

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: November 3, 2014

PLACE: Davy Crockett Tower – Conference Room 1-B
500 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Jeff Morris
Bobby Colson
Ronnie Colyer
Adam Lewis

ABSENT: Howard Phillips

PRESENT: Staff Members:
Chris Whittaker, Assistant General Counsel
Kimberly Whaley, Director of Licensing
Robyn Ryan,
Jennaca Smith, Paralegal
Anthony Glandorf, Chief Counsel

GUESTS: Jeremiah Nelson
Chris Jones

CALL TO ORDER: Vice Chairman Ronnie Colyer called the meeting to order at 9:13 a.m. Mr. Colyer yielded to Mr. Morris to chair the meeting due to Mr. Phillips absence.

Ms. Whaley called the roll. Four (4) members were present.

NOTICE OF MEETING: Ms. Whaley read the following statement for the record, “This meeting’s date, time and location have been noticed on the Tennessee Auctioneer Commission’s website, included as part of this year’s meeting calendar, since August 16, 2013. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Auctioneer Commission’s website since October 22, 2014. This meeting has also been noticed on the tn.gov website.”

AGENDA: Mr. Colyer made a motion to adopt the agenda as amended, seconded by Mr. Lewis.

MOTION CARRIED.

MINUTES: Mr. Colson made a motion to approve the minutes of the October 6, 2014 meeting, seconded by Mr. Colyer.

MOTION CARRIED.

EDUCATION PROVIDER UPDATE – Nashville Auction School representatives were not able to attend the meeting. Ms. Whaley read a report that was provided via email.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, Director of Licensing

Complaint Comparison Report – Ms. Whaley represented the October performance measure for the Tennessee Auctioneer Commission stands at 93.75% which is above the current 80% standard.

Application Review - Ms. Whaley presented an application for a reciprocal licensure.

Adjourned Meeting for Formal Hearing at 9:19am

FORMAL HEARING: See Transcript

Commission Meeting The commission resumed its regular business at 11:37am.

Application Review - Ms. Whaley continued to present an application for a reciprocal licensure. After some discussion a motion was made by Mr. Colyer to table the application until the next meeting and request additional information about licenses held in other states. Seconded by Mr. Colson

MOTION CARRIED.

Continuing Education Seminar Ms. Whaley presented the TAA Winter Convention continuing education seminar to the Commission for approval. A motion was made by Mr. Colyer to approve, seconded by Mr. Lewis. Mr. Colson recused himself.

MOTION CARRIED.

Apprentice Log Discussion - The Commission decided to postpone this discussion until January.

Apprentice Application Ms. Whaley presented an apprentice application. The applicant lives out of state and is requesting to apprentice with a Tennessee auctioneer while residing out of state. After some discussion a motion was made by Mr. Colyer to table the application until the next meeting and request additional information about how the apprentice planned to obtain his apprentice points, seconded by Mr. Lewis.

MOTION CARRIED.

LEGAL REPORT – CHRIS WHITTAKER, ASSISTANT GENERAL COUNSEL

1. **2014009881**

License #: Unlicensed
First License Obtained: N/A
License Expiration: N/A
Type of License: N/A

History: 0 – same Respondent as #2 on this report

2. 2014016911

License #: Unlicensed

First License Obtained: N/A

License Expiration: N/A

Type of License: N/A

History: 0 – same Respondent as #1 on this report

Complaint 2014009881 was filed by a licensee against Respondent (Respondent 1 and 2 are the same unlicensed company). Complainant states that Respondent conducted an auction on April 26, 2014 without proper licensure and that unlicensed individuals conducted the auction despite the fact that advertising stated that a licensed auctioneer was going to conduct the auction.

Complaint 2014016911 was filed by three (3) representatives of an estate who engaged the services of Respondent. Complainants state that they met with Respondent's representatives to discuss options for liquidating household goods relating to the estate. An estate sale was discussed, but Complainants state that they were later told that Respondent found a way to conduct an auction because a licensed auctioneer had agreed to conduct the auction for part of the agreed-upon price. The Complainants stated that they signed a contract but never got a copy, and the auction was set for April 26, 2014 (this is the same auction as the one referenced by the first Complainant). Complainants state that this was an illegal auction without a licensed auctioneer. Complainants state that the licensed auctioneer was unable to make it due to an emergency situation, and two (2) individuals associated with Respondent functioned as auctioneer (neither of these individuals are licensed auctioneers). Complainants have other complaints such as that the sale was not widely advertised, that items were broken, that items were removed from the property, that an inventory of broken/removed items was not provided, that they were charged an undisclosed buyer's premium, that there was low attendance, that items were not sold, that items were sold at low bids, that items sold were substituted without agreement, and that there were items missing. Also, Complainants state that items not sold were transported to an auction house to be sold, and Complainants do not know the name of that auction house.

