

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: March 7-8, 2011

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room (March 7th)
Andrew Johnson Tower – 3rd Floor Conference Room (March 8th)
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
Mark Green, Assistant General Counsel

March 7, 2011

CALL TO ORDER: Chairman Dreaden called the meeting to order at 9:08 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. All (5) Commission members were present. Visitors included Luellen Alexander, Rhessa Orr, Wendell Hanson and Keeling Baird.

ANNOUNCEMENTS: Chairman Dreaden welcomed Mark Green, the new Assistant General Counsel for the Commission.

AGENDA: Ms. Hancock advised that the continuing education course application listed under the Administrative Report would not be presented and requested that it be removed from the agenda. Mr. Alexander made a motion to adopt the agenda as amended, seconded by Mr. Cole. **MOTION CARRIED.**

MINUTES: Mr. Cunningham made a motion to approve the minutes of the January 19, 2011 meeting, seconded by Mr. Alexander. **MOTION CARRIED.**

NASHVILLE AUCTION SCHOOL REPORT – RHESSA ORR

Ms. Orr gave an oral report to the Commission regarding the recent seminar held at Paris Landing and advised that the next seminar will be held in Clarksville on June 21, 2011. She also advised that the next newsletter is being drafted and asked Chairman Dreaden to submit a letter to include on his behalf.

LEGAL REPORT – MARK GREEN AND ADRIAN CHICK, ASSISTANT GENERAL COUNSELS

Mr. Green presented the following Legal Report:

1. 2010017911

Complainant states numerous misrepresentations with respect to auction, including misrepresentations that (a) auction previously zoned for additional units; (b) lot zoned commercial; (c) lots would “pay for themselves”; and (d) lots effectively landlocked. Complainant also states that he was the high bidder on a separate lot but that the lot was re-auctioned. Complainant also states that he was told that this separate lot was required to be purchased in order to have outside access. Complainant also states that Respondent auctioneered property separately that was included in another lot. Respondent states that these representations were not made and Respondent has sent in an audio recording of the auctions.

Recommended Action: Close pending results from the Court approving the auction, sale and partition of the property. Upon resolution as to those matters, this matter may be reviewed at that time for action.

Motion: Mr. Colson made a motion to accept Legal’s recommendation, seconded by Mr. Alexander. **Motion carried.**

Mr. Chick joined the meeting at 9:20 a.m.

2. 2009016371 (removed was presented at a previous meeting)

3. 2009023271 (removed was presented at a previous meeting)

4. 2010009761

Complainant alleged that licensee was conducting an auction without a license. Respondent’s license expired 2/28/08. A response was not provided until an investigator contacted the Respondent who provided a letter purported to have been sent to the Commission on 4/20/2010 and an explanation that he did not realize his license was suspended due to personal matters in his life.

Recommended Action: Authorize for a hearing and offer consent order with a \$1000.00 penalty and all requirements for licensing be met before such is re-issued by the Commission.

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

5. 2010023841

This complaint stems from a court ordered absolute auction for the real and personal property belonging to the Complainant and his now ex-wife. A contract for an Absolute Auction was signed by the respondent, complainant and ex-wife and auction was conducted. The auction sold various pieces of property per the Court order. The parties signed contracts at the conclusion of the auction for the sales prices obtained through the auction that was pending Court approval. After this process, complainant filed a complaint alleging misconduct and misrepresentation as to the sales prices for the property, after he signed all the contracts for the prices so received. An investigator interviewed the parties and copies of the contracts were obtained. Respondent sent a timely response.

Recommended Action: As there is no evidence that the Respondent did anything improper or misrepresenting and considering the Complainant signed and approved contracts afterwards that were pending court approval, dismiss the action against Respondents.

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

5. 2010030191

Complaint filed by auction and realty company against Respondent, who was an independent contractor with them, alleging failure to account for funds he was paid by clients in an auction that the clients backed out of. Client asked for an accounting of \$2,350.00 paid to Respondent. Respondent has refused to give an accounting. The contract in which he had with Complainant states that Respondent would be responsible for his own advertising. He did submit a response but did not address the funds that were spent for advertising, instead he responded with a statement of general denial. The question becomes did the Respondent fail to account for or remit any money belonging to others or engage in any conduct that was improper, fraudulent, incompetent or dishonest under Tenn Code Ann. 62-19-122(b)(4) or (12).

Recommended Action: Authorize for a formal hearing and Consent Order that assesses a \$1000 fine for improper handling of funds and failure to account for monies paid by a client for advertising.

