

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: November 4, 2013

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

PRESENT: Commission Members:
Jeff Morris, Chairman
Howard Phillips, Vice Chairman
Bobby Colson
Ronnie Colyer

ABSENT: Gary Cunningham

PRESENT: Staff Members:
Julie Cropp, Assistant General Counsel
Kimberly Whaley, Accountant 3
Susan Lockhart, Administrative Services Assistant 4

GUESTS: Robyn Ryan, Regina Oldham and Bill Giannini

CALL TO ORDER: Chairman Morris called the meeting to order at 9:05 a.m.

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

NOTICE OF MEETING: Kimberly Whaley read the following statement for the record, "This meeting's date, time and location have been noticed on the Tennessee 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 Tennessee Auctioneer Commission's website since October 25, 2013. Also, this meeting has been noticed on the tn.gov website."

AGENDA: Mr. Philips made a motion to adopt the agenda, seconded by Mr. Colson.
MOTION CARRIED.

MINUTES: Mr. Phillips made a motion to approve the minutes of the October 7, 2013 meeting, seconded by Mr. Colyer. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS –

No updates were given regarding the seminars and newsletters.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

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

1. **2013009931**

License #:

First License Obtained: 9/14/12

License Expiration: 9/13/14

Type of License: Firm

History: None

Respondent (firm) conducted a personal property auction for Complainant. After the auction, Complainant states that Respondent's principal auctioneer told Complainant that one of the auctioneer's family members bid on a diamond ring and several other items and did not have the money to pay and asked if Complainant could wait until later in the month for payment. Complainant states that there was a \$750.00 reserve on the diamond ring. Complainant states that the auctioneer told Complainant that the auctioneer would pay Complainant after all money was collected. Complainant states that the auctioneer let the family member leave with a box of gemstones and another ring without payment. Complainant states that the auctioneer tried to prosecute the family member for theft, and a police officer returned the ring to Complainant but said the gemstones could not be found and no arrest was made. Complainant states that Respondent's auctioneer paid Complainant some money but there is a remaining balance, which Respondent's auctioneer refuses to pay. Complainant states that a police officer said that Respondent's auctioneer resold the diamond ring and other items at another auction.

Respondent's auctioneer states that Complainant has been paid in full, noting that Respondent sent Complainant an additional check for one hundred thirty nine dollars and seventy cents (\$139.70) with the notation "Auction – Paid in Full," which Complainant cashed. Respondent's auctioneer admits that a family member did not pay at the subject auction, and the auctioneer has banned the individual from Respondent's auctions and filed a police report.

Complainant submitted correspondence from Respondent's auctioneer to Complainant stating that some items were sold at another auction and Complainant would send information about how much the items brought and the commission. In the correspondence, Respondent's auctioneer states that Respondent took a loss and could not take more. Respondent's auctioneer also states that pursuant to the terms and conditions of the sale, if a purchaser does not comply with the terms and conditions, Respondent can cancel the sale and sell all items at public auction without reserve with any purchaser being liable for any deficiency/costs. Complainant also attaches a Settlement form from Respondent which appears to outline the money brought in at the original sale plus at two (2) additional sales, deducting Respondent's expenses (including gas and commission for items sold on three (3) separate dates as well as commission for items which were not sold) and leaves a balance owed to Complainant of \$139.70, which was sent to Complainant and cashed. Complainant states that Complainant did cash the \$139.70 check because Complainant also took a loss on the diamond ring that Complainant had placed on reserve for \$750 (which Complainant states was sold at a later auction for \$300) and gemstones.

Respondent's auctioneer sent the contract and Final Settlement. Respondent's auctioneer states that Complainant was sent the Final Statement showing the revenue and expenses along with the additional \$139.70 check (marked "Auction – Paid in Full") and, by cashing this check, Complainant agreed with the Final Statement. Respondent's auctioneer attached a copy of the contract, which the auctioneer states does not mention any reserves. Upon examining the contract, it does not appear to specifically reference any reserves but states that the auctioneer has the right to sell the property, described as "personal property," and the right to sell the property "...includes the right to sell the above described property at Public Auction, to the highest bidder(s) on the premises on or about April 5, 2013 or up to sixty days after said approximate date." Respondent's auctioneer states that a family member did not pay a bill, and Respondent ate the cost of that. Respondent's auctioneer states that Complainant removed numerous items before the sale and the gemstones, and no money is owed to Complainant.

