

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: August 1, 2011

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Dave Cole, Vice Chairman; Bobby Colson; Gary Cunningham; and Marvin Alexander

ABSENT: Kenneth Dreaden, Chairman

PRESENT: Staff Members:
Donna Hancock, Executive Director; Mark Green, Assistant General Counsel; and Judy Elmore, Administrative Reg. Board Assistant 3

CALL TO ORDER: Vice Chairman Cole called the meeting to order at 9:00 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Four (4) of the five (5) Commission members were present. Mr. Dreaden were absent.

AGENDA: Mr. Colson made a motion to adopt the agenda, seconded by Mr. Cunningham. **MOTION CARRIED.**

MINUTES: Mr. Colson made a motion to approve the minutes of the May 2, 2011 meeting, seconded by Mr. Alexander. **MOTION CARRIED.**

NASHVILLE AUCTION SCHOOL REPORT

Ms. Orr advised that Nashville Auction School was recently awarded a five (5) year contract for the Tennessee Auctioneer Commission's newsletters and continuing education seminars. She distributed information regarding the location of licensed auctioneers along with a list of proposed cities to hold seminars and discussed potential subject matter. She also distributed a layout for the newsletters for approval. Mr. Alexander made a motion that the Commission members should each review and approve drafts of future newsletters before they are finalized and if a problem with a draft is found they are to notify Ms. Hancock who will contact Ms. Orr, seconded by Mr. Colson. **MOTION CARRIED.**

LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL

Mr. Green presented the following Legal Report for consideration:

1. **2011007071**

Anonymous complaint sent in advertising regarding an auction advertised for one day over several hours with an opening and closing time all done on-line. The advertisement invited bidders to come inspect property prior to the auction and or to do so by appointment (equipment to be auctioned was located in Tennessee at the customer's business location). No evidence exists of a live or simulcast component to the online auction and it appears it falls within the exemption of 62-19-103(9).

Recommendation: Dismiss

Action Taken: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

2. **2011002681**

3. **2011003511**

Complainants allege that respondent and co-respondent came to their auction representing themselves to be auctioneers who purchase property and then re-auction themselves under their business name which includes the term "Auctions" in it. They bid on the property and bought \$2000.00 from one complainant and \$3640.00 from the second (different date) paying by checks that were returned for insufficient funds. Respondent did not answer. Legal Counsel requested an investigation whereby the Respondent was located and submitted an affidavit that he did conduct auctions but that he was not doing so anymore. Additionally, the investigator found the place of business where the Respondents conducted the auctions and it was signed and advertised outside the building. Investigator submitted photographs of the business and signage. It is evident that though it appears many auctions have been conducted there, we know of at least two.

Recommendation: Authorize for formal hearing with an offered Consent Order of \$1000.00 for failure to answer a complaint within the proscribed time, \$2500.00 for violation of 62-19-112(b) (12) for a total civil penalty of \$6,000.00

Action Taken: Mr. Cole recused himself. Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

4. **2011003531**

Complainants allege that respondent and co-respondent came to their auction representing themselves to be auctioneers who purchase property and then re-auction themselves under their business name which includes the term "Auctions" in it. They bid on the property and bought \$2000.00 from one complainant and \$3640.00 from the second (different date) paying by checks that were returned for insufficient funds. Respondent did not answer. Legal Counsel requested an investigation whereby the **Respondent was located but refused to cooperate**. Additionally, the investigator found the place of business where the Respondents conducted the auctions and it was signed and advertised outside the building. Investigator submitted photographs of the

business and signage. It is evident that though it appears many auctions have been conducted their, we know of at least two.

Recommendation: Authorize for formal hearing with an offered Consent Order of \$1000.00 for failure to answer a complaint within the proscribed time, \$2500.00 for violation of 62-19-112(b) (12) for a total civil penalty of \$6,000.00

Action Taken: Mr. Cole recused himself. Mr. Cunningham made a motion to accept Legal's recommendation, seconded by Mr. Alexander. MOTION CARRIED.

5. 2011007081

6. 2011007091

Complainant alleges misrepresentation by the Respondents who auctioned a piece of property as-is and did not mention specific covenants and restrictions with the real property. Complainant paid a down payment on the property of \$21,000 and then canceled the sale. Both sides have attorneys and this matter is going to court between the owner of the property and the buyer at auction. There is no evidence that the auctioneer engaged in any misrepresentation. He answered that he did not mention any because he did not know of any restrictions and that the sale was subject to a survey, zoning and planning regulations.

