



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
AUCTIONEERS COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-3600

August 3rd, 2015 Minutes
First Floor Conference Room (1-B)
Davy Crockett Tower

The Tennessee Auctioneers Commission met on August 3rd, 2015, in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Chairman Howard Phillips called the meeting to order at 9:00 a.m. and the following business was transacted. Director Avers called the roll and three members were present.

BOARD MEMBERS PRESENT

HowardPhillips
Bobby Colson
Ronnie Colyer
Jeff Morris
Adam Lewis

BOARD MEMBERS ABSENT

None

STAFF MEMBERS PRESENT

Nikole Avers, Keeling Gamber, Jennaca Smith, Dennis O'Brien

ROLL CALL & NOTICE OF THE MEETING

Director Avers took roll call and read notice of the meeting into the record, as follows:
Notice of August 3, 2015 meeting of Auctioneer Commission
Posted to the Auctioneer Commission's web site on July 27, 2015

ADOPT AGENDA

Mr. Colyer made a motion to adopt the agenda as written. This was seconded by Mr. Colson.
The motion carried unopposed.

MINUTES

The May 4th, 2015 minutes were reviewed. Mr. Morris made the motion to accept the minutes as written. It was seconded by Mr. Colyer. The motion carried unopposed.

EDUCATION PROVIDER REPORT

Rhessa Hanson presented the Contract Report.
The FY 4th quarter newsletters had been distributed and received. The Fall Seminar scheduled for October 5th would be moved for later in the month since the speaker had cancelled so work would continue for a different speaker and venue. As such, the September (FY 1st Quarter) NewsLine would note those changes and be delivered a week earlier.

LEGAL REPORT

1. 2015005991

License #: 286174

First License Obtained: 2/20/03

License Expiration: 10/12/16

Type of License: Real Estate, Principal Broker

History: No history of disciplinary action.

2. 2015006001

License #: 323369

First License Obtained: 5/16/11

License Expiration: 5/15/17

Type of License: Real Estate, Affiliate Broker

History: No history of disciplinary action.

A complaint was filed alleging that Respondent was selling real estate at auction without a valid license to do so. Respondent is an employee of a licensed real estate brokerage firm and holds a real estate license in the state of Tennessee. Respondent was advertising on a web based real estate management and marketing platform providing an online marketplace for sellers to manage offers and market properties, including by auction. The complaint alleges that, through the marketing of properties on the website, Respondent is engaging in auction activity in violation of Tennessee law requiring an auctioneer license.

Respondent's employer sent a response to the complaint stating that the exemption in T.C.A. 62-19-103(9), "any fixed or times listings that allow bidding on an internet web site but that do not constitute a simulcast of a live auction," applies directly to the auction marketing of properties located on the website. When a property is listed on the website, the property has a set period of time that it will be offered at auction, during which interested parties may submit auction bids on the property. Bidder activity is made transparent to all parties. No simulcast is available as no "live" auction takes place. For all properties marketed on the website, Respondent employer firm (and not Respondent) is engaged by the seller to offer property for sale at auction for a fee. Respondent employer firm solely manages the auction bidding process on the website pursuant to the terms and conditions of each auction. Respondent does not make any advertisement or representation regarding their provision of auction services for a fee. Their real estate services are described in each property listing agreement and are limited to standard real estate brokerage services for which brokers are paid a standard real estate brokerage commission by the seller. Respondent does not act as "auctioneer" or engage in any "auction" activity related to the marketing of properties on the website; thus, they do not require auction licensure pursuant to T.C.A. 62-19-102(2).

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

3. 2015005981

License #: 261368

First License Obtained: 5/28/10

License Expiration: 5/27/16

Type of License: Auction Firm

History: No history of disciplinary action.

This complaint was filed alleging that Respondent was operating as an unlicensed auction firm. This is the firm affiliated with the Respondents in case numbers **2015005991** and **2015006001**, above.

Respondent sent a response to the complaint stating that the exemption in T.C.A. 62-19-103(9), "any fixed or times listings that allow bidding on an internet web site but that do not constitute a simulcast of a live auction," applies directly to the auction marketing of properties located on the website. When a property is listed on the website, the property has a set period of time that it will be offered at auction, during which interested parties may submit auction bids on the property. Bidder activity is made

transparent to all parties. No simulcast is available as no “live” auction takes place. For all properties marketed on the website, Respondent firm is engaged by the seller to offer property for sale at auction for a fee. Respondent firm solely manages the auction bidding process on the website pursuant to the terms and conditions of each auction.

