

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: February 3, 2014

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

ABSENT: Ronnie Colyer
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, Greer Kelly and Stephanie Roller-Morrow

CALL TO ORDER: Chairman Morris called the meeting to order at 9:07 a.m.

ROLL CALL: Ms. Whaley called the roll. Three (3) of the five (5) members were present. Mr. Colyer and Mr. Cunningham were 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 16, 2013. Additionally, the agenda for this month's meeting has been posted on the Tennessee Auctioneer Commission's website since January 27, 2014. This meeting has also 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 November 4, 2013 meeting, seconded by Mr. Colson. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS –

Ms. Whaley advised representatives from the contracted auction school were unable to attend the meeting and gave an oral report on their behalf. She advised that the next continuing education seminar provided by the Commission is scheduled for May 19, 2014 at Montgomery Bell State Park located in Burns, Tennessee. She also advised a seminar is tentatively scheduled for October in Kingsport, Tennessee and the location has not been provided at this time.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

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

1. 2013015681

License #:

First License Obtained: 6/16/87

License Expiration: 2/28/15

Type of License: Firm

History: None

Complainant submitted one of Respondent's (firm) advertisements for a consignment auction. Said advertisement states that Respondent is holding a consignment auction of farm equipment along with items such as lawn mowers, RTVs, tractors, skid steers, trucks, and cars. Respondent does not have a public automobile auction license. Complainant states that it is not permissible to sell vehicles on consignment.

The complaint was opened and sent out for a response and an investigation was opened to determine more information regarding this auction. The investigator was referred to Respondent's attorney to gather the information requested, who informed the investigator that the attorney would prepare an affidavit including the requested information and supply all pertinent information promptly. The attorney wrote a letter stating that the only motor vehicles auctioned were associated with the auction of heavy construction equipment and were exempt pursuant to T.C.A. § 55-17-120 which was incidental to the sale of farm equipment, and all non-qualifying motor vehicles were pulled from the auction after being contacted by TAC, as it was not Respondent's intention to violate TAC's laws or rules. There was also an affidavit from Respondent's president which included licensing information with TAC and the Motor Vehicle Commission for Respondent and the individuals involved in the subject auction sale (the affidavit admits that neither Respondent nor any of the individuals calling the auction hold public automobile auctioneer licenses to the best of Respondent's president's knowledge). Further, the affidavit referenced an attachment of items sold by each individual participating in the subject auction. Finally, the affidavit stated that a public automobile auction was not conducted and stated that any motor vehicle sold met exemptions found within T.C.A. § 55-17-120(b) or (c).

Respondent's advertisement stated that Respondent would auction items such as trucks and cars at the subject auction. Based upon a review of the item list for items sold at the subject auction provided by Respondent, it appears that there were two (2) items sold at the subject auction

which do not meet any of the licensing exemptions found at T.C.A. § 55-17-120 – namely, two (2) motorcycles.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with civil penalty of \$1,500 for violations of T.C.A. §§ 62-19-102(a)(3) license requirement and 62-19-128 licensure of public automobile auctions.

DECISION: *Commissioner Colson recused himself from the discussion and vote on this matter.* Mr. Phillips made a motion to the recommendation of legal counsel, seconded by Chairman Morris. MOTION CARRIED.

Mr. Colson left the room at 9:15 a.m. after recusing himself from the above-referenced matter and returned at 9:20 a.m. before the presentation of the following matter:

2. 2013016601

License #:

First License Obtained: 8/11/77

License Expiration: 8/31/15

Type of License: Firm

History: 4

Complaint opened by TAC based on Respondent's auction advertisement submitted to TAC office which includes Respondent's firm license number but does not include Respondent's firm name as licensed with TAC.

Respondent submitted no response to the complaint although the complaint was signed for at Respondent's address on file with the Commission.

After the complaint was opened and a copy of the complaint sent to Respondent, it appears that the owner/principal auctioneer of this Respondent applied for and obtained a firm license for the name which was utilized on the subject advertisement.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with civil penalty of \$500.00 for violation of T.C.A. § 62-19-112(b)(7) and Rules 0160-01-.05(1) and 0160-01-.20(1) regarding advertising an auction sale.

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

3. 2013018211

License #:

First License Obtained: 3/24/08

License Expiration: 3/23/14

Type of License: Firm

History: None

Complainant had personal items which were sold on consignment with Respondent (firm) in September 2012. Complainant states that Complainant called multiple times over the past year requesting information about when Complainant's money would be received. Complainant was told by one of Respondent's representatives that the computer crashed but was repeatedly assured that the money would be sent out soon. As of the filing of the complaint in September 2013, Complainant stated that Complainant had not received the money.

