

Competition and deceptive advertising to consumers of real estate services

Issue:

The National Association of Realtors (NAR) and its' subsidiary REBAC created barriers to the operation of my business with deceptive advertising claims to consumers.

Facts:

NAR: provides information on the benefits of buyer's agents without disclosing the possibility of dual agency. <http://www.realtor.com/realestateagents/>

REBAC: (www.rebac.net) Provides buyers a link <http://rebac.net/buyers-rep> purporting to send them to a buyer's agent - yet provides, for the most part, listing agents who may not be able to provide those services. This is not disclosed in their advertising claims.

Dual Agents: In states that allow it, disclosures are too little far too late. A buyer can work with a 'buyer's agent', look at 10 houses and come to one listed by that agent's company -then the agent is no longer the buyer's agent.

HUD: - [Settlement Cost Booklet \(https://www.hud.gov/sites/documents/HUD_SETTLE_COST.PDF\)](https://www.hud.gov/sites/documents/HUD_SETTLE_COST.PDF)

On page 6 HUD says: "It is your responsibility to search for an agent who will represent your interests in the real estate transaction. **If you want someone to represent only your interests, consider hiring an "exclusive buyer's agent", who will be working for you."**

Good advice and many consumers try. Help them - by not allowing others to make it harder. Nationally, NAR, and others, advertise in opposition to HUD's suggestion to hire an exclusive buyer's agent.

Since at least 1990 the FTC has weighed in on competition and consumer services in the real estate industry. In 1990 they responded to a NYS request: https://www.ftc.gov/sites/default/files/documents/advocacy_documents/ftc-staff-comment-new-york-division-licensing-services-concerning-regulation-real-estate-licensees/v900038.pdf

For a time the disclosures NY proposed did reduce confusion.

The internet changed things:

At the time there was no internet and no national advertising of real estate services. Disclosure at a face to face meeting may have been sufficient. No longer. Now it's a national issue affecting competition and consumers across state lines.

NAR's advertising harms my business:

I operate a real estate brokerage in New Jersey and Pennsylvania. NAR fails to address dual agency and REBAC's link misleads consumers into thinking they are being directed to a buyer's agent. This obfuscation harms my **Exclusive Buyer's Agency** business. Consumers can't find me. Yet, **my business is the kind of business to which HUD has attempted to direct home buyers.**

MANY brokerage websites engage in misleading advertising:

Example: Keller Williams <http://www.kw.com/kw/WhyKW.html> "We love helping buyers find their dream home! ... **When You Work With Us, You Get:** A committed ally to negotiate on your behalf"

State Disclosure Laws: insufficient given misleading national advertising

Most states require licensees to disclose the type of representation they intend to provide. Yet, NAR's studies have shown disclosure is often not made at all, let alone in the advertising consumers see prior to selecting an agent.

Harm to brokerages and buyers is national:

In the 90s as states began requiring disclosure Exclusive Buyer Agent companies grew nationally. Then, other brokerages- and NAR - began internet advertising without agency disclosure.

Due to this and the resultant obfuscation by companies advertising buyer agent services without a disclaimer that the service may not be available, this fledgling segment of the industry is floundering. Without relief it may disappear completely.

Home buying consumers know to look for a 'buyer's agent.' But, because of the confusion created by misleading advertising they don't know that they are unable to rely on that advertising to select a true buyer's agent.

Solution

Require companies that advertise buyer agent services to disclose potential for dual agency wherever & whenever they advertise buyer agent services.