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel’s recommendation.

4. 2015010381

License #: 6666

First License Obtained: 8/14/12

License Expiration: 8/13/16

Type of License: Auctioneer

History: No history of disciplinary action.

A complaint was filed alleging that Respondent was guilty of conduct unbecoming of an auctioneer. The complaint alleged that Respondent began bad mouthing and discouraging the sale of a product that Complainant was selling at auction. The complaint also alleged that Respondent has a history of making off color remarks to female attendees and has run off customers, due to these comments. The auction owners have spoken to him regarding this behavior, but he continues to ignore their request and continues to make derogatory remarks.

Respondent sent a response to the complaint stating that he did not bad mouth Complainant’s product, rather he merely answered a buyer’s question about whether he knew if the carpet cleaner that Complainant was preparing to sell was a good product. In Respondent’s opinion, he was simply abiding by the code of ethics to be honest and forthright with both vendors and buyers. Respondent stated that he had purchased the item in the past, and it did not work at all. Respondent stated he has performed multiple auctions for Complainant’s auction company and has never heard Complainant complain about being unhappy with his conduct. Respondent claims that he jokes around and has a good time with the customers, but it is never directed toward females and has never been “off color”. Respondent stated that he has never run off customers and has, in fact, brought more customers in to the auctions. Respondent stated this is the only vendor that has complained, and the witnesses that he is using are family (his wife and niece). Respondent feels that Complainant harbors bitter feelings from his being honest when asked about the product. Respondent wishes to be cooperative and can provide a list of vendors and customers who can attest to his professional and entertaining auctioneer skills, if need be.

Reasoning and Recommendation: Complainant did not provide evidence of a violation or conduct unbecoming of an auctioneer on the part of Respondent in this matter. As such, Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel’s recommendation.

5. 2015011721 (unlicensed auctioneer)

History: No history of disciplinary action.

This complaint was filed alleging an advertising violation and possible unlicensed activity on the part of Respondent. Respondent is not a licensed auctioneer. The complaint was opened as the result of an advertisement in Complainant’s mailbox, advertising a large liquidation auction that was open to the public on Friday, May 1, 2015. The auction was also advertised via website.

Respondent appears to be the owner of the firm conducting the sale, who hired an auctioneer to call the sale on May 1, 2015. The firm advertised is not a licensed firm with the state of Tennessee.

Recommendation: Violation of T.C.A. 62-19-102(a)(1) for acting as or advertising or representing to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission under this chapter or prior state law. 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 Consent Order. This civil penalty amount would be \$500 per auction date advertised on the website and via mail. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: Board approved Counsel's recommendation.

6. 2015011722

License #: 2799

First License Obtained: 3/11/94

License Expiration: 12/31/15

Type of License: Auctioneer

History: No history of disciplinary action.

This complaint corresponds to the Respondent in the preceding complaint, #2015011721. Respondent is a licensed auctioneer. The complaint was opened as the result of an advertisement in Complainant's mailbox, advertising a large liquidation auction that was open to the public on Friday, May 1, 2015. The auction was also advertised via website.

Respondent appears to be a licensed auctioneer that was hired to call the sale on May 1, 2015. Respondent sent a response to the complaint stating that he was hired by the Respondent in the previous matter to work a sale on May 1, 2015 as a contract auctioneer. Respondent stated that he was assured that everything was in compliance with the laws of Tennessee, and he provided Respondent firm owner with a copy of his Tennessee Auctioneer License and proceeded in good faith. Respondent stated he has held a license in Tennessee for twenty-one (21) years and would certainly do nothing to knowingly jeopardize his good standing. Respondent stated he can only apologize for his ignorance in this matter because as he has stated, he was asked to work only in a contract labor capacity.

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board authorized a civil penalty in the amount of Five Hundred Dollars (\$500) to be satisfied within thirty (30) days of execution of the Consent Order for violation of T.C.A. 62-19-112(b)(7) and Rule 0160-01-.01, plus a Letter of Instruction.

7. 2015012732 (unlicensed auctioneer)

History: No history of disciplinary action.

