the judgment of the district court."

The court found that the “plain language” of a 2020 letter leaves open the possibility for the DOJ to reopen its investigation.

A three-judge panel heard oral arguments on Dec. 1, when NAR was still publicly stating that it would appeal the [Sitzer | Burnett verdict](#). On March 15, NAR announced it would [settle the case](#) and others that have continued to spread across the nation, all largely focused on the same thing.

Friday’s ruling allows the DOJ to continue its campaign that has put [pressure on the real estate industry](#).

Judge Justin R. Walker wrote a dissenting opinion, saying the DOJ signed a contract with NAR and that reopening its investigation would violate that contract.

“As in every contract, each side gained something, and each side gave something up,” Walker wrote. “The Realtors agreed to give up four policies that DOJ considered anticompetitive. In exchange, DOJ promised that it had ‘closed’ its investigation into two other policies.”

Walker had previously indicated NAR’s settlement with the DOJ was a bet that the department and its staff wouldn’t change under the Biden administration and the DOJ would keep the matter closed.

“You gained the benefit of being pretty confident that if the personnel and the antitrust division didn’t change after the election, you’d be good to go,” Walker said during December arguments. “You made that bet and you lost.”

In a statement, NAR spokesman Mantill Williams pointed to Walker’s dissent and said it was considering its options.

“As articulated by Judge Walker in his dissenting opinion, NAR believes that the government should be held to the terms of its contracts,” Williams said. “We are reviewing today’s decision and evaluating next steps.”

*This post will be updated.*