

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: April 1, 2013

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

PRESENT: Commission Members:
Bobby Colson, Chairman
Marvin Alexander
Gary Cunningham

ABSENT: Jeff Morris, Vice Chairman
Howard Phillips

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

GUESTS: Rhessa Hanson, Michael Crawley, and Luellen Alexander

CALL TO ORDER: The meeting start was delayed in order to acquire a quorum. Chairman Colson called the meeting to order at 10:10 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Three of the five (5) Commissioners were present. Mr. Morris and Mr. Phillips were absent.

NOTICE GIVEN: Ms. Hancock read the following statement for the record, "This meeting's date, time and location have been noticed on the TN Auctioneer Commission's website, included as part of this year's meeting calendar, since August 8, 2012. Additionally, the agenda for this month's meeting has been posted on the TN Auctioneer Commission's website since March 25, 2013."

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

MINUTES: Mr. Alexander made a motion to approve the minutes of the March 4, 2013 meeting, seconded by Mr. Cunningham. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS – RHESSA HANSON, Nashville Auction School

Ms. Hanson presented an oral report on the progress of the seminar schedule and newsletter. She advised the next seminar is scheduled for May 20, 2013 at the Agriculture Center/Fairgrounds in Lebanon, Tennessee. She also stated that the newsletter has been printed and distributed.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

Presentation of the Legal Report -

Ms. Cropp presented the following complaint report for the Commission's consideration:

1. 2013000241

License #:

First License Obtained: 9/24/09

License Expiration: 9/23/13

Type of License: Firm

History: None

Complainant hired Respondent (firm) to conduct an auction of personal items and equipment which was held at Complainant's farm. After the auction contract was signed, Complainant had a number of complaints about the way the auction was conducted, and outlined those issues in a written statement accompanied by a number of written statements from family members and acquaintances who attended the sale. The allegations in the complaint and statements included that Complainant did most of the work getting ready for the auction, that, after the contract was signed, Respondent would not allow Complainant to remove items from the listing of items to be sold, that equipment was not explained or started/demonstrated at the auction, that Respondent's team members were rude and unprofessional, that the auctioneer was going too fast and was hard to understand, that only a few bids were taken and some were ignored and items were sold too cheaply, that Complainant's friend was accused of running up the bids on big items to sell them back to Complainant, and that several individuals from the team were in Complainant's garage during the auction when there was nothing for sale in there and were also in the garage on the day after the sale when Complainant was not home, that some roofing was sold on a trailer (which was supposed to be sold separately) and Respondent's worker was rude to a bidder when the bidder expressed that he had wanted the roofing, and that no one bid on a desk and the auctioneer said he would take it for \$5, but Complainant was not paid for the desk. It was also alleged that an individual who was not licensed called some of the auction items.

The owner and principal auctioneer for Respondent submitted a response addressing each of the issues raised by Complainant. The auctioneer states that he met with Complainant before the auction and looked at the items for sale, and Complainant expressed that Complainant wanted certain amounts for the high value items. After the auctioneer put together some information about what he expected the items would bring at auction, he states that he met with Complainant and explained the expected total (which he states Complainant was okay with) and told Complainant that Respondent only does absolute auctions and does not sell items on reserve.

