

BEFORE THE IOWA REAL ESTATE COMMISSION  
1918 S.E. HULSIZER  
ANKENY, IOWA

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IN RE:	)	CASE NUMBER: 91-036
	)	
John R. McElmeel (B12869)	)	
Broker.	)	
	)	INFORMAL SETTLEMENT
101 North Main Street	)	
Monticello, IA 52310	)	

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Pursuant to Iowa Code Section 17A.10(1991) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between John R. McElmeel and the Iowa Real Estate Commission (Commission). The parties agree as follows:

STIPULATED STATEMENT OF FACTS

1. The Commission has jurisdiction of this matter under Iowa Code Chapters 17A, 117, and 258A(1991) as well as the administrative rules found in Chapter 193E of the Iowa Administrative Code.

2. John R. McElmeel is, and was at all times during the following events, a licensed real estate Broker. His license number is B12869. John R. McElmeel is Broker in Charge of HOMAC Real Estate located at Monticello, Iowa.

3. On January 4, 1991 HOMAC Real Estate listed property located at 420 E. 3rd, Monticello, Iowa. The owner of the property is Burdelle Lackman.

4. On May 17, 1991 a Purchase Agreement was written with Marciea Folker as Buyer for the Lackman property.

5. John R. McElmeel did not obtain a written Agency Disclosure Statement signed by the Buyer and the Seller.

6. Iowa Code Section 117.29(2)(3) states:

117.29 Revocation or suspension.

A license to practice the profession of real estate broker and salesperson may be revoked or suspended when the licensee is guilty of the following acts or offenses:

- ✓ 2. Professional incompetency.
- ✓ 3. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

7. Iowa Code Section 117.34(4) states:

117.34 Investigations by commission.

The real estate commission may upon its own motion and shall upon the verified complaint in writing of any person, if the complaint together with evidence, documentary or otherwise, presented in connection with the complaint makes out a prima-facie case, request the department of inspections and appeals to investigate the actions of any real estate broker, real estate salesperson, or other person who assumes to act in either capacity within this state, and may suspend or revoke a license issued under this chapter at any time if the licensee has by false or fraudulent representation obtained a license, or if the licensee is found to be guilty of any of the following:

- 4. Acting for more than one party in a transaction without the knowledge of all parties for whom the licensee acts.

8. Iowa Code Section 117.55 states:

**Disclosure of Relationship.**

The real estate commission shall adopt rules requiring that each real estate broker or salesperson in a real estate transaction disclose in writing the broker's or salesperson's agency relationship with the buyer or seller in the transaction.

9. Iowa Administrative Code Section 193E--1.37(117) states:

Disclosure of agency. Enforcement of this rule and its subrules will commence January 1, 1990.

10. Iowa Administrative Code Sections 193E--1.37(1) and (4) states:

(1) No person licensed pursuant to Iowa Code chapter 117 shall represent any party or parties to a real estate transaction or otherwise act as a real estate broker or salesperson unless that person makes an affirmative written disclosure to all parties to the transaction identifying which party that person represents in the transaction. The disclosure shall be acknowledged by separate signatures of the buyer and seller.

(4) A licensee may not be the agent for both the buyer and the seller without obtaining the written consent of both the buyer and the seller. The written consent shall state that the licensee made a full disclosure of the type of representation the licensee will provide and shall briefly describe the type of representation the licensee will provide to the buyer and to the seller. A general statement in the consent signed by the buyer and seller that the licensee represents both buyer and seller is not sufficient.

AGREED ORDER

By agreement it is therefore ORDERED, ADJUDGED, and DECREED by the Iowa Real Estate Commission as follows:

1. John R. McElmeel has the right to a hearing on this matter, but waives his right to a hearing and all attendant rights by freely entering into this Informal Settlement.

2. By failing to obtain an Agency Disclosure in writing and signature of both the Buyer and the Seller, John R. McElmeel violated Iowa Code Sections 117.29(2)(3) and 117.34(4) and 117.55 and Iowa Administrative Code Section 193E--1.37(1) and (4).

3. John R. McElmeel is hereby REPRIMANDED.

4. John R. McElmeel is hereby placed on probation for 12 months. During the period of probation, the Iowa Real Estate Commission upon reasonable notice may require John R. McElmeel to appear before them for the purpose of apprising the commission of his activities in the practice of real estate.

5. John R. McElmeel shall take twelve hours of real estate continuing education in "Real Estate Law, Contract Law and Agency Law" within twelve (12) months of the signing of this Informal Settlement. These twelve (12) hours shall be taken in the area of Broker Pre-license Licensing and shall be in addition to all other Real Estate hours required by law. Proof of compliance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of the signing of this Informal Settlement by the Commission. The Certificate of Attendance must come under a cover letter addressed to the Commission's Executive Secretary and must be referred to as case number 91-036.

6. This Informal Settlement shall be made part of the permanent record of John R. McElmeel and shall be considered by the Commission in determining the nature and severity of the disciplinary action to be imposed for any future license law violations by John R. McElmeel.

7. Failure to comply with the provisions of this agreed order shall be considered prima facie evidence of a violation of Iowa Code Sections 117.29(3) and 117.34(2)(1991). However, no action may be taken against any licensee without a hearing as provided for in Iowa Code Section 117.35(1991).

8. The within settlement is subject to the approval of the Commission and if the Commission fails to approve this settlement, it shall be of no force or effect on either the Commission or the licensee, and it shall not be admissible for any purposes at any further proceedings in this matter.

FOR THE BROKER:

Dated this 31 day of JAN., 1992.



John R. McElmeel

Signed and sworn to before me this 31<sup>st</sup> day of JANUARY, 1992.



Notary Public, State of Iowa

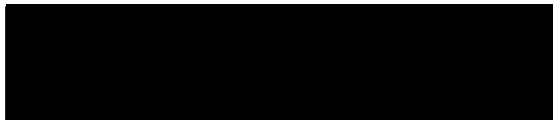
FOR THE COMMISSION:

Signed this 20<sup>th</sup> day of FEBRUARY, 1992.



Gerry F. Duggan, Chairperson

Executed this 20<sup>th</sup> day of FEBRUARY, 1992.



Roger L. Hansen  
Executive Secretary