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PATRICK K. KELLY 7290  
Regulated Industries Complaints  
Office  
Department of Commerce and  
Consumer Affairs  
State of Hawaii  
235 S. Beretania Street, 9th Floor  
Honolulu, Hawaii 96813  
Telephone: 586-2660

DEPT. OF COMMERCE  
AND CONSUMER AFFAIRS

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AND CONSUMER AFFAIRS

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HEARINGS OFFICE

HEARINGS OFFICE

Attorney for Department of Commerce  
and Consumer Affairs

REAL ESTATE COMMISSION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
STATE OF HAWAII

DEPT. OF COMMERCE  
& CONSUMER AFFAIRS  
STATE OF HAWAII

2005 AUG - 8 P 2: 06

RECEIVED  
PROF. & VOCATIONAL  
LICENSING DIVISION

In the Matter of the )  
Real Estate Broker's License of )  
)  
MARTY SMITH, aka MARTIN E. SMITH, )  
)  
Respondent. )  
AND COMMISSION'S FINAL ORDER )

REC 2005-147-L

SETTLEMENT AGREEMENT PRIOR TO  
FILING OF PETITION FOR  
DISCIPLINARY ACTION; EXHIBIT "1"

SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION  
FOR DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER

Respondent MARTY SMITH, aka MARTIN E. SMITH (hereinafter "Respondent"), and  
the Department of Commerce and Consumer Affairs, through its Regulated Industries  
Complaints Office (hereinafter "RICO"), through its undersigned attorney, enter into this  
Settlement Agreement on the terms and conditions set forth below.

A. UNCONTESTED FACTS

1. Respondent is licensed by the Real Estate Commission (hereinafter the  
"Commission") as a real estate broker under License Number RB 12543. Said license was issued  
on November 5, 1981, and currently has an expiration date of December 31, 2006.

2. The last known mailing address for Respondent is 62-2391 Kanehoa Street, Kamuela, Hawaii 96743.

3. RICO received a request for investigation from the Commission alleging that Respondent had failed to disclose a disciplinary action taken by the Idaho Real Estate Commission on an application for licensure filed with the Commission.

4. Based on RICO's investigation of this matter, RICO determined that Respondent was licensed to practice real estate in the State of Idaho. On or about April 21, 1999, Respondent entered into a Disciplinary Citation and Consent Order (hereinafter the "Idaho Order"), in which Respondent admitted to violating laws relating to the licensing of real estate persons in the State of Idaho. Pursuant to the Idaho Order, Respondent paid fines in the amount of \$175.00. A true and correct copy of the Idaho Order is attached as Exhibit "1."

5. On or about January 25, 2005, Respondent submitted an application of licensure to the State of Hawaii's Real Estate Commission (hereinafter the "Hawaii Commission"). Respondent answered "no" in response to the question "[h]as an application for license or a real estate license ever been denied, suspended, fined, involuntarily terminated, revoked, or otherwise subject to disciplinary action?".

6. Respondent had disclosed the Idaho Order on a June 11, 2004 Verification of License which was submitted to the Commission as part of the pre-licensing process.

7. RICO alleges that Respondent violated H.R.S. § 436B-19(15) (failure to disclose disciplinary action).

8. The foregoing allegations, if proven, would constitute violations of the following statutes governing the conduct of real estate salespersons licensed in the State of Hawaii: 436B-19(15) (failure to disclose disciplinary action).

9. The Commission has jurisdiction over the subject matter herein and over the parties hereto.

**B. REPRESENTATIONS BY RESPONDENT:**

1. Respondent is fully aware that he has the right to be represented by an attorney of his choosing in this matter and voluntarily waives that right.

2. Respondent enters into this Settlement Agreement freely and voluntarily and under no coercion or duress.

3. Respondent has been informed of his right to have a hearing to determine the issues in RICO's investigation. Pursuant to H.R.S. §91-9(d), Respondent voluntarily waives his right to a hearing and agrees to a disposition of this case in accordance with the terms and conditions of this Settlement Agreement.

