

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: March 2, 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: Will Loomis
Larry Moon
Brian McClure
Phillip Traylor
Rhessa Orr Hanson
Justin Ochs

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 February 24, 2015. This meeting has also been noticed on the tn.gov website.”

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

MOTION CARRIED.

MINUTES: Mr. Colson made a motion to approve the minutes of the January 5, 2015 meeting, seconded by Mr. Morris.

MOTION CARRIED.

EDUCATION PROVIDER UPDATE – A Nashville Auction School representative spoke about the recent seminar which was held in West Tennessee and the upcoming seminar which will be May 5, 2015 in Nashville.

LEGAL REPORT – KEELING BAIRD GAMBER, ASSISTANT GENERAL COUNSEL**1. 2014026691**

License #: 5811

First License Obtained: 03/31/2004

License Expiration: 04/03/2016

Type of License: Auctioneer

History: 0

A complaint was filed by a consumer and alleged errors in Respondent's auction report. Complainant wanted to make a claim against Respondent's E&O Insurance. Complainant alleged that Respondent recently represented Complainant in a court ordered auction of her jointly owned marital property to dispose of the property to settle a divorce. Complainant alleged the error in the report to the court damaged her financially and now the auction report is in the court record. Complainant alleged that Respondent violated his fiduciary duty to her and the courts by reporting that she, as the previous occupant of the house, was the subject of a utilities theft investigation. Complainant states that this allegation in the report is completely false and defamatory. Complainant also alleged that she received a bill for utilities that she never authorized to be turned on at the residence in her name. Complainant alleges Respondent used her identity and account number to get the utilities turned on without her permission. Complainant then alleges that Respondent is guilty of utility theft by using her information to turn on the utilities, then telling the court that they were in Respondent's name. Complainant also questions the criteria Respondent used in coming up with his starting asking price on the property.

Respondent sent a response to the complaint stating that he was, in fact, appointed by the court to sell a home for Complainant at auction. In preparation for the inspections, Respondent stated he had to have the utilities turned on, and during his visit to the utility company, he found that they had no record of the utilities being on for a number of years and a utility fraud case had been opened for the subject property address. Respondent then offered to put the utilities in account in his name and showed the representative a copy of the court order to sell the property so the utility company agreed to turn on the services. Respondent stated the facts that were reported to the court are substantiated by the records from the utility company, which were provided for the complaint file. It appears from the records in the file that the utility bill is in Respondent's name, and Respondent paid it. Respondent also stated that the selling price of the subject property was approved by the court.

Reasoning and Recommendation: The Complainant's allegations concern matters outside of the jurisdiction of the Auctioneer Commission. It was found that Respondent did not omit any necessary items with regard to the sale of the property, in terms of his professional capacity, and did not commit a misrepresentation with regard to the sale of the property. As such, Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

2. 2014017891

License #: 5792
First License Obtained: 06/06/12
License Expiration: 06/05/16
Type of License: Gallery
History: 0

This matter is being re-presented from the January 2015 Commission meeting, at which time the Commission voted to defer the 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. The facts as presented at the previous meeting are as follows:

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.

After the previous Commission meeting, legal counsel requested an investigation of Respondent, specifically requesting information as to who the auctioneer was for the sale during which the 2 ½ dollar gold piece and 18 carat gold ring were sold. In addition, the investigation specifically centered around how the gold piece was represented at the auction, as well as how it was advertised prior to the auction. The investigation found that Respondent had a valid firm license and a valid gallery license. The auction is owned by an individual who has a valid auctioneer license, and the auctioneer for the sales in question also had a valid auctioneer license. The 2 ½

dollar piece was sold for \$225.00, according to the invoice. The gold piece was photographed and advertised at AuctionZip.com. That was the only advertisement for this item. It was advertised as a "2 ½ dollar gold piece". Respondent owner stated it was their policy to announce at all auctions that all sales were with "no warranties, no guaranties, all items sold as is, where is, all sales Final. You be the judge." He furthered advised bidders are encouraged to come to inspect the item up for bid. As a matter of policy it is announced the auction does not know the authenticity of any item, the buyer must be the judge. The 18 carat gold ring sold for \$37.50. According to information obtained in the affidavit there was no advertisement of any of the rings sold, which include the subject ring. Respondent owner recalled the ring was announced as "the ring is stamped 18K gold ring, we don't know if it is or not, you be the judge." In regards to the consignee for both items in question; the consignees were not willing to refund the sales amount. He was informed the rings were purchased through an estate auction and had no knowledge of their authenticity. The consigner of the gold piece coin did not have any comment; other than he would not offer to refund the purchase. It was stated that they do not appraise or promise specific value of auctioned items.

Previous Recommendation: Dismiss.

Reasoning and Recommendation: Discuss.

DECISION: Authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000) for advertising violation of 0160-01-.20(2), plus a refund of bid and buyer's premium. Respondent must show proof of refund and buyer's premium.

