

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

GARY BAUMAN, MARY JANE BAUMAN,)
and JENNIFER NOSALEK, individually and)
on behalf of all others similarly situated,)

Plaintiffs,)

vs.)

MLS PROPERTY INFORMATION)
NETWORK, INC., REALOGY HOLDINGS)
CORP., HOMESERVICES OF AMERICA,)
INC., BHH AFFILIATES, LLC, HSF)
AFFILIATES, LLC, RE/MAX, LLC, and)
KELLER WILLIAMS REALTY, INC.,)

Defendants.)

ORAL ARGUMENT REQUESTED

No: 1:20-cv-12244-PBS

**MOTION TO DISMISS FOR
FAILURE TO PLAUSIBLY PLEAD CAUSATION**

**FILED BY HOMESERVICES OF AMERICA, INC. BHH AFFILIATES, LLC; HSF
AFFILIATES, LLC; MLS PROPERTY INFORMATION NETWORK, INC.; REALOGY
HOLDINGS CORP.; AND RE/MAX, LLC**

Defendants HomeServices of America, Inc.; BHH Affiliates, LLC; HSF Affiliates, LLC;
MLS Property Information Network, Inc.; Realogy Holdings Corp.; and RE/MAX Holdings, Inc.
("Defendants") respectfully move the Court to dismiss the claims against them pursuant to Fed.
R. Civ. P. 12(b)(6) because Plaintiffs have failed to plausibly plead causation. In support of this
Motion, Defendants state as follows:

1. Plaintiffs are individual residents of Massachusetts who allege that the real-estate
broker commissions they paid when selling their homes were illegally inflated in violation of
federal and state antitrust laws.

2. Plaintiffs base their complaint on a rule imposed by the local multiple listing service (“PIN”), which requires that, when posting a home for sale on the PIN platform, listing brokers include an offer of some amount of compensation to any other broker who facilitates the sale by finding a buyer for the home. Notably, the rule requires only some level of compensation be offered; it does not require that such offers be “substantial” or that they be any particular amount. Thus, offers as low as \$0.01 would comply with the PIN rules.

3. Plaintiffs allege that buyer brokers are less likely to show a home to their buyer client if the home is listed with a below-market compensation offer to the buyer broker and that this risk of “steering” therefore puts pressure on sellers and their listing brokers to offer the “standard” compensation amount to buyer brokers. Plaintiffs then conclude that this “standard” compensation offer is incorporated into the total commission they must pay, allegedly inflating their costs in violation of federal and state antitrust laws.

4. But Plaintiffs’ theory suffers from a fatal flaw – Plaintiffs have not alleged any facts to support their assertion that, absent the PIN rule, compensation offers from listing brokers to buyer brokers would cease, a necessary predicate to their alleged causation chain given their allegation that such offers create the steering risk that allegedly drives up commissions. To the contrary, the facts pleaded in the Complaint make such an assertion implausible given that multiple listing services were created more than 100 years ago as a means for facilitating home sales by enabling brokers to offer compensation to other brokers who assist with the sale. Because the practice of offering such compensation predates the PIN rule at issue and because Plaintiffs admit that most sellers voluntarily choose to offer substantial compensation to buyer brokers under the current PIN rule, there is no reason to believe that the

practice would change if the rule were withdrawn, and the steering risk that Plaintiffs allege puts upward pressure on commissions would continue.

5. Plaintiffs' failure to plead facts to the contrary dooms their claims because, if sellers and listing brokers would continue to offer compensation to buyer brokers whether the PIN rule were in place or not, and steering risk would exist regardless, then the rule cannot possibly be the cause of their alleged damages.

6. Causation is a necessary predicate to an antitrust claim under both the Sherman Act and the Massachusetts Antitrust Act. Plaintiffs' failure to plausibly plead causation requires dismissal of the Complaint.

7. Counsel hereby certifies pursuant to Local Rule 7.1(a)(2) that counsel for the defense group conferred with Plaintiffs' counsel in connection with Defendants' motions to dismiss and was unable to resolve or narrow the issues.

WHEREFORE, for the reasons set forth in the accompanying Memorandum in Support of Motion to Dismiss Based on Failure to Plausibly Plead Causation, the Defendants respectfully ask the Court to enter an Order granting this Motion and dismissing all claims pleaded in the Complaint against Defendants pursuant to Fed. R. Civ. P. 12(b)(6).

REQUEST FOR ORAL ARGUMENT

Pursuant to the Local Rule 7.1(d), Defendants respectfully request that the Court allow oral argument on their Motion to Dismiss.

Dated: March 1, 2021

Respectfully submitted by:

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CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2021, a copy of the foregoing document was electronically filed through the ECF system and will be sent electronically to all persons identified on the Notice of Electronic Filing.

s/ Robert D. MacGill