A response was submitted on behalf of Respondent stating that Complainant's merchandise was sold at auction in September 2012, and, approximately one (1) week later, Respondent's computer crashed. The response states that the data had not been backed up which resulted in an inability to retrieve the records to make payment until recently. The response states (and a copy is included) that a check was sent to Complainant along with a Consignor's Settlement Statement on the same date that the response was sent to the Commission.

Recommendation: Letter of warning regarding T.C.A. § 62-19-112(b)(4) requirement for timely accounting for or remitting money belonging to others.

DECISION: Mr. Phillips made a motion to authorize a Consent Order with a civil penalty of \$500.00 for violation of T.C.A. § 62-19-112(b)(4). The motion was seconded by Mr. Colson. MOTION CARRIED.

4. **2013018331**

License #:

First License Obtained: 10/8/13

License Expiration: 10/7/15

Type of License: Firm

History: None

5. **2013019471**

License #:

First License Obtained: 10/20/09

License Expiration: 10/19/15

Type of License: Firm

History: 1 – in litigation monitoring

These complaints involve the same piece of property which was offered for auction. Respondent 1 was a company located in another state which was unlicensed until 10/8/13. Respondent 2 is a licensed firm located in Tennessee.

A complaint was first opened by TAC against Respondent 1 due to an anonymous phone call. The individual informed staff that Respondent (then unlicensed) was advertising a real estate auction in Tennessee. Information was located online by staff that indicated Respondent was conducting a live auction of the property in Tennessee. A complaint was opened and an investigation requested regarding this matter. The investigator contacted the listing broker for the property, who stated that Respondent 2 (a licensed firm) was now going to conduct the auction sale, but that Respondent 1 had originally planned to conduct the sale. The investigator also spoke with Respondent 2's principal auctioneer who stated that Respondent 2 had an auction

contract with the property owners and Respondent 1 was hired as a marketing company (the investigator received a copy of this contract). The investigator visited the auction site on the original planned day but discovered that no auction was to take place that day and had been delayed. Then the investigator spoke with Respondent 1's President to request a copy of the marketing contract and original sale agreement between Respondent 1 and the property owners, but received no information. The investigator then contacted the property owners who verified that Respondent 1 was the original choice for the marketing and sale of the property (and the property owner provided a copy of the original contract which provided that Respondent 1 would market and sell the property by public or private sale). When visiting the auction site on the second scheduled day, the investigator spoke personally with the property owner, who informed the investigator that the auction had been cancelled and the property was being kept with the original listing agent to sell through traditional means. Respondent 1 submitted a response through an attorney stating that it is the attorney's understanding that, by obtaining licensure through TAC in October 2013, the issue has been resolved. Further, the attorney states that the subject property was not listed by Respondent 1, but Respondent 1 was hired to conduct the auction online and market the property, but the property owners had the property listed through a licensee with a real estate firm in Tennessee. The attorney states that Respondent 1's role was to advertise the property on the internet.

A complaint was opened against Respondent 2 regarding its online advertisement from Respondent 2's webpage which was provided to TAC for the subject property. Said advertisement states that there is no reserve but includes a starting bid price. Additionally, the advertisement for the auction does not appear to include Respondent 2's firm number. Respondent 2 submitted a response stating that the firm number is on the bottom of the main page of the website and the submitted page for the complaint was the fifth (5th) page into the site and the firm number was at the bottom of the page (Respondent 2 submitted copies of the website pages). Further, with regard to stating that the auction is absolute but including a starting bid price, Respondent 2 states that this is not misleading or deceiving the public because a dollar amount has to be put in on the website for the online bidding. Further, Respondent 2 states that it is clearly specified that there is no reserve and that any bidder must place a refundable deposit in Respondent 2's escrow account to bid on the property.

Recommendation: With regard to Respondent 1, letter of warning regarding T.C.A. § 62-19-102 license requirements. With regard to Respondent 2, dismiss.

DECISION: As to Respondent 1, Mr. Phillips made a motion to authorize a Consent Order with a civil penalty of \$1,500.00 for violation of T.C.A. § 62-19-102(a)(1) and (2). The motion was seconded by Mr. Colson. MOTION CARRIED.

As to Respondent 2, Mr. Phillips made a motion to authorize a Consent Order with a civil penalty of \$1,000.00 for violation of T.C.A. § 62-19-112(b)(7), Rule 0160-01-.20 and Rule 0160-01-.19. The motion was seconded by Mr. Colson. MOTION CARRIED.

LEGISLATIVE REPORT – *Upon the arrival of Greer Kelly, Legislative Liaison for the Department of Commerce and Insurance, the presentation of the Legal Report was interrupted at 9:45 a.m. to allow for Ms. Kelly's report.* Ms. Kelly introduced herself to the Commission and advised she is unaware of any pending legislation that would impact the Commission. She further advised the Commission is not scheduled for a Sunset Hearing this year, therefore, did

not have any further information to report. The Commission inquired about a bill proposed by Senator Norris concerning real property auctions. Ms. Kelly and Ms. Whaley advised they were unaware of such legislation and would research the matter.

