

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: May 7, 2012

PLACE: Andrew Johnson Tower – 3rd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Dave Cole, Chairman
Marvin Alexander
Bobby Colson
Jeff Morris

ABSENT: Gary Cunningham, Vice Chairman

PRESENT: Staff Members:
Donna Hancock, Executive Director
Julie Cropp, Assistant General Counsel
Mark Green, Assistant General Counsel
Susan Lockhart, Admin Services Asst. 4

GUESTS: Judge Lynn England and John Keistler

CALL TO ORDER: Chairman Cole called the meeting to order at 9:15 a.m. and the following business was transacted:

Ms. Hancock called the roll. Four (4) of the five (5) Commission members were present. Commissioner Cunningham was absent.

The Auctioneer Commission Meeting went into recess while the following Formal Hearing was conducted:

Formal Hearing for complaint 2010035171 (docket no. 12.15-115432A) regarding John Keistler; Assistant General Council Mark Green, Litigator for the State of Tennessee. Conducted and presided over by Administrative Law Judge Lynn England.

Formal Hearing for complaint 2010009771 (docket no. 12.15-116394A), listed on the agenda, was settled prior to the hearing.

BREAK: The hearing concluded at 10:35 a.m., a copy of the court reporter's transcript will be requested for record keeping purposes. The Commission took a break and reconvened at 10:55 a.m. to conduct the following business:

AUCTIONEER COMMISSION MEETING RESUMED -

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

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

MINUTES: Mr. Morris made a motion to approve the minutes of the April 2, 2012 meeting, seconded by Mr. Colson. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS – Report was not presented.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

Ms. Cropp presented a Final Order for the Chairman's signature regarding the formal hearing pertaining to Complaint #2008003741, Docket No. 12.15-115375A) held March 5, 2012. She advised that during the hearing the Commission asked her to look into opening a complaint against an individual who has not been licensed in quite some time and may be difficult if not impossible to locate as the events occurred in 2009. Ms. Cropp requested, and the Commission agreed, to note in the auctioneer's license file that should he ever reapply for licensure the matter will be addressed at that time.

Ms. Cropp advised she spoke with the Deputy General Counsel regarding the Commission's inquiry as to the deadline for legislative proposals. She advised he had not been notified of the deadline at this time but the Commission is welcome to suggest and discuss any proposals in preparation for the meantime. Mr. Alexander advised he would still like to pursue requiring background checks for licensure.

Ms. Cropp then presented the following Legal Report for the Commission's consideration:

1. 2009011231

First License Obtained: 1/25/1991

License Expiration: 1/31/2010

Type of License: Firm

History: One complaint against auction firm (closure)

October 2009 Meeting:***Complaint No. 2009011231***

Complaint: This complaint was predicated upon an online advertisement brought to the attention of staff on June 16, 2009. The advertisement announced that a large automobile auction would be held on June 20, 2009, with registration beginning June 19, 2009. The Respondents hold a valid firm license and valid auctioneer license, but do not hold either a public automobile auction license or a public automobile auctioneer license. A letter was hand delivered to the Respondents on June 19, 2009 advising of the new requirements regarding public automobile auction and public automobile auctioneer licenses.

Response: The respondents were cooperative with the investigator and acknowledged receipt of the letter. Respondents state they were unaware that they needed a public automobile auction or

public automobile auctioneer license and obviously are unable to obtain the proper license one day prior to the sale. Respondents state that they have expended considerable resources on rental of event space, advertising, etc., and are already registering vehicles for the auction. Respondent states that they will obtain licensure as requested prior to the next annual event, but have no feasible choice but to hold the auction.

Recommendation: *Consent order assessing civil penalty of \$500 against the firm license and authorization for a hearing. Letter of warning to the individual who called the auction.*

COMMISSION VOTED TO ASSESS CIVIL PENALTY OF \$10,000 AGAINST FIRM AND \$1,000 AGAINST INDIVIDUAL LICENSE.

Since the original presentation of this case, Respondent's license has expired, as well as the license of the individual auctioneer who called the subject auction. Respondent is located outside of the state, and there has been no activity within the State of Tennessee on the part of Respondent since the subject auction.

New Recommendation: Close and flag file.

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

2. 2012006951

First License Obtained: 8/23/2010

License Expiration: 8/22/2012

Type of License: Apprentice

History: One (closed by consent order)

Anonymous complaint received which included copy of AuctionZip ad with note that Respondent (who is an apprentice and also a gallery owner) is "stealing sales tax dollars" and that "there is rarely anyone that is licensed to oversee him." No supporting documentation was included to support these allegations.

