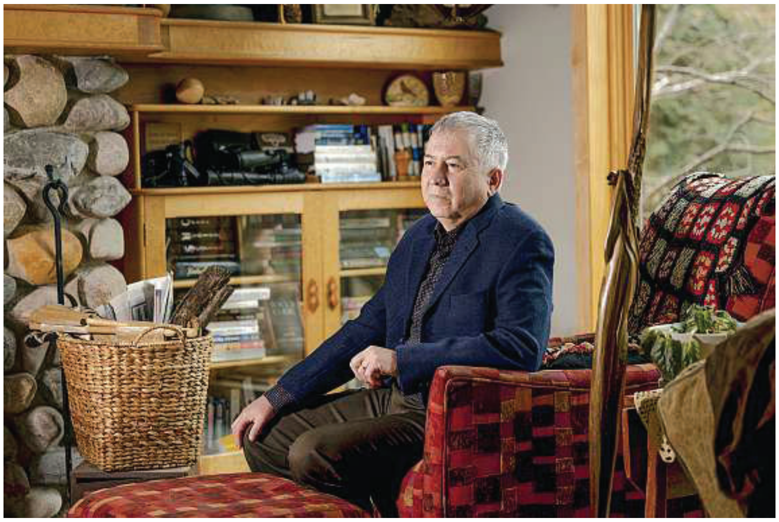

JENN ACKERMAN FOR THE WALL STREET JOURNAL

The Man Behind the New Real-Estate Rules

A Minnesota attorney has been losing battles against Realtors for decades. He finally won a big one.

By Laura Kusisto

Doug Miller, a Minnesota attorney with a one-man law firm and the mien of a Fargo character, has spent nearly 40 years pursuing a goal of making the residential real-estate industry fairer for consumers. It had been a losing battle for him—until this month.

In the early hours of March 15, lawyers signed a deal in Washington, D.C., in which the National Association of Realtors settled a lawsuit accusing the industry of conspiring to inflate prices. NAR agreed to pay more than $400 million and change rules that have been central to how real-estate agents have been paid for decades.

Under that system, home sellers typically pay the buyer's agent commission, making it difficult for buyers to negotiate that cost with their own agents. The residential brokerage industry has proven a remarkably elusive target for regulators and plaintiff lawyers. The Justice Department has investigated the industry several times but its most recent investigation, which concluded in 2020, resulted in little change. Plaintiff firms said a class-action lawsuit seemed out of reach because it would involve not just going after one company but an entire industry.

More than five years ago, Miller pitched his idea for a case to lawyers at Washington-based Cohen Milstein, a 100-lawyer plaintiffs' firm known for suing big companies and banks. His idea was to target a rule requiring sellers to offer compensation to a buyer's agent.

"Doug gave us a lot of raw material and a lens to examine the industry that for us was a fresh way to think about building a case," said Benjamin Brown, a partner at Cohen Milstein.

Miller, 63 years old, has been amassing material about the industry for more than four decades, since he first got his real-estate license in high school in New Jersey for fun, he said. In the late 1980s, when he worked as Realtor in the office of the then-president-elect of the National Association of Realtors while attending law school, he saw practices that soured him on the industry.

"I learned all about all kinds of scams and schemes," he said, such as agents representing a buyer in a transaction without making clear they were also representing the seller.

In college, Miller had a booming lawn-mowing business called the College Clippers and he agonized about whether to carry on with that or go to law school. His college grades weren't great but his references praised him as someone who would make a difference. When he got into law school in Wisconsin he vowed to live up to that.

Doug Miller

- **First job:** Delivered newspapers for three publications in middle school to save up for his first telescope.
- **Dog:** His dog's name is Moo. He's a rescue and some kind of hound dog. Miller says Moo is the smartest dog he's ever owned.
- **Hobbies:** An avid traveler, he has been to Antarctica, the Solomon Islands and Ecuador's jungles.
- **He lives with:** His wife Heidi, an artist. His three kids are all grown.
- **Chef skills:** He specializes in the Juicy Lucy, a Minnesota-style hamburger stuffed with sauteed veggies, bacon and cheese.