Upon the completion of the Legislative Report, the presentation of the remaining Legal Report resumed at 9:50 a.m. as follows:

6. **2013018941**

License #:

First License Obtained: 1/10/79

License Expiration: 6/30/14

Type of License: Firm

History: 1

Complainant alleges that Respondent (firm) advertised a machinery consignment auction on Auctionzip and Craigslist, and Complainant copied the text of the advertisements into the online complaint. Complainant states that the Craigslist advertisement only contains two (2) telephone numbers and no names. Complainant states that the Auctionzip ad contained, as contacts, the names of three (3) individuals and telephone numbers but no firm name or number on either advertisement. Two of the individuals who are listed as contacts appear to be unlicensed. The third appears to be a licensee who is the owner and principal auctioneer of Respondent firm.

The owner/principal auctioneer of Respondent firm submitted a response stating that Respondent held the auction referenced in the advertisements, and the owner/principal auctioneer acted as auctioneer. Respondent's owner/principal auctioneer states that the two (2) other individuals whose names and numbers were on the advertisements were only organizers for the auction, and those individuals did not act as auctioneers. Respondent's owner/principal auctioneer states that the original flyer was corrected to show Respondent's firm number and auctioneer license number long before the auction was held and attached a copy of the flyer including the license numbers. The flyer includes the name and license number of the principal auctioneer as well as Respondent's firm license number but does not appear to include Respondent's firm name as required by the advertising rule.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with civil penalty of \$500.00 for violation of T.C.A. § 62-19-112(b)(7) and Rule 0160-01-.20(1) regarding advertising an auction sale.

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

7. **2013020511**

License #:

First License Obtained: 9/14/12

License Expiration: 9/13/14

Type of License: Auctioneer

History: 1 – authorized for formal hearing

Complainant alleges that Respondent (auctioneer) held a consignment sale of Complainant's personal items (mostly household items according to Complainant). Complainant and Respondent signed a Consignment Form on June 6, 2013 for sale of "household contents." Complainant states that Respondent promised an itemized statement of items sold and payment for those items. Complainant states that Complainant spoke with Respondent once and there were some items left to be sold. Since that time, Complainant states that Complainant has been unable to reach Respondent and has not received payment from Respondent.

A copy of the complaint was sent to Respondent at the business address and home address on file with the Commission. Both were returned "unclaimed" and no response was submitted. In the previous complaint against Respondent, Respondent indicated that Respondent was back in another state and Respondent's firm was closed. An internet search did not reveal any information indicating that Respondent is conducting auctions in Tennessee at this time.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order for voluntary surrender of Respondent's auctioneer license for violations of T.C.A. § 62-19-112(b)(4) regarding timely accounting for or remitting money belonging to others and (12) conduct that demonstrates improper, fraudulent, or dishonest dealings.

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

Ms. Cropp advised the Commission that Robyn Ryan, who was in the audience during the first portion of the Legal Report, has been assigned as a litigator for the Auctioneer Commission. She further advised Ms. Ryan plans to combine the matter just voted on with the related cases currently pending and move forward as quickly as possible.

8. **2013022691**

License #:

First License Obtained: 1/14/77

License Expiration: 5/31/15

Type of License: Firm

History: None

Complainant states that Respondent (firm) conducted an auction for Complainant, and Respondent failed to conduct the auction pursuant to the terms and conditions set forth in the contract. Complainant does not specify what Respondent did that was in conflict with the contract but states that Complainant raised repeated concerns throughout the auction as to how the auction was being conducted and the results it was bringing. Further, Complainant states that Complainant instructed Respondent on five (5) different occasions to stop the auction and put no more items up for sale but states that this was ignored by Respondent's representatives. Complainant alleges that, because of Respondent's actions, Complainant suffered large monetary damages. Complainant further alleges that Respondent has not provided an accounting of all

monies received by Respondent on Complainant's behalf, and Respondent has not submitted the collected funds to Complainant.