Recommendation: Dismiss

Action Taken: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Colson. MOTION CARRIED.

7. 2011000791

Complainant alleges the Respondent was conducting auctions without a license. The license expired in 2007 and the Complainant sent in advertisements from the Southern Standard website. The last auction appears to have been conducted on January 1, 2011. The staff has made three attempts to contact the Respondent but all certified letters have been returned unable to forward. The advertising shows that the auctions were conducted by an out of state auctioneer who is licensed in Tennessee but did provide his name and license number in the advertisement. He is in Florida.

Recommendation: Close and Flag the case on this Respondent and open one naming the out of state Auctioneer as the Complainant or defer this matter until the out of state auctioneer can be added to the complaint.

Action Taken: Mr. Colson made a motion to defer this matter until the out of state auctioneer can be added to the complaint, seconded by Mr. Alexander. MOTION CARRIED.

8. 2011007111
9. 2011007101

Complaint alleges the auctioneer Respondents auctioned 4 rugs for less than the agreed upon reserve price. Respondents admit this and state that two of the rugs sold quickly (reserve of \$500 and \$600 respectively) for \$300.00 and \$260.00 respectively. The Respondent's sent and Complainant signed a settlement sheet accepting the terms. The last two rugs did not sale for several months (again with a \$500 and \$600 reserve) but finally sold at \$75 and \$105 admittedly and there is no signed settlement sheet. Complainant believes he is owed \$956 and will not accept any offer of less than that. Respondents claim that before the auction of the rugs, there was an agreement that the rugs would not bring the reserve amount and that Complainant stated to go ahead and sell them because it would be cheaper than paying for shipping back to New York. There is no documentation of this change by way of contract just an email that explains that they are not going to sell at the reserve amounts and asking Complainant how they should proceed. The settlement amount is not a matter for the Commission to determine though I believe the Complainant believes it will weigh in on the amount. There is little doubt, however, that the rugs sold below the contract reserve and there was no amended contract replacing the terms. The Respondents defend the sale of the first two rugs being below the reserve amount by stating Complainant agreed to it upon signing the settlement sheet. The Complainant states that his signature of that document does not mean he agreed to the sell below the reserve amount.

Recommendation: On both cases, Consent Orders of \$100.00 for violation of Tenn. Code Ann Section 62-19-112 failing to enter into a written agreement prior to an auction, and for TAUC Rule 0160-1-.19 (2) Reserve Auctions.

Action Taken: Mr. Colson recused himself. Mr. Cole made a motion to issue a Letter of Instruction, seconded by Mr. Alexander. MOTION CARRIED.

Adrian Chick, Assistant General Counsel, joined the meeting at 10:00 a.m. to present his report.

Mr. Chick advised that the complaint cases that were to be presented at the formal hearing scheduled in June were dismissed by the Administrative Law Judge assigned to hear the cases. He distributed copies of the Orders for the Commission's review. After some discussion, Mr. Colson made a motion to grant the Tennessee Department of Commerce and Insurance a review of the Initial Order issued by the Administrative Law Judge. The motion was seconded by Mr. Alexander. **MOTION CARRIED.**

After some discussion, Mr. Alexander made a motion to review the Initial Order apart from the Tennessee Department of Commerce and Insurance's petition. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

Mr. Green read a proposed Order granting Petition to Appeal regarding docket numbers 108574A, 11036A, and 111139A for the Commission's consideration. Mr. Alexander made a motion to approve the Orders as read by Mr. Green, seconded by Mr. Cunningham. **MOTION CARRIED.**

Ms. Hancock inquired as to the status of the corresponding license that was summarily suspended pending the formal hearing in these cases. Counsel advised the status should remain suspended until a Final Order is obtained.

The Commission recessed at 10:35 a.m. for a break and reconvened at 10:50 a.m.