3. 2014028631

License #: 5943

First License Obtained: 07/11/2014

License Expiration: 07/10/2016

Type of License: Gallery

History: 0

Complainant alleges that items consigned at an auction were taken to a gallery without the consignors consent and that the gallery is operating on an expired license. Complainant is a former business partner of Respondent.

Respondent filed a response denying the allegations that he gave some items to a local store owner, just after the subject auction took place. Respondent stated he had the express permission of the item's owner to handle the item as Respondent handled it, in spite of Complainant's false claim to the contrary. The item in question is a dining room table with two (2) leaves. Respondent stated that Complainant, a former business partner, concocted the complaint against him in a misguided attempt to extract unearned and unjust compensation from Respondent and also to attempt to extricate himself from business obligations still owing a third party for the acquisition of the subject business.

Recommendation: Complainant did not provide sufficient proof of a violation in this matter that would warrant disciplinary action against Respondent. In addition, Respondent is properly licensed with the Tennessee Auctioneer Commission. As such, Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

4. 2014029491

License #: Unlicensed

History: 0

Complainant alleges that Respondent is not a licensed firm, but that it is conducting "online auctions" and doing business in Tennessee. Complainant stated Respondent recently held an inspection: "Please join us for the preview at subject location on Tuesday, October 28, 2014 from 4:00 PM to 7:00 PM Central Time." Full details could be viewed via a website and Respondent talked about "extend bidding" as per their terms and conditions. Complainant states that the public is in no way protected under the law from this unlicensed Respondent.

Respondent filed a response stating that it falls under the exemption in T.C.A. 62-19-103(a). Respondent states that the licensure requirement does 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 since its website does not simulcast live auctions, its online estate and personal property sales fall within this exemption. Therefore, Complainant's complaint is without merit.

Legal counsel reviewed the documentation in the file, and under Respondent's terms and conditions, there is a section titled Deadlines and Close of Internet Bidding. This section states that "All online sales will feature our automatic extension system. If an item receives a bid within the last 5 minutes, the close time will be extended 5 minutes from the time the bid is placed. The time will continue to be extended for 5 minutes with each newly placed bid and the item will not close until 5 minutes have elapsed with no additional bid activity."

Recommendation: According to the terms and conditions in Respondent's website advertisement, all online sales feature extended bidding. Thus, Respondent would not fall under the exemption in T.C.A. 62-19-103(a) for fixed price or timed listings. As such, Counsel recommends the authorization of a civil penalty in the amount of Five Hundred Dollars (\$500) to be satisfied within thirty (30) days of execution of the Order.

DECISION: Authorization of a civil penalty for One Thousand Dollars (\$1,000) per item up to a maximum of Two Thousand Five Hundred Dollars (\$2,500) for unlicensed activity. Board authorized the monitoring of Respondent by investigation.

5. **2014030411**

License #: Unlicensed

History: 0

A complaint was filed alleging that Respondent was operating under an expired license. Complainant alleged that Respondent conducted auctions every Monday and Friday for the past 2 years. Along with the complaint, Complainant attached a copy of a business card alleged to have been used by Respondent with the name of Respondent's unlicensed firm. Complainant alleges that Respondent operates auction houses at various locations.

On or about January 15, 2015 an investigation of Respondent was conducted by Marshall Buckner, an Investigator with the Department of Commerce and Insurance to investigate whether or not unlicensed activity was taking place. During the investigation Respondent owner admitted to conducting a business under Respondent's name. Respondent owner stated he had operated the business approximately one (1) year before receiving a telephone call from an Investigator with the Regulatory Boards division; thus, Respondent owner admitted to operating Respondent company for a least a one year period. Respondent owner stated that up until that call he was unaware that a license was required to sale his own items at auction. Respondent owner stated that his conversation with the investigator was on December 17, 2014 and he had closed

Respondent auction company effective December 19, 2014. Respondent owner informed the investigator that they did not have any written records of transaction for Respondent business that was conducted. On January 29, 2015, Investigator Buckner met with a realtor and auctioneer licensed in Tennessee who submitted a written affidavit stating that he attended an auction at Respondent company in the early part of 2014. On January 29, 2015, investigator Buckner made photographs of Respondent auction building. One shows the exterior of the building. The second photo shows a sign posted on the door announcing the business would re-open on February 2, 2015. Respondent's license has now been renewed.

Recommendation: Though Respondent is currently properly licensed, Respondent admitted to operating for one (1) year without a valid license to do so. As such, Counsel recommends the authorization of a civil penalty in the amount of One Thousand Dollars (\$1,000) for unlicensed activity to be satisfied within thirty (30) days of execution of the Order.

DECISION: Authorization of a civil penalty in the amount of Two Thousand Five Hundred Dollars (\$2,500) and cease and desist language until Respondent becomes licensed.

