

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: August 4, 2014

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

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

ABSENT: Gary Cunningham

PRESENT: Staff Members:
Julie Cropp, Assistant General Counsel
Kimberly Whaley, Director of Licensing
Judy Elmore, Regulatory Board Administrative Assistant 3
Rachel Powers, Program and Policy Director
Michael Driver, Chief Counsel
Jennaca Smith, Paralegal

GUESTS: Rhessa Orr Hanson
Justin Ochs

CALL TO ORDER: Chairman Morris called the meeting to order at 9:02 a.m.

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 16, 2013. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Auctioneer Commission’s website since August 4, 2014. This meeting has also been noticed on the tn.gov website.”

OFFICER ELECTIONS:

Howard Phillips was nominated for chairman by Bobby Colson and seconded by Ronnie Colyer.

MOTION CARRIED

Ronnie Colyer was nominated for Vice-Chairman by Bobby Colson and seconded by Ronnie Colyer. **MOTION CARRIED**

Mr. Philips thanked Mr. Morris for his service and requested that Mr. Morris Continue to chair the meeting.

AGENDA: Mr. Colson made a motion to adopt the agenda, seconded by Mr. Phillips

MOTION CARRIED.

MINUTES: Mr. Colson made a motion to approve the minutes of the June 2, 2014 meeting, seconded by Mr. Colyer.

MOTION CARRIED.

EDUCATION PROVIDER UPDATE – Ms. Rhessa Hanson from the Nashville Auction School provided the Commission with an update. The next continuing education seminar is scheduled for September 22, 2014 in Johnson City, Tennessee. This year's continuing education course will include "Salesmanship" and "Ethics". Additionally the rules for the upcoming rulemaking hearing were included in the latest edition of the NewsLine. The following edition of the NewsLine will include articles about Notify and bird dog fees.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

1. 2011030171

January 2012 Meeting:

Complaint filed against Respondent by Complainant who purchased a Jet Ski at an auction and received title upon the purchase but has never received the Jet Ski. Complainant paid \$7345.00 which included the purchase price and a 15% buyer's premium.

Respondent failed to answer. He and his company are unlicensed

Recommendation: Consent order for a civil penalty of \$1000.00 for failure to account for funds belonging to another under 62-19-112(b)(4) and \$1000.00 for unlicensed activity under 62-19-102.

Action Taken: Mr. Alexander made a motion to authorize a Consent Order for a civil penalty of \$1000.00 for failure to account for funds belonging to another under 62-19-112(b)(4) and \$2000.00 for unlicensed activity under 62-19-102. The motion was seconded by Mr. Colson.
MOTION CARRIED.

New information was recently received from Respondent through an attorney, including, but not limited to, an auction advertisement for the subject auction as well as a Consigner Statement with a description of the items sold at the auction along with prices (which appears to include the jet ski purchased by Complainant). This documentation states that the subject auction took place in a neighboring state and not in Tennessee as originally believed when this matter was first presented. Additionally, documentation submitted by Respondent through his attorney indicates that Respondent conducted the subject auction in the neighboring state with a license in that state. Respondent's attorney states that the auction was conducted in the neighboring state in full

compliance with that state's laws and regulations. Respondent's attorney states that, in winding up and clearing out the final sale items, some items were stolen from the warehouse including the jet ski purchased by Complainant. Respondent's attorney states that Respondent informed authorities but was not permitted to file a complaint or press charges since Respondent was not the owner of the items stolen. Respondent's attorney states that Complainant was made aware of this, and Respondent's attorney does not know what actions were taken by Complainant to recover the property. Based on this new information, it does not appear that there was unlicensed activity in Tennessee by Respondent, and it appears that all activities occurred in another state.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

2. **2014008551**

License #:

First License Obtained: 6/30/08

License Expiration: 6/29/14

Type of License: Firm

History: No Prior Disciplinary Action

Complainant is a licensee who states that Respondent (firm) advertised that, as part of an estate auction, a van would be auctioned. Complainant states that Respondent does not have an auto auction license.

