

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: January 5, 2015

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

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

PRESENT: Staff Members:
Anthony Glandorf, Chief Counsel
Kimberly Whaley, Director of Licensing
Keeling Baird Gamber, Assistant General Counsel

GUESTS: Rhessa Orr Hanson

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

Ms. Whaley called the roll. All members were present.

NOTICE OF MEETING: Ms. 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 4, 2014. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Auctioneer Commission’s website since December 29, 2014. This meeting has also been noticed on the tn.gov website.”

Ms. Whaley requested that the Commission vote to adopt Robert’s Rules for 2015

Mr. Morris made a motion to adopt Robert’s Rules for 2015, seconded by Mr. Colyer.

MOTION CARRIED.

AGENDA: Mr. Lewis made a motion to adopt the agenda as amended, seconded by Mr. Colson.

MOTION CARRIED.

MINUTES: Mr. Colson made a motion to approve the minutes of the November 3, 2014 meeting, seconded by Mr. Morris.

MOTION CARRIED.

Anthony Gladorf introduced Keeling Baird Gamber.

LEGAL REPORT – KEELING BAIRD GAMBER, ASSISTANT GENERAL COUNSEL

***Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.**

1. **2014018961 AAA Auto Sales**
License #: Unlicensed
History: 0

An anonymous complaint was filed that included a flyer that states in relevant part "Bid night...dealers and public welcome to bring cars to sell." The flyer also included a \$100 fee to buy and a \$100 fee to sell but no entry fee. The flyer states the bid night is held every Friday at Respondent's business location.

Respondent states that the company is not running an auction, nor do they retain an auctioneer to auction cars. Respondent states the purpose of the sale night advertised is to attract customers to make offers, and the company decides whether or not to accept the offer. Respondent advises that every offer is made in writing and is not in a competitive manner. Respondent states that the advertisement will be changed to say "Make an Offer Night" to avoid confusion with the word bid.

Recommendation: Consent Order for \$500 in violation of T.C.A. § 62-19-102

DECISION: The Commission authorized a Consent Order in the amount of \$1,000 for violation of T.C.A. 62-19-102. Such Order is to contain cease and desist language pertaining to unlicensed activity. The Commission also requested that an Investigator be sent out to Respondent location on a Friday night in a couple of weeks to check for further unlicensed activity. The Commission also requested that the matter be referred to the Motor Vehicle Commission for review.

2. **2014019951 Jewel's Auction Company**
License #: 5840
First License Obtained: 01/22/13
License Expiration: 01/22/15
Type of License: Firm
History: 0

A complaint was filed by a buyer who attended Respondent's auction. Complainant states that while bidding on lawn mowers, it was discovered that Complainant was bidding against the owner of the lawn mower. Complainant states that Respondent's owner acknowledged that the seller was bidding on the lawn mowers and the owner had a reserve on the mowers. Complainant further states that Complainant's spouse bid against a phantom bidder and when

Respondent could not find the phantom bidder, Respondent allowed Complainant's spouse to purchase it at the last bid.

Respondent denies knowledge of the Complainant stating that people move around a lot during bidding and Respondent does not know how Complainant knows who owns what at the auction. Respondent states that when Complainant approached Respondent, Respondent thought Complainant was asking about the current bid being called. Respondent states that particular mower had a reserve on it, and it was called as a "no sale." Respondent states that Respondent does not advertise as an absolute auction. Respondent further states that the floor help notified Respondent that Complainant was discussing three (3) other lawn mowers which sold for \$130 each to somebody who owns an engine repair shop. Respondent further states that the phantom bid is a false claim, and Complainant is mistaken. Respondent states that 99% of the merchandise is on consignment, and Respondent does not run a bid up. Respondent tries to make everyone happy and is sorry that Complainant feels wronged.

Recommendation: Dismiss

DECISION: The Commission voted to accept Counsel's recommendation.

3. 2014018711 Sellers Auction Service

License #: Unlicensed

History: 0

Complainant states that an auction was advertised to auction off six (6) storage units at two separate locations, and Complainant bought two (2) of the units. Complainant states that Respondent advised that Respondent did not need an auctioneer license in-state. Complainant states the auctions were verbally called for and bids accepted and states that the advertisement did not include license information. Complainant provided a copy of the advertisement on the website. It appears from documents provided that Respondent conducts most auctions in another state.

Respondent states that the company operates out of another state and acknowledges that Respondent does not hold a Tennessee license and was not aware Respondent needed one to conduct storage auctions. It is Respondent's understanding that storage auctions are considered lien sales and ordered by state law and were exempt from licensing requirements. Respondent states that if advised, Respondent will make the necessary arrangements to become licensed in Tennessee and apologizes for the misunderstanding.

Recommendation: Consent Order for \$500 in violation of T.C.A. § 62-19-102

DECISION: The Commission authorized a Consent Order in the amount of \$500 for violation of T.C.A. 62-19-102.