Legal counsel contacted the police detective who handled the police report. No one was prosecuted as the matter was determined to be a civil one. The detective stated that one ring (not the diamond ring) was recovered and returned to Complainant, and Respondent's auctioneer told the detective that the auctioneer resold the items won but not collected by the family member at another auction for \$600. The detective was told that the diamond ring that originally sold for \$750 was sold for \$300, and the auctioneer said he would have to pay Complainant the difference. Respondent's auctioneer was contacted by legal counsel and asked for documentation regarding the items sold at the three (3) auctions referenced in the final settlement and an explanation for the gemstones and diamond ring. He initially expressed cooperation, but then sent an e-mail stating that all files were destroyed in a flood, that Complainant was paid in full, and stating that he was back in another state and the firm was closed.

Recommendation: Consent Order for voluntary surrender of Respondent's firm license for violations of T.C.A. § 62-19-112(b)(4) and (12).

The Commission tabled a vote on the first matter presented until the second matter regarding the related auctioneer was presented.

2. 2013013531

License #:

First License Obtained: 9/14/12

License Expiration: 9/13/14

Type of License: Auctioneer

History: None

Complainant alleges that Respondent (auctioneer – this is the auctioneer for the Respondent firm referenced in the previous complaint, but a new Complainant) auctioned furniture and personal property for Complainant in May 2013 but has not paid Complainant and will not return Complainant's telephone calls or e-mails.

Respondent states that Complainant signed a contract stating that all items were free and clear of encumbrances, and Respondent later discovered that the items were financed. Respondent states that Respondent was contacted by a bank representative who told Respondent this. Respondent states that Complainant has returned the Final Statement, but Respondent has not heard back

from the bank, and Respondent does not know who to pay now (Complainant or the bank), and this is the reason for the delay in payment. Respondent attached no documentation.

Complainant sent additional information stating that Complainant filed a police report with the local police department around the time of filing this complaint. Complainant attached a copy of an e-mail from Respondent to Complainant on the same date (just prior to Respondent submitting his response to this complaint), which states that Respondent's firm is closing on July 13, 2013, and Complainant would receive Complainant's money in 45-60 days. The e-mail also states that Complainant signed a contract stating that everything was free and clear of liens and Complainant would receive the money in the time allotted. Complainant states that Respondent's statements regarding a bank are false and that all property was Complainant's property and no bank had contacted anyone about liens. Complainant again sent information in September 2013, stating that Respondent was still in full possession of the money received for auctioning the items in May 2013, which totals over \$2,000.00. Complainant states that, although Respondent stated he was closing the business, Respondent is still auctioning.

Respondent was contacted by legal counsel requesting documentation regarding the subject sale, including information about the bank which allegedly contacted Respondent. Respondent initially appeared cooperative but then sent an e-mail stating that all files had been destroyed in a flood, that Respondent was back in another state and the firm closed and indicating that Respondent would not discuss the situation any further.

Recommendation: Consent Order for voluntary surrender of Respondent's auctioneer license for violations of T.C.A. § 62-19-112(b)(4) and (12).

DECISION: Mr. Colson made a motion to accept the recommendations of legal counsel for both 2013009931 and 2013013531. The motion was seconded by Mr. Colyer. MOTION CARRIED.

3. **2013013551**

License #:

First License Obtained: 8/22/12

License Expiration: 8/21/14

Type of License: Firm

History: None

4. **2013013561**

License #:

First License Obtained: N/A

License Expiration: N/A

Type of License: Unlicensed

History: None

Complaints were opened against Respondents (Respondent 1 is a licensed auction firm and licensed real estate firm; Respondent 2 is unlicensed with the Auctioneer Commission but is a licensed real estate firm) based on an anonymous complaint which included two (2) advertisements for two (2) real property auctions. The anonymous Complainant states that: 1)

the auction firm number for Respondent 1 is not included on the advertisement; 2) one ad references that two (2) lots will sell absolute but does not identify which lots in the advertisement; 3) Respondent 2 is shown as “Co-Broker” and is unlicensed with the Auctioneer Commission; 4) one ad references an opportunity to “buy at your price” and not everything is being sold absolute; 5) name of the auctioneer for Respondent 1 is not displayed as it is on that individual’s license; and 6) Respondent 1’s website does not include its auction firm number.

