

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: June 2, 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: Gary Cunningham
Ronnie Colyer

PRESENT: Staff Members:
Julie Cropp, Assistant General Counsel
Kimberly Whaley, Director of Licensing
Judy Elmore, Regulatory Board Administrative Assistant 3

GUESTS: Jennaca Smith
Chris Bellamy

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

Ms. Whaley called the roll. Four (3) of the five (5) members were present. Mr. Cunningham and Mr. Colyer 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 May 29, 2014. This meeting has also been noticed on the tn.gov website.”

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 May 5, 2014 meeting, seconded by Mr. Phillips. **MOTION CARRIED.**

EDUCATION PROVIDER UPDATE – Ms. Whaley provided the Commission with an update submitted by the provider via email.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL**1. 2014006271**

License #:

First License Obtained: 11/17/93

License Expiration: 3/31/15

Type of License: Auctioneer

History: 0 – 2014007771 also being presented

Complainant was the winning bidder of a commercial lot auctioned by Respondent (auctioneer). Complainant states that the auction was advertised as an “absolute auction.” Complainant states that the property was owned by an LLC, and one of the members of the LLC was present at the auction and bid against Complainant on the commercial lot. Complainant states that Respondent allowed the member of the LLC to bid which should not be allowed in an absolute auction, and the member’s bidding caused the price to be higher than it otherwise would have been. Complainant states that Complainant received a signed contract after the auction and then received an additional copy a few days (or a week) later with an additional member of the LLC’s signature on it who had not signed the contract right away. Complainant also states that Respondent did not make sure that Complainant’s spouse signed the contract although the spouse was also a buyer. Further, Complainant states that the contract gave the LLC the right to accept or reject the agreement even though it was an absolute auction. Finally, Complainant states that Complainant’s attorney made a demand for Respondent to return the earnest money deposit paid by Complainant, and Complainant would like to know the status of the earnest money since the matter has not been settled, and it has been almost a year since the auction took place. Copies of contracts relating to the sale as well as other documentation was provided.

Respondent states that Respondent received legal advice that the sale was compliant. Respondent states that Complainant has buyer’s remorse and stated shortly after the auction that Complainant wanted out of the contract. Respondent states that Complainant requested an extension of closing and persuaded the seller to agree to that as well as a lower price. Respondent states that the seller has tried to accommodate Complainant in some manner other than returning the deposit, and the deposit remains in Respondent’s escrow account, which Respondent plans to hold until the matter is legally settled either through written agreement of the parties or court resolution. Respondent states that the family trust that owned the property was legally changed to an LLC some years back, and the president is of advanced age and lives in an assisted living facility. Respondent states that Respondent learned that one of the members desired to purchase the property from the LLC, and Respondent received legal advice that the member could bid because the LLC was the owner/seller and not the member. Respondent states that the member’s attorney and accountant attended the auction with the member. Respondent states that Complainant was not tricked into submitting a bid and is experienced in real estate. It appears from the real estate sales contract that an LLC was the seller and there were multiple members, and, as such, it appears to legal counsel that the member who bid was not the seller of the property. It does not appear that there is a violation of TAC’s statutes/rules by Respondent.

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

2. **2014007771**

License #:

First License Obtained: 11/17/93

License Expiration: 3/31/15

Type of License: Auctioneer

History: 0 – 2014006271 also being presented

Complainant states that Respondent (auctioneer) auctioned Complainant's house and personal property. Complainant states that Respondent falsely advertised the sale as an estate auction, and Complainant states that Complainant is still alive but just moved to another state. Complainant also states that Complainant did not get an itemized list of the items sold. Further, Complainant states that Respondent charged twenty percent (20%) and then charged another ten percent (10%) although Complainant states there was nothing in the contract allowing this.

Respondent states that a ten percent (10%) buyer's premium was in the written agreement between Complainant and Respondent. Respondent states that, when Respondent mailed the proceeds check, Respondent failed to enclose a copy of the sales tickets which Respondent usually provides sellers at settlement but immediately mailed the sales tickets when Respondent was advised that they had been omitted. Respondent states that there was no misrepresentation. The agreement between the parties appears to specify that Respondent would be compensated with twenty percent (20%) plus a ten percent (10%) buyer's premium on the personal property. Additionally, the advertisement advertises the absolute auction and states that the sellers have retired and are moving to another state. It does not appear based on the information that there is a violation of TAC's statutes/rules by Respondent.

Recommendation: Dismiss.

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

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, Director of Licensing

Complaint Comparison Report - Ms. Whaley presented a comparison of the complaints pending in June 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 97.37%. This measure exceeds the Department's goal of 75%.

Budget Report – Ms. Whaley presented a report of the revenues and expenditures to for the current fiscal year thru April 30, 2014. Ms. Whaley additionally advised that the Recovery Fund balance is currently \$219,504.45.

80 Hour Course Application Review – Ms. Whaley presented an application from the Ohio Auction School requesting approval as an auction school for the eighty (80) hour apprentice (auctioneer pre-licensing) curriculum as required by the Commission. After some discussion, Mr. Phillips made a motion to approve. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

Continuing Education Course Application Form Review/Discussion – Ms. Whaley presented a revised draft of an application for an education sponsor to apply for approval to offer a continuing education course. The Commission made a one change to the form and asked staff to include language that requests that the applicant provide a ten (10) year biography/résumé. After some discussion, Mr. Colson made a motion to approve the form as amended. The motion was seconded by Mr. Colyer. **MOTION CARRIED.**

Recovery Fee Discussion – Ms. Whaley and Ms. Cropp provided the Commission information related the fees charged for the Auctioneer Education and Recovery Account. After some discussion, Mr. Phillips made a motion to keep the fees as they are and to update the fees on the forms to reflect the fees actually being charged. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

UNFINISHED / NEW BUSINESS – JEFF MORRIS, CHAIRMAN

Being no further business to discuss, the meeting adjourned at 9:40 a.m.



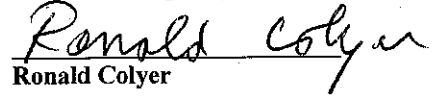
Jeff Morris, Chairman



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