Respondent submitted a response to both complaints (which was signed by an individual listed as owner/operator of Respondent and an individual listed as contractor for Respondent) stating that they met with the second Complainants and signed a contract for the estate to be liquidated by onsite auction. Respondent states that a licensed auctioneer gave verbal agreement to conduct the auction, but later Respondent was told that the auctioneer's partner would be the auctioneer. On the day of the auction, Respondent states that it was discovered that the auctioneer scheduled to call the auction suddenly passed away. Respondent states that the individual who signed the response as a contractor for Respondent conducted the auction based on the circumstances. Respondent states that the items which were not sold were taken to another auction house for liquidation. Respondent states that Respondent and the contractor for Respondent have not conducted an estate auction before without a licensed auctioneer and would not have done so here had there not been an emergency.

An investigation was requested to determine more information about the subject auction as well as to determine whether Respondent had conducted any other auctions without proper licensure. The investigator met with Respondent's owner and the contractor for Respondent and obtained

an affidavit. The affidavit states that the contractor conducted the auction based on the emergency conditions that were described in the response then auctioned items that belonged to Respondent and the contractor with the remaining items being taken to another auction house (which does appear to have a gallery license). The owner and contractor state in the affidavit that neither individual has conducted any other prior non-licensed auction. Further, Respondents state that allegations that Respondent has conducted an online auction which requires a license are false because Respondent states that all of Respondent's sales are conducted by Proxibid which requires no license so long as it is a virtual internet auction. A copy of the contract with the second Complainants was obtained as well as other documentation relating to the sale. Other documentation relating to the second auction referenced in the affidavit was included. It appears that Respondent and another auction firm held the Proxibid Internet and Live Auction where items were sold in house and by internet. It appears that Respondent received part of the buyers premium for the items sold in house and the auction firm received the remaining portion, and the two also each received part of the buyers' premium for the items sold online. The information states that the expenditures were divided equally and Respondent did the work of putting the sale on Proxibid and the auction firm allowed usage of the facility for the auction. It appears to legal counsel that Respondent's involvement in both auctions constitutes unlicensed auction activity. While fixed price or timed listings that allow bidding on a website but do not constitute a simulcast of a live auction are exempted from licensure requirements by T.C.A. § 62-19-103(9), it does not appear that the Proxibid/in house auction falls within these constraints even with the involvement of the licensed auction firm.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with a civil penalty of \$1,000 for violations of T.C.A. § 62-19-102(a)(1).

DECISION: The Commission voted to accept the recommendation of legal counsel.

3. 2014016041

License #:

First License Obtained: 6/3/13

License Expiration: 6/2/15

Type of License: Gallery

History: 0

Complainant consigned personal property items with Respondent in January. Complainant states that within the first week some items sold, and Complainant was promptly paid the following week. Complainant states that Respondent moved cities, and Complainant's items were listed as last sale and Respondent was going out of business. Complainant states that phone calls were not returned and Complainant requested a check via email. Complainant states that a representative of Respondent called Complainant and stated the landlord locked Respondent out of the building, stole Respondent's computer and files. Complainant states that Complainant has not heard from Respondent since then, and Respondent still owed Complainant money.

Respondent did not submit a timely response to the complaint.

Recommendation: Authorize formal hearing with authority to settle by Consent Order upon payment of a \$ 1,000 civil penalty by the Respondent for violation(s) of T.C.A. § 62-19-112 (b)(4) and Rule 0160-01-.24.

DECISION: The Commission voted to accept the recommendation of legal counsel.

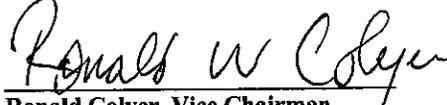
The commissioners discussed the December meeting. After some discussion a motion was made by Mr. Colyer to cancel the December meeting, seconded by Mr. Colson.

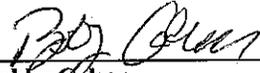
MOTION CARRIED.

Mr. Colson brought up requiring errors and omission for auctioneers. Anthony Glandorf appeared before the board and discussed the legislative process.

Being no further business to discuss, the meeting adjourned at 12:00 p.m.


Howard Phillips, Chairman


Ronald Colyer, Vice Chairman


Bobby Colson


Jeff Morris


Adam Lewis