4. 2014017891 Carroll County Auction

License #: 5792

First License Obtained: 06/06/12

License Expiration: 06/05/16

Type of License: Gallery

History: 0

Complainant alleges that a 2 ½ dollar 1861 gold piece and an 18 caret gold ring purchased at Respondent's gallery turned out to be counterfeit. Complainant states Complainant attempted to resolve the situation numerous times but Respondent refuses to refund money or identify the seller. Complainant states that after requesting a refund, Respondent posted signs stating sales are as is, there are no guarantees, and all sales are final. Complainant provided a copy of the receipts and a letter from a pawn shop stating that acid tests were performed on the gold coin and the item does not have any kind of gold in it. The letter further states that the ring is heavy gold electroplated and not solid gold. Complainant also provided a similar statement from a coin company.

Respondent states the stores policy has always been that all items are sold as is, no guarantees, and all sales are final, and there have been signs posted in plain sight since Respondent's owner bought the gallery in 2012. Respondent states that the items were displayed for inspection for prospective buyers. Respondent states that Complainant was told to examine and purchase at Complainant's discretion. Respondent states that Complainant was threatening when requesting a refund. Respondent further states that Respondent spoke to the consigners who stated they purchased the items at an auction under the same "As is" conditions. Respondent did not reveal the names of the consigners to act in their best interest, and it is not Respondent's policy to disclose consignor's names. Respondent further states that Complainant is slandering the gallery and included a Facebook post. Respondent further states that a letter was sent by an attorney on behalf of Complainant, and Respondent replied promptly. Respondent further states that a police officer investigated the incident, did not find cause of action, and dropped the charges. Respondent further states that Complainant was a regular and often boasted how well Complainant did with purchases, and Respondent apologizes that Complainant is unhappy with the two (2) purchases. Respondent included pictures of Complainant with the "As is" sign in the background, attorney correspondent, a copy of the Facebook post, and a terms of sale card.

Complainant submitted additional information denying that Complainant was told there was no guarantee and once again stating that the signs were put up after the incident. Complainant states that the receipts clearly state the items are gold and the regular auctioneer has always stated before an auctions starts that if something is misrepresented, the buyer will receive a refund. Complainant further states that the terms of sale card was never given to buyers because the system is electronic.

Recommendation: Dismiss.

DECISION: The Commission voted to defer this matter until the next Commission meeting and requested that further information be obtained regarding what was advertised to Complainant and who the auctioneer was in the matter.

5. 2014022081 Arthur Auction Gallery

License #: 5617

First License Obtained: 03/18/10

License Expiration: 03/17/16

Type of License: Gallery

History: 0

A complaint was filed stating that Respondent was operating under an expired license. Respondent states that Respondent recently moved and did not receive the Commission's renewal paperwork, but renewed Respondent's license after receipt of the complaint, which was

sent on 9/8/14. It appears that the gallery license expired on 3/17/14 and was renewed on 9/17/14. It also appears that Respondent advertised for an auction to take place on September 4.

Recommendation: Consent Order for \$500 in violation of T.C.A. § 62-19-125.

DECISION: The Commission voted to accept the recommendation of Counsel.

6. 2014022091 Circle R. Auction

License #: Unlicensed

History: 0

A complaint was filed stating that Respondent, auction house, and auctioneers are operating without a license. An investigation was requested, which produced pictures of the auction facility and multiple signs on the property. One sign states "Horses for sale or trade...", another states "General Consignment Auction Friday night 6 pm...", and the main company sign lists the company name and "Consignment & Auction." Further, the company is a registered LLC and is in possession of a business license. It appears that Respondent advertised online for auctions dated October 24, October 31, November 7, November 14, November 21, and November 28. The advertisement displays Respondents name then lists a second company name, which appears to be a licensed auction firm.

Respondent's owner submitted a response stating a different individual (unlicensed auctioneer 1) rents the building on Friday nights to supposedly auction goods for a non-profit organization. Respondent states that this individual was auctioning items for persons in need of medical, funeral, or accident-related items. Respondent learned that the unlicensed auctioneer 1 was not doing as told and states that the unlicensed auctioneer 1 was asked not to return. Respondent further states that the unlicensed auctioneer 1 produced bad checks and issued stop payments on checks paid to Respondent.

A second investigation was conducted, which yielded the following information: Respondent submitted an application for a gallery license on November 25, 2014. The investigator observed an auction sale on November 14, 2014. The auctioneer holding the auction (unlicensed auctioneer 2) held an apprentice auctioneer's license but was revoked in August 2006. The unlicensed auctioneer 2 stated that his uncle, a licensed auctioneer who owns the aforementioned license auction firm, was scheduled to call the auction but was sick. Respondent's owner stated that Respondent obtained a USDA designation as a livestock auction sight and alleged that the USDA representative contacted the Commission who advised a license was not necessary. The investigator contacted the USDA representative who was not aware that Respondent intended to engage in merchandise or consignment auctions and conversations with Respondent were related to the operation of a livestock auction. Respondent's owner states that consignment auctions began June 6, 2014 through July 11, 2014 until the unlicensed auctioneer 1 took over the auctions through October 3, 2014, at which time Respondent resumed auctions and has continued to operate since. Respondent's owner states that the licensed auctioneer called the auctions, with the exception of the unlicensed auctioneer 2 who called on November 7, 2014 and November 14, 2014. Respondent provided copies of auction sales and bidder records for the auctions conducted. The investigator attempted to interview unlicensed auctioneer 1 who evaded an interview, but the investigator interviewed three (3) witnesses who attended those alleged non-profit auctions. The investigator was unable to locate information regarding the non-profit organization and was unable to determine if it qualified as a 501(c)(3).

