

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** January 19, 2011

**PLACE:** Andrew Johnson Tower – 2<sup>nd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

**PRESENT:** Commission Members:  
Kenneth Dreaden, Chairman; David Cole, Vice Chairman; Marvin Alexander,  
Bobby Colson; and Gary Cunningham

**PRESENT:** Staff Members:  
Donna Hancock, Executive Director  
Susan Lockhart, Executive Assistant  
Adrian Chick, Assistant General Counsel

**GUESTS:** Luellen Alexander

**CALL TO ORDER:** Chairman Dreaden 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 (5) Commission members were present at roll call. The fifth member, Mr. Cunningham, arrived during the administrative report.

**AGENDA:** Ms. Hancock asked that some items be added to the administrative report for discussion and asked that the proposed rule discussion be postponed due to a change in legal staff. Mr. Colson made a motion to adopt the agenda as amended, seconded by Mr. Alexander. **MOTION CARRIED.**

**ADOPT ROBERT'S RULES OF ORDER:** Mr. Alexander made a motion to accept Robert's Rules of Order, seconded by Mr. Cole. **MOTION CARRIED.**

**MINUTES:** Mr. Colson made a motion to approve the minutes of the November 1, 2010 meeting, seconded by Mr. Cole. **MOTION CARRIED.**

**NASHVILLE AUCTION SCHOOL REPORT – RHESSA ORR**

Ms. Orr was not present, therefore, this item was passed on the agenda.

**ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR**

*Mr. Cunningham joined the meeting at 9:10 a.m.*

**Laura Slyman Piers** - Ms. Hancock presented a request from Ms. Piers to waive the retesting and additional thirty (30) hours of education. Mr. Alexander made a motion to approve the request, seconded by Mr. Colson. **MOTION CARRIED.**

**Tri-Cities Auto Auction, LLC** - Ms. Hancock presented a public automobile auction application for Tri-Cities Auction, LLC for consideration. After some discussion, Mr. Alexander made a motion to approve the application conditionally subject to the LLC substantiating that it has \$100,000 in assets, seconded by Mr. Cole. **MOTION CARRIED.**

**Internet/Website Advertising Requirements** – Ms. Hancock presented some information regarding a question concerning whether or not an auction firm's name and license number must be listed on a web advertisement. The commission advised that it should at least be on the home page and in the company's contact information listed on the company's web site. The commission further advised that a complaint should be opened regarding the advertisement in question in order to request additional information for their consideration.

**Complaint Status Report** - Ms. Hancock presented a comparison of the complaints pending in January 2010 to those currently pending.

**Budget Report** – Ms. Hancock presented a budget comparison report for the last four (4) fiscal years. She also presented a breakdown of the administrative "costback" expenditures for the last fiscal year.

**Contract for Seminars & Newsletters** - Ms. Hancock distributed a copy of the current seminar and newsletter contract for the Auctioneer Commission and advised that it is scheduled to expire on June 30, 2011. Therefore, she requested the commissioners review the current contract and recommend any changes before a bid proposal is released to potential bidders.

**Contract for Examinations** - Ms. Hancock advised she had been in contact with a representative from PSI and asked if the commission wanted to establish an examination committee as they had in the past. After some discussion, the commission advised that they would like to review the exam the day after their regularly scheduled meeting in March 2011. Ms. Hancock agreed to contact PSI to see if they would be available on that date and coordinate the exam review.

Mr. Colson advised that the June 2011 meeting listed on the schedule will conflict with the Tennessee Auctioneer Association meeting. After some discussion, the commission asked Ms. Hancock to seek approval to have the meeting in conjunction with the association meeting in Gatlinburg as all members would be present at the conference.

**NALLOA Report** – Mr. Alexander gave a report of the recent teleconference meeting of the National Auctioneer License Law Officials Association (NALLOA) that he participated in on behalf of the commission.

**Eastern Middle TN Association Realtors** – Ms. Hancock presented an application for a continuing education seminar. The commission tabled the meeting until their March 2011 meeting in order to obtain the supporting documents required for the application.

