

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: October 1, 2012

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

PRESENT: Commission Members:
Jeff Morris, Vice Chairman
Marvin Alexander
Howard Phillips

ABSENT: Bobby Colson, Chairman
Gary Cunningham

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

GUESTS: Luellen Alexander, Rhessa Orr Hanson, Jeremy McBroom, and John Sanders, Jr.

CALL TO ORDER: Vice Chairman Morris called the meeting to order at 9:10 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Three (3) members were present and two (2) were absent. Absent members were Bobby Colson and Gary Cunningham.

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

MINUTES: Mr. Alexander made a motion to approve the minutes of the August 6, 2012 meeting, seconded by Mr. Phillips. **MOTION CARRIED.**

Ms. Orr had not arrived yet, therefore her report was deferred until later in the meeting.

LEGAL REPORT –

Presentation – Adrian Chick, Assistant General Counsel – Ms. Cropp stated that Mr. Chick was out of the office on vacation and requested that his presentation be deferred until the next meeting. Mr. Green explained that Mr. Chick planned to report on the 30 or so cases he is currently assigned that are pending in Chancery Court. The report was deferred.

Presentation – Mark Green, Assistant General Counsel – Mr. Green advised there were two (2) formal hearings originally planned for the meeting that were postponed. The first case involves unlicensed activity and the Respondent has moved creating a notice of hearing service issue. In the second case, the Respondent recently obtained legal counsel who requested and was granted a continuance by the administrative law judge scheduled to hear the case.

Presentation – Julie Cropp, Assistant General Counsel - Ms. Cropp presented the following Legal Report for the Commission's consideration:

1. **2012015021**

License #:

First License Obtained: 9/15/08

License Expiration: 9/14/14

Type of License: Firm

History: None

Complainant was the successful bidder on a property through an online auction conducted online by Respondent (licensed firm located out of state). Complainant alleges that Respondent required that an out-of-state company serve as the closing agent, which Complainant believes is due to a common ownership or fee splitting arrangement based on the fact that the companies are across the country from one another. Complainant also states that Respondent represented that the property title would be free of all past encumbrances (and Complainant says the title indicates that fact), but the property had several hundreds of dollars' worth of unpaid property taxes for 2011. Complainant also states that, included in Respondent's materials, Respondent stated that an individual held an auctioneer license (and included a license number), but Complainant states that the individual does not hold such license.

Respondent submitted a response stating that it conducts online auctions of bank owned real estate and does not act as the escrow/closing agent. Respondent states that Complainant agreed to the escrow/closing agent pursuant to a purchase agreement, and Respondent is not affiliated with the escrow/closing agent. Respondent states that the purchase agreement instructs the escrow/closing agent to prorate the taxes at closing, and Respondent states that the settlement statement indicates tax prorations. Respondent states that any failure on the part of the escrow/closing agent to prorate or pay for taxes at closing is between Complainant and the escrow/closing agent and not Respondent. As to the allegations that the individual does not hold an auctioneer license, Respondent states that Complainant is incorrect and the individual does hold an auctioneer license and the license number is as listed. The individual also holds a real estate broker license. A copy of the settlement statement does indicate tax prorations for the year 2012, and the settlement statement also appears to indicate a settlement charge paid from the seller's funds at closing for "2011 delinquent taxes." There does not appear to be a violation of TAC's statutes and/or rules, but more likely this is a contractual issue between Complainant and

the parties responsible for ensuring the taxes were paid from the funds paid by the seller for this purpose at closing.

Recommendation: Dismiss.

This complaint was not presented to the Commission at the October meeting and was deferred until the November meeting because legal counsel is waiting for additional information prior to presentation.

2. **2012015051**

License #: Unlicensed
First License Obtained: N/A
License Expiration: N/A
Type of License: N/A
History: None

Complaint was opened based on e-mail which was forwarded to TAC. The original e-mail was sent from Respondent (unlicensed) which is a Tennessee licensed real estate firm. The e-mail announced an online auction.

Respondent submitted a reply stating that Respondent was contacted by a corporation which was conducting the subject auction which needed Respondent's assistance with handling access to the property for prospective bidders. Respondent states that Respondent was not asked to participate in the actual auction. To assist with publicizing the auction, Respondent's marketing director sent out an e-mail blast. The blast e-mail included a photo of the property and provided links to the corporation's auction brochure and the registration form for the subject property. The auction brochure and registration form did not reference Respondent, but only referenced the corporation which was handling the subject auction. Respondent states that it did not mean to cause confusion by sending the e-mail. Based on the information included in the auction brochure and registration, it appears that this was an online auction which had a designated beginning and ending time and does not appear to have included a simulcast and is therefore included within the exemption found at T.C.A. § 62-19-103(9).

