

Court grants final approval to NAR's landmark settlement deal

Judge Stephen R. Bough approved antitrust deals reached with the National Association of Realtors and HomeServices of America Tuesday afternoon.



From left: Nykia Wright, Gino Blefari, Stephen Bough, Michael Ketchmark, Merrick Garland and Mauricio Umansky
by [Andrea V. Brambila](#), Inman News Today, November 26, 2024

A federal court has granted final approval to antitrust settlements reached with the National Association of Realtors and major real estate franchisor HomeServices of America, potentially closing the door on a tumultuous chapter in the history of the real estate industry.

The deals resolve antitrust claims brought by homesellers in cases known as [Sitzer/Burnett](#), [Moehrl](#) and other, similar suits nationwide alleging NAR, HomeServices and other major real estate companies formed an illegal conspiracy to inflate broker commissions.

Judge Stephen R. Bough of the U.S. District Court for the Western District of Missouri gave the deals final approval orally on Tuesday afternoon in Kansas City, according to Robby Braun of Cohen Milstein, attorney for the Moehrl plaintiffs.

“We’re pleased that the Court approved the settlement which provides monetary relief and important practice changes that benefit millions of home sellers and buyers nationwide,” Braun told Inman.

Bough did not modify the settlements in any way before granting them final approval, Braun added.

Before the hearing, the plaintiffs’ attorneys requested a third of the NAR and HomeServices settlement amounts, or about \$233 million, plus \$16.5 million in expenses, as their attorney fees. Bough did not rule on that request at Tuesday’s hearing and did not say when he would rule, according to Braun.

HomeServices confirmed its settlement received final approval.

“HomeServices of America is pleased that its settlement has received final court approval, marking an important milestone during this transformative time for the real estate industry,” Chris Kelly, executive vice president for HomeServices told Inman in a statement.

“We remain committed to supporting our people as they continue to deliver exceptional service to clients and communities nationwide. Our local company leaders, agents, and employees deserve tremendous credit for their exceptional ability to navigate the challenges of the past year.”

The ruling comes just over a year after a Kansas City [jury found](#) NAR, HomeServices, Keller Williams, Anywhere, and RE/MAX conspired to inflate broker commissions and awarded the Sitzer/Burnett plaintiffs \$1.8 billion in damages — an award amount that would have been trebled to \$5.4 billion had the case not settled. Both Sitzer/Burnett and Moehrl were originally filed in March 2019.

“After five years of hard-fought litigation and nearly a year after the jury verdict, all of the settlements have now been approved,” Michael Ketchmark of Ketchmark & McCreight, attorney for the Sitzer/Burnett plaintiffs, told Inman in a statement.

“We are excited to move forward and watch the marketplace work for the benefit of home sellers.”

While the ruling will almost certainly be appealed, the final approval means that business practice changes required by NAR’s \$418 million settlement — including the removal of offers of compensation from multiple listing services and the requirement that buyer agents sign agreements with buyers before touring a property — will remain for the foreseeable future and that NAR will be required to make its first \$197 million payment within 90 days. Those funds will come at least partially from NAR’s operating, advocacy and ad campaign [reserves](#).

NAR, HomeServices and brokerages and MLSs that opted-in to NAR’s deal [have agreed to pay](#) just under \$700 million to settle: \$418 million from NAR to cover some 1 million Realtors and 547 Realtor-affiliated MLSs, \$250 million from HomeServices and nearly \$30.6 million from 15 non-Realtor MLSs and 13 large brokerages. That amount doesn’t include more than \$300 million in settlements from other companies such as RE/MAX, Keller Williams and Anywhere.

If Bough approves the plaintiffs’ attorneys fee request, that leaves about \$450 million for millions of class members nationwide, though not all will submit claims.

As of mid-November, 491,450 people had submitted claims for a portion of the NAR and HomeServices settlements, with six months left before a May 2025 deadline, according to a filing from the plaintiffs last week. If the number of claims remained unchanged, [homesellers would receive about \\$913](#) each, but that amount will fall as more homesellers file claims.

In advance of the final approval hearing, the industry held its breath waiting to see whether the U.S. Department of Justice (DOJ) would weigh in on NAR’s settlement after suggesting the federal agency was unhappy with a provision in the deal that said offers of compensation from listing brokers to buyer brokers outside of the MLS would not be prohibited.

Ultimately, the [DOJ filed a five-page statement of interest](#) in the case on Sunday evening that took no position on whether Bough should approve the settlement Tuesday, but balked at the practice change requiring buyers and buyer brokers to enter into written agreements before touring homes.

The federal agency asked Bough to either eliminate that provision or clarify that the settlement does not create “any immunity or defense under the antitrust laws.”

The DOJ’s attorneys also warned that the deal’s practice changes wouldn’t prevent further legal challenges and requested Bough clarify that the settlements most players in the industry agreed to aren’t protections against future enforcement.

More than a dozen homesellers filed [objections to the NAR and HomeServices settlements](#) before the final approval hearing, saying the deals seek to cover too many claims for too little money and give too many in the industry a “free pass” for participating in the alleged conspiracy.

Notably, University of Buffalo contracts law professor Tanya Monestier filed a [136-page objection](#) to the NAR settlement, calling it “[the worst of all possible worlds](#)” for consumers, and then subsequently [challenged a court order](#) compelling objectors of the deal to appear in person at the final approval hearing, saying the order is “unconstitutional” and “a glaring appellate issue.”

Attorneys for the plaintiffs subsequently asked the court to consider — and reject — Monestier’s objection regardless of whether she appeared in person at the hearing.

Tuesday’s final approval hearing is not the end of antitrust litigation for NAR and HomeServices or even the end of these cases. Tuesday’s ruling will almost certainly be appealed and any settlement funds collected will be held in escrow until all litigation avenues have been exhausted.

Even if the settlements are not appealed, the DOJ may decide to take more definitive action on NAR’s rules through a different route, such as through filing its own lawsuit.

Moreover, NAR and HomeServices are still defendants in homebuyer suits with similar antitrust allegations that are not resolved by these settlements. In addition, other NAR rules have attracted antitrust scrutiny, including NAR’s Clear Cooperation Policy, its no-commingling policy, its three-way agreement, and the tying of MLS services to Realtor membership.

Editor’s note: This story has been updated with additional comments from plaintiffs’ attorneys Robby Braun and Michael Ketchmark.