Recommendation: Consent Order for \$1,000 in violation of T.C.A. § 62-19-102

DECISION: The Commission authorized a Consent Order in the amount of \$6,000 for violation of T.C.A. 62-19-102. The civil penalty reflects \$1,000 per date of the auction. The Consent Order is to contain cease and desist language.

7. 2014024491 McLemore Auction Company

License #: 5241

First License Obtained: 12/8/06

License Expiration: 12/7/16

Type of License: Firm

History: 2010002331 Dismiss with no action.

A complaint was filed alleging that Respondent's website stated they pay referrals in violation of Rule 0160-01.02 which states it is unlawful to rebate any part of his commission to any person or persons not holding a license. A copy of the website was provided, which states "[Respondent] pays referrals to individuals who provide auction leads. Anyone who brings a seller to our attention will receive a 20% referral once the property sells..."

Respondent sent a response stating that Respondent has never paid a referral to any unlicensed individual for any activity regulated by the Commission. Respondent states that many referrals have been paid to unlicensed individuals for information or introductions resulted in timed sales or internet only auctions, which are exempted under T.C.A. § 62-19-103(9) stating the provisions of this chapter do not apply to any fixed price or timed listings that allow bidding on an internet website but that do not constitute a simulcast of a live auction. Respondent states that Respondent has made preparations to cease providing referrals in timed sales or internet only auctions with extended bidding pending the new proposed rules. Respondent states Respondent currently operates and will continue to operate in full compliance with the laws and rules regulated by the Commission.

Recommendation: Dismiss.

DECISION: The Commission authorized a Consent Order for \$500 for violation of T.C.A. 62-19-112(7) and Rule 0160-01-.02. Such Consent Order is to contain cease and desist language.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, Director of Licensing

Complaint Comparison Report – Ms. Whaley presented the November performance measure for the Tennessee Auctioneer Commission stands at 96.67% which is above the current 80% standard.

Budget Report - Ms. Whaley presented the budget reports as of November 30, 2014

Application Review - Ms. Whaley re-presented an application for a reciprocal licensure. The applicant disclosed on their application that there had been discipline in another state and the board tabled the matter until more information to be obtained. Ms. Whaley presented the additional information. After some discussion a motion was made by Mr. Morris to approve the application. Seconded by Mr. Colson.

MOTION CARRIED.

Application Review - Ms. Whaley presented an application for a reciprocal licensure. The applicant disclosed on their application that there had been discipline in another state. After some discussion a motion was made by Mr. Colson to approve the application. Seconded by Mr. Morris.

MOTION CARRIED.

Apprentice Application Ms. Whaley presented an apprentice application. After some discussion a motion was made by Mr. Morris to approve the application. Seconded by Mr. Colson.

MOTION CARRIED.

Late Renewal Wavier Request - Ms. Whaley presented a late renewal waiver request. After some discussion a motion was made by Mr. Morris to grant the waiver. Seconded by Mr. Colyer.

MOTION CARRIED.

APPRENTICE LOG DISCUSSION - Ms. Whaley presented examples of apprentice logs that were requested by the Commissioners.

EDUCATION PROVIDER UPDATE - A Nashville Auction School representative spoke about their newsletter, internet only laws, new commissioner and their upcoming seminar.

NEW BUSINESS —

Mr. Morris suggested canceling the February 15th meeting. Mr. Phillips suggested moving meetings to every three months to cut down on financial expenses. Ms. Whaley discussed options meeting options that available to the Commission.

Mr. Phillips brought up unlicensed activity, and expressed concerns about the civil penalties assessed for unlicensed activity. The Commission believes that this should reviewed by the administration. Mr. Glandorf discussed some options that the Commission may pursue. Commissioner Phillips wants the administration to further pursue the rules related to the penalties that can be charged.

Mr. Colson requested an update on the progress of the rules from the October Rulemaking hearing. Ms. Baird advised that the rules were still pending with the Attorney General. Ms. Whaley advised that the rules would send sent out via the NOTIFY application.

Ms. Whaley discussed communication options that are available to the Commissioners. Mr. Colson inquired about how NOTIFY emails are sent.


Being no further business to discuss, the meeting adjourned at 10:58 p.m.


Howard Phillips, Chairman


Ronald Colyer, Vice Chairman


Bobby Colson


Jeff Morris


Adam Lewis