Later, the auctioneer states that he reviewed and signed the auction contract with Complainant. The auctioneer states that Complainant sold a large item before auction. In setting up, the auctioneer states that Complainant was difficult about wanting to move certain items himself and complete repairs, and also Complainant wanted to remove a couple of larger items from the sale just before the auction due to repairs. The auctioneer states that removing items from the listing attached to the auction contract was a breach of the contract. The auctioneer states that a friend of Complainant arrived at the sale to be sure that the items brought what Complainant wanted and was the successful bidder on several high dollar items, and the individual was bi-bidding even though he was instructed not to do so. The auctioneer states that, after the auction, Respondent received information that some of the items were cosigned and not owned by Complainant in violation of the auction contract. As to the allegations, Respondent denies that the bids were unclear or too fast, that equipment was started auction day and inspection day, that items were sold too fast and bids ignored, stating that Respondent would have no reason to do so because Respondent was receiving a percentage in buyer's premium on all items sold. The auctioneer denies he was rude to a bidder who wanted the roofing, and that team members were in the garage during and after the sale to get a part to an item which was sold for a bidder and later to get some tools to load an item for a bidder. As to the desk, the apprentice sold it to himself for \$5 after no bids, and as soon as it was over, the auctioneer told him he did not have to do that, so "no bid" was written on the ticket; however, the desk was mistakenly loaded, and the auctioneer states that the mistake was brought to Respondent's attention and the \$5 was mailed to Complainant. The auctioneer denies that Respondent's team was rude or unprofessional to anyone. As to the unlicensed individual, the auctioneer admits that a nephew, who just started auction school out of state, auctioned the last three (3) items under the auctioneer's supervision without any compensation for such. Based on the information submitted, this appears to be the only violation by Respondent.

Recommendation: Authorize formal hearing with authorization to settle by consent order with civil penalty of \$250.00 for violation of T.C.A. § 62-19-102(b) which states that all auctions for a firm shall be conducted exclusively by licensed individuals.

DECISION: Mr. Alexander made a motion to issue a Letter of Warning for violation of T.C.A. § 62-19-102(b, seconded by Mr. Cunningham. MOTION CARRIED.

2. **2013002191**

License #:

First License Obtained: 1/4/07

License Expiration: 1/3/15

Type of License: Firm

History: None

Complainant states that Complainant is the Senior Manager of a store. Respondent (firm) contracted with Complainant to hold an auction for all personal property of the store. Complainant outlines a number of complaints regarding Respondent and the way the auction was handled. Complainant states that after the auction, Complainant was told that Complainant would receive the auction proceeds ten (10) days after the auction. Complainant states that Respondent then refused to release the auction proceeds to Complainant because Respondent had

been served with a garnishment against Complainant from another individual. Complainant states that the inventory of the items sold at the auction was missing items (Complainant does not specify what items were missing). Complainant includes a list of complaints, including that Respondent breached a fiduciary responsibility to the store, that the money was not released at an appropriate time, theft of property and broken items, conspiracy by Respondent, deceptive advertisement and unfair business practices, defamation of character toward Complainant, failure to follow requests regarding merchandise placed on reserve, questionable commission fees, constructive fraud in neglecting to inquire about other cosigners and owners, and that Respondent's workers were unprofessional and rude.

Respondent submitted a thorough response through its principal auctioneer stating that Respondent entered an auction contract with Complainant, who represented that Complainant was the owner of the store, to auction the inventory of the store. Respondent states that Respondent was misled by Complainant, and, after the auction, Respondent was contacted by others claiming to also be owners of the store inquiring about the proceeds. Respondent states that when Complainant was not satisfied with the prices some of the larger items were bringing, Respondent allowed Complainant to buy back some pieces. Respondent states that Complainant was told of the ten (10) day period within which the proceeds and auction summary would be sent. Respondent states that four (4) business days after the auction, Respondent was served with a court garnishment on Complainant which was for an amount in excess of the auction proceeds. Respondent states that Respondent contacted Complainant to notify that, because of the garnishment, Respondent could not pay the proceeds to Complainant, and they would have to be held in escrow until the matter was resolved. Respondent provided an inventory and states that the inventory includes a complete listing of all items sold and the bid amounts. As to Complainant's list of complaints, Respondent states that Respondent conducted the auction with professionalism, that Respondent held the funds in escrow until ordered by the court as to how to handle the funds, that Respondent has no knowledge of any missing items and the complaint was the first mention of this, that Respondent did not conspire to defraud Complainant of the money owed from the auction, that Respondent acted on behalf of Complainant with regard to reserves placed on a few items because Complainant still has those items, that all commissions were in line with the auction contract, and that Respondent was at all times professional. As to the other listed complaints such as deceptive advertisement and unfair business practices, defamation, and constructive fraud, Respondent is unsure of the basis of the complaints but asserts that there was no wrongdoing.