Motion: Mr. Alexander made a motion to accept Legal's recommendation in addition to requesting a breakdown of the advertising expenses, seconded by Mr. Colson. **MOTION CARRIED.**

**6. 2010036521
2010036531**

Complaint alleged that Complainant consigned a horse for Respondent to sell at auction. Upon the payment of the proceeds, the Respondent sent a check to Complainant that was returned for insufficient funds. Since the filing of the complaint, Complainant has notified the Commission the matter has been resolved.

Recommended Action: Dismiss

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

Mr. Cunningham left the meeting at 9:45 a.m.

7. **2010033231**
 2010033751

Complaints alleged that licensee was advertising an auction as a firm when he did not have a firm license. Respondent answered admitting such and that he did not arrange the advertising. He stated the family for whom he agreed to auction the personal property for had placed the ad and that he was unaware of it. He admits that it wasn't proper and asks the Commission to consider his explanation.

Recommended Action: Respondent admits that the advertising was incorrect and that indeed it was a violation of Tenn Code Ann 62-19-102. He does have an auctioneer license but not a firm license. Submit a letter of warning.

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

Commission took a break at 9:48 a.m. and reconvened at 10:00 a.m. Mr. Cunningham also returned at that time.

8. **2010016731**

Complaint alleged that Respondent Firm was using "Ring Men" to drive up bids, specifically troubling to complainant was the sale of equipment complainant believed to be bid for at one price only to have the Respondent stop the auction and seek a clarification at which time one of the "ring men" stated \$4000.00, which it sold for. An investigator visited the buyer of the equipment who stated he made a bid around \$4,000.

The investigator attended an auction by Respondent as it was advertised on his website. When attending the auction he discovered that the respondent was not conducting it but another firm was (a firm who respondent's son was affiliated with and advertised on respondent's website as being conducted by the respondent). Respondent and his son admitted that the Respondent had allowed the son to advertise his auction through the other firm on its website. They stated they were trying to assist the son as he was "new to the business."

Recommended Action: Authorization of formal charges and the entrance of a consent order with a recommended civil penalty of \$250.00 for failure to disclose who was conducting the auction in its advertising.

Motion: Mr. Alexander made a motion to dismiss the complaint, seconded by Mr. Cole.

MOTION CARRIED.

9. 2010015411

This was previously presented before the commission in February.

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, but since Commission has no address on the firm, re-present.

Motion: Mr. Cole made a motion to dismiss the complaint, seconded by Mr. Alexander.

MOTION CARRIED.

10. 2010036541

Complaint submitted with advertising alleging that Respondent was conducting an auction while his license had expired. Respondent answered stating he had failed to renew his license and admitted his responsibility.

Recommendation: Close with a letter of warning that future action shall lead to disciplinary action.

Motion: Mr. Alexander made a motion to close the complaint and flag the license file upon issuance of a Cease and Desist letter to the Respondent, seconded by Mr. Colson. **MOTION CARRIED.**

11. 2010009771

Previously presented matter whereby Commission approved a Consent Order in lieu of formal proceedings. The Respondent has failed to respond.

Recommendation: Authorize for formal disciplinary hearing.

Motion: Mr. Alexander made a motion to withdraw the Consent Order and authorize a formal hearing, seconded by Mr. Cole. **MOTION CARRIED.**

Mr. Chick presented the following portion of the Legal Report:

12. **Complaint No. 201100347**
Complaint No. 201100349
Complaint No. 2010036651
Complaint No. 2010036631
Complaint No. 2010036621
Complaint No. 2010036641
Complaint No. 2010036601

Complaint No. 201100347

Complaint No. 201100349

Beginning on or about November 10, 2010, Complainant received calls from representatives of Respondent seeking the consignment of items for auction by Respondents.

Respondents misrepresented to Complainant that each of twenty-seven (27) items consigned would not be sold below minimum prices, which totaled approximately \$220,000, as established on an inventory list.

Respondents conducted an auction on or about December 4, 2010 at which each of the twenty-seven (27) items were sold at prices substantially below the agreed minimums, resulting in a loss to Complainant of approximately \$116,000.

Twenty six (26) of the items were motor vehicles requiring a public automobile auctioneer license.

Respondent is not licensed as a public automobile auctioneer.

Request for response was sent out less than 14 days ago.

Complaint No. 2010036651

Beginning on or about October 12, 2010, Complainant received calls from an individual identifying himself as representative of respondent seeking the consignment of items for auction by Respondents.

Respondents misrepresented to complainant that there would be no freight fee and that consigned items would not be sold below reserve set by complainant.

Respondents conducted an auction on or about October 23, 2010 and sold consigned items at prices substantially below the agreed reserve prices.