**2010 Consent Order Report** – Ms. Hancock presented a report of the consent orders authorized and civil penalties collected in 2010. After some discussion, Mr. Alexander made a motion for staff to compile a list of all active licensees with outstanding consent orders or other fines. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

*The commission recessed for break at 10:45 a.m. and reconvened at 10:55 a.m.*

**LEGAL REPORT - ADRIAN CHICK, STAFF ATTORNEY**

Mr. Chick presented the following Legal Report for consideration:

**1. 2007085561**

**Complaint:** Complainant alleges that the Respondent auctioneer sold real property without disclosing that timber rights had been previously granted. This complaint has been under a litigation monitoring agreement. An agreed settlement order was entered 11/18/10 in Chancery Court resolving the dispute and, as part of the resolution, Complainant signed a letter requesting to dismiss the complaint against Respondent on 11/11/10. Counsel left a voicemail at Complainant's office, requesting confirmation that he wished to dismiss the complaint. An email to Complainant's counsel was returned undeliverable.

**Recommendation: Dismissal.**

**MOTION: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cole. Mr. Alexander abstained from voting. MOTION CARRIED.**

**2. 2010027911**

**Complaint:** The respondent is a volunteer fire hall that is allegedly allowing its facilities to be used by an unlicensed auction.

**Response:** The Respondent states that it is a non-profit organization that lets any person use its facilities upon request and "cannot and will not be held accountable for wrongdoing performed by any persons operating in or out of the Hall."

**Recommendation:** Send cease and desist letter to respondent and close against volunteer fire hall. Open complaint against auction owner that was identified in investigation.

**MOTION: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Cole. MOTION CARRIED.**

3. 2010029271
4. 2010029272

**Complaint:** Anonymous complainant alleges that an unlicensed auction house is operating every Friday and Saturday night without a licensed auctioneer. Extensive pictures of the auction house and a Facebook advertisement were provided by the complainant. An investigator interviewed an individual who had previously supplied merchandise for the auctions. The individual confirmed that the auctions took place but that they had stopped since Respondent owner knew he was being investigated. Respondent states that they had an auctioneer who had to leave for a family illness and that they have ceased operations until a licensed auctioneer can be found.

**Recommendation:** Close with Cease and Desist letter.

**MOTION:** Mr. Colson made a motion to accept Legal's recommendation and to also issue a Letter of Instruction to the Respondent not to conduct business without a gallery license and licensed auctioneer. The motion was seconded by Mr. Cole. **MOTION CARRIED.**

5. 2010031501
6. 2010031502

**Complaint:** Complainant contends that Respondent owner is an unlicensed auctioneer and runs an auction out of Respondent unlicensed firm house. An investigation established that Respondent auctioneer possesses a valid license and operates out of a licensed auction firm.

**Recommendation:** Dismiss complaint.

**MOTION:** Mr. Cole made a motion to accept Legal's recommendation, seconded by Mr. Alexander. **MOTION CARRIED.**

7. 2010031561
8. 2010031282

**Complaint:** TAUC complaint filed after unlicensed activity discovered during separate, unrelated investigation. Investigator interviewed Respondent firm owner at Respondent firm auction house and she admitted that she had been operating an auction every Saturday night for the two and a half months prior to her formal response to this complaint. Respondent firm owner stated she operated under firm license of a third party and using a licensed fourth party as the actual auctioneer. The licensed third party firm owner was interviewed and he told investigator that he had only permitted Respondent firm owner to operate using his license for a single auction. The fourth party auctioneer has not been licensed since 2007.

Evidence of Respondent firm auction house exists in federal and state revenue filings, business license tax, and bank records – all of which identify Respondent firm owner and list the word "auction" in its firm name.

Respondent has also thus far failed to answer complaint, though she has cooperated with investigators.

**Recommendation:** Consent order for each Respondent agreeing to a civil penalty of \$1000 for performing auctions without a firm license (62-19-102) and authorize for hearing.