Legal counsel obtained copies of documents regarding the garnishment, including a court Order which ordered Respondent not to disburse funds until ordered by the court and an Order, signed after the response was submitted, which directed Respondent to pay the auction proceeds into the court so that the court could determine the ownership of the auction proceeds between Complainant and the individual issuing the garnishment. Respondent complied with the order to pay the auction proceeds into court, which concluded Respondent's involvement in the court proceeding. Based on the information provided and obtained, there does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

3. **2013002621**

License #:
First License Obtained: 7/15/05
License Expiration: 7/14/13
Type of License: Gallery
History: None

4. **2013002581**

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

5. **2013002611**

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

Complaint submitted by a licensee who stated that Respondent 1 (gallery) does not use licensed auctioneers. In the complaint, Complainant also stated that Respondents 2 and 3 (both unlicensed individuals) were auctioneering without a license. Because the complaint did not give detail with regard to where Respondents 2 and 3 were auctioning or where those unlicensed individuals could be found, Complainant was contacted and gave information that Respondents 2 and 3 were calling auctions without a license for Respondent 1 (gallery). Complainant could not provide addresses or locations for Respondents 2 and 3 so the complaints for Respondents 2 and 3 were also sent to Respondent 1's address along with Respondent 1's complaint.

The owner of Respondent 1 gallery submitted a written response to the complaint against Respondent 1. The response states that Respondent 1 used Respondent 2 as an auctioneer because Complainant had used Respondent 2 as an auctioneer before, and Respondent 3 took over calling auctions briefly but could not provide the proof of licensure when the Respondent 1's owner requested it. Respondent 1's owner expressed regret over not checking Respondents 2 and 3 for papers or licenses, but Respondent 1's owner says she took them at their word when utilizing their services for a brief period of time. The response states that Respondent 1 terminated the services of both Respondent 2 and 3 when it was learned that the individuals were not licensed and now has a licensed auctioneer calling all of Respondent 1's auctions. The licensed auctioneer confirmed this information. From the information obtained, it appears that Respondent 1 gallery's brief use of Respondents 2 and 3's services has ended and Respondent 1 is now in compliance by utilizing a licensed auctioneer to call all auctions.

As to Respondents 2 and 3, there were no responses submitted due to the fact that their complaints were sent to Respondent 1's address. The owner of Respondent 1 stated that they had been terminated and the owner did not have Respondent 2 and 3's home addresses to forward the complaints to them. It appears that no one involved in the complaint knows their addresses or locations and Respondents 2 and 3 cannot be located at this time.

Recommendation: As to Respondent 1, letter of warning regarding using a licensed auctioneer to call bids at all auctions under T.C.A. § 62-19-125(b). Close as to Respondents 2 and 3.

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

6. **2013002641**

License #:

First License Obtained: 11/19/01

License Expiration: 11/30/13

Type of License: Gallery

History: None

The same complaint mentioned above also stated that Respondent (gallery) did not use a licensed auctioneer, but the complaint did not provide the name of any unlicensed individuals who called auctions for Respondent.

The owner of Respondent submitted a response stating that Respondent has a permanent auctioneer and provided the name and license number of the individual, who is an active licensed auctioneer (Respondent's online auction ads all appear to confirm that this licensed auctioneer is the auctioneer for Respondent). When that auctioneer is not available, Respondent's owner states that the auctioneer sends another licensed auctioneer to take his place and call Respondent's auctions. On one night (a few days before the complaint was submitted) Respondent's owner states that the regular auctioneer was called away on an emergency and told Respondent that an unlicensed individual could call that night since Respondent was selling all of that individual's items that night. Respondent's owner states that if they were in the wrong on that occasion, they were unaware, but in all other instances Respondent has used licensed auctioneers. Respondent's owner indicates familiarity with Complainant as a fellow industry member who has an auction and has attended Respondent's auctions.