Respondents sold the consigned items on or about October 23, 2010 without a valid written contract signed by the parties.

Respondent's misrepresentations resulted in a loss to complainant of approximately \$6,000.

Complaint was hand delivered to respondents 1/26/11 and no response has been received.

Complaint No. 2010036631

In or about November, 2010, complainant consigned ten (10) items to Respondents for auction.

Respondents conducted an auction on or about November 20, 2010 which resulted in proceeds of approximately \$40,000.

Respondents failed to remit proceeds from the above auction within a reasonable amount of time.

On or about December 20, 2010, complainant travelled to Respondents' place of business and obtained payment.

Complaint was hand delivered to respondents 1/26/11 and no response has been received.

Complaint No. 2010036621

Beginning in or about October, 2010, complainant, received calls from a representative of Respondents seeking the consignment of items for auction by Respondents.

Respondents represented to complainant. that it would receive prompt payment following the sell of items at auction.

Respondents sold a motor vehicle consigned by complainant, described as a 2009 Kawasaki EN500C9F, VIN# JKAENVC139A214989 on or about October 23, 2010, without being licensed as a public automobile auctioneer or a public automobile auction.

Respondents sold a motor vehicle consigned by Complainant, described as a 2009 Kawasaki KLX250W9F, VIN# JKALXMW119DA00043 on or about October 23, 2010, without being licensed as a public automobile auctioneer or a public automobile auction.

Respondents sold a motor vehicle consigned by Complainant, described as a 2009 Kawasaki EX500009F, VIN# JKAEXVDIZ9A113151 on or about October 23, 2010, without being licensed as a public automobile auctioneer or a public automobile auction.

Respondents sold a motor vehicle consigned by Complainant, described as a 2009 Kawasaki KL650E9F, VIN# JKAKLEE1490A22598 on or about October 23, 2010, without being licensed as a public automobile auctioneer or a public automobile auction.

Respondents sold a motorcycle consigned by Complainant, described as a 2009 Kawasaki KX250W9F, VIN# JKAKXMWC39A011864 on or about October 23, 2010.

Respondents sold a motorcycle consigned by Complainant, described as a 2008 KTM 125SX, VIN# VBKMXH2348M103833 on or about October 23, 2010.

Respondents sold a motorcycle consigned by Complainant, described as a 2009 KTM 450 EXC, VIN# VBKEXA4009M371083 on or about October 23, 2010.

Respondents sold a motorcycle consigned by Complainant, described as a 2008 KTM 125SX, VIN# VBKMXH2348M103833 on or about October 23, 2010.

Respondents sold a motorcycle consigned by Complainant, described as a 2009 KTM 400 XC-W, VIN# VBKEXA4079M248512 on or about October 23, 2010.

Respondents have failed to pay due proceeds to Complainant, resulting in a loss to Complainant of approximately \$25,000.

Complaint was hand delivered to respondents 1/26/11 and no response has been received.

Complaint No. 2010036641

In or about May, 2010, complainant entered into an agreement with Respondents to auction four (4) all terrain vehicles.

Respondents conducted an auction on or about May, 2010, and sold each of the four (4) items.

Respondents have failed to remit due proceeds of the auction.

Complaint was hand delivered to respondents 1/26/11 and no response has been received.

Complaint No. 2010036601

Beginning in late 2008 or early 2009, and again in the summer of 2010, complainant received calls from representatives of respondents, seeking consignment of items by respondents.

Respondents represented that any items sent to its auction would not be sold below our cost of each item which was set forth on a separate inventory list.

In reliance upon this representation, complainant sent twenty-nine (29) items to the auction.

Complainant's total cost reflected on the separate inventory list was approximately \$229,000.

Respondents conducted an auction on or about August 21, 2010, at which it claims to have sold each of the items at prices substantially below the item's respective cost.

Respondent claims to have sold the items for a total of approximately \$155,100, which, if remitted, would result in a loss to complainant of approximately \$58,960.

As of February 25, 2011, complainant has received no proceeds whatsoever from the auction.

Complaint was hand delivered to respondents 1/26/11 and no response has been received.

Recommendation: Approve for formal hearing on disciplinary action on all seven cases.

Motion #1: After some discussion, Mr. Alexander made a motion for all charges/complaints listed under "12" in the Legal Report to be combined with any existing charges/complaints pending against the Respondent(s), seconded by Mr. Colson. **MOTION CARRIED.**

Motion#2: Mr. Alexander made motion for any formal proceeding regarding the complaints discussed in the previous motion to be heard by the Commission, seconded by Mr. Colson. The motion carried by a vote of four (4) to one (1). [Cunningham-yes; Alexander-yes; Cole-yes; Dreaden-no; and Colson-yes]

The Commission took a break at 11:30 a.m. and reconvened at 11:40 a.m. Mr. Chick did not return after the break.

