

[MLS & ASSOCIATIONS](#)

New commission lawsuit in New York may draw FTC attention

The antitrust case from homebuyer and homeseller Hao Zhe Wang alleges MLS and broker services are illegally tied.

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A New York homebuyer and homeseller has filed an antitrust lawsuit attacking an alleged tying arrangement between multiple listing services and brokerage services.

On Friday, March 29, Hao Zhe Wang, acting as his own attorney, lodged the [complaint](#) in the U.S. District Court for the Southern District of New York against the National Association of Realtors (NAR), the Real Estate Board of New York (REBNY), HomeServices of America, Compass, eXp World Holdings, Douglas Elliman, Halstead Real Estate, Brown Harris Stevens Residential Sales, and Realty One Group.

Halstead and Brown Harris Stevens [merged](#) in 2020 under the BHS banner.

The suit alleges the defendants conspired “to impose, implement and enforce anticompetitive restraints that cause Plaintiff to pay inflated commissions on the purchase and sale of his homes, in violation of federal and state statutes in Massachusetts, New York, District of Columbia and New Jersey.”

Unlike other commission suits filed in the wake of a landmark [multibillion-dollar verdict](#) in a case known as [Sitzer | Burnett](#) in October, this suit is not seeking class-action status, which means Wang filed the suit on his own behalf only. While [NAR](#) and [Compass](#) reached proposed settlements last month in class-action commission lawsuits nationwide, any seller can choose to opt out of those deals and pursue their own claims as Wang is doing.

Wang’s suit is also unique in that it heavily emphasizes what Wang calls a “tying” of MLSs as a product to a different product, brokerage services. (A tying arrangement is an agreement in which the seller conditions the sale of one product on the buyer’s agreement to purchase a separate product from the seller, according to [Cornell’s Legal Information Institute](#).)

This is notable because early in President Joe Biden’s tenure, he [encouraged the Federal Trade Commission \(FTC\)](#), which shares responsibility over antitrust with the U.S. Department of Justice (DOJ), to exercise its rule-making authority “in areas such as ... unfair occupational licensing restrictions; unfair tying practices or exclusionary practices in the brokerage or listing of real estate; and any other unfair industry-specific practices that substantially inhibit competition.”

Wang doesn’t mince words in his complaint, asserting that the defendants used access to MLSs and to REBNY’s listing service, RLS, “to pressure sellers to set an inflated buyer broker commission rate in their listings and conscribe the sellers into the role of a patsy in the defendants’ elaborate ruse to cheat and deceive the buyers, and sellers would have no choice but to include the buyer broker compensation in the listing (given the prospect of being denied access to MLSs if they

refused) and to set the rate at the high level of 2.5% – 3% (given the prospect of being blacklisted by buyer brokers who would steer their clients to other houses on the market).

“But once the sellers played their part in the defendants’ ruse to cheat the buyers, it became the sellers’ turn to play suckers, for [an] artificially inflated commission rate for buyer brokers also created enormous pressure for homesellers to pay a similarly inflated rate to listing brokers.”

The complaint alleges Wang overpaid listing brokers’ fees by tens of thousands of dollars due to the defendants’ conspiracy.

“Without the MLS rule mandating [a] universal, unilateral blanket offer to buyer brokers, Plaintiff would have had no reason to stipulate a rate in his listing agreements with his listing broker; if the buyer brokers were all getting paid rates by their own clients and paid at, say, a rate of 1% or a flat rate of \$3000, Plaintiff would have had no reason to pay his own listing broker 3%; if his listing broker was getting paid 1% or flat rate of \$3000 in working as buyer broker for her other clients, Plaintiff would have had no reason to pay her 3% either.”

In a statement, eXp spokesperson Jennifer Zimmerman told Inman, “We are committed to upholding fair and transparent practices compliant with law and we already have mechanisms and a plan in place that enables buyers and sellers to negotiate commissions. Our agile business model allows us to make adjustments seamlessly and effectively, no matter the jurisdiction.”

HomeServices of America, Realty One Group, Douglas Elliman, and Brown Harris Stevens declined to comment. REBNY and Compass did not respond to requests for comment.

“The National Association of Realtors will respond to this complaint in court,” NAR spokesperson Mantill Williams told Inman in a statement.

In the complaint, Wang details his experience buying seven homes and selling three homes starting in 2014. As Wang tells it, time and again when he wanted to purchase a home as an unrepresented buyer, the listing broker for the home told him he had to hire the listing broker as a dual agent or hire a colleague of the listing broker as his agent in order to make an offer on the home.

“Plaintiff often identified dozens of properties of interest before each purchase and sometimes had to bid for multiple properties before winning one,” the complaint says.

“Plaintiff has thus contacted hundreds of listing brokers, and the conversations they had with him always turned into their professional ‘ethics’ of not taking offers from unrepresented buyers and about Plaintiff’s need to use the listing broker as a dual agent or a colleague or employee of the broker as his buyer agent.

“In shopping for the New York home in 2018, for example, he also viewed properties listed by Compass, BHS, and Halstead Real Estate brokers, all of whom told him he needed to retain the listing brokers themselves as buyer brokers before he could bid on their listings. In buying the New Jersey property in 2023, he also viewed properties listed by Realty One brokers who told him he must retain them as buyer brokers before he could bid on their listings.”

According to Wang, he is an experienced buyer who did not need, want or trust the agents whom he was allegedly compelled to hire and pay for.

“In buying the properties, Plaintiff had his own attorneys, home inspectors, land surveyor, lead paint inspector, and mortgage broker at the ready and did not solicit or receive advice from the buyer brokers,” the complaint says.