A complaint was filed alleging Respondent is conducting auctions without proper licensure to do so. An investigation was conducted by Marshall Buckner, on or about January 20, 2015. During such investigation, Respondent provided a written affidavit, stating she has leased the building at subject location since November 25, 2014. Respondent further stated that a licensed auctioneer had conducted auctions there at that location until January 9, 2015. According to Respondent, another licensed auctioneer took over the location as auctioneer on January 12, 2015 and has conducted three auctions at that location. No evidence or information was found to confirm any unlicensed activity related to Respondent or the location. The Complainant, a licensed auctioneer, stated that he wished he had not filed the complaint after confirming that the auction was taken over by another licensed auctioneer.

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

8. 2015012731 (unlicensed auctioneer)

History: No history of disciplinary action.

A complaint was filed alleging Respondent is conducting auctions without proper licensure to do so. An investigation was conducted by Marshall Buckner, on or about January 20, 2015. During such investigation, it was found that Respondent had not acted as an auctioneer at the subject location. Rather,

another licensed auctioneer took over the location and was conducting auctions there. No evidence or information was found to confirm any unlicensed activity related to Respondent or the location. The Complainant, a licensed auctioneer, stated that he wished he had not filed the complaint after confirming that the auction was taken over by another licensed auctioneer.

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

9. 2014019891

License #: 1727
First License Obtained: 7/13/83
License Expiration: 7/31/16
Type of License: Auctioneer
History: No history of disciplinary action.

10. 2014019921

License #: 1550
First License Obtained: 3/19/86
License Expiration: 1/31/17
Type of License: Auction Firm
History: No history of disciplinary action.

11. 2014019931

License #: 7
First License Obtained: 2/17/09
License Expiration: 2/17/09
Type of License: Public Auto Auctioneer
History: No history of disciplinary action.

12. 2014019941

License #: 3
First License Obtained: 3/16/09
License Expiration: 3/15/17
Type of License: Public Automobile Auction
History: No history of disciplinary action.

This complaint matter is currently in litigation monitoring status, pending the outcome of the criminal matter. Respondent was arrested and detained for violation of the Tennessee Peeping Tom statute and destruction of property. Respondent attended a hearing of summary suspension with the Tennessee Auctioneer Commission, and an informal conference was held. There are companion complaints with the Tennessee Real Estate Commission and Tennessee Motor Vehicle Commission, as Respondent holds multiple licenses in the state of Tennessee.

In May 2015, Respondent entered an *Alford* plea (or a best interest plea, which did not make any admission that Respondent had committed the actual conduct that was alleged) for two (2) counts of unlawful photographing in violation of privacy (both misdemeanors). The matter is, therefore, concluded in criminal court.

Recommendation: Respondent currently holds four (4) separate licenses with the Auctioneer Commission, which consist of an Auctioneer License, a Firm License, a Public Automobile Auctioneer License, and a Public Automobile Auction License. Counsel recommends a civil penalty in the amount of \$4,000 for violation of 62-19-112(b)(12), "Any conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings" to be satisfied within thirty (30) days of the execution of the Consent Order. This constitutes \$1,000 per license held by the Respondent. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: Board approved Counsel's recommendation.

13. 2015009431

License #: 5618

First License Obtained: 3/30/10

License Expiration: 3/29/16

Type of License: Auction Firm

History: No history of disciplinary action.

This complaint was filed alleging that Respondent failed to provide title to a truck that was sold at auction. The complaint alleged that the auction company told Complainant that he would have his title for the truck within 10 days after the sale date, which was November 1, 2014. At the time the complaint was filed in March 2015, the Complainant alleged he still did not have title.

Respondent sent a response stating that the truck was sold as part of a bankruptcy. There was a problem with the title being delivered, but it has since been delivered to Complainant. Respondent stated it received the title for Complainant in mid-April and sent it to Complainant at that time. Respondent stated that during the time since the November auction, Respondent has kept in contact with Complainant and informed him of the attempts to obtain the title after it was paid off by the bankruptcy administrator. Respondent included a copy of the title with its response.

An investigation of Respondent was conducted by Laurie Wilson Weaver, an investigator with the Department of Commerce and Insurance, on or about June 4, 2015. During the investigation, Respondent owner stated that Respondent was contacted by a bankruptcy attorney approximately two (2) weeks prior to conduct the auction and that at the time of the auction an announcement was made that the auction was a bankruptcy auction, and there were reserves on some of the vehicles being offered. According to Respondent owner, the auction was advertised in local papers, signs, on websites, and via flyers. Respondent owner also detailed the contacts with the bankruptcy attorney regarding the issue of the lost title for the vehicle in question, indicating that Respondent received the title and it was forwarded to the Complainant on April 27, 2015. USPS return receipt documents the delivery of the title to Complainant on May 1, 2015. The investigation also showed the Bill of Sale issued to Complainant for the vehicle in question contained the incorrect VIN number for the truck.