4. Respondent being at all times relevant herein licensed as a real estate salesperson by the Commission acknowledges that he is subject to penalties including but not limited to, revocation, suspension or limitation of his license and civil fines, if the foregoing violations are proven at hearing.

5. Respondent admits to the veracity of the allegation(s) and that his acts constitute violation(s) of the following statutes and/or regulations governing the conduct of real estate salespersons licensed in the State of Hawaii: H.R.S. § 436B-19(15) (failure to disclose

disciplinary action).

6. Respondent enters into this Settlement Agreement as a compromise of the claims and to conserve on the expenses of proceeding with an administrative hearing on this matter.

7. Respondent agrees that this Settlement Agreement is intended to resolve the issues raised in RICO's investigation in RICO Case No. REC 2005-147-L.

C. TERMS OF SETTLEMENT:

1. Administrative fine. Respondent agrees to pay a fine in the amount of FIVE HUNDRED AND NO/100 DOLLARS (\$500.00), the payment of which shall be due within thirty (30) days of the Commission's approval of this Settlement Agreement. Said payment shall be made by **cashier's check or money order made payable to "State of Hawaii - Compliance Resolution Fund"** and mailed to the Regulated Industries Complaints Office, Attn: Patrick Kelly, Esq., 235 S. Beretania Street, 9<sup>th</sup> Floor, Honolulu, Hawaii 96813. The mailing should be postmarked by the 30<sup>th</sup> day to be in compliance with this Settlement Agreement.

2. Failure to Comply with Settlement Agreement. If Respondent fails to fully and timely pay the administrative fine as set forth in paragraph(s) C.1 above, Respondent's license shall be automatically revoked for a period of five (5) years upon RICO's filing of an affidavit with the Commission attesting to such failure. In case of such revocation, Respondent shall turn in all indicia of his licensure to the Executive Officer of the Commission within ten (10) days after receipt of notice of the revocation. Upon completion of the revocation period, Respondent understands that he will need to apply to the Commission for reinstatement pursuant and subject to the requirements and conditions set forth in HRS § 436B-21.

3. Possible further sanction. The Commission, at its discretion, may pursue additional disciplinary action as provided by law to include further fines and other sanctions as the Commission may deem appropriate if Respondent violates any provision of the statutes or rules governing the conduct of real estate licensees in the State of Hawaii, or if Respondent fails to abide by the terms of this Settlement Agreement.

4. Approval of the Commission. Respondent agrees that, except for the representations, agreements and covenants contained in Paragraphs C.5, C.6, C.7 and C.8 below, this Settlement Agreement shall not be binding on any of the parties unless and until it is approved by the Commission.

5. No Objection if Commission Fails to Approve. If the Commission does not approve this Settlement Agreement, does not issue an order pursuant thereto, or does not approve a lesser remedy, but instead an administrative hearing is conducted against Respondent in the Commission's usual and customary fashion pursuant to the Administrative Procedure Act, Respondent agrees that neither he nor any attorney that he may retain, will raise as an objection in any administrative proceeding or in any judicial action, to the Commission's proceeding against him on the basis that the Commission has become disqualified to consider the case because of its review and consideration of this Settlement Agreement.

6. Any Ambiguities Shall be Construed to Protect the Consuming Public. It is agreed that any ambiguity in this Settlement Agreement is to be read in the manner that most completely protects the interests of the consuming public.

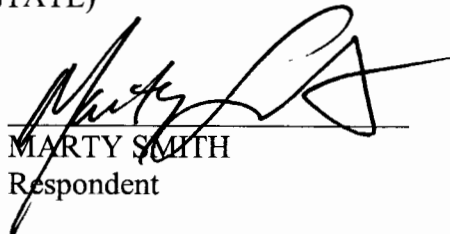
7. No Reliance on Representations by RICO. Other than the matters specifically stated in this Settlement Agreement, neither RICO nor anyone acting on its behalf has made any

representation of fact, opinion or promise to Respondent to induce entry into this Settlement Agreement, and Respondent is not relying upon any statement, representation or opinion or promise made by RICO or any of its agents, employees, representatives or attorneys concerning the nature, extent or duration of exposure to legal liability arising from the subject matter of this Settlement Agreement or concerning any other matter.