His first target after graduating from law school was the double-representation practice in deals he said agents called "hoggers" because they would get double the commission.

Miller was fresh out of law school, working just outside of Minneapolis, when a couple who had recently bought a home came to his office saying they believed they had been ripped off in such a deal. That ultimately led to a class-action lawsuit against a prominent Minnesota real-estate brokerage.

The plaintiffs won the case on summary judgment in the early 1990s and it made national headlines. Miller was flown out to Washington to speak at a conference with Ralph Nader. "I thought I was cool as s—," he said.

About a year later, Realtors backed a lobbying effort that resulted in state legislation largely undoing the changes that resulted from the lawsuit, he said. Miller said when he went to legislators' offices to oppose the bill, they were wearing Realtor pins.

It was the first of many setbacks. Miller said over the years he has been involved in more lawsuits against the real-estate industry than he can count, but they rarely have resulted in much change until now.

Miller started a nonprofit in 2008 that aimed to educate consumers about the real-estate industry. He struggled to raise funds, however, for such a wonky topic, he said. He also works as a real-estate lawyer who helps clients buy and sell homes for about half the cost of a typical agent.

Doug Miller has been involved in more lawsuits against the real-estate industry than he can count.

Miller is a nature photographer whose backyard has 10-foot tall castor-bean plants and a bamboo water feature that he created after a trip to Ecuador. The yard has been featured in the Lake Minnetonka community magazine. His earnest Midwestern demeanor that belies a hard headedness.

Prentiss Cox, a friend of Miller's and a law professor at the University of Minnesota, said Miller had a breakthrough moment about seven years ago when the two were having lunch on a patio at a restaurant in uptown Minneapolis.

For years they had talked about possible legal cases and regulatory changes but had struggled to land on the big idea. "Everyone told him he was crazy and annoying, which he kind of is, and I say that affectionately," Cox said.

It was at that lunch that the friends landed on the idea of a class-action antitrust case, which they felt would have the power to lead to systemic change without running into the Realtors' lobbying might.

The Cohen Milstein lawyers filed a lawsuit in Chicago based on Miller's initial idea in March 2019. A copycat lawsuit was filed in Kansas City about a month later. A charismatic Kansas City attorney, Michael Ketchmark, took that case to trial, where the plaintiffs won a $1.8 billion verdict in October. Ketchmark largely became the face of the case in the press.

Miller, meanwhile, has stayed mostly anonymous while keeping in regular contact with plaintiff attorneys and suggesting ideas for what a settlement could look like.

Miller will get a small percentage of the fees a judge ultimately awards to the attorneys.

Robert Braun, another Cohen Milstein partner, said he was conscious when he was negotiating that Miller would want to see the strongest possible settlement. "I had a little Doug on my shoulder," he said.

Braun said after he told Miller about the settlement victory, the Minnesotan didn't miss a beat before telling him what he thought the next cases should be, including targeting referral fees and the contracts sellers and buyers sign with agents.

Miller said he has had a roller coaster of emotions since the settlement as he has seen real-estate agents talk about how to evade it and also realizes it may hurt some people's livelihoods, but he ultimately believes it will help consumers.

"I feel like I just dropped a nuclear bomb on the industry," Miller said. "But it needs it."

THE INTELLIGENT INVESTOR | JASON ZWEIG

Betting on a Big Bitcoin Bet

Investors are willing to pay a premium for a CEO's cryptocurrency gambit

Forget about earnings per share, or EPS. Maybe companies should be valued on the basis of BPS: bitcoin per share.

BPS might also stand for brilliance per share, if you ask fans of Michael Saylor. He is the executive chairman of MicroStrategy, the software company that has morphed into the world's largest corporate holder of bitcoin.

Many investors are convinced it's worth paying far more for MicroStrategy's stock than the value of its bitcoin would justify—because Saylor himself warrants what we might call a "genius premium."

He has, they believe, created a perpetual-motion money machine. One of these days, I believe, it will clank to a halt.

Smart, intense and charismatic, Saylor is one of bitcoin's most ardent evangelists. Under him, MicroStrategy has poured approximately $7.5 billion into bitcoin since 2020.

