

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

IN RE:)

CASE NUMBER: 91-028

Alan E. Smith (B18738)
Broker-Associate)

INFORMAL SETTLEMENT

17 Royal Road)
Council Bluffs, IA 50501)

Pursuant to Iowa Code Section 17A.10(1991) and 193E Iowa Administrative Code Section 4.12(117), this Informal Settlement is entered into between Alan E. Smith 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. Alan E. Smith is, and was at all times during the following events, a licensed real estate Broker. His license number is B18738.

3. Alan E. Smith is licensed as a Broker-Associate with Century 21 Realty Centre located at 716 South 4th Street, Council Bluffs, Iowa.

4. Alan E. Smith entered into an agreement with Harold Miller, Jr., President of Royal Vending, Inc., to manage properties located at 2543 3rd Avenue and 2540, 2542, 2547 2nd Avenue, Council Bluffs, Iowa. The agreement was signed by Harold Miller, Jr. and Alan E. Smith.

5. Alan E. Smith collected rents for the above mentioned properties.

6. Alan E. Smith deposited rent funds into a checking account in the name of Alan E. Smith and Jacqueline E. Smith.

91-028

7. Alan E. Smith accepted compensation from Royal Vending, Inc. to manage these properties as agreed to in the management agreement.

8. Iowa Code Section 117.34(5) states:

Accepting a commission or valuable consideration as a real estate broker associate or salesperson for the performance of any of the acts specified in this chapter, from any person, except the broker associate's or salesperson's employer, who must be a licensed real estate broker. However, a broker associate or salesperson may, without violating this subsection, accept a commission or valuable consideration from a corporation which is wholly owned, or owned with a spouse, by the broker associate or salesperson if the conditions described in subsection 9 are met.

9. Iowa Administrative Code Section 193E--1.27(117) states:

Trust account. Earnest payments, rents collected, property management funds, and other trust funds received by the broker shall be deposited in an identified "trust" account in a bank, savings and loan association, savings bank, or credit union located in Iowa. A broker shall maintain in the broker's office a general ledger for the trust account and an account ledger for each account or transaction which shall provide a complete record of all moneys received on real estate transactions, rents, and management funds, including the sources of the money, the date of receipt, depository, and date of deposit; and when a transaction has been completed, the final disposition of the moneys. The notification to the commission of the name, depository, and address of the broker's trust account shall include the account number.

10. Iowa Administrative Code Section 193E--4.40(117) states:

193E--4.40(117) Violations for which
civil penalties may be imposed.

4.40(6) Improper trust account and
closing procedures:

i. Failing as a salesperson or broker
associate to immediately turn funds over
to the broker.

AGREED ORDER

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

1. Alan E. Smith 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 deposit rents collected into his Broker's
trust account, Alan E. Smith violated Iowa Administrative Code
Sections 193E--1.27(117) and 4.40(6) i.

3. By accepting compensation from Royal Vending, Inc., Alan
E. Smith violated Iowa Code Section 117.34(5).

4. Alan E. Smith shall take twelve (12) hours of real
estate continuing education in "Trust Account and Closing
Procedures". This course must be approved as a "Broker
Pre-License Course". [(See 3.2(3)(117)]. These hours shall be
in addition to all other real estate continuing education
required by law for license renewal. Proof of compliances 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 91-028.

5. Alan E. Smith agrees that all trust funds received will
be turned over to his broker for deposit into the broker's trust
account.

6. Alan E. Smith agrees to accept compensation from his
employing broker only regarding real estate transactions.

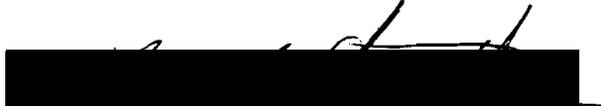
7. This Informal Settlement shall be made part of the
permanent record of Alan E. Smith and shall be considered by the
Commission in determining the nature and severity of the
disciplinary action to be imposed for any future license law
violations by Alan E. Smith.

8. 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).

9. 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 9 day of April, 1992.


Alan E. Smith

Signed and sworn to before me this 9th day of April, 1992.


Notary Public, State of Iowa

FOR THE COMMISSION:

Signed this May 21 day of _____, 1992.


Jerry F. Duggan, Chairperson

Executed this 21 day of MAY, 1992.


Roger L. Hansen
Executive Secretary

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause by depositing a copy thereof in the U. S. Mail, postage prepaid, in envelopes addressed to each of the attorneys of record herein at their respective addresses disclosed on the pleadings, on May 26, 1992.