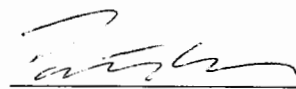
8. Complete Agreement. This Settlement Agreement is a complete settlement of the rights, responsibilities and liabilities of the parties hereto with respect to the subject matter hereof; contains the entire agreement of the parties; and may only be modified, changed or amended by written instrument duly executed by all parties hereto.

IN WITNESS WHEREOF, the parties have signed this Settlement Agreement on the date(s) set forth below.

DATED: KAMUELA, HAWAII, AUGUST 1, 2005.  
(CITY) (STATE)


  
MARTY SMITH  
Respondent

DATED: Honolulu, Hawaii, AUG 5 2005.

  
DARIA A. LOY-GOTO  
PATRICK K. KELLY  
Attorney for Department of Commerce and  
Consumer Affairs


IN THE MATTER OF THE REAL ESTATE BROKER'S LICENSE OF MARTY SMITH, aka  
MARTIN E. SMITH; SETTLEMENT AGREEMENT PRIOR TO FILING OF PETITION FOR  
DISCIPLINARY ACTION AND COMMISSION'S FINAL ORDER; CASE NO. REC 2005-  
147-L

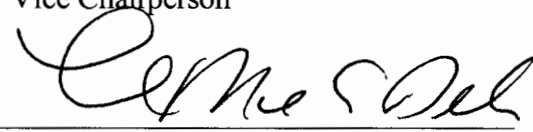
APPROVED AND SO ORDERED:  
REAL ESTATE COMMISSION  
STATE OF HAWAII

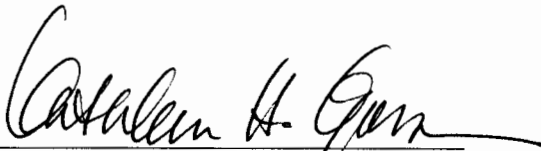
  
\_\_\_\_\_  
~~JOHN OHAMA~~ Trudy I. Nishihara  
Chairperson

August 26, 2005  
DATE


  
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~~MITCHELL A. IMAHARA~~ Iris R. Okawa  
Vice Chairperson

  
\_\_\_\_\_  
LOUIS E. ABRAMS

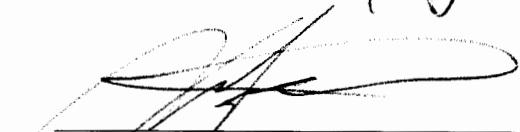
  
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CAROL MAE A. BALL

  
\_\_\_\_\_  
KATHLEEN H. KAGAWA,  
PH.D.

  
\_\_\_\_\_  
MICHELE SUNAHARA  
LOUDERMILK

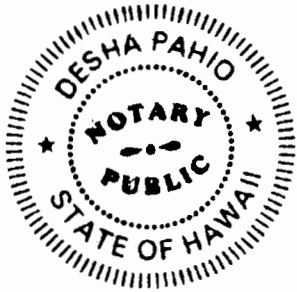
  
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~~TRUDY I. NISHIHARA~~ Stanley M. Kuriyama

\_\_\_\_\_  
IRIS R. OKAWA

  
\_\_\_\_\_  
VERN M. YAMANAKA

STATE OF HAWAII )  
 ) SS.  
COUNTY OF HAWAII )

On this 1<sup>st</sup> day of August, 2005, before me personally appeared  
Marty Smith, to me known to be the person described and who executed the  
foregoing instrument and acknowledged the same as ~~his~~<sup>her</sup> free act and deed.



Desha Pahio  
Name: \_\_\_\_\_  
Notary Public – State of \_\_\_\_\_

My commission expires: \_\_\_\_\_

**DESHA PAHIO**  
NOTARY PUBLIC, STATE OF HAWAII  
COMMISSION EXPIRES: 02/20/2009



4/25/99  
2/4/99

REE-023  
05/97

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IDAHO REAL ESTATE  
COMMISSION

**CERTIFICATION**

IDAHO REAL ESTATE COMMISSION  
PO BOX 83720  
BOISE ID 83720-0077  
PHONE (208)334-3285

I hereby certify that this is a true & correct copy of the original document on file at the office of the Idaho Real Estate Commission.