6. 2014029471

License #: 385
First License Obtained: 06/22/1972
License Expiration: 09/30/2015
Type of License: Auctioneer
History: 0

A complaint was filed alleging that Respondent is not properly licensed to auction real estate. Complainant states that Respondent does not hold a real estate license in Tennessee, and is, thus, not permitted to auction real estate.

Respondent filed a response stating that Respondent is properly licensed with the Auctioneer Commission.

Legal Counsel reviewed the documentation in the file, and confirmed that Respondent is properly licensed as with both the Auctioneer Commission and the Real Estate Commission.

Recommendation: Dismiss.

DECISION: Board approved Counsel's recommendation.

7. 2014031411

License #: 5906
First License Obtained: 11/06/2013
License Expiration: 11/05/2015
Type of License: Gallery
History: 0

A complaint was filed alleging that Respondent owner violated T.C.A. 62-19-112(b)(6)(9)(11).

Respondent sent a response to the complaint stating that Complainant would do anything to put him out of business. Respondent stated that pursuant to the application questions filed with the Auctioneer Commission, he has never nor has any officer or director ever been indicted or

convicted on charges involving embezzlement, obtaining money under false pretenses, larceny, or extortion. Respondent also stated that it maintains contractual agreements with all its sellers and consigns containing all terms and conditions pursuant to the sale of all property being sold. Respondent also stated that it never uses false bidders, cappers or pullers. Respondent stated it looks forward to working with the Commission to resolve any complaints regarding its company.

Legal counsel did research to determine whether Respondent owner had any felony convictions and obtained documents from a county criminal court showing that Respondent owner pled guilty to violation of the sex offender registry and was convicted of a Class E felony.

Recommendation: Discuss. Please note that T.C.A. 62-19-112(b)(6) states in pertinent part, "The Commission may suspend, revoke, or refuse to renew any license issued under this chapter... for any of the following causes: (6) Being convicted in a court of competent jurisdiction of this or any other state, or of the United States, of a criminal offense involving moral turpitude or a felony. Complainant did not provide proof of a violation of section 9 or 11 as alleged.

DECISION: Dismiss.

Storage Unit Auction Question - Ms. Baird and Ms. Whaley presented a question related to storage unit auctions. After some discussion the Mr. Morris made a motion that the matter be tabled until the next meeting, seconded by Mr. Colson.

MOTION CARRIED.

The Commission took a ten minute break at 10:01 A.M.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, Director of Licensing

Complaint Comparison Report – Ms. Whaley presented the monthly performance measure for the Tennessee Auctioneer Commission which stands at 94.59% which is above the current 80% standard. There are currently 55 open complaints.

Budget Report - Ms. Whaley presented the budget reports as of January 31, 2015

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. Morris to approve the application. Seconded by Mr. Colson.

MOTION CARRIED.

Apprentice Application Review – Ms. Whaley presented an apprentice application for licensure. The applicant and his sponsor do not reside in the same state. After some discussion a motion was made by Mr. Colson to approve the application. Seconded by Mr. Morris. The Commission voted on the motion, with Mr. Phillips voting no.

MOTION CARRIED.

Apprentice Application Review – Ms. Whaley presented a letter from Mr. Leonardi requesting that the Commission waive the requirement that he apprentice for two years before applying for an auctioneer license. Legal counsel advised the Commission of TCA 62-19-117 which lays out the requirements of reciprocity. Due to the Commission not having the authority to waive this requirement Mr. Morris made a motion to deny the request, seconded by Mr. Colyer.

MOTION CARRIED.

Apprentice Application – Ms. Whaley presented six continuing education courses for approval. Rhessa Orr Hanson from Nashville Auction School appeared and explained the courses to the Commission. After some discussion a motion was made by Mr. Morris to approve the application. Seconded by Mr. Colyer.

MOTION CARRIED.

Public Auto Auction Application – Ms. Whaley presented an application for a public auto auction. Mr. Colyer recused himself from the discussion. Four representatives from the company were present. Mr. Glandorf advised that Commission that the application did not meet the requirements for licensure. Mr. Loomis appeared on behalf of Fairway Auto Auction. After some discussion a motion was made by Mr. Colson to deny the application, seconded by Mr. Morris. Mr. Colyer recused himself from the vote.

MOTION CARRIED.

LEGISLATIVE UPDATE – Ms. Whaley presented the current bills that relate to the Tennessee Auctioneer Commission.

NEW BUSINESS —

The frequency of meeting and the amount of business was discussed.

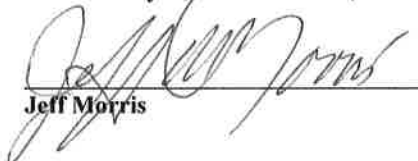
Mr. Morris brought up the parking and the dates of the meetings. Ms. Whaley stated that she would research alternative meeting dates for the Commission.

Being no further business to discuss, the meeting adjourned at 10:51 a.m.


Howard Phillips, Chairman


Ronald Colyer, Vice Chairman


Bobby Colson


Jeff Morris

Adam Lewis