**MOTION:** Mr. Cole made a motion to accept Legal's recommendation, seconded by Mr. Alexander. **MOTION CARRIED.**

9. 2010031701

10. 2010031702

**Complaint:** Complainant alleges that Respondents presented misleading advertising at an auction of residential property. Advertisement claims that tracts "have a creek running through the property" and that water source is a "well with brick well house". Complainant states that after she purchased property she discovered that water source was sulfur well, unsuitable for drinking. Complainant states that on the auction date the faucets in the home were taped up, allegedly because of a leak, thus preventing her from discovering the sulfur before the auction. Respondents returned receipt of complaint on 10/18/10 and 11/4/10, but did not respond to complaint. Complainant's attorney submitted letter to TAUC on 11/19/10, seeking to drop complaint after parties resolved their differences.

**Recommendation:** Dismiss.

**MOTION:** Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cole. **MOTION CARRIED.**

11. 2010030171

12. 2010031821

13. 2010031891

14. 2010031951

15. 2010033321

**Complaint #30171:** Comp contends that Respondent solicited Complainant to auction motorcycles. The auction was held and Complainant delivered the title documents to the Respondent five days later. Complainant states that he has not received the proceeds from the auction as of the filing of this complaint and phone calls from Complainant to Respondent were not returned. Complainant eventually received the funds of the auction, however. Respondent signed certified mail acknowledging receipt of complaint on September 29, 2010, but has not filed an answer.

**Complaint #31821:** Comp states that Respondent firm contacted Complainant to auction motorcycles and ATVs. Complainant says property supposedly sold on 8/7/10, but no payment has been received. Complainant has refused to provide sales information to Respondent to

properly title and register the vehicles. Respondent signed certified mail acknowledging receipt of complaint on October 27, 2010, but has not filed an answer.

**Complaint #31891:** Complainant contracted with Respondent to sell vehicles. On 8/3/10, Respondent sent confirmation to Complainant that property sold at auction. Complainant states that he has repeatedly tried to get payment from Respondent for the sale but with no success. Respondent signed certified mail acknowledging receipt of complaint on October 21, 2010, but has not filed an answer.

**Complaint #31951:** Complainant contracted with Respondent to auction boats. Complainant states they were assured the boats would be sold at specified minimum bids or above. On 9/13/10, Complainant states he received document from Respondent showing boats sold at well below minimum bids. Complainant states that they attempted to communicate with Respondent numerous times. Complainant states that they finally sent MSOs to Respondent after being assured that this was not a scam. Complainant states that they have not been able to reach Respondent since sending MSOs. Respondent signed certified mail acknowledging receipt of complaint on October 20, 2010, but has not filed an answer.

**Complaint #33321:** Complainant contracted with Respondent to auction a boat at reserve. Complainant was promised that shipping would be covered by Respondent but freight shipping costs were charged to Complainant once Complainant refused to lift reserve.

**Recommendation: Authorize all complaints for formal hearing.**

*The commission recessed at 11:25 a.m. and reconvened at 11:30 a.m.*

**MOTION #1:** After some discussion, Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. **MOTION CARRIED.**

**MOTION #2:** Mr. Cunningham made a motion to suspend the Respondent's firm and auctioneer license due to the public health, safety, or welfare imperatively requiring emergency action and the commission provides the Respondent with means to an information conference within seven (7) days. The motion was seconded by Mr. Cole. **MOTION CARRIED.** The informal conference was scheduled for January 26, 2011 at 10:00 a.m. via teleconference.

**16. 2010031981**

**Complaint:** Complainant alleges that Respondent presented misleading advertising at an auction of personal property. Complainant states that he traveled from a long distance only to discover on his arrival that there was no truck for sale, as had been originally advertised. Advertisement submitted by Respondent identifies a truck for auction but lists disclosures, including "Sale list subject to change before auction" and "announcements made day of sale take precedence over all advertising." Complainant states that he was told that putting the truck in the advertisement was a mistake because only the chrome from the truck was to be sold. Complainant states that even the chrome was not auctioned that day.