Respondent 1 (who is principal auctioneer of Respondent 1 as well as a licensed affiliate broker) submitted a response on behalf of Respondents. The individual is the auctioneer/affiliate broker who was advertised as conducting the sale for Respondent 1 in both advertisements. The individual states that he has been auctioning for many years in several states and has never had a complaint but takes the matter seriously and wishes to correct any violations that may have occurred. The individual admits that one ad references two lots selling absolute but does not specify which ones and states that this was the only advertisement that did not have the specification and was meant to be included on this particular ad. The individual also states that the wording about “buying at your price” is simply wording that has been used to entice buyers to attend, and the individual was unaware if this is unacceptable wording. With regard to no firm license listed on the ads, the individual (whose auctioneer license number is listed on the advertisement) states that he did not realize that the firm number was to also be included and both license numbers will be utilized in the future. With regard to listing Respondent 2 as a “Co-Broker,” the individual states that the reason Respondent 2’s name was on the ad was because Respondent 2 referred its client to Respondent 1 to handle the auction, and Respondent 2 had no part in the auction or the advertisements but was only listed as a courtesy. There appears to be no evidence of unlicensed activity on the part of Respondent 2. For Respondent 1, the only violation appears to be that the auction firm license number was omitted (the firm name was listed), and the individual recognized the mistake and stated that it will be corrected in the future.

Recommendation: Letter of warning regarding Rule 0160-01-.20 regarding advertising.

DECISION: Mr. Phillips made a motion to accept the recommendation of legal counsel, seconded by Mr. Colson. MOTION CARRIED.

RULE DISCUSSION – Julie Cropp, Assistant General Counsel

Ms. Cropp presented a copy of the proposed Notice of Rulemaking and gave a brief overview of each item contained therein. After some discussion, Chairman Morris made a motion to approve the Notice of Rulemaking Hearing as amended. The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

Upon the arrival of Bill Giannini, Assistant Commissioner of the Division of Regulatory Boards, the Commission deferred the required Regulatory Flexibility Analysis until later in the meeting to allow Mr. Giannini the opportunity to present the budget report.

BUDGET REPORT – Bill Giannini, Assistant Commissioner of the Division of Regulatory Boards

Mr. Giannini presented a copy of the closing budget for the 2012-2013 fiscal year and the previous three fiscal years for comparison. He also gave an oral report regarding the new licensing system planned to be implemented by the Department by the end of 2014. He advised the new system would provide a more consumer friendly way of doing business including online submissions of applications, acceptance of credit cards, email notifications, etc. He also advised all staff will complete Customer Focused Government training as part of Governor Haslam's initiative to improve customer service by December 31, 2013.

The Commission recessed at 9:55 a.m. for break and reconvened at 10:00 a.m.

Chairman Morris gave an oral report for the Auctioneer Commission's Education and Recovery Fund.

RULE DISCUSSION (continued) – Julie Cropp, Assistant General Counsel

Ms. Cropp presented the Regulatory Flexibility Analysis and other items for the Commission's consideration pursuant to the Regulatory Flexibility Act of 2007 (T.C.A. § 4-5-401 et seq) as follows:

REGULATORY FLEXIBILITY ANALYSIS: (from T.C.A. § 4-5-402(b))

*Each of the following must be considered by the Commission with regard to the proposed rules:

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules

Mr. Colson made a motion to approve the following response, "There will be no known overlap, duplication, or conflict with other federal, state, or local governmental rules." The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

(2) Clarity, conciseness, and lack of ambiguity in the rule

Mr. Phillips made a motion to approve the following response, "The rules are clear, concise, and unambiguous. Further, the rules are not open to different interpretations." The motion was seconded by Mr. Colyer. **MOTION CARRIED.**

(3) The establishment of flexible compliance and reporting requirements for small businesses

Mr. Colson made a motion to approve the following response, "These rules provide uniform and reasonable requirements, both for licensees of the Tennessee Auctioneer Commission, as well as those individuals who wish to be licensed with the Tennessee Auctioneer Commission. These rules assist with ensuring the welfare and safety of the citizens of Tennessee." The motion was seconded by Mr. Colyer. **MOTION**

