

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Mark Filip	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	05 C 5140	DATE	11/27/2006
CASE TITLE	USA vs. National Association of Realtors		

DOCKET ENTRY TEXT

ENTER MEMORANDUM OPINION AND ORDER DENYING DEFENDANT'S MOTION TO DISMISS COMPLAINT OF THE UNITED STATES: Defendant's motion to dismiss[22] is respectfully denied.

■ [For further detail see separate order(s).]

Docketing to mail notices.

	Courtroom Deputy Initials:	TBK
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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

United States of America,)	
)	
Plaintiff,)	Case No. 05 C 5140
)	
v.)	
)	
National Association of Realtors,)	Hon. Mark Filip
)	
Defendant.)	

MEMORANDUM OPINION AND ORDER DENYING
DEFENDANT'S MOTION TO DISMISS COMPLAINT OF THE UNITED STATES

Plaintiff, the United States of America ("United States" or "Plaintiff"), has filed this civil antitrust suit against the National Association of Realtors® ("NAR" or "Defendant").¹ (D.E. 1.) The Amended Complaint alleges that NAR has violated Section 1 of the Sherman Act, 15 U.S.C. § 1. (D.E. 6.) The case is before the Court on Defendant's motion to dismiss (D.E. 22) for lack of subject matter jurisdiction and for failure to state claims upon which relief can be granted. *See* Fed. R. Civ. P. 12(b)(1) and 12(b)(6). For the reasons stated below, Defendant's motion to dismiss is respectfully denied.

FACTUAL BACKGROUND

NAR is a trade association that establishes and enforces policies and professional standards for its over one million individual member brokers and their affiliated agents and sales

¹ The various docket entries in this case are designated "D.E. ___." The term "Realtor®" is a collective membership mark indicating that a real estate broker or agent so designated is a member of the National Association of Realtors.

associates.² (D.E. 6 ¶ 11.) NAR's member brokers compete with one another in local brokerage services markets to represent consumers in connection with real estate transactions. (*Id.*) NAR's policies govern the conduct of its members in all fifty states, including all Realtors® and all of NAR's local Realtor® associations ("member boards"). (*Id.* ¶ 13.)

At any one time, there are over 1.5 million homes for sale in the United States. (*Id.* ¶ 18.) It goes without saying, and the Court takes judicial notice, that each year many billions of dollars of residential real estate are sold, with realtors taking commissions on such sales.

The vast majority of residential real estate transactions involve the use of a multiple listing service ("MLS"), a cooperative arrangement brokers have developed to pool information about nearly all properties for sale through brokers in a particular market area.³ (*Id.* ¶ 5.) MLSs collect detailed information about nearly all properties available for sale through brokers and are alleged to be indispensable tools for brokers servicing consumers in each MLS's market area. (*Id.*) Defendant's local Realtor associations ("member boards") control a majority of the MLSs in the United States. (*Id.*)

The geographic coverage of the MLS serving each town, city, or metropolitan area normally establishes the outermost boundaries of each relevant geographic market. (*Id.* ¶ 17.) In a substantial majority of markets, a single MLS provides the only available comprehensive compilation of listings. (*Id.* ¶ 21.) The vast majority of brokers believe that they must participate in the MLS operating in their local market to adequately serve their customers and

² The facts are taken from the Amended Complaint and presented in a light most favorable to Plaintiff. With respect to facts relevant to the jurisdictional inquiry, the Court has credited Plaintiff's version of material facts, and, to the extent that Defendant has presented uncontroverted evidence on a point, credited Defendant's evidence in that regard. *Accord, e.g., Ezekiel v. Michel*, 66 F.3d 894, 897 (7th Cir. 1995) (collecting cases).

³ MLSs list virtually all homes for sale through a broker in the areas they serve. (D.E. 6 ¶ 21.)

