

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA)	
)	
Plaintiff,)	Civil Action No. 05 C 5140
)	
v.)	Judge Filip
)	
NATIONAL ASSOCIATION OF REALTORS)	Magistrate Judge Denlow
)	
Defendant.)	
)	

MOTION TO DISMISS

Defendant National Association of Realtors® (“NAR”), hereby moves to dismiss the following claims in plaintiff’s Amended Complaint:

- First, pursuant to Fed. R. Civ. P. 12(b)(1), NAR moves to dismiss all claims regarding NAR’s 2003 Virtual Office Website Policy (“2003 VOW Policy”). That Policy was rescinded before this lawsuit was filed. Thus there is nothing to enjoin with respect to that Policy and no “case or controversy” over which this Court may exercise jurisdiction under Article III of the United States Constitution.
- Second, pursuant to Fed. R. Civ. P. 12(b)(6), NAR moves to dismiss plaintiff’s claims challenging the “opt-out” provisions in both the former 2003 VOW Policy and the current Internet Listings Display Policy (“2005 ILD Policy”). These provisions do nothing more than permit individual entities to make independent decisions regarding whether to authorize display of their own listings on the internet sites of other entities. Thus, they do not involve any collectively imposed

restraint of trade as required to state a claim under Section 1 of the Sherman Act,
15 U.S.C. § 1

- Third, pursuant to Fed. R. Civ. P. 12(b)(6), NAR moves to dismiss plaintiff's claim challenging the "opt-out" provision of the 2005 ILD Policy. With respect to anticompetitive effect, the Amended Complaint contains nothing more than a conclusory statement that this provision will have the same anticompetitive effects as the "opt-out" provision in the rescinded 2003 VOW Policy – even though the relevant provisions in the two Policies are fundamentally different. Without a specific factual allegation regarding anticompetitive effect of the "opt-out" provision in 2005 ILD Policy, the Amended Complaint fails to state a cause of action against that Policy under Section 1 of the Sherman Act.

In support of its motion, NAR submits herewith a Memorandum of Law and the Affidavit of Laurene K. Janik.

Respectfully submitted,

National Association of Realtors®

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Dated: December 6, 2005

CERTIFICATE OF SERVICE

I, Julie K. Potter, an attorney, hereby certify that on this 6th day of December, 2005, I caused copies of the foregoing document to be served on the persons listed below by electronic mail and U.S. Mail.

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/s/ Julie K. Potter

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