Respondent does not deny that the vehicle was not auctioned. Respondent contends that this was a consignment auction and the information put on the advertisements was provided to Respondent by a private consigner. Respondent contends that the disclaimers on the advertisement were used because it was a consignment sale and subject to periodic change.

**Recommendation: Dismissal.**

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

**17. 2010021701**

**Complaint:** Complainant is a seller who used Respondent to auction her real estate and personal property. Complainant contends (a) Respondent never gave her a list of items to be sold; (b) Respondent convinced Complainant to move out of the property to be auctioned prior the auction, thereby committing her to the auction; (c) Respondent lied about what was discussed versus what was on the contract; (d) Respondent allowed an individual to make bids without money to pay for items; (e) Respondent never supervised property pickups; (f) Respondent didn't carry items out for auction; (g) Respondent bundled too many items together; (h) Respondent kept changing contract; and (i) Respondent talked disrespectfully to her on many occasions.

Respondent contends all the contract changes were approved by Complainant and necessitated by changed circumstances. Respondent also contends that Complainant breached her contract on a number of occasions related to this auction, including failure to permit the Respondent to attempt to list the house ninety days after the auction, once the house did not sell.

Complainant appears to have authorized all changes to the auction contract, via her initials.

**Recommendation: LOW 62-19-112(b)(8), failing to furnish copy of all written instruments.**

**MOTION: Mr. Colson made a motion to dismiss the complaint, seconded by Mr. Alexander. MOTION CARRIED.**

**18. 2010015411**

**Complaint:** Complainant contended that an auction was being run four nights a week out of Respondent's unlicensed firm. Investigator interviewed the Complainant and was told that the unlicensed auctions had been shut down over the last six months and that the Complainant wished to drop complaint. Investigator confirmed through additional source and through observation that these auctions are no longer taking place.

**Recommendation: Close with cease and desist letter.**

**MOTION: Mr. Cole made a motion to accept Legal's recommendation, seconded by Mr. Colson. MOTION CARRIED.**

**19. 2010022811**

**Complaint:** This complaint alleges that the Respondent advertised as an apprentice auctioneer with a company the apprentice is not associated with.

A response was not received, but it was determined that the request for response was sent to the wrong address. Respondent is registered with the company listed in the advertisement.

**Recommendation:** Dismiss.

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

**OLD BUSINESS:** No old business was discussed.

**NEW BUSINESS:** Ms. Hancock asked the commission if they intended to meet as scheduled in February 2011. After some discussion, the commission decided to cancel the February 2011 meeting for lack of business and to have a two (2) day meeting in March 2011 to allow time for the examination review.

Mr. Alexander made a motion for the commission to keep a list of unlicensed people that cannot be licensed for at least six (6) months in accordance to the statutory requirement regarding unlicensed activity. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

Mr. Colson advised the commission to be aware of Senate Bill 0017 regarding seller financing without a mortgage license.

Mr. Dreaden thanked Ms. Hancock and Ms. Lockhart for attending the recent association meeting and advised that it was greatly appreciated by the industry. Ms. Hancock advised that Mr. Colson and Mr. Alexander's presentation was very informative.

Mr. Chick asked the commission to authorize one of the local commission members to sign any formal filings resulting from the summary suspension previously discussed in lieu of the chairman. Mr. Alexander made a motion to allow Mr. Colson or Mr. Cunningham to sign any formal documents on behalf of the commission prepared by Mr. Chick, seconded by Mr. Cole. **MOTION CARRIED.**

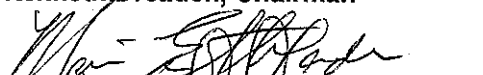
**Being no further business to discuss the meeting adjourned at 12:15 p.m.**



Kenneth Dreaden, Chairman



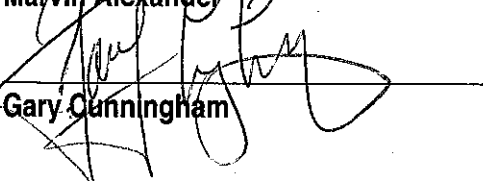
David Cole, Vice-Chairman



Marvin Alexander



Bobby Colson



Gary Cunningham