Respondent submitted a response through its principal auctioneer and owner stating that Respondent was contacted by a client from another state regarding selling the individual's late father's estate. Respondent states that the auction consisted of several items which were a portion of the estate including a van and a sailboat which was not in working order. Respondent states that completion of the sale of items of the estate was accomplished in May 2014. Respondent's owner/principal auctioneer states that it is his understanding that items of personal property such as these associated with a deceased person's estate can be consigned for auction, but motorized vehicles not associated with an estate require the auto auction license.

When examining the laws and rules of the Motor Vehicle Commission, it appears that there is an exemption found at Rule 0960-01-.18(1)(a) relating to motor vehicles in estate sales for up to five (5) motor vehicles. Respondent might benefit from a letter of instruction regarding the rule.

Recommendation: Letter of instruction regarding Rule 0960-01-.18.

DECISION: The Commission voted to accept the recommendation of legal counsel.

3. **2014009191**

License #:

First License Obtained: 5/16/11

License Expiration: 5/15/15

Type of License: Firm Branch

History: No Prior Disciplinary Action

Anonymous Complainant states that a property was advertised by Respondent (firm branch) as "Commercial Property," and Complainant attached photos of a sign advertising the auction. Complainant states that Complainant had a client interested in the property, and, in doing research, Complainant found that the property is Neighborhood Commercial – not Commercial – and restrictions would not let a gas station be built in the location. Complainant states that there is a big difference between Neighborhood Commercial and Commercial, and Complainant states that buyers and realtors need to be aware of the difference because there are more building restrictions with Neighborhood Commercial.

Respondent submitted a response through its principal broker/principal auctioneer stating that, in the town where the property is located, there is no individual category known as commercial zoning, and there are instead many categories which are commercial specific. Respondent attached a Chart of Permitted Land Uses by Zoning District for the city. Respondent states that it would be impossible to adequately advertise on a location sign each individual type of commercial zone, and, in order to address the issue, Respondent provided an information box on site with brochures (a copy was provided) which note that the property was neighborhood commercial. Respondent states that all advertising provided that announcements on the day of sale supersede advertising, and it was announced on the sale date that printed copies of zoning regulations were available for inspection. Respondent states that advertising reminded potential buyers to perform their due diligence. Also, Respondent states that a survey plat provided on the sale date addressing the zoning situation and all relevant regulations including construction set backs, and the information on the survey plat was available on site from the beginning of advertising until the date of sale. Based on all of the information provided, it does not appear that there is a violation by Respondent.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

4. 2014010011

License #: Unlicensed
First License Obtained: N/A
License Expiration: N/A
Type of License: N/A
History: No Prior Disciplinary Action

This is a complaint opened by TAC based on information received advertising that Respondent (unlicensed company) was conducting a Chapter 7 Bankruptcy Liquidation Auction consisting of multiple real estate parcels within Tennessee.

Respondent submitted a response through its managing partner attaching an Order signed by a U.S. Bankruptcy judge authorizing retention of Respondent as auctioneer to the bankruptcy trustee. Respondent states that it hopes that this satisfies the Commission's concerns.

An investigation was requested, and an investigator attended the subject auction. The investigator indicated that Respondent's managing partners were made aware of the laws in the

State of Tennessee relating to the auction but continued. The investigator stated that there were not any sales due to the only bidder leaving early.

It appears to legal counsel that, although Respondent argues that it was authorized by U.S. Bankruptcy Judge to be retained by the trustee to auction this property relating to a bankruptcy, the licensing exemption found at T.C.A. § 62-19-103(1) ("The provisions of this chapter do not apply to: (1) Any person acting as a receiver, trustee in bankruptcy, guardian, administrator, executor or other such person acting under order of any court;") does not apply to Respondent.

Recommendation: Authorize formal hearing with authorization to settle by Consent Order with a civil penalty in an amount to be determined by the Commission for violations of T.C.A. § 62-19-102(a)(1) and (2).

DECISION: The Commission voted to authorize formal hearing with authorization to settle by Consent Order with a civil penalty of \$2,000 for violations of T.C.A. § 62-19-102(a)(1) and (2).

Commissioner Morris recused himself from the vote on this matter.

5. **2014013371**

License #:

First License Obtained: 12/12/96

License Expiration: 9/30/15

Type of License:

History: 1 Agreed Citation; 1 Consent Order; 1 Letter of Warning

Complainant states that Complainant attended an auction conducted by Respondent (firm). Complainant states that Complainant bid up to \$5,000 per acre and won a tract but was told when Complainant went to settle that it was \$7,000 per acre. Complainant states that they made Complainant write a check, which Complainant later cancelled.

