

BEFORE THE IOWA INSURANCE COMMISSIONER

)	
)	Division Case No. 124131
IN THE MATTER OF)	
)	
CENTRAL IOWA GUTTER, INC.,)	ORDER AND CONSENT TO ORDER
d/b/a SMART HOME EXTERIORS,)	
d/b/a SMART HOME SERVICES,)	
)	
and)	
)	
DONALD SMART)	
DOB: 8/2/XXXX,)	
)	
)	
Respondents.)	

NOW THEREFORE, upon motion of the Iowa Insurance Division (“Division”) and by the consent of Respondents Central Iowa Gutter, Inc., and Donald Smart, pursuant to the provisions of pursuant to the provisions Iowa Code chapter 522C—Licensing of Public Adjusters, Iowa Code chapter 507B— Insurance Trade Practices, and Iowa Code chapter 507A—Iowa Unauthorized Insurers Act, the Commissioner enters the following Order and Consent to Order (“Consent Order”):

I. PARTIES AND JURISDICTION

1. The Commissioner of Insurance, Douglas M. Ommen, directly and through his designees, administers and enforces Iowa Code chapters 507A—Unauthorized Insurers, 507B—Insurance Trade Practices, and 522C—Licensing of Public Adjusters, pursuant to Iowa Code § 505.8.
2. Central Iowa Gutter, Inc., d/b/a Smart Home Exteriors, d/b/a Smart Home Services (“Smart Home”) is an Iowa corporation formed in 2017 with its principal office located at 2024

NW 92nd Ct., Clive, Iowa 50325. James R. Monroe (“Monroe”) is Smart Home’s registered agent on file with the Iowa Secretary of State, with an address of 2222 Forest Avenue, Des Moines, Iowa 50311. Smart Home is not and never has been a licensed public adjuster in the state of Iowa.

3. Donald Smart (“Smart”) is an individual with a last-known residence address of 601 3rd St. NW, Altoona, Iowa 50325. Smart is a registered contractor in Iowa under registration number C132543. Smart is not and never has been licensed as an insurance producer or public adjuster in the state of Iowa.

4. Smart Home and Smart are hereinafter collectively referred to as “Respondents.”

5. Pursuant to Iowa Code § 505.28, Respondents have consented to the jurisdiction of the Commissioner of Insurance by committing acts governed by Iowa Code chapters 507A, 507B, and 522C.

6. From on or about April 27, 2024, to present, Respondents engaged in acts and practices within the state of Iowa that constitute cause for a summary order to cease and desist from engaging in such acts or practices and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8(10), 507A.10(2)(a), 507B.6A(1), and 522C.6(3)(c), and rules adopted pursuant to these chapters.

II. FINDINGS OF FACT

7. Respondents are not, nor have they ever been, licensed in the state of Iowa as public adjusters.

8. Smart Home offers roofing, siding, window, gutter, and storm restoration services in the Clive, Iowa, area. Smart Home is registered with the Iowa Secretary of State under business number 545286. Smart is the owner of Smart Home.

Advertisements for Public Adjuster Services on Smart Home Website

9. On September 20, 2024, a Division investigator accessed Smart Home's website wherein Respondents advertised public adjuster services for underlying first-party insurance claims in conjunction with home repair services.¹ Sometime in late September 2024, the website went inactive.

10. As of at least October 22, 2024, a new version of the Smart Home website can now be found at the same web address. Both versions of the website informed the public that Smart Home and/or its employees provide said public adjuster services in Iowa.

11. The homepage of the old version of the Smart Home website advertised that Respondents perform "Insurance Negotiation," and "Will Work to Get You the Coverage You Deserve." The homepage stated that Smart Home performs "Storm Restoration," and that "We're more than a roofing contractor; we're your partners in storm damage restoration. We handle all exterior damages caused by storms, from your roof to siding, windows, and gutters. **Let us work with your insurance company to restore your home's exterior to its former glory.**" *Id.* (emphasis added).

12. The "Storm Restoration" page of the old version of the Smart Home website further detailed how Smart Home works directly with insurance companies on storm damage claims:

¹ See SMART HOME EXTERIORS, <https://www.smarthomeexteriors.com/> (last visited October 22, 2024).