“In purchasing properties, Plaintiff usually did his own research before approaching each listing broker. During subsequent price negotiations with sellers Plaintiff rarely solicited advice from the buyer brokers, nor did he trust unsolicited advice that he received from them, because the brokers were either the listing brokers themselves or their employees whose loyalty may be divided.”

“Even in selling his properties Plaintiff relied on his own research in setting the listing price and on his own instinct and experience in negotiating with prospective buyers.”

Like other commission suits, Wang’s complaint challenges an NAR rule and others like it that require listing brokers to offer compensation to buyer brokers in order to submit a listing to a multiple listing service. NAR’s rule is known as the Participation Rule or the cooperative compensation rule.

But Wang reserves much of the complaint to what he calls the “tying” of the MLS to brokerage services. According to the complaint, before 1987, NAR’s Code of Ethics required listing brokers to accept and transmit offers made by unrepresented buyers as well as offers made through buyer brokers.

“But this language was dropped from 1987 onwards: instead, the universal refrain among listing brokers has been that their professional ethics now forbids them from taking offers from an unrepresented buyer until he retains representation, a line that hundreds of listing brokers, including both NAR and REBNY members, uniformly repeated to Plaintiff in slight variations,” the complaint says.

According to the complaint, NAR links the two products — MLSs and brokerage services — on a “propaganda” website created in the wake of the commission lawsuits, [Real Estate Compensation Facts](#), which notes that MLS data is provided to listing sites such as Zillow and made available to the public “for free.”

“It is this ‘free’ product that NAR- and REBNY-aligned brokers and the brokerage defendants relied upon to coerce the general home-selling and home-buying public to pay them a cut of 5-6% in every real estate transaction,” the complaint says.

“For homebuyers, for example, the ‘free’ MLS feeds, widely spread by Zillow, StreetEasy or Google, are indeed useful information. But the ‘ethical’ rules barring the submission of an offer by an unrepresented buyer and transmission of such an offer means the information is useless to buyers unless they also agree to pay 2.5-3% for buyer’s representation that they may or may not want — and they do not get to negotiate the percentage.

“By the same token, homesellers are hardly ever permitted to pay for a stand-alone ‘listing’ service that just consists of the listing part. Rather, the ‘listing’ service would come with a bundle of distinct ‘brokering’ services: staging, photography, showings, price negotiation, help with closings, etc.”

Therefore, NAR and REBNY have allegedly created “an illegal and anticompetitive bundling of the MLS/RLS product and their members’ offline buyer brokerage service” that has been implemented and enforced by the franchisor and broker defendants, according to the complaint.

“In essence, the MLSs are a tying good, and the brokerage services are a different, tied good that may seem an overpriced and not always desirable product to the home-buying and home-selling public,” the complaint says.

“NAR conceded as much on its shiny new propaganda website: most of the information on MLS is available to the public for free, NAR says, but imagine what would happen if the buyer brokers stop getting paid? The doomsday scenario would result in the disappearance of MLSs and all the ‘free’ information and Zillow feeds, NAR admonishes the American public.”

“NAR’s shrill propaganda at once reveals the defendants’ darkest secret: the MLSs are not a free product, and NAR always needed the home-buying and home-selling public to purchase a second, distinct but adjacent product from them — the offline service that involves interacting with buyers and sellers on a human level, the showings, the price negotiations, and the closings — before they were willing to let the buyers and sellers use [the] first product,” the complaint adds.

“To the extent that virtually all sellers and buyers needed the first product but not all of them found the second product useful, the defendants desperately wanted to tie the less desirable product to the first product.”

The complaint contends that the NAR advises MLSs to have third-party websites that receive their data sign non-compete agreements that prevent them from becoming rivals to brokerages and MLSs.

“If the defendants wanted the public to believe that their affiliated brokers and agents deserve to be compensated for their legwork and real estate expertise, they also showed little effort to compete in this market by offering price cuts or superior service,” the complaint says.

“Rather, it was the monopoly of the MLSs that they guarded most jealously and ruthlessly.”

According to Wang, the idea that the NAR’s rules might have been created in order to level the playing field so that represented sellers would not be able to take advantage of unrepresented buyers “is easily debunked by the fact that an unrepresented buyer who showed up at an open house and wanted to make an offer almost always ended up with the listing broker as the dual agent whose primary fealty remained with the seller.

“In other words, in hiring the listing broker as the buyer broker and anointing her as the dual agent, the unrepresented buyer did not buy her loyal service, only the privilege to be able to bid on the home for sale that the listing broker represented.”

The complaint also faults the longstanding practice of buyer agents advertising their services as “free” — a practice that NAR rules allowed [until 2022](#).

“To further mask and conceal their conspiracy to maintain [inflated] prices, the defendants trained and directed their licensees and franchisees and affiliates to falsely advertise their services for buyers as free,” the complaint says.

“From 2014 on, buyer agents or listing brokers who asked to be dual agents when Plaintiff wanted to submit bids for their listings as unrepresented buyers all toed defendants’ lines and repeatedly represented to Plaintiff that their service was free to him.”

“The reality is, of course, that buyer brokers, just like the mortgage brokers, lawyers, home inspectors, were all paid by Plaintiff on the day of closing,” the complaint adds. “Yet, because of the elaborate lie and ruse, Plaintiff, like most other homebuyers, were given to believe that he was not paying for anything.”

The complaint alleges violation of the federal Sherman Antitrust Act as well as state laws barring unfair and deceptive business practices in Massachusetts, New York, New Jersey and Washington, D.C. Wang demands a jury trial and is asking for damages with interest, costs of the suit, and “such other relief as the Court may deem just and proper.”