Recommendation: The advertisement collected by the investigator during the course of the investigation does not appear to contain the bankruptcy court case number assigned by the court of jurisdiction for such proceeding, in violation of T.C.A. 62-19-112(b)(7) and Rule 0160-01-.20(4). 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 Consent Order. Such terms are to be settled by Consent Order or Formal Hearing.

DECISION: Board approved Counsel's recommendation.

14. 2015010391

License #: 216

First License Obtained: 1/24/77

License Expiration: 6/8/17

Type of License: Auction Firm

History: No history of disciplinary action.

This complaint was filed alleging that Respondent did not provide a clean title and will not communicate with Complainant regarding the matter. The complaint alleged that in October 2014, Complainant purchased a home in Tennessee. Complainant alleged he tried selling the home in January 2015. The buyer did a title search and found it did not have a clear deed. Complainant suggested that when he bought the home, Respondent did a title search and prepared his deed. Complainant notified Respondent immediately, and Respondent refused to return the money. Complainant alleged he gave Respondent time to correct the deed, and there were many heirs involved that would not sign off. As of March 2015, there was no correspondence from the business following up with Complainant on what they are

accomplishing in correcting the deed or much less returning the money. At the time of the complaint, Complainant alleged it had been five (5) months, and Complainant consulted an attorney. On April 7, Complainant stated Respondent refunded his money for the purchase price of the home of \$10,500 but the closing cost, insurance, interest, etc. was not included. Complainant feels he has been taken advantage of in this matter.

Respondent sent a response to the complaint stating that he did nothing wrong regarding the matter. Respondent stated he auctioned the home for the owner. The owner's attorney handled the probate of the home for owner and confirmed a clear deed. Respondent stated its responsibility was to handle the auction. Seller issued a warranty deed. The attorney issued a title letter, and Complainant could have bought title insurance, and he elected not to do so. No one knew anything was wrong until January 2015, when Respondent immediately turned the matter over to an attorney. Efforts were made to correspond with Complainant. The Complainant dealt with the attorney, and on April 7, Complainant received \$10,500 from seller, and the buyer gave him \$300 on good will. The seller failed to let the attorney know that another sister had the deed, and she had two grown children. Respondent stated that the buyer and seller signed a contract stating that Respondent was not responsible should parties be unable to fulfill their agreement. Respondent stated that Complainant threatened Respondent on a couple of occasions.

An investigation was conducted by Dan Kelly, an investigator with the Department of Commerce and Insurance, on or about June 2, 2015. During such investigation, Investigator Kelly met with the attorney who probated the estate of the subject property. She stated the title to the residence was clear; however, there were undisclosed heirs that held an interest in the property. It was believed all heirs released their interest, but they delayed in signing the release. Due to the title problems, all funds were refunded, including attorney fees. The attorney was surprised that a complaint was filed. Full payment was submitted to the Complainant the first week of April 2015. Complainant submitted the complaint after receiving the refund. Investigator Kelly also interviewed Respondent, who confirmed that all of the statements made by the attorney were correct, and also added that Complainant was extremely uncooperative throughout the process.

Recommendation: It appears from the investigation that Respondent was contracted to sell at auction property that legally belonged to an individual. Complainant purchased the property at auction and declined title insurance. At a later date it was learned that undisclosed heirs had interest in the property. It appears that Complainant declined to allow the attorney to resolve the issues, and it was decided by the owner of the property to issue a full refund to Complainant. As such, Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel's recommendation.

15. 2015011891 (unlicensed auction firm)

History: No history of disciplinary action.

This complaint was opened alleging unlicensed activity on the part of Respondent.