Recommendation: Letter of instruction regarding using a licensed auctioneer to call bids at all auctions under T.C.A. § 62-19-125(b) and the exemption found in T.C.A. § 62-19-103(5) for any person performing acts relating to property owned or leased by the person.

DECISION: Mr. Alexander made a motion to authorize a formal hearing with authorization for Respondent to settle by Consent Order with Civil Penalty in the amount of \$500 for using an unlicensed individual in violation of T.C.A. § 62-19-112(b)(7) and T.C.A. § 62-19-125(b) and to open a complaint against the unlicensed individual who called

the bids at the auction. The motion was seconded by Mr. Cunningham. MOTION CARRIED.

Rule Discussion –

Ms. Cropp stated that she received additional notes from Mr. Alexander regarding some changes to the draft of proposed rules and a suggestion that she make those changes for presentation at the next meeting in order to allow the other commissioners an opportunity to be involved in the discussion. Mr. Alexander made a motion to table the proposed rule discussion until the next meeting, seconded by Mr. Cunningham. **MOTION CARRIED.**

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending March 30, 2012 to those currently pending.

Budget Report – Ms. Hancock presented expenditure and revenue reports and the education and recovery account budget information comparing the last three (3) fiscal years to the revenues and expenditures of the current FY through February 28, 2013.

Reciprocity Agreements – Discussion

Ms. Hancock presented copies of the syllabus and information for the new six (6) hour CORE Course being required by the State of Kentucky for all licensed auctioneers. She advised she had been in contact with the Director of the Kentucky Auctioneer Commission to discuss this new requirement and was advised the only exceptions from the requirement would be for Indiana licensees who have taken Indiana's CORE course.

Rhessa Hanson explained the content requirements of Kentucky's CORE Course and advised that she is scheduled to appear before the Kentucky Auctioneer Commission at their meeting on April 15, 2013 to address her concerns regarding exceptions not being allowed for licensees who have taken similar or more extensive continuing education.

Ms. Hancock informed the Commission that Tennessee's reciprocal agreements with other states were all destroyed during the May 2010 flooding of our office building but that she has written to each state who currently reciprocates with the Tennessee Auctioneer Commission asking them to provide a copy of the agreement for our records. She has since received eight (8) responses (presented today) from the eighteen (18) reciprocal states. Two (2) states, Indiana and Kentucky, were unable to locate their copies of the reciprocity agreement with Tennessee. After some discussion, it was agreed that Ms. Hancock would present all copies of the reciprocal agreements for review at the next meeting.

Mr. Alexander then made a motion for Ms. Cropp to draft a policy for the Commission's approval mirroring Kentucky's new continuing education requirement and require all Kentucky licensees to complete a Tennessee CORE Course before their individual licenses may be renewed. Mr. Cunningham seconded the motion. **MOTION CARRIED.**

UNFINISHED / NEW BUSINESS – BOBBY COLSON, CHAIRMAN

Michael Crawley appeared before the Commission regarding his firm and auctioneer licenses. He reminded the Commission that he appeared at the last meeting and was advised to submit his applications and waiver request in writing before it would be considered. He advised that both licenses had been expired less than two (2) years and requested the Commission waive the retesting and additional education requirements. He further advised the applications, fees and written request to waive the additional thirty (30) hour education had all been submitted to the Commission office the previous week. He had a copy of the written request for their consideration. After some discussion, Mr. Alexander made a motion to waive the additional education as Mr. Crawley had completed the required six (6) hour continuing education course for the last renewal period. The motion was seconded by Mr. Cunningham. **MOTION CARRIED.**

Being no further business to discuss, the meeting adjourned at 11:23 a.m.



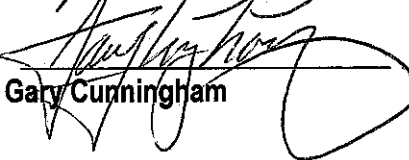
Bobby Colson, Chairman



Jeff Morris, Vice Chairman



Marvin Alexander



Gary Cunningham



Howard Phillips