



MONMOUTH OCEAN REGIONAL REALTORS

Burnett Questions Answered **October 31, 2023**

In the case of Burnett v. NAR et al, on Tuesday, Oct. 31, the jury found NAR and the co-defendants liable. The plaintiffs claimed real estate commission rates are too high, buyer brokers are being paid too much and that NAR rules and corporate defendants' practices lead to set pricing.

The reality is that NAR rules prioritize consumers, support market-driven pricing and promote business competition. We stand by the fact that NAR's guidance for local MLS broker marketplaces ensures consumers get comprehensive, equitable, transparent and reliable home information and that brokerages of any size, service or pricing model get a fair shot at competing.

Following are answers to questions you might have

What are next steps legally and the timing?

This matter is not close to being final as we will appeal the jury's verdict, and we remain confident we will ultimately prevail. In the interim, we will ask the court to reduce the damages awarded by the jury. Due to the nature of appeals, this case likely will not be concluded for several years.

What will be the basis for NAR's appeal?

We can't speak to the specifics of that until we file our appeal, but we can say that we have a very strong legal basis for appeal.

Is there anything REALTORS®, brokers, state/local associations or MLSs need to do differently because of this verdict?

Not because of this verdict. But NAR has emphasized for many years two important things. One is the use of buyer representation agreements, which maximize transparency by putting all agreements in writing to ensure clarity and understanding, as all members are obligated to do pursuant to the NAR Code of Ethics. These agreements formalize the professional working relationship with clients and detail what services consumers are entitled to and what the buyer agent expects from their client in return. Second, it's also an imperative for members to continue to express that commissions are negotiable and set between brokers and their clients; explain how local MLS broker marketplaces promote equity, transparency and market-driven pricing for consumers; and persistently communicate the incredible value agents who are REALTORS® provide.

What does the future of buyer representation look like as a result of the verdict?

This verdict does not require a change in our rules, but if class action attorneys had it their way, buyer representation would be very much at risk because many first-time home buyers, among others, couldn't afford to pay for representation out of pocket. It's important that members take every opportunity to express how they are experts who guide consumers through the financial, legal and community complexities of buying or selling a home.

Does NAR have the funds to pay the proposed damages or post a bond to file an appeal?

NAR is going to appeal and has the funds to post bond, which allows us to proceed with our appeals and defer potential payment of damages. While appeals will take years, and we are confident we will ultimately prevail, we also are financially prepared for any final judgment.

How does this verdict affect other ongoing litigation, including the other seller lawsuit?

It doesn't. Cases are tried separately, and we remain confident we will ultimately prevail because we have a strong case we'll present on appeal and because our rules are pro-consumer and pro-business competitive.

Is there any scenario where NAR would consider settling?

NAR always has been open to a resolution that maintains a way for buyers and sellers to continue to benefit from the cooperation of real estate professionals and eliminates our members' risk of liability for the claims alleged. That being said, we remain confident we will prevail on our appeal.

Would NAR ever consider changing the cooperative compensation rule?

This rule always has been in place to protect and serve the best interests of consumers, support market-driven pricing and advance business competition. NAR consistently reviews and considers evolving its rules in a way that responds to changes in the industry and what best serves consumers.

Do you expect the plaintiffs to seek an injunction that would require NAR to stop making the rule mandatory or eliminate the rule altogether?

We cannot predict what plaintiffs will do. We would contest any such effort because this rule always has been in place to protect and serve the best interests of consumers, support market-driven pricing and advance business competition.

What's the status with the Department of Justice and has anything changed with this verdict?

We reached an agreement with the DOJ nearly two years ago. NAR has upheld our end of the agreement, and we expect the DOJ to do the same as affirmed by a federal court's careful ruling. That is a separate matter from the case of Burnett v. NAR et al.