Respondent's attorney sent a response to the complaint stating that Respondent is one of many e-commerce shopping sites that operate with a bidding model that is substantially similar to eBay, with different bidding elements. When you bid with Respondent, you have the option of either placing one bid at a time or of choosing to use the automatic bidding tool. Bids are made using bid credits, which cost a certain small amount of money. When using the automatic bidding tool (BidBuddy), you are instructing Respondent to automatically bid on your behalf up to the maximum bids you decide to allocate, as with eBay. With Respondent, your maximum bid is also kept secret. No other people can see the number of bids allocated to your BidBuddy or know how many bids you will decide to use. Your maximum bid is only revealed when an article is sold. Unlike sites such as eBay, which operate on a consignment basis, Respondent sells brand name products from its own inventory and for its own account. Respondent stated that it is important to recognize that the Legislature both defines an "auction" differently than in common parlance, and specifically exempts on-line sales that might be otherwise deemed an auction. As the Commission knows, there are a great many online auction operations today. The legislature recognized that it was in the best interest of the public to create an exemption from licensing for such operations in

T.C.A. 62-19-103(9). Respondent stated it falls under the exemption since it incorporates both timed listings that allow internet bidding without any live auction, and the option for participants to buy the same articles for a fixed price under the Buy it Now feature. Even without the exemption, Respondent stated it would not appear to meet the definition of an “auction” because there is no auctioneer engaging in an exchange with members of any audience, in the words of the statute. Rather, Respondent allows an indefinite universe of prospective purchasers to place bids online without the involvement of an auctioneer.

Recommendation: Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board approved Counsel’s recommendation.

16. 2014018961 (unlicensed public automobile auction)

License #: 15865

First License Obtained: 10/26/06

License Expiration: 10/31/16

Type of License: Motor Vehicle Dealer

History: Motor Vehicle Commission Complaints-2013010571, litigation pending; 2015000871 pending presentation to MVC.

January 2015 meeting:

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.

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

PREVIOUS 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.

Additional Information:

This matter was opened from a consumer affairs referral, alleging unlicensed activity. The complaint is based on an advertisement stating “bid night”. Respondent replied that they did not auction but negotiated so that if offer was accepted and approved, the offer took place. This was in January and the consent order went out in January. An investigation was returned in March and the owner was interviewed and stated that the intent was to collect silent bids with the highest bidder winning but that no sale was ever negotiated as no one took part. And on the dates in question, no auction took place. Signs were destroyed and no events ever took place. No auction took place either.

Recommendation: This is a companion case to a Motor Vehicle case which is still going forward. Since there is just an anonymous complaint, together with a proposal to take sealed bids with the highest bid winning and no sales, with no auction, and the investigation completed after first presentation showed no violations, Counsel recommends that this matter be **Closed with no further action.**

DECISION: Board authorized the original civil penalty of One Thousand Dollars (\$1,000) to be satisfied within thirty (30) days of execution of the Consent Order for violation of T.C.A. 62-19-102. Such order is to contain Cease and Desist language pertaining to unlicensed activity.

DIRECTORS REPORT

Director Avers presented the Auctioneer commission budget numbers, expenditure and revenue, with the current licensee counts as of August 2015. A summary of the current complaints followed.

There were no legislative updates to report but based on member interest, she explained how to track legislative changes and bills under consideration on the Capitol's website.

The report ended (after the presentation from Ms. Young on the Public Auto Auctions upcoming Bill), with the presentation of an email from Steven Bragg on Auction Houses being able to 'cherry pick' items of interest which in his opinion and stating of the facts in particular, was unethical. The members advised counsel on how to respond to his concerns as to what was and what was not illegal and/or ethical as to the how an Auctioneer may conduct business.

PRESENTATION: PUBLIC AUTO AUCTIONS HOUSE BILL

The Board recognized Ms. Mandy Young who requested a dialogue with the board members on the House Bill coming up on Public Automobile Auctioning and licensure. She explained that her company had an Auctioneer's license and was regulated by the commission like any other licensee. She handed out screen shots of the website designed for the purpose of selling automobiles to the public online, for members to peruse and explained that all her company was asking was that the Board consider her company's position on the Bill as to its being approved towards CoPart and other companies like theirs to be able to sell cars to the public online. Senior counsel Mr. Michael Driver was present to share the legal perspective with the Board members, who took the observations, concerns and Ms. Young's presentation under advisement.

ELECTION OF BOARD MEMBERS

Mr. Morris made a motion to nominate Mr. Ronnie Colyer as the next Chairman. This was seconded by Mr. Colson. The motion carried unanimously.

Mr. Phillips made a motion to nominate Mr. Colson as the next Vice-Chairman. This was seconded by Mr. Colyer. The motion carried unanimously.

There being no new business, Chairman Phillips adjourned the meeting.