After the break, Mr. Green continued presenting his Legal report as follows:

- 10. 2011008931
- 11. 2011009001

Two Complaints by two separate Complainants, neither of whom were the bidders or are parties to the transaction which is the subject of the complaint, in fact according to the information, it appears they were not present at the auction. The Complainants allege that the Respondent's mother bid on real property that was being auctioned and was the successful high bidder. The Complainants state that this fact should have been disclosed to the public prior to conducting the auction (though they would not have been there to hear that disclosure). Respondent admits his mother bought one house that evening at the auction and was the high bidder. There is no evidence that the mother remotely involved in the Respondent's business and it appears to have been for her own use or for a rental property.

From the information received it appears that a neighbor of the subject property was outbid by the mother and when he offered to purchase it from her and she declined the complaints were filed. There does not appear to be a violation of any statute or TAUC rule in this matter.

Recommendation: Dismiss

Action Taken: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Alexander. MOTION CARRIED.

- 13. 2011007011
- 14. 2011007101

Complaint against these Respondents alleges that they colluded with the attorney for the estate of his mother, the Complainant's brother, the Estate of his deceased mother's title company, and possibly the Probate Court of the county where this took place to defraud the Estate through "untruthful and unscrupulous profiting." The basis of the complaint was that he (as executor of his mother's estate) hired these auctioneers (#14 to do the personal property auction, #13 to do the real property auction) to auction the estate property and that they mislead him on how to open an estate through the court and that they as auctioneers should know this information. Respondent #14 conducted the personal property and did remit the money to the estate and was paid his commission. The real property was auctioned by Respondent #13. At the auction the property sold at a bid of \$110,000. The contract was signed and the buyer submitted a check for \$22,000 that a few days later were returned for insufficient funds. The Complainant then demanded that the sales contract was void and demanded the Respondents sell to the next highest

bidder and that the buyer should be prosecuted for a felony. Apparently, the attorney for the estate did not want the contract voided and communicated such. In the meantime, the Respondents did not stop or prevent the buyer from seeing the property. When Complainant discovered this he called the sheriff. The attorney gave the buyers the keys. The Complainant holds the auctioneers responsible.

The closing did go through and the title company did release to the estate the \$110,000. Respondent #13 asked for his commission and the Complainant refused to pay it. It was his understanding that the Respondents would add what their amount was supposed to be to the bid price at auction not that the estate would have to pay. Respondent filed a claim against the estate and was awarded his commission. Though Respondent #13 was supposed to appear as a witness against Respondent #14 he did not appear and it was later discovered that the estate's attorney did not issue a subpoena on him as he wanted him arrested. The Complainant points this out as evidence of more collusion.

Additionally, the Complainant fired the attorney thereafter and operated on his own claiming he was going on legal advice he had received from the Respondents. Someone filed an action to remove Complainant as executor (presumably, his brother) due to alleged mismanagement and he states he was following the advice given to him by the Respondents. The Probate Court removed him as executor. He alleges that the attorney and the Respondents "may have been running a scam... to take advantage of people in distressed situations for their personal profit... by getting him to enter into a contract that they knew, or reasonably should have known, was not in accordance with Tennessee law" by getting a 10% commission of the gross amount of the estate and that they got his brother to participate in it, as well as the title agency and collected fees on an illegal contract and then refused to give him all of the documentation.

Recommendation: Dismiss

Action Taken: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

15. 2011010031

Complaint alleges that the Respondent was conducting Public Automobile auctions without being licensed and conducting auctions with an invalid firm license. Respondent failed to file a response.

Recommendation: Authorize a Consent order for \$1000 civil penalty for violation of Tenn. Code Ann. Section 62-19-102(3), \$1000 for violation of Tenn. Code 62-19-102(a)(1) an \$1000 for failure to file a response within 15 days of receipt of the complaint.

Action Taken: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

16. 2011000881

Complaint alleges that the Respondent is conducting auctions with an invalid firm license. Respondent is advertising "Auctions every 1st and 3rd Thursday at 7:00 PM." Respondent failed to file a response.

Recommendation: Authorize a consent order for \$1000 for violation of Tenn. Code 62-19-102(a) (1) an \$1000 for failure to file a response within 15 days of receipt of the complaint.

Action Taken: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Colson. MOTION CARRIED.

17. 2011010291

Complaint alleges that on advertising on an internet listing service (Craig's List) it failed to list its firm license number on the listing. The firm admitted that it was a mistake and oversight by a new employee and they have corrected the matter. They submitted the corrected advertisement.

