

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

IN RE:)	CASE NUMBER: 90-052.
)	
EDWIN J. SMITH (B24103))	
Broker)	INFORMAL SETTLEMENT
)	
1427 E. Washington)	
Clarinda, Iowa 51632)	

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

1. The Commission has jurisdiction over this matter under Iowa Code chapters 17A, 117, and 258A (1991) as well as the regulations found in chapter 193E of the Iowa Administrative Code.
2. Edwin J. Smith is, and was at all time material hereto, a licensed real estate broker. His license number is B24103.
3. Edwin J. Smith is a sole proprietor and broker in charge of Smith Real Estate located at 1427 East Washington, Clarinda, Iowa.
4. On February 16, 1990, Edwin J. Smith listed property located in Shambaugh, Iowa. The owners of the property were Doyle and Donna Wagoner. The property was listed for \$20,000.
5. Edwin J. Smith then offered the Wagoners \$12,000 for their property.
6. The Wagoners counter-offered to sell the property to Edwin J. Smith for \$13,500.

7. On March 18, 1990, a Purchase Agreement was signed by Edwin J. Smith and the Wagoners for \$13,500.

8. On March 23, 1990, Edwin J. Smith showed the Wagoner property to Janet McCormick-Coulter.

9. On March 26, 1990, Edwin J. Smith signed a Purchase Agreement selling the Wagoner property to Janet McCormick-Coulter for \$25,000.

10. On March 30, 1990, a real estate contract was signed by Edwin J. and Sharon Smith (Buyers) and Doyle and Donna Wagoner (Sellers) to purchase the Wagoner property for \$13,500.

11. On May 2, 1990, a real estate contract was signed by Janet McCormick-Coulter (Buyer) and Edwin J. and Sharon Smith (Sellers) to purchase the Wagoner property for \$25,000.

12. Iowa Code § 117.34 states:

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 the evidence, documentary or otherwise, presented in connection with the complaint makes a prima-facie case, request the department of inspection and appeals to investigate the actions of any real estate broker, real estate sales person, 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.

5. Being unworthy or incompetent to act as a real estate broker or salesperson in such manner as to safeguard the interests of the public.

13. Iowa Administrative Code § 193E-1.9(117) states:

Licensee acting as a principal. A licensee shall not acquire any interest in any property nor shall the licensee sell any property in which the licensee has an interest without first making the licensee's true position clear to the other party. Satisfactory proof of this fact must be produced by the licensee upon request of the board.

STIPULATED ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Iowa Real Estate Commission as follows:

1. Edwin J. Smith has a right to a hearing on this matter, but waives the right to a hearing and all attendant rights by freely entering into this Informal Settlement.

2. By purchasing the Wagoner property, Edwin J. Smith violated Iowa Code §§ 117.34(4) & (8) and Iowa Administrative Code § 193E-1.9.

3. The broker's license of Edwin J. Smith, number B24103, is hereby suspended for a period of twenty-four (24) months commencing February 1, 1992.

4. After successful completion of the twenty-four (24) month suspension, the broker's license of Edwin J. Smith, number B24103, will be placed on probation for twelve (12) months.

5. Edwin J. Smith shall complete twelve (12) hours of real estate continuing education in "Iowa Real Estate License Law and Commission Rules" within thirteen (13) months of the signing of this Informal Settlement. This requirement may be satisfied by completing two six (6) hour classes in "Iowa License Law" provided that the classes have different course numbers and

instructors. In addition, such hours shall not be taken by correspondence courses. Such hours shall be taken in addition to all other real estate education hours required by law. Proof of compliance must be submitted to the Iowa Real Estate Commission within thirteen (13) months of signing this Informal Settlement by the Commission. A certificate of attendance must come under a cover letter addressed to the Commission's Executive Secretary and must refer to case number 90-052.

6. This Informal Settlement shall be made a part of the permanent record of Edwin J. 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 the broker.

7. Failure to comply with the provisions of this Informal Settlement shall be considered prima facie evidence of a violation of Iowa Code §§ 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 § 117.35 (1991).

8. This Informal Settlement is subject to the approval of the Iowa Real Estate Commission. If the Commission fails to approve this agreement, it shall be of no force or effect on either party, and it shall not be admissible for any purpose in further proceedings in this matter. If approved by the Commission, this agreement shall be deemed and agreed upon disposition of a contested case proceeding and will dispose of all matters contained in case number 90-052.

FOR THE BROKER:

Dated this 9TH day of DECEMBER, 1991.

[REDACTED]

EDWIN J. SMITH

Signed and sworn to before me this 9TH day of
DECEMBER, 1991.

[REDACTED]

Notary Public, State of Iowa



FOR THE COMMISSION:

Dated this 12 day of DECEMBER, 1991.

[REDACTED]

JERRY F. DUGGAN, CHAIRPERSON

Executed this 12 day of DECEMBER, 1991.

[REDACTED]

ROGER H. HANSEN
EXECUTIVE SECRETARY