At Smart Home Exteriors, we offer comprehensive storm damage restoration in Clive, IA. We understand that storms can significantly damage your home's exterior, which can be overwhelming. That's why we are here to help. Our team is equipped to handle any exterior damage, be it to your roof, siding, windows, or gutters. **We work closely with you and your insurance company to ensure a smooth restoration process.**

...
Don't let storm damage get you down. Reach out to Smart Home Exteriors today for effective storm damage restoration in Clive, IA. **We provide personalized solutions, addressing every aspect of the damage and working directly with your insurance company for hassle-free claims.** Our commitment to excellent customer service and quality work makes us your best choice for restoration services. Contact us today and let us help you bring your home back to life.

(emphasis added).

13. The new version of the Smart Home website similarly advertises that Respondents provide public adjusting services in Iowa. For example, on the new Smart Home "About" page, above a "CONTACT US TODAY" button, reads "Insurance Claims? We Help You Get The Coverage You Deserve!"

14. The new version of the Smart Home homepage further touts that "From insurance claims to house and property cleanup, our affordable roofing contractor [*sic*] Cliva IA will be there throughout the entire process to meet all of your roofing needs" and will "guide [customers] through insurance claims." The Website also contains a review from Consumer A.W. stating "We are SO GLAD we did not listen to that other company! Chris did amazing and helped us work with our insurance to make everyone happy!"

Advertisements for Public Adjuster Services on Smart Home Facebook Page

15. Smart Home also maintains an active Facebook page, wherein Smart Home also advertises public adjusting services. Smart Home's Facebook page informs the public that Smart Home provides said public adjuster services in Iowa.

16. On April 27, 2024, Smart Home published the following post to its Facebook page:

Our thoughts and prayers are with everyone who was impacted by the storms in ours and surrounding areas last night. In the aftermath of a storm, navigating what to do next can be overwhelming. **At Smart Home Exteriors, we specialize not only in restoring your home's exterior but also in managing the complexities of insurance claims and many other areas that we can help you. Let us handle the paperwork and negotiations,** allowing you to focus on what matters most—rebuilding and moving forward. Trust in our expertise to streamline the process and secure the coverage you deserve, ensuring a seamless restoration experience from start to finish. (emphasis added).

17. Thereafter, Smart Home continued to advertise and offer services on Facebook related to negotiating and processing insurance claims. On May 7, 2024, Smart Home stated that as “experts in home restoration and storm damage repair, we specialize in handling everything from prep to cleanup, **insurance claims**, and full-scale restoration” (emphasis added). On May 21, 2024, Smart Home advertised that it would “even deal with your insurance company for you.” On July 16, 2024, Smart Home again posted an advertisement offering “Insurance assistance,” and stated in a separate post that they “can provide assistance with your homeowner's insurance.”

18. Smart Home also ran a sponsored Facebook advertisement offering to help get “Insurance To Cover Up to 90% Of Your New Roof,” wherein Smart Home again offers to directly work and negotiate with customers' insurance companies:

IOWA HOMEOWNERS: Most homeowners don't know this...but your insurance company could pay for up to 90% of a new roof... We've done a lot of work in Iowa, and we've noticed that many roofs have serious damage...

...

The good news is... we can help for FREE!

The way this works is very simple...

We specialize in finding unseen damage that could turn into nightmares for both your home and your insurance company if left alone...

If your home is like many of your neighbors, chances are we'll be able to get you a new roof – and get your insurance to pay nearly all of it!

With our new Inspect and Protect program, you may be eligible for insurance to cover up to 90% of a FULL ROOF REPLACEMENT for just the cost of your deductible if we find unseen damage on your roof!

...

Our team of experts will handle everything from start to finish when dealing with your insurance company for FREE – so all you have to do is sit back and enjoy your brand new roof!

We have an outstanding success rate with getting our clients a new roof for just their deductible out of pocket!

...

(emphasis added) (errors in original).

III. CONCLUSIONS OF LAW

COUNT I

Unlicensed Public Adjuster

19. Iowa Code § 507A.5 provides that “[a] person or insurer shall not directly or indirectly perform any act of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute.”

20. Iowa Code § 507A.3(1)(e) defines engaging in the business of insurance as “[t]he doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.”

21. Under Iowa Code § 507A.10(2)(a):

Upon a determination by the commissioner that a person or insurer has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may issue a summary order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the decision, and directing the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is in the judgment of the commissioner necessary to comply with the requirements of this chapter.