Response submitted by attorney on behalf of Respondent. Respondent states that subject auction which was addressed in advertisement submitted by Complainant was a one-time event and Respondent was supervised by a licensed auctioneer. Further, Respondent states that Respondent is in a "duel [*sic*] apprenticeship" with two licensed auctioneers, one of which is Respondent's sponsor (who is the Respondent to the following complaint) and the other, who supervised the subject auction and appears to be Respondent's employing auctioneer based on a form submitted to TAC in December 2011. Respondent also states that Respondent pays taxes and conducts auctions properly within the law.

The AuctionZip advertisement provided by Complainant includes the name of the Respondent apprentice auctioneer and a gallery license number for a gallery which is owned by Respondent and another individual. However, the advertisement does not include the firm or gallery's name which is responsible for holding the sale, and it does not identify Respondent as an apprentice auctioneer or provide Respondent's license number nor does it include the license number of Respondent's sponsor's firm.

Recommendation: Authorize formal hearing with authorization to settle by consent order with civil penalty of \$250.00 for violation of T.C.A. § 62-19-112(b)(7) violating any provision of this chapter or any rule/regulation thereunder, failure, in an ad placed by an apprentice, to identify the apprentice auctioneer as such or to include the apprentice's license number and the name and license number of his/her sponsor's firm in violation of Rule 0160-01-.12(7) and failure to include the name and license number of the auction firm or gallery responsible for holding the sale in violation of Rule 0160-01-.20(1).

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

3. **2012006961**

First License Obtained: 11/18/1993

License Expiration: 8/31/2013

Type of License: Auctioneer

History: None

Complaint opened against Respondent, who is the sponsor of the previous Respondent apprentice, based on anonymous complaint referenced above alleging that someone – presumably the previous Respondent – is “stealing sales tax dollars” and that “there is rarely anyone that is licensed to oversee him.”

Respondent submitted response stating that previous apprentice Respondent was supervised at subject sale and has been supervised at all sales at which the previous Respondent has called bids. Further, Respondent states that the subject auction was with another auctioneer's firm and the previous Respondent's auction gallery. Finally, Respondent states that the previous Respondent was only calling bids at the subject auction and a licensed auctioneer was present at the sale. It appears that the parties notified TAC through a Temporary Apprentice Sponsorship Agreement that the previous Respondent would be employed by the auctioneer who was present at the subject auction.

Recommendation: Dismiss.

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

4. **2012007511**

First License Obtained: 4/24/2006

License Expiration: 4/23/2014

Type of License: Firm

History: None

Anonymous complaint received against Respondent firm based on AuctionZip advertisement for auction at different location than firm's address.

Respondent submitted response stating that Respondent has relocated Respondent's weekly auction to the location referenced in the subject advertisement, which is where Respondent intends to hold the auction on a permanent basis. Respondent states that Respondent planned to make the address change when the firm license expired in April 2012. Respondent states that, upon receipt of this complaint, Respondent has submitted the change of firm address to TAC and has displayed the license at the new location with the change of address form until Respondent's new license is received. Respondent acknowledges that address information on subject advertisement was not correct, but states that this was due to inaccurate information and has been corrected. Respondent submitted documentation, including two recent advertisements to show compliance.

Recommendation: Dismiss.

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

5. 2012007891

First License Obtained: 12/12/2003

License Expiration: 3/20/2014

Type of License: Auctioneer

History: None

Complainant alleges that Respondent's license is delinquent, and Respondent continues to book auctions. Complainant included photographs of signs for auction to take place on March 17, 2012 and which listed Respondent's firm name and firm license number as well as Respondent's name. Complainant also attached several advertisements. Ads for the previously mentioned sale include Respondent's firm name and license number but another auctioneer's name and license number who is with Respondent's firm. Respondent also included copies of several ads, both for Respondent's work with Respondent's employer real estate firm and for Respondent's auction firm. Complainant pointed to one of Respondent's ads, which directed interested parties to call Respondent for auctions, did not include a license number.

Respondent submitted response that Respondent is employed by a real estate company and is licensed as a broker, and Respondent also owns an auction firm and employs an individual, who is licensed as a broker and auctioneer, as the principal broker and auctioneer for Respondent's firm. In March 2012, Respondent realized that Respondent's auctioneer license had expired as well as Respondent's real estate firm license. Respondent attached documentation showing that the real estate firm license was renewed on March 16, 2012. Respondent sent paperwork and fee to renew auctioneer license on March 16. Respondent states that Respondent did not perform any auctioneer duties at the March 17 auction. Also, Respondent states that Respondent's company had been asked to bid on an auction, and Respondent verbally passed along a bid from the principal broker/auctioneer of Respondent's firm, but the auction has not been finalized – it appears that Complainant's knowledge of this bid was due to Complainant also bidding on the auction. Respondent replied that one ad asking interested parties to call Respondent which was under the real estate firm's logo was in error. Respondent states that newspaper was notified of

error, and it was corrected. Other ads seeking interested parties to call Respondent's auction firm for auctions which do not include the firm number do not appear to give notice of an upcoming auction.