Saylor and MicroStrategy didn't respond to requests for comment. This past week, MicroStrategy raised $592 million in convertible debt and used all the proceeds to buy more bitcoin.

The company said this past week that, as of March 18, it held 214,246 bitcoin. At the digital currency's average price this past week of roughly $65,000, MicroStrategy's trove is worth something close to $14 billion.

Adjusting for debt and options that can be converted to shares, the stock has a total market value of about $33 billion. That's about twice the value of MicroStrategy's remaining software business and all its bitcoin holdings combined.

Some say this is merely the price of admission to what could turn out to be one of the greatest investing shows in history.

One theory says that, under Saylor, MicroStrategy will effectively corner the crypto market. The company will keep buying bitcoin, investors will keep providing cheap capital for it to do so, and both bitcoin's and MicroStrategy's price will keep skyrocketing.

"Saylor Forever!" one Reddit user wrote. "The limits are endless on what they will be able to do." Another fan posted on X that MicroStrategy's stock-market value could soon exceed $2 trillion.

MicroStrategy has funded its bitcoin buying by issuing more than $5 billion in stock and debt.

Normally, companies dilute their earnings per share when they issue extra stock. MicroStrategy's stock offerings, however, have been antidilutive. By issuing shares at such a high premium to the value of its bitcoin, and then pouring the proceeds into more bitcoin, which in turn has risen even higher, MicroStrategy has driven up its stock.

Joseph Vafi, an analyst at Canaccord Genuity, estimated earlier this month that, at recent prices, a $500 million stock issuance would add about $23 (or 1.5%) to MicroStrategy's share price.

The company's latest debt offering carries an interest rate of only 0.875% and is initially convertible to stock at $2,327 a share—about 40% higher than this past week's price. The debt gives its holders the right but not the obligation to convert to the common stock.

"It makes sense for Saylor to try to monetize the premium in the marketplace," says Tracy Maitland, president of Advent Capital Management, a specialist in convertible securities. Because many professional investors aren't permitted to buy bitcoin directly, Microstrategy's bonds are "a very cheap option play," says Maitland.

In February, MicroStrategy's earnings presentation illustrated what could happen if the company borrowed $1 billion to buy more bitcoin: A 480% gain for the cryptocurrency would turn into a 740% gain for MicroStrategy.

Can this magical money merry-go-round keep on whirling indefinitely?

In 1929, investment trusts—portfolios of stocks bundled into a single stock, somewhat like today's exchange-traded funds—were hot.

Trust managers whose stock sold at a premium to the underlying holdings bought other trusts that also sold at a premium. Investors loved the way the managers used cheap money to mint money.

The Magazine of Wall Street, a popular publication of the day, wrote that investors should be happy to pay a genius premium: "If the past record of management indicates that it can average 20% or more..., a price of 150% to 200% above [net asset value] might be reasonable."

Premiums of even 300% above asset value weren't unusual.

Then came the 1929 market crash.

By 1932, at many of the trusts that had sold at premiums, a $1 investment had shriveled to as little as 2 cents, the Securities and Exchange Commission later found.

Or consider CMGI, which helped fund internet startups in the 1990s. An early backer of such online pioneers as Lycos and GeoCities, CMGI became one of the hottest investments in history. Over the five years ended Dec. 31, 1999, the stock rose an astonishing average of 213% annually.

As 2000 began, CMGI's market value reached roughly $34 billion—larger than industrial titans such as Alcoa or Texaco. Yet CMGI's best-known asset, the portfolio of publicly traded companies it had fostered, was worth approximately $11 billion.

Investors and market pundits hailed the company's chief executive, David Wetherell, as a "genius," a "conquering hero who performed miracles" and the "Warren Buffett of the Web."

I couldn't reach Wetherell for comment, but Andrew Hajducky, CMGI's chief financial officer from 1995 to 2001, says the company was so hot that "everybody wanted to buy a part of the star as it sailed up through the universe."

He adds, "We were extra-acquisitive because we knew we had an extremely high-priced stock."

But buying high-priced assets, even with extremely high-priced stock, is always a dangerous game.

In 1999, CMGI stock rose 940%. In 2000, it fell 96%.

ALEX NABAUM