Dated this 11th day of May, 2005.

*[Signature]*

**Disciplinary Citation and Consent**

Date: 4/21/99

Respondent/Licensee's Name: MARION SMITH

License Number: DB ~~7306~~ 17076

Designated Broker for: Evergreen Land Co.

(Name of Brokerage Company)  
219 S. Main St., Hailey, Id.  
(Address)

The undersigned inspector for the Idaho Real Estate Commission certifies that he/she has probable cause to believe that the above-named licensee has violated the named provisions of Idaho Real Estate License Law and Rules by committing the acts specified in the attached Idaho Real Estate Commission Audit Report:

Violation	Fine Amount	Violation	Fine Amount
<u>(Failure to Account)</u>		<u>(Check Register/Reconciliations)</u>	
<u>54-2040A(C)</u>	<u>\$ 75.00</u>	<u>205-08</u>	<u>\$ 75.00</u>
<u>(Deposits/Checks)</u>		<u>205-08</u>	
<u>205.04</u>	<u>\$ 25.00</u>		
<u>205.06</u>			
		<b>Total Amount Due</b>	<b><u>\$175.00</u></b>

Respondent stipulates and agrees pursuant to rule 035, Rules of Practice and Procedure of the Idaho Real Estate Commission, that the above violation(s) occurred, that this stipulation is deemed a Complaint which was filed pursuant to the provisions of Idaho Code sections 54-2040 and 54-2041, and is in compliance with Chapter 52, Title 67, Idaho Code. **Respondent understands that he or she may pay civil fine(s) in the total amount of \$ 175.00 (See itemization above), and admit to the violations above or may deny any or all of the named violations and demand formal action, including a hearing.**

**Admission of violations** shall constitute an offer to consent to discipline and thereby terminate any additional disciplinary action against Respondent's real estate license based on the above violations. The consent agreement is contingent on acceptance by the Executive Director of the Idaho Real Estate Commission. Admission of violation and payment of fines shall mean entry of this citation in the public record as a final action of the Commission. Further, the Respondent, by admission, waives all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of this consent agreement.

**EXHIBIT**  
tabler  
"1"

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MAY 3 1999

IDAHO REAL ESTATE COMMISSION

Within 10 days of the issuance or receipt of this citation, you must:

- a. ADMIT TO THE VIOLATIONS by signing this citation below and mailing the *original* of the citation plus the total amount due to the Commission office at the address above. Admission submitted without total payment shall be rejected.
- b. DENY THE VIOLATIONS (or any of them specifically) by signing the denial of citation below and mailing the *original* of the citation to the Commission office at the above address. You will receive further notification of any formal action.

Check one:  I admit to all violations and agree to pay the fines above.

I admit to only the following violations:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

and agree to pay only the fines charged for those violations in the total amount of \$\_\_\_\_\_.

I deny all violations not admitted above and seek formal action by the Idaho Real Estate Commission .

Signatures:

Marty [Signature]  
Respondent/Licensee

4-28-99  
Date

[Signature]  
Inspector

4/21/99  
Date

Agreed to and accepted by:

[Signature]  
Executive Director  
Idaho Real Estate Commission

5/4/99  
Date

DISCIPLINARY ORDER

**Smith, Martin E.**, designated broker with Evergreen Land Company in Hailey, Idaho. Agreed to citation stipulation and civil penalty fine of \$175 for violation of Idaho Code 54-2040A(c)-failure to account (\$25); Commission administrative rules 205.04 and 205.06-deposits/checks; and Commission rules 205.08 and 205.08 (check register/reconciliations) \$75).

Date of Order: 5/4/99

**CERTIFICATION**

I hereby certify that this is a true & correct copy of the original document on file at the office of the Idaho Real Estate Commission.

Dated this 11th day of May, 2005