Recommendation: Dismiss.

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

6. **2012008861**

License #: Unlicensed

History: None

Complaint opened against Respondent (licensed affiliate real estate broker) for ads placed by Respondent on behalf of Respondent's real estate firm which includes in one ad "virtual tours & auctions" and in another "auctions available."

Respondent's principal broker responded stating that Respondent is not advertising as an auctioneer but is merely stating that the real estate firm can arrange for an auction. Respondent's principal broker states that the firm has an auctioneer at the firm and works with another auction company, and any questions regarding auctions are referred accordingly.

This does not appear to constitute the advertisement of an auction sale nor does it appear to be designed to give notice of an upcoming auction.

Recommendation: Dismiss.

*****Chairman Cole recused himself from the vote on this matter*****

Action Taken: Mr. Morris made a motion to send a letter of warning to Respondent stating that Respondent does not have the authority to advertise auctions without a license and informing Respondent of the provisions of § 62-19-102(a)(1) and (2). The motion was seconded by Mr. Colson. MOTION CARRIED.

7. **2012008871**

License #: Unlicensed

History: None

Complaint opened against individual who is believed at one time to have owned and operated an unlicensed gallery. Complaint opened at the request of Commission based on complaint against unlicensed gallery which was filed in 2009. Based on information received during investigation in 2010, original matter was represented to be closed in March 2012. At that time, Commission directed that complaint should be opened against individual who allegedly bought unlicensed auction gallery in early 2010.

Respondent submitted brief reply stating that Respondent did not own the building or sign and had not leased same (possibly referring to photos taken by investigator of auction gallery location).

Telephone call with original Complainant yielded information that auction gallery is no longer in business and has not been for quite a while. In fact, Complainant believes that the auction gallery closed after the investigator was there.

Recommendation: Dismiss.

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

BREAK: The Commission took a break at 11:40 a.m. and reconvened at 11:50 a.m.

8. 2012009391

First License Obtained: 4/12/2000

License Expiration: 4/30/2014

Type of License: Firm

History: None

Complainant was an unsuccessful bidder at an estate sale auction held by Respondent. The winning bidder allegedly informed Complainant after the sale that the winning bidder had bought the property for an employee who could not attend. A few days later, Complainant states that the property was listed for sale with the auctioneer who conducted the sale listed as the owner. Complainant attached a copy of the deed showing the auctioneer as owner and reflecting the high bid price but not including the commission fee.

Respondent responded that the high bidder was purchasing the property for an employee, who later was unable to buy the property from the bidder. Respondent states that Respondent agreed to take over the bid if the seller approved it, and Respondent planned to resell or rent the property. Further Respondent states the 10% buyer's premium is a commission to the auction company and would have been a charge on the HUD statement as a buyer's expense.

Recommendation: Dismiss.

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

Ms. Cropp then presented a report regarding proposed consent orders, paid consent orders and complaints pending for formal hearings.

Ms. Cropp then presented a handout for the Commission's reference concerning her conversations with Mr. Alexander pertaining to potential changes to the Rules. After some discussion, Ms. Cropp advised she had noted the Commission's additional recommendations and would present a revised list at the next meeting.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in May 2011 to those currently pending.

Apprenticeship Discussion - Ms. Hancock presented an email from Steven Loft to Governor Haslam expressing his concerns with Tennessee's current apprenticeship licensing requirements. The Commission agreed they have strict requirements and offered no further comment.

OLD BUSINESS: Mr. Green advised Complaint # 2010009771 scheduled to be heard earlier in the day had been settled.

Ms. Hancock inquired about the TN Higher Education Rule revisions discussed during the April 2012 meeting. Attorney Green informed the Commission that he has heard nothing more on the subject from the Nashville Auction School. Mr. Morris advised that the Commission's request to suspend the rule and allow SB1428 to be added to the Senate Education Committee's Calendar was not approved.

NEW BUSINESS: No new business was discussed.

Being no further business to discuss, the meeting adjourned at 1:48 p.m.



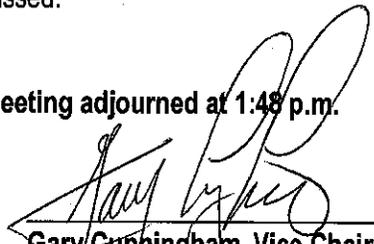
David Cole, Chairman



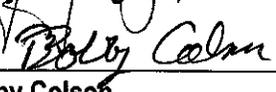
Maryin Alexander



Jeff Morris



Gary Cunningham, Vice Chairman



Bobby Colson