22. Under Iowa Code § 507A.10(1):

Upon a determination by the commissioner, after a hearing conducted pursuant to chapter 17A, that a person or insurer has violated a provision of this chapter, the commissioner shall reduce the findings of the hearing to writing and deliver a copy of the findings to the person or insurer, may issue an order requiring the person or insurer to cease and desist from engaging in the conduct resulting in the violation, and may assess a civil penalty of not more than fifty thousand dollars against the person or insurer.

23. Acting as a public adjuster constitutes the doing of insurance business within the meaning of Iowa Code § 507A.3(1). *See* Iowa Code § 522C.6(3)(b) (authorizing penalties for acting as an unlicensed public adjuster pursuant to Iowa Code chapter 507A).

24. Iowa Code § 522C.4 provides that a “person shall not operate as or represent that the person is a public adjuster in this state unless the person is licensed by the commissioner in accordance with this chapter.” *See also* Iowa Admin. Code r. 191—55.3.

25. Under Iowa Code § 522C.2(6) a “person” includes an individual or business entity.

26. Iowa Code § 522C.2(7) defines “public adjuster” as “any person who for compensation or any other thing of value acts on behalf of an insured by doing any of the following:

(a) Acting for or aiding an insured in negotiating for or effecting the settlement of a first-party claim for loss or damage to real or personal property of the insured.

(b) Advertising for employment as a public adjuster of first-party insurance claims or otherwise soliciting business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured.

(c) Directly or indirectly soliciting business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.”

27. Under Iowa Code § 522C.6(3)(c):

If a person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of this chapter or any rule adopted or order issued pursuant to this chapter, the commissioner may issue a summary order that includes a brief statement of findings of fact, conclusions of law, and policy reasons for the order, and that directs the person to cease and desist from engaging in the act or practice constituting the violation and that may assess a civil penalty or take other affirmative action as in the judgment of the commissioner is necessary to assure that the person complies with the requirements of this chapter as provided in chapter 507A.

28. Under Iowa Code § 522C.6(3)(b), “a person who, after hearing, is found to have violated this chapter by acting as a public adjuster without proper licensure may be ordered to cease and desist from engaging in the conduct resulting in the violation and may be assessed a civil penalty according to the provisions of chapter 507A.”

29. Respondents have never been licensed as public adjusters in the state of Iowa.

30. Respondents are and have been operating as public adjusters in the state of Iowa.

31. Respondents acted as public adjusters by advertising and representing to the public that Smart Home handles insurance paperwork and negotiates directly with insurance companies to handle customers’ first-party insurance claims.

32. Respondents knew or should have known that operating as a public adjuster without a license violates Iowa Code §§ 507A.5 and 522C.4.

33. Respondents' acts and practices violated Iowa Code §§ 507A.5 and 522C.4, subjecting Respondents to a summary order directing Respondents to cease and desist from engaging in such acts or practices, the imposition of a civil penalty, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 507A.10, 522C.4, and 522C.6, and Iowa Administrative Code rule 191—55.3.

COUNT II

Unfair Trade Practices – Registration and Licensure

34. Under Iowa Code § 507B.3, “A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance.”

35. Iowa Code § 507B.2(1) defines a “person” as any individual, “and any other legal entity engaged in the business of insurance, including insurance producers and adjusters.”

36. Iowa code § 507B.6(1) provides:

Whenever the commissioner believes that any person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in section 507B.4, 507B.4A, or 507B.5 and that a proceeding by the commissioner in respect to such method of competition or unfair or deceptive act or practice would be in the public interest, the commissioner shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing on such charges to be held at a time and place fixed in the notice, which shall not be less than ten days after the date of the service of such notice.

37. Pursuant to Iowa Code § 507B.6A, the Commissioner may issue a summary order and direct the person to cease and desist from engaging in acts or practices or to take other affirmative action as necessary to comply with Iowa Code chapter 507B.

38. The Commissioner has consistently concluded that the prohibition of unfair acts and practices in Iowa Code § 507B.3 includes acts and practices that offend public policy as established by law and are likely to cause substantial injury to insurance purchasers. *In the Matter of 33 Carpenters Construction, Inc.* (“33 Carpenters”), Division Case No. 105269, 2021 WL 1717542, at *12 (Iowa Ins. Div., April 19, 2021); *In the Matter of Mark S. Diamond*, Division Case No. 96975, 2019 WL 5677529, at *38 (Iowa Ins. Div., Oct. 23, 2019); *In the Matter of Newman*, Division Case No. 91936, 2017 WL 6504574, at *8 (Iowa Ins. Div., Jan. 24, 2017). The Commissioner also considers whether the likely injury is unavoidable and not outweighed by any consumer or competitive benefits. *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12, 33–34 (Iowa 2013); *33 Carpenters*, 2021 WL 1717542, at *12.