Respondents submitted a response through its principal auctioneer stating that Complainant's allegations are untrue. Respondent states that a farm was offered in multiple tracts to be sold by the acre, high bidder's choice. Respondent states that Complainant bid \$7,000 per acre to lose the bid to another bidder at \$7,100 per acre on the previous round, and then Complainant won the bid at \$7,000 per acre in the following round. At the end of the sale, Respondent states that contracts were filled out, and no one complained or challenged the sales price, and Complainant was not intimidated. Respondent states that Respondent later received Complainant's returned check, and after several attempts to contact Complainant, Respondent's attorney sent a letter which was returned, and Respondent has been unable to contact Complainant. Respondent provided a Contract for Sale of Real Estate which was executed by both the Complainant (as buyer) and the seller which was for an amount representing \$7,000 per acre for the amount of acreage Respondent states was sold, a copy of the letter from the attorney which was returned, a copy of the handbill, and a copy of Complainant's registration, which Respondent states contains a false address. It does not appear from the information provided that there is a violation by Respondent.

Recommendation: Dismiss.

DECISION: The Commission voted to accept the recommendation of legal counsel.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, Director of Licensing

Complaint Comparison Report – Ms. Whaley advised that the current performance measure for the Tennessee Auctioneer Commission stands at 89.66% which is above the current 75% standard. She also advised the new standard may soon be raised to 80%.

Mr. Morris inquired about the number of complaints currently open. Ms. Whaley advised that there were less than 15.

Mr. Phillips inquired about how long it takes for a matter to be presented to the Commission. Ms. Cropp and Ms. Whaley explained the standard operating procedures that are utilized by the Division.

2015 Meeting Dates – Mr. Colyer made a motion to adopt 2015 meeting dates. Seconded by Mr. Colson. **MOTION CARRIED**

Legislative Update – Ms. Whaley and Ms. Cropp presented information about Public Chapter 815 - Certificate of Employability and Public Chapter 881 - Apprenticeship Program. Public Chapter 881 asks a series of questions related to the current apprenticeship program. Ms. Whaley and Ms. Cropp will gather information to present to the legislature. The public chapter will be presented a draft to the commission during the October meeting.

Recovery Account Claim – Ms. Whaley and Ms. Cropp presented information related to the Auctioneer Recovery Account Claim Process. Chairman Morris had previously suggested placing a “user-friendly” version of the recovery account statute on the commission’s website. The document was presented to the board members for their approval. Motion to adopt by Mr. Colson, Seconded by Mr. Phillips. **Motion Carried**

Citation Information - Ms. Whaley and Ms. Cropp presented information related to the citation process laid out in 62-19-126(a). The code allows the Administrative Director and the Investigator to fine unlicensed auctioneers. Mr. Phillips raised a concern that the citation does not require the cases to come before the board. Rachel Powers advised that the new citation system is a way to increase efficiency within the commission. Michael Driver explained the details of the new code, acknowledging that enforcement is the largest difference between board action and administrative action.

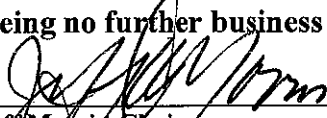
UNFINISHED / NEW BUSINESS – JEFF MORRIS, CHAIRMAN

Ms. Whaley reminded the Commission members of the rule making hearing scheduled for October 6, 2014.

NALOOA Conference – The most recent conference was considered a success, with the largest attendance on record. Mr. Morris was elected President of NALOOA. The organization plans

on implementing a notification system for unlicensed activity. The next conference will be held in Dallas.

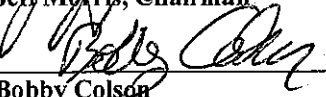
Being no further business to discuss, the meeting adjourned at 9:58 a.m.



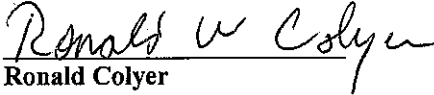
Jeff Morris, Chairman



Howard Phillips, Vice Chairman



Bobby Colson



Ronald Colyer

Gary Cunningham