Recommendation: Dismiss.

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

3. **2012015431**

License #: Unlicensed
First License Obtained: N/A
License Expiration: N/A
Type of License: N/A
History: None

Complaint was submitted by a representative from a sheriff's department, who stated in the complaint that an individual operating an estate sale business got a civil judgment for failure to pay a client and then refused to pay it, resulting in criminal prosecution. During the investigation process, the Complainant performed checked the individual's "present and former business" with TAC staff and was advised to file the complaint. The complaint does not provide any additional information or documentation. The complaint was opened against Respondent (unlicensed), which is an estate sale business, but is not the business which was referenced by Complainant as the individual's business who had received the civil judgment.

Respondent submitted a reply through the operator of Respondent, stating that a copy of the complaint was received, and the individual referenced in the complaint had moved out of state but, prior to moving, had helped the operator start Respondent estate sale business and set up a website. The operator of Respondent states that the individual referenced in the complaint moved out of state and opened a very similarly named business to Respondent's name, but the two companies are in no way affiliated. Counsel's attempts to contact Complainant by telephone to attempt to obtain more information were unsuccessful. Based on the information within the file and information obtained online, there is no indication that Respondent was performing auction services without a license, but is merely an estate sale business.

Recommendation: Dismiss.

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

4. **2012018301**

License #: Unlicensed
First License Obtained: N/A
License Expiration: N/A
Type of License: N/A
History: None

This is a complaint which was opened based on an anonymous complaint which stated that Respondent (unlicensed) frequently holds tack and horse sales and uses unlicensed individuals to hold the auctions.

Respondent submitted a reply denying Complainant's allegations of utilizing unlicensed auctioneers and stating that Respondent does use a licensed auctioneer for its sales. Respondent included a copy of the individual's (a licensed auctioneer) license. Based on a check of the United States Department of Agriculture Packers and Stockyards Administration's website, Respondent is listed as a regulated entity.

Recommendation: Dismiss.

DECISION: Mr. Alexander made a motion to defer the matter until the next meeting and instructed counsel to request additional information. The motion was seconded by Mr. Phillips. MOTION CARRIED.

5. 2011026691

License #:

First License Obtained: 12/12/96

License Expiration: 9/30/13

Type of License: Firm

History: 1

January 2012 Meeting:

Complaint alleges that Respondent failed to include it's license number on advertising in violation of 62-19-118-(c)(2) and TAUC Rule 0160-01-20(1). A copy of the advertising was sent with the complaint.

Respondent answered that its number is always on all advertising. Respondent does not address the specific advertising in question. Furthermore the Respondent stated that the intent of the law is to ensure that all auction firms may be found and since they have been in business for so long and are an established company they certainly can be found.

Recommendation: Consent order with a civil penalty of \$500.00 for violating 62-19-118(c) (2) and Rule 0160-1-.20(1).

Decision: The Commission voted to authorize a Consent Order with a civil penalty of \$250.00 for violating § 62-19-118(c) (2) and Rule 0160-1-.20(1).

Because Respondent never contacted TAC regarding the Consent Order which was sent following the January 2012 meeting, an additional copy of the Consent Order was sent to Respondent prior to setting a date for a formal hearing. Respondent submitted a more substantive response providing copies of a proof for the subject advertisement, an original newspaper page which contained the ad, a handbill, and a copy of the sign order. Respondent states that the firm number is included on all. It appears that the firm number is included all materials (including the subject advertisement), but it is very small and difficult to read. Respondent concedes that the font size is small but states that the rule does not specify size. Respondent does state that after this issue was brought to its attention, the templates for future advertisements have included the firm number in a larger font size.

New Recommendation: Dismiss.

