

**BEFORE THE BOARD OF REAL ESTATE APPRAISERS**

**STATE OF IDAHO**

In the Matter of the License of:	)	
	)	Case No. REA-2007-40
BRETT A. SMITH,	)	
License No. CGA-1142,	)	<b>STIPULATION AND</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
	)	

REASmith-BVP7143lma

WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against Brett A. Smith (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A.**

1. The Board may regulate the practice of real estate appraising in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.

2. Respondent Brett A. Smith is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. CGA-1142 to practice as a real estate appraiser in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.

3. Pursuant to Idaho Code § 54-4116, the Board has adopted a rule requiring continuing education as a condition of continued licensure. Board Rule 401 (IDAPA 24.18.01.401) requires each renewal application to be accompanied by certification of having attended and completed a minimum of 15 hours of instruction in Board-approved courses or seminars during each year prior to renewal.

4. On or about October 18, 2005, Respondent submitted his License Renewal Application for the 2005-06 renewal year. As part of his License Renewal Application, Respondent signed the following affidavit:

I hereby certify under penalty of perjury that my responses to the above are true and correct, and that I have met the continuing education requirement as prescribed by the laws & rules applicable to the license for which I am applying to renew, and that documented proof of my attendance is in my possession and will be provided upon request.

5. The License Renewal Application further notified Respondent that the Board would conduct random audits to ensure compliance with continuing education requirements.

6. On or about August 22, 2006, Respondent was notified that he had been selected for a continuing education audit. Respondent was requested to provide documentation to the Bureau of Occupational Licenses by September 22, 2006, to confirm completion of the Board's continuing education requirements.

7. On or about September 18, 2006, Respondent submitted to the Bureau of Occupational Licenses his Continuing Education Audit Verification and Certificate of Compliance with supporting documentation.

8. The Continuing Education Audit Verification and Certificate of Compliance submitted by Respondent reflects that Respondent attended a total of 38 hours of continuing education from March 26, 2004 through September 14, 2006, but only 7 hours of continuing education for the year prior to his renewal on October 18, 2005, as follows:

<b>Course Title</b>	<b>Date</b>	<b>Sponsoring Organization</b>	<b>Location</b>	<b>Total hrs</b>
St. George Symposium	3/18/05- 3/19/05	Utah Chapter Appraisal Institute	St. George, UT	7
<b>Total Hours</b>				<b>7</b>

9. Despite certifying on his License Renewal Application on October 18, 2005, that he had met the Board's continuing education requirement, Respondent failed to

obtain 15 hours of continuing education for the year prior to his renewal. Respondent has represented that he is licensed in multiple states and that his non-compliance with Idaho's continuing education requirements was not intentional.

10. The above-stated allegations, if proven, would constitute a violation of the laws and rules governing the practice of real estate appraising, specifically Idaho Code §§ 54-4107(1)(a), (c) and (d) and 54-4116 and IDAPA 24.18.01.401.02. Violations of these laws and rules would constitute grounds for disciplinary action against Respondent's license to practice real estate appraising in the State of Idaho.

11. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby admits the violations and agrees to the discipline against his license as set forth in Section C below.

## **B.**

I, Brett A. Smith, by affixing my signature hereto, acknowledge that:

1. I have read and admit the allegations pending before the Board, as stated above in Section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraising in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraising in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this Stipulation and Consent Order I am enabling the Board to impose disciplinary action upon my license without further process.

### C.

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of Two Hundred Fifty and No/100 Dollars (\$250.00) within thirty (30) days of the entry of the Board's Order.

3. Within six (6) months of the date of entry of the Board's Order, Respondent shall obtain an additional eight (8) hours of Board-approved continuing education credits. Respondent shall take and pass any examinations given at the conclusion of each course. Respondent shall submit proof of attendance and proof that he passed any given examinations within 30 days of attendance. If no examination is given at the conclusion of a course, Respondent shall submit a letter from the course instructor stating that no examination was given. This continuing education shall be in addition to any continuing education Respondent is required to obtain to maintain his license.

4. At the time Respondent renews his license in 2007 and 2008, Respondent shall submit with his License Renewal Application documentation verifying completion of the required continuing education.

5. All costs associated with compliance with the terms of this Stipulation and Consent Order are the sole responsibility of Respondent.

6. The violation of any of the terms of this Stipulation and Consent Order by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

**D.**

1. It is hereby agreed between the parties that this Stipulation and Consent Order shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this settlement agreement, and if rejected by the Board, an administrative Complaint will be filed. By signing this document, Respondent waives any right Respondent may have to challenge the Board's impartiality to hear the allegations in the Complaint based on the fact that the Board has considered and rejected this settlement agreement. Pursuant to Idaho Code § 67-5252, Respondent retains the right to otherwise challenge the impartiality of any Board member to hear the allegations in the Complaint based upon bias, prejudice, interest, substantial prior involvement in the case or any other reason provided by law or for any cause for which a judge is or may be disqualified.

3. If the Board does not accept this Stipulation and Consent Order then, except for Respondent's waiver set forth in Paragraph D(2), above, it shall be regarded as null and void and admissions by Respondent herein will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. With the exception of Paragraph D(2), above, which becomes effective upon Respondent signing this document, this Stipulation and Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-4107. If Respondent violates or fails to comply with this

Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board to assess whether or not Respondent has defaulted under this agreement. The Chief shall also serve notice of the default hearing and charges to Respondent and to Respondent's attorney, if any. Within twenty-one (21) days after the notice of default hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations of default will be deemed admitted.

b. At the default hearing, the Board and Respondent may submit affidavits made on personal knowledge and present oral argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.

c. At the default hearing, the Board will determine whether to impose additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. This Stipulation and Consent Order is the resolution of a contested case and is a public record.

8. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the

Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

DATED this 28<sup>th</sup> day of May, 2007.

Brett A. Smith  
Brett A. Smith  
Respondent

I concur in this stipulation and order.

DATED this 29<sup>th</sup> day of May, 2007.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By Emily A. MacMaster  
Emily A. MacMaster  
Deputy Attorney General

**ORDER**

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 5 day of June, 2007. **IT IS SO ORDERED.**

IDAHO STATE BOARD  
OF REAL ESTATE APPRAISERS

By Paul Morgan  
Paul Morgan, Chair

**CERTIFICATE OF SERVICE**

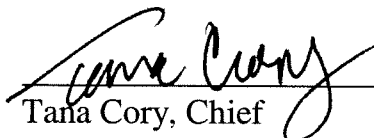
I HEREBY CERTIFY that on this 5<sup>th</sup> day of June, 2007, I caused to be served a true and correct copy of the foregoing by the following method to:

Brett A. Smith  
6440 S. Wasatch Blvd., Suite 180  
Salt Lake City, UT 84121

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: \_\_\_\_\_
- Statehouse Mail

Emily A. Mac Master  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- U.S. Mail
- Hand Delivery
- Certified Mail, Return Receipt Requested
- Overnight Mail
- Facsimile: \_\_\_\_\_
- Statehouse Mail

  
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Tana Cory, Chief  
Bureau of Occupational Licenses