

Landmark Ruling May Alter Real Estate Industry

Christine Sampson | December 28, 2023

Commission Lawsuit In The Midwest Is A Hot Topic In The East End Market

A class-action court ruling on Halloween, stemming from an antitrust trial in Kansas City, Mo., is the talk of the town among real estate professionals here. A federal jury found that the National Association of Realtors and multiple large brokerage firms had “conspired to artificially inflate the commissions paid to real estate agents,” The New York Times reported that day, calling it “a decision that could radically alter the home-buying process in the United States.”

The plaintiffs, a large group of house sellers, have been awarded nearly \$1.8 billion in damages and possibly more. The National Association of Realtors and other brokers implicated in the jury decision have appealed the decision, according to The Times.

The case has the potential to “uncouple the listing and buying agents’ commissions,” The Times wrote, “so sellers would no longer be obligated to pay the buyer’s portion.”

But could a case originating halfway across the country really impact the East End real estate scene, where numerous agencies and individual agents compete for high-end listings, buyers often have substantial means, and the Multiple Listing Service, which is a hallmark feature of National Association of Realtors membership, holds very little relevance?

“Everyone in the industry is aware of it, because it is what we could consider a landmark decision,” Judi Desiderio, chief executive officer of Town and Country Real Estate in East Hampton, said by phone last week.

Still, Ms. Desiderio wants to know more before reacting to the jury decision by changing the way business is done. “I’d like to find out if there were some bad

actors involved that ended up putting the whole industry in a tailspin like this. What was the origin? What was the methodology? If you know anything about real estate, you know it is one of the most competitive businesses out there. I compare it to professional sports. We compete for buyers and sellers, but also for agents, and it's big business, especially out here."

Jackie Lowey, an agent with Saunders and Associates, said in the Nov. 9 edition of "Happening in the Hamptons," a real estate podcast, that the decision is "going to signal a change in the business in the future, but none of us know what that change is going to be yet."

At the end of the day, Ms. Lowey said, "everything is about negotiation." Sellers already have the ability to negotiate the commissions they are paying, she said, and buyers' agents do a lot behind the scenes, too, that deserves appropriate compensation. "These cases were brought in the Midwest. It's a very different buying environment in the Midwest than it is out here in the Hamptons."

Adam Miller, who established a Bridgehampton real estate law firm, the Adam Miller Group, in 2007, suggested that there may be "a silver lining" to the Oct. 31 jury decision. "I think it will level the playing field more."

He agreed with Ms. Lowey's statement that everything in real estate is negotiable. "If you're close to a number that's acceptable, ask the broker if they are willing to cut their commission by half a percent to make this happen," Mr. Miller said. "There's a delicate line there because you want to make sure people are incentivizing showing the house."

It may simply be too early to tell, particularly while the National Association of Realtors and other entities appeal the decision, and while copycat cases make their way through the courts, as well.

"No one's going to rush to any changes here unless clients start demanding that." Mr. Miller said. "It's going to be a somewhat client-driven process."

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