CARRIED.**(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses**

Mr. Colson made a motion to approve the following response, “These rules will not be effective until a rulemaking hearing is held (which is open to the public for comments) and ninety (90) days have passed after filing any rules adopted by the Tennessee Auctioneer Commission with the Secretary of State, so any individuals affected by these rules will have notice and an adequate period of time to ensure compliance with the requirements of these rules.” The motion was seconded by Mr. Colyer. **MOTION CARRIED.**

(5) The consolidation or simplification of compliance or reporting requirements for small businesses

Mr. Colyer made a motion to approve the following response, “These rules, some of which amend current rules and some of which are new rules, are intended to provide clarification and do not complicate compliance or reporting requirements for small businesses.” The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule

Mr. Colyer made a motion to approve the following response, “The Tennessee Auctioneer Commission expects all businesses, regardless of size, to abide by the requirements of these rules.” The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs

Mr. Colson made a motion to approve the following response, “These rules do not result in the unnecessary creation of entry barriers or other effects that will stifle entrepreneurial activity, curb innovation, or increase costs.” The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

OTHER CONSIDERATIONS:**Does the rule make it better to do business in Tennessee?**

Mr. Colson made a motion to approve the following response, “Yes, these proposed rules are expected to make it better to do business in Tennessee by clarifying the requirements for licensees of the Tennessee Auctioneer Commission as well as the process for obtaining licensure for individuals who wish to become licensed through the Commission.” The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

The Commission held a vote on the following responses until they were all presented:

Does the rule make it easier to create jobs in Tennessee?

“These rules are unlikely to have a foreseeable impact on job creation in Tennessee.”

Is it essential and effective?

“The proposed rules are essential and effective as they seek to clarify the responsibilities of licensees, explain existing licensing exemptions within the law, and provide clarification for military applicants.”

Who does it affect?

“The rules affect licensees of the Tennessee Auctioneer Commission, potential applicants for licensure, as well as citizens of the State of Tennessee.”

Is the rule a positive move?

“Yes. These rules seek to further specify the responsibilities and duties of licensees as well as clarify existing licensing exemptions in order to protect the welfare and safety of the citizens of the State of Tennessee. Also the Military Applicant rule seeks to streamline the application and renewal process for affected individuals.”

Is it outcome-based (i.e. does it have a measurable, positive outcome)?

“Yes. The Commission expects to receive fewer questions regarding the responsibilities and duties of licensees as well as clarify some of the existing licensing exemptions found within the statutes relating to the Auctioneer Commission.”

Mr. Colson made a motion to approve the responses to the above-referenced questions as amended. The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

Mr. Colyer made a motion to move forward with the rulemaking hearing based on the drafted rules as amended. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, ACCOUNTANT 3

Complaint Comparison Report - Ms. Whaley presented a comparison of the complaints pending in November 2012 to those currently pending. She also advised the current performance measure for closing or referring complaints for legal action within the designated benchmark for the last eighteen (18) months is 91.49%. This measure exceeds the Department’s goal of 75%.

Chairman Morris requested an update on the cases the Commission currently has pending in Chancery Court. Ms. Cropp advised she would be prepared to give an update at the next meeting.

Auctioneer Application Review – Ms. Whaley presented an auctioneer license application and applicant inquiry for the Commission's review. After some discussion, Mr. Phillips made a motion that the applicant must meet the reapplication requirements including completion of an approved thirty (30) hour pre-licensure course and retesting. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

Examination Provider Contract – Ms. Whaley advised the current examination provider contract with P.S.I., Inc. is scheduled to expire on June 30, 2014. She further advised that the Commission has the option under the existing contract to grant a one (1) year extension at which time it would be necessary to complete the Request for Proposal (RFP) process. Mr. Colson made a motion to extend the contract until June 30, 2015, seconded by Mr. Phillips. **MOTION CARRIED.**

UNFINISHED / NEW BUSINESS – JEFF MORRIS, CHAIRMAN

No unfinished / new business was presented.

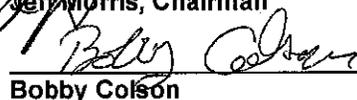
Being no further business to discuss, the meeting adjourned at 10:40 a.m.



Jeff Morris, Chairman



Howard Phillips, Vice Chairman



Bobby Colson

Ronald Colyer

Gary Cunningham