Recommendation: Letter of Instruction.

Action Taken: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Alexander. MOTION CARRIED.

18. 201101010601

19. 201101010611

20. 201101010601

21. 2011010081

22. 2011010791

23. 2011010771

24. 2011010591

25. 2011010071

26. 2011010801

Some Complaints previously approved by the Commission for a Summary Suspension. Since then more complaints have been added to the original number of four against a firm and non-owner auctioneer. TAUC is opening complaints against the sponsoring auctioneer as well. The non-owner auctioneer of the firm remains in Federal custody according to all information received by legal for numerous serious crimes. The sponsoring auctioneer is a co-defendant and a witness for the US Government. Complaints have stopped, at this time, from coming in, but all cases needed to be combined and the sponsoring auctioneer included. There is no information that the sponsoring auctioneer is currently doing business.

Recommendation: Approve all complaints for summary suspension and open and add sponsoring auctioneer and set for a hearing as at the May auctioneer meeting

Action Taken: Mr. Colson made a motion to accept Legal's recommendation, seconded by Cunningham. MOTION CARRIED.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in August 2010 to those currently pending.

World Automobile Auctioneers Championship – Ms. Hancock presented a letter from Mr. Paul Behr, President of the World Automobile Auctioneers Championship, soliciting support for the organization to hold its 2012 auctioneer championship competition at the Chattanooga Auto Auction in Chattanooga, Tennessee. After discussion, Mr. Green advised that he was of the opinion that the Commission could allow the auctioneers to participate in the competition without licensure because the auctioneers will not be compensated. Mr. Cole made a motion to allow auctioneers from out-of-state to participate in this competition without being licensed in Tennessee, seconded by Mr. Alexander. **MOTION CARRIED.**

Ms. Hancock advised she had just this morning received an email requesting a decision about whether or not an auctioneer can act as a sponsor or principle for multiple firms/galleries. She asked if the commission would allow her to add the issue to the agenda. Hearing no objections, Ms. Hancock read the email into the record. After some discussion, the Commission agreed that the auctioneer does not appear to be in violation based on the current laws and rules.

Mr. Green advised that he has some rule information that was drafted by his predecessor that he will review and present at the October 2011 meeting. The Commission requested drafts to be sent to each member prior for review prior to the meeting.

Mr. Colson left the meeting at 11:55 a.m. and returned at 12:00 p.m.

OLD BUSINESS: No old business was discussed.

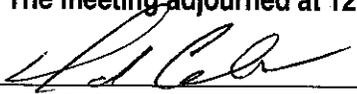
NEW BUSINESS:

Complaint 200902515 - Mr. Green advised that he received a judgment regarding a claim against the Recovery Fund pertaining to this complaint. Mr. Colson made a motion for Attorney Green to inform the Complainant that if he/she meets all of the statutory requirements for the claim, then the Commission will not challenge their claim, seconded by Mr. Cunningham. **MOTION CARRIED.**

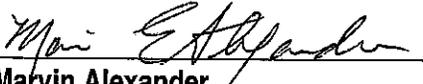
Election of Officers – Mr. Green opened the floor for nominations for Chairman to serve from September 1, 2011 through August 31, 2012. Mr. Colson made the motion to nominate Mr. Cole for Chairman, seconded by Mr. Alexander. **Motion carried by acclamation.**

Mr. Green opened the floor for nominations for Vice-Chairman to serve from September 1, 2011 through August 31, 2012. Mr. Alexander nominated Mr. Cunningham, seconded by Mr. Cole. **Motion carried by acclamation.**

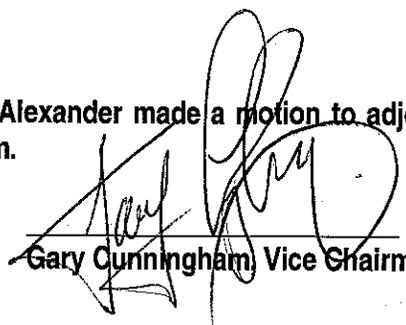
Being no further business to discuss, Mr. Alexander made a motion to adjourn, seconded by Mr. Colson. The meeting adjourned at 12:25 p.m.



David Cole, Chairman-Elect



Marvin Alexander



Gary Cunningham, Vice Chairman-Elect

Bobby Colson