Mr. Green advised that he would report on the licensees with unpaid Consent Orders at the next meeting.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Auctioneer Commission – June 2011 Meeting – Gatlinburg, TN – Ms. Hancock advised she did not feel that it was an appropriate time to request a meeting outside of Nashville. The Commission agreed to withdraw their request to move the location of the meeting and to discuss rescheduling the June meeting at when they meet again in April 2011.

NALLOA Conference July 12-16, 2011 – Orlando, FL – Ms. Hancock asked if the Commission would like to request that they be represented at the NALLOA meeting scheduled for July 2011. Mr. Colson made a motion to submit requests for the Director, Staff Attorney and one (1) Commission member to attend on the Commission's behalf, seconded by Mr. Alexander. **MOTION CARRIED.** The Commission agreed for Mr. Cunningham to attend as the Commission member if he will be available, if he is not then Mr. Alexander will attend. Mr. Alexander advised that he would let Ms. Hancock and the Commission know by the next meeting if he plans to attend.

Education Seminars Report – Ms. Hancock presented a written summary of the surveys completed by the recent seminar's attendees for the Commission's information. She advised that she and Ms. Lockhart attended the seminar and everyone seemed appreciative of their presence. They were met with many questions regarding licensing including a question concerning livestock auctions with respect to a certain number of auctions being allowed at the same facility before the Packers Association Account is required. After some discussion, Ms. Hancock advised that she would contact the association for clarification.

Complaint Status Report - Ms. Hancock presented a comparison of the complaints pending on February 26, 2010 to those pending on March 4, 2011.

PSI Exam Review Discussion – Ms. Hancock advised that a representative from the examination contractor, PSI, would meet with the Commission the following day to discuss the content of the examinations they administer on behalf of the Commission.

OLD BUSINESS: No old business was discussed.

NEW BUSINESS: Mr. Cole inquired as to whether an apprentice's sponsor should notify the Commission when the apprentice should be removed from their sponsorship due to upgrading to an auctioneer. Ms. Hancock advised that it would be helpful for the sponsor to notify the Commission of such a change to ensure that the sponsor's information is removed from apprentice's licensing file.

Mr. Cunningham advised that security was not aware of the parking reservations for the Commission members when he arrived prior to the meeting and asked that security be given a list of parking assignments in the future. Ms. Hancock advised that she would notify the facility's management regarding his concern.

Mr. Cunningham asked if the law books printed by the Commission are still available and given to new applicants. Ms. Hancock advised that the books have not been printed since 2003 due to costs and the laws/rules are posted on the Commission's website for the public.

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

March 8, 2011

CALL TO ORDER: Chairman Dreaden called the meeting to order at 9:20 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Three (3) of the five (5) Commission members were present (Mr. Colson and Mr. Cunningham were absent.) Visitors included Carolyn Moore-Mooso, Luellen Alexander and Kimberly Whaley.

PSI, INC. – PRESENTATION AND DISCUSSION: Carolyn Moore-Mooso, representative for PSI, presented materials regarding the current examinations for the Auctioneer Commission and led a discussion concerning the content required.

The Commission took a break at 10:20 a.m. and reconvened at 10:40 a.m.

The presentation and discussion continued.

Steve Majchrzak, Assistant Commissioner of the Division of Regulatory Boards, joined the meeting from 11:20 a.m. until 11:38 a.m. during which time he addressed the Commission regarding the focus and purpose of their discussion with Ms. Moore-Mooso.

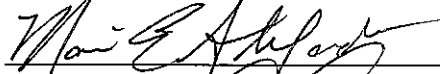
Ms. Lockhart left the meeting at 11:45 a.m. and Gloria Lye, Administrative Assistant, joined the meeting.

The Commission took a break at 12:20 p.m. and reconvened at 1:00 p.m.

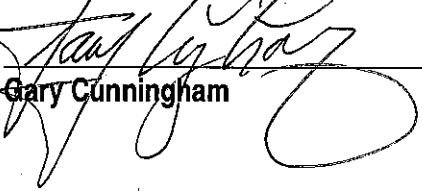
The presentation and discussion continued.

Being no further business to discuss the meeting adjourned at 2:10 p.m.

Kenneth Dreaden, Chairman



Marvin Alexander



Gary Cunningham



David Cole, Vice-Chairman



Bobby Colson