39. Iowa Code § 103A.71(3) provides:

A residential contractor shall not represent or negotiate on behalf of, or offer or advertise to represent or negotiate on behalf of, an owner or possessor of residential real estate on any insurance claim in connection with the repair or replacement of roof systems, or the performance of any other exterior repair, exterior replacement, or exterior reconstruction work on the residential real estate.

40. Iowa Code § 103A.71(3) prohibits residential contractors from acting as public adjusters. *33 Carpenters Constr., Inc. v. State Farm Life & Casu. Co.*, 939 N.W.2d 69, 80 (Iowa 2020). The Commissioner has previously found that “Iowa’s Insurance Trade Practices law would

prohibit as an unfair practice any public adjuster or residential contractor from doing indirectly what the law prohibits directly.” *33 Carpenters*, 2021 WL 1717542, at *10.

41. Performing, offering to perform, or advertising to perform acts that fall under Iowa Code § 522C.2(7), without obtaining proper licensure, and in contravention of Iowa Code § 103A.71, which places limitations on residential contractors, is an unfair trade practice.

42. Smart Home is and has been a residential contractor within the meaning of Iowa Code § 103A.71 at all relevant times hereto.

43. Respondents are and have been committing an unfair trade practice by acting as public adjusters in offering to negotiate insurance claims on the behalf of potential Iowa customers in violation of Iowa Code §§ 103A.71(3) and 522C.4.

44. Respondents committed an unfair trade practice by acting as public adjusters in advising Iowa residents as to how to communicate and negotiate with their insurer, as well as advocating on behalf of those consumers to their insurance agent, and by extension, their insurer regarding their first-party insurance claim in violation of Iowa Code §§ 103A.71(3) and 522C.4.

45. Respondents’ acts and practices violated Iowa Code §§ 507B.3 and 522C.4, subjecting Respondents to a summary order requiring Respondents to cease and desist from engaging in such acts or practices, the imposition of a civil penalty, imposition of costs of the investigation and prosecution of the matter, and any other corrective action the Commissioner deems necessary and appropriate pursuant to Iowa Code §§ 505.8, 507B.6, 507B.6A, 507B.7 and 522C.6.

V. ORDER

IT IS THEREFORE ORDERED that, pursuant to Iowa Code § 522C.6, Respondents and any of their agents, representatives, employees, and officers shall not, directly or indirectly:

- (1) Act for or aid an insured in negotiating for or effecting the settlement of any first-party claim for loss or damage to real or personal property of the insured;
- (2) Advertise services as a public adjuster of first-party insurance claims or otherwise solicit business or representing to the public that the person is a public adjuster of first-party insurance claims for loss or damage to real or personal property of an insured; or
- (3) Directly or indirectly solicit business investigating or adjusting losses, or advising an insured about first-party claims for loss or damage to real or personal property of the insured.

IT IS FURTHER ORDERED that Respondents shall make all necessary changes to their website(s) and social media pages to come into compliance with this Order and provide the Division with certification of compliance with this Order within five (5) business days of this Order. Certification shall be sent to the undersigned attorney for the Division.

IT IS FURTHER ORDERED that Respondents shall instruct any and all agents, representatives, employees, and officers regarding the prohibition against unlicensed public adjusting in the state of Iowa pursuant to Iowa Code chapter 522C and Iowa Administrative Code 191.55. Respondents shall direct them to abide by chapter 522C whenever conducting business in the state of Iowa. Such direction shall include prohibiting any and all agents, representatives, employees, and officers from engaging in any of the following specific conduct:

- (1) Initiating, handling, negotiating, or otherwise taking any direct or indirect role in effecting settlement of any Iowa insured's insurance claim;
- (2) Reviewing a consumer's insurance contract;
- (3) Giving advice to a consumer on provisions of their insurance contract including demanding appraisal;
- (4) Choosing an appraiser or public adjuster to handle a consumer's claim; and
- (5) Directly or indirectly advertising, marketing, or otherwise holding themselves out as public adjusters or as providing any public adjuster services as defined under Iowa Code § 522C.2(7). This prohibition applies to any published statements on the Smart Home Website, and any social media profiles owned or controlled by Respondents and/or any of their agents, representatives, employees, and officers.