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

6. 201101010601

License #:

First License Obtained: 6/15/10

License Expiration: 6/14/12
Type of License: Public Automobile Auction
History:

7. 201101010611

License #:
First License Obtained: 6/15/10
License Expiration: 6/14/12
Type of License: Public Automobile Auction
History:

8. 2011010081

License #:
First License Obtained: 6/15/10
License Expiration: 6/14/12
Type of License: Public Automobile Auction
History:

9. 2011010791

License #:
First License Obtained: 6/15/10
License Expiration: 6/14/12
Type of License: Public Automobile Auction
History:

10. 2011010771

License #:
First License Obtained: 3/29/10
License Expiration: 3/28/12
Type of License: Gallery
History:

11. 2011010591

License #:
First License Obtained: 3/29/10
License Expiration: 3/28/12
Type of License: Gallery
History:

12. 2011010071

License #:
First License Obtained: 3/29/10
License Expiration: 3/28/12
Type of License: Gallery
History:

13. 2011010801

License #:
First License Obtained: 3/29/10
License Expiration: 3/28/12
Type of License: Gallery
History:

August 2011 Meeting:

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 public automobile auction. TAUC is opening complaints against the sponsoring auctioneer as well. The non- auctioneer owner 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

DECISION: Approved.

These matters, complaints which were opened against this gallery and public automobile auction, were based on four (4) complaints. The essence of these complaints is that Respondents auctioned vehicles for Complainants and paid with bad checks. One Complainant also stated that Respondents had vehicles in Respondent's lot that Complainant could not get, and Complainant had purchased and paid for vehicles from Respondents and Respondents would not provide a title. These matters were transferred to litigation to be set for a hearing. Since that time, the litigation attorney has obtained information through a federal correctional institution that the non-auctioneer owner of Respondents is incarcerated until the year 2027. Further, Respondents' licenses (#5619 and #17) have expired earlier this year and passed the two month period within which T.C.A. § 62-19-111(j) allows licensees to renew following expiration date.

Recommendation: Close and flag.

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

UPDATE ON SEMINARS & NEWSLETTERS – RHESSA ORR, NASHVILLE AUCTION SCHOOL

Ms. Orr advised the Fall newsletter has been posted on the Commission's website and is currently in production to be mailed to licensees. She also advised that the next seminar is scheduled to be held Friday, October 5, 2012 in Pigeon Forge, Tennessee. She reported the school plans to hold the next two seminars in early February and May 2013 and stated that Nashville Auction School is currently in negotiations with Natchez Trace State Park for the West Tennessee Seminar.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Ms. Hancock congratulated Ms. Orr on her recent nuptials with Mr. Hanson. Ms. Orr thanked Ms. Hancock and welcomed Mr. Phillips back to the commission. Mr. Phillips is a previous member of the Commission who sat out a term and has recently been reappointed.

Apprentice Auctioneer Application – Residency Waiver Request – Ms. Hancock presented an application from an apprentice auctioneer who resides in Missouri along with a request from him to waive the Tennessee residency requirement as his sponsor resides in Tennessee. Jerry McBroom, the applicant, was present and addressed the Commission regarding his request. After some discussion, Mr. Phillips made a motion to approve the request to waive the residency rule, seconded by Mr. Alexander. **MOTION CARRIED.**

2013 Meeting Schedule – Ms. Hancock presented a proposed meeting schedule for 2013. After some discussion, the Commission agreed to the schedule upon the addition of a meeting in December 2013.

Auctioneer Application for John Sanders – Exam Waiver Request – Mr. Sanders was present and addressed the Commission regarding his request to waive the auctioneer examination before he can upgrade his license from an apprentice auctioneer. He explained he was inadvertently given and passed the auctioneer exam in February 2008 prior to applying as an apprentice. He took and passed the apprentice auctioneer examination the following month. Mr. Green advised Mr. Sanders passed the exam in February 2008 and the current rule addressing the timeframe for taking said exam was not in effect until December 2008. After some discussion, Mr. Phillips made a motion to approve the request to waive retaking the exam, seconded by Mr. Alexander. **MOTION CARRIED.**

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

Budget Report – Ms. Hancock presented a comparison report of expenditures and revenues for the past three fiscal years and the year-to-date totals for the current F/Y for the Commission's review. In addition, she advised that she and Chairman Colson planned to represent the Auctioneer Commission at a Sunset Hearing the following day and other members were welcome to join them.

Education Provider Application- Ms. Hancock presented an application from Easy LR 24 Online Training School, Inc. tabled at the previous meeting along with the additional information requested by the Commission. After some discussion, the Commission deferred the matter until the next meeting since Mr. Phillips was new to the Commission and two of the members involved in the previous discussion were absent.

UNFINISHED / NEW BUSINESS – JEFF MORRIS, VICE-CHAIRMAN

Proposed Rules Discussion – Ms. Cropp asked that this discussion be deferred until the next meeting so all members could participate.

Being no further business to discuss, the meeting adjourned at 10:35 a.m.

Bobby Colson, Chairman

Jeff Morris, Vice Chairman

Marvin Alexander

Gary Cunningham

Howard Phillips