Respondent submitted a response stating that Complainant entered into an Exclusive Absolute Auction contract (and provided a copy) with Respondent to liquidate Complainant's business at absolute auction. Respondent states that the auction was held as scheduled but was stopped with at least two thirds (2/3) of the inventory remaining due to Complainant's behavior toward staff and bidders alike. Respondent states that, pursuant to Auctioneer Commission Rule 0160-01-.19 (which, in part, defines an absolute auction), Respondent does not believe Complainant had cause to stop the auction event, but Respondent felt that Complainant's behavior resulted in cancellation being the only choice. On the following morning, Respondent states that Complainant demanded a meeting with a complete accounting of the auction and a check for the auction proceeds, and Complainant stated that Complainant would not release any merchandise to any buyer until Complainant had been paid in full, although Complainant had previously agreed to allow buyers three (3) days to load merchandise. Respondent states that Respondent agreed to give Complainant a full accounting of the auction but could not settle with Complainant until the buyers had been given a receipt of their merchandise, and the buyers had purchased the merchandise at the sale expecting to have three (3) days to pick it up so there was a possibility for financial implications resulting from that. Respondent provided the total amount of the sale proceeds, the amount deducted from escrow as of the date of the complaint due to refunds and stopped payments as a result of Complainant's actions, and the amount of the buyers' goods which are still in the possession of Complainant. Respondent states that the case is in litigation, and Complainant's attorney has been provided an accounting.

Complainant submitted a reply disputing the statements within the response, stating that Respondent has swindled Complainant out of merchandise worth a large amount of money, that Respondent has commingled Complainant's auction funds, and that a full and/or accurate accounting of the funds has not been provided.

The parties are currently engaged in active litigation relating to the subject auction. Based on the fact that this matter is currently in litigation, it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

DECISION: *Commissioner Colson recused himself from the discussion and vote on this matter.* Mr. Phillips made a motion to accept the recommendation of legal counsel, seconded by Chairman Morris. MOTION CARRIED.

9. **2013022741**

License #:

First License Obtained: 1/10/79

License Expiration: 7/31/09

Type of License: Auctioneer

History: None

Anonymous Complainant states that Respondent (individual with expired auctioneer license) is unlicensed and is calling bids at auctions. Complainant references two (2) auctions, one (1) of which allegedly took place in Tennessee. There was no documentation included with the complaint. Complainant states that Complainant personally knows Respondent and wishes to remain anonymous for that reason, but Complainant's reason for filing the complaint is for the purpose of protecting the public from an unlicensed person who is bid calling.

Respondent states that Respondent did not know that Respondent's license had expired until Respondent received the complaint. Respondent says this was an oversight and would like the opportunity to make things right. Respondent states that Respondent has been in the auction business for forty-five (45) years and Respondent has mostly been clerking with very little microphone time. Respondent states that Respondent wants to do the right thing as Respondent has respect for the Commission and the profession. Respondent states that this was a mistake and Respondent will make it right if given a chance. As of the date of legal counsel's review of this complaint (January 24, 2014), Respondent's license is still expired.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with a civil penalty of \$1,000.00 for violation of T.C.A. § 62-19-102(a)(1) license requirements.

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

Ms. Cropp distributed a copy of the Notice of Rulemaking Hearing that she filed on behalf of the Commission advising it is pending the approval of the Attorney General's Office.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, ACCOUNTANT 3

Apprentice Auctioneer Application – Request for Sponsor Location Waiver – Ms. Whaley presented an application for an apprentice auctioneer license along with a written request from the applicant seeking a waiver for her and her sponsor to reside in separate states. The applicant, Stephanie Roller-Morrow, appeared before the Commission to address any questions concerning her request. After some discussion, Mr. Colson made a motion to approve the waiver, seconded by Chairman Morris. By a vote of two (2) to one (1) (Voting Yes - Colson and Morris; Voting No – Phillips),
MOTION CARRIED.

Complaint Comparison Report - Ms. Whaley presented a comparison of the complaints pending in February 2013 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 97.92%. This measure exceeds the Department's goal of 75%.

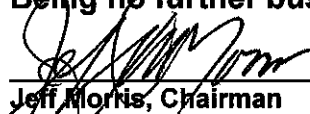
Budget Report – Ms. Whaley presented year-to-date comparisons of the revenues and expenditures to the three (3) previous fiscal years.

Auction Regrouping – Review/Discuss Email Inquiry – Ms. Whaley presented an email received by the administrative office regarding the legalities of regrouping items for sale at auction. After some discussion, the Commission advised they are unaware of any rules or laws that address the grouping or regrouping of items for sale at auction and it is up to the individual auctioneer to act on behalf of the seller to the best of his/her ability. Ms. Whaley advised she would respond to the inquiry on the Commission's behalf.

UNFINISHED / NEW BUSINESS – JEFF MORRIS, CHAIRMAN

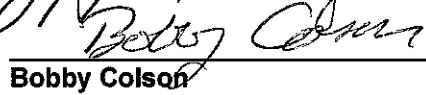
No unfinished / new business was presented.

Being no further business to discuss, the meeting adjourned at 10:30 a.m.

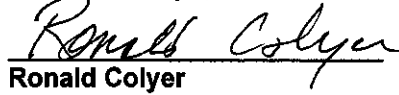


Jeff Morris, Chairman

Howard Phillips, Vice Chairman



Bobby Colson



Ronald Colyer

Gary Cunningham