Respondents shall certify that they have provided the required instruction and direction to all of their agents, representatives, employees, and officers within thirty (30) days of issuance of this order.

IT IS FURTHER ORDERED that Respondents shall include a disclaimer on their construction contract in at least size ten bolded font that states that Respondents are not public adjusters and do not provide public adjusting services.

IT IS FURTHER ORDERED that the Division's Petition for Summary Cease and Desist Order filed on October 24, 2024, is denied and the hearing scheduled for December 10, 2024, is cancelled.

SO ORDERED on the 26th day of November, 2024.



DOUGLAS M. OMMEN
Iowa Insurance Commissioner

Respectfully submitted,



Joseph A. Fraioli
Iowa Insurance Division
1963 Bell Avenue, Suite 100
Des Moines, Iowa 50315 (515) 654-6562
Joseph.fraioli@iid.iowa.gov
ATTORNEY FOR THE DIVISION

Copies to:
James R. Monroe
2222 Forest Avenue
Des Moines, Iowa 50311
ATTORNEY FOR RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause, or their attorney, at their respective addresses disclosed on the pleadings on November 26, 2024.

By: First Class Mail Personal Service
 Restricted certified mail, return receipt Email, by consent
 Certified mail, return receipt _____

Signature: Brooke Hohn
Brooke Hohn

NOTICE OF PENALTIES FOR WILLFUL VIOLATION OF THIS ORDER

YOU ARE NOTIFIED that acting as a public adjuster, as defined in Iowa Code chapter 522C, in violation of this order, is a serious misdemeanor under Iowa Code § 507A.10, subjecting you to punishment of imprisonment, jail, fines, or any combination of custody and fines.

YOU ARE NOTIFIED that if you violate this Order, you may be subject to administrative and civil penalties pursuant to Iowa Code § 522C.6. The Commissioner may petition the district court to hold a hearing to enforce the order as certified by the Commissioner. The district court may assess a civil penalty against you in an amount not less than three thousand dollars but not greater than ten thousand dollars for each violation and may issue further orders as it deems appropriate.

NOTICE OF FINAL ORDER IMPACT

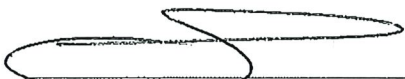
A final cease and desist order may adversely affect other existing business or professional licenses and may result in license revocation or disciplinary action.

A final order in an administrative action does not resolve any potential criminal or civil violations or causes of action that might arise from the same or similar conduct that is the subject of this order. It may result in criminal law enforcement authorities, including the fraud bureau of the Iowa Insurance Division, pursuing a criminal investigation or prosecution of potential criminal law violations.

CONSENT TO ORDER AND AGREEMENT

I, Donald Smart, in my personal capacity and as representative of Central Iowa Gutter, Inc., d/b/a Smart Home Exteriors, d/b/a Smart Home Services, Respondents in this matter, have read, understood, and do knowingly consent to this Order in its entirety. I have consulted with my attorneys, and I fully understand the terms of this Consent Agreement. By executing this Consent, I understand that I am waiving my rights to a hearing, to confront and cross-examine witnesses, to produce evidence, and to judicial review.

I further understand this Order is considered a final administrative action that will be reported by the Division to the National Association of Insurance Commissioners and to other regulatory agencies. I also understand this Order is a public record under Iowa Code chapter 22, and information may be shared with other regulatory authorities or governmental agencies, pursuant to Iowa Code § 505.8(8)(d). I also understand this Order will be posted to the Division's website, and a notation will be made to the publicly available website record that administrative action has been taken against me.



Donald Smart, Respondent


11/21/24

Date

2024 NW 92nd Ct #12

Address of Signatory Clive IA 50325

Subscribed and sworn before me by Donald Smart on this 21st day of Nov, 2024.



Notary Public for the State of Iowa

Donald Smart

Donald Smart, as owner of Central Iowa Gutter, Inc.,
d/b/a Smart Home Exteriors, d/b/a Smart Home Services

11/21/24
Date

2024 NW 92nd Ct, Suite 12, Clive IA 50325
Address of Central Iowa Gutter, Inc., d/b/a Smart Home Exteriors, d/b/a Smart Home Services

Subscribed and sworn before me by Donald Smart on this 21st day of Nov, 2024.



Notary Public for the State of Iowa

