



AUCTIONEERS COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-3600

**December 7th, 2015 Minutes
First Floor Conference Room (1-B)
Davy Crockett Tower**

The Tennessee Auctioneers Commission met on December 7th, 2015, in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Colson called the meeting to order at 9:00 a.m. and the following business was transacted.

BOARD MEMBERS PRESENT

Bobby Colson
Jeff Morris
Adam Lewis
Howard Phillips (by Teleconference)

BOARD MEMBERS ABSENT

Ronnie Colyer

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 December 7th, 2015 meeting of Auctioneer Commission was posted to the Auctioneer Commission's web site on November 30th, 2015.

STATEMENT OF NECESSITY

Director Avers also read the statement of necessity into record since one member would be in attendance by teleconference.

ADOPT AGENDA

Mr. Lewis made a motion to adopt the agenda as written. This was seconded by Mr. Phillips. The motion carried unanimously.

MINUTES

The members decided that the November 2nd minutes of the meeting would be reviewed and adopted into record at the next meeting on February 1st, 2016.

LEGAL REPORT

1. **2015020861**

(Unlicensed)

History: No history of disciplinary action.

This complaint was filed by a licensed auctioneer and alleges that Respondent continued using Complainant's license number to advertise auctions, though Complainant was no longer calling

auctions for Respondent. Complainant alleges that Respondent is holding auctions without an auctioneer, firm, or gallery license. Further research indicates that Respondent is now utilizing a different license number. The complaint also alleges that Respondent does not have an escrow account. Respondent advertised auctions for September 3, September 5, and September 12, 2015.

An investigation of Respondent Auction was conducted on or about September 5, 2015. Investigator conducted a visit of the subject auction location, and the building had a sign posted saying, "Auction". Investigator met with Respondent, identified as the operator of the business. Respondent stated that he did have a license as an auctioneer and a firm license for the subject address. No license was displayed at the location or produced by Respondent. Investigator was unable to locate any type of license related to Respondent. On or about October 17, 2015, Investigator returned to the subject location, and there was an auction in progress. Respondent was present and over-seeing the auction. The man conducting the auction was not Complainant and stated that he was not a licensed auctioneer. The man stated he thought he could conduct an auction as long as he did not receive payment for his service. Respondent owner stated that the license number that was posted on an online advertisement was the number listed on the sign that was already on the building. Again, there were no licenses posted at the location. Investigator took photos of both the unlicensed auctioneer and Respondent at the time of the October 17, 2015 auction.

Reasoning and Recommendation: Respondent conducted at least four auctions without proper licensure to do so. Respondent also had an unlicensed auctioneer calling at least one of the auctions that was visited by Investigator. This constitutes four (4) violations of T.C.A. 62-19-102(a)(1). As such, Counsel recommends the authorization of a civil penalty in the amount of Four Thousand Dollars (\$4,000) to be satisfied within Thirty (30) days of execution of the Consent Order. Such terms to be settled by Consent Order or Formal Hearing.

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

2. **20150213231**

License #:
First License Obtained:
License Expiration:
Type of License:
History:

This complaint was filed by a concerned citizen and alleged that Respondent firm is in blatant violation of auction rules and regulations. Complainant alleged that the owners of the auction house do not hold a gallery license, and they allow unlicensed auctioneers to call the auction. The complaint alleges that they do not use consignment sheets for the sellers, and they pay in cash, which means that are not using the required escrow account. Complainant also alleges that Respondent's auctions include a raffle, which is also a violation of the law.

Office of legal counsel requested an investigation, which was conducted on or about October 21, 2015 and yielded the following information. All of Respondent's licenses appeared valid and up-to-date. On October 21, 2015, Investigator visited an auction at subject location and observed the sale for approximately 2 hours. Investigator approached the auctioneer and asked him for his credentials. He then produced his auctioneer license and his firm license. Respondent owner stated that he owns Respondent firm and that an associate leases the building there and runs the concession stand. Respondent owner also gave Investigator the firms official address and stated that he has a firm branch for this current location. The stand-in auctioneer did not have an auctioneer license. He stated that he was licensed in Georgia and that Respondent owner probably thought he was licensed in Tennessee, as well.

Respondent stated that they have had a Saturday night auction every week since November 2014 and had started Wednesday auctions only 2 months ago. Respondent owner admitted that he pays his sellers in cash, however, he did have an old escrow account that he had used with another auction that he used to run. Respondent stated that his firm license is listed to his home address but uses his firm branch license for the subject location. Respondent stated that he did not have a county business tax license with this current auction but used to have one when he ran an auction with a different name. Respondent also admitted to allowing an the unlicensed auctioneer from Georgia call the auction while the auctioneer took a break. While attending the auction, Investigator say no evidence of bid shilling, buy bidding, or a raffle being used. The allegation of using an unlicensed auctioneer was substantiated, as well as paying sellers cash (instead of using an escrow account).

Reasoning and Recommendation: Counsel recommends the authorization of a civil penalty in the amount of Two Thousand Dollars (\$2,000) for violations of T.C.A. 62-19-102(a)(1) and T.C.A. 62-19-112(b)(4) 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: The Commission voted to accept the recommendation of legal counsel.

3. **20150212401**

License #:

First License Obtained:

License Expiration:

Type of License:

History:

This complaint was filed by an auctioneer licensee and alleged that Respondent is a 3 time convicted felon, never used consignment sheets, and is constantly using fake bids to raise the bids. Complainant also alleges that Respondent firm is posting false advertisements on facebook, in order to try and steal business from Complainant.

Respondent sent a response to the complaint stating that it is another obvious and blatant attempt by Complainant to drum up support of any kind in hopes of some sort of disciplinary action to be brought against Respondent. Respondent stated that he is growing tired of Complainant's repeated complaints and attempts to discredit Respondent since his termination with the company. Respondent stated in response to Complainant's allegations that a past felony conviction does not prohibit him from holding a gallery license in Tennessee. When applying for such license, Respondent owner stated he answered all questions honestly. Respondent also stated that Complainant was never involved in the consignment process for Respondent company and has no knowledge of consignment requirements because he was never there when the consignments took place. He was only an auctioneer as he previously stated and cannot attest to the consignments by Respondent company. Respondent owner stated that he was contacted by several people stating that they were approached by Complainant, asking if they would file some sort of complaint against Respondent, and even offering them money to do so. Respondent stated Complainant will stop at nothing to discredit Respondent company. Respondent stated that he has answered all complaints filed against him and has spoken with investigators on 3 different occasions, and they have concluded that Respondent was in compliance.

Reasoning and Recommendation: Dismiss. Although Respondent gallery has an expired license, as of November 5, 2015, Respondent gallery was properly licensed at all times relevant to this complaint. Complainant failed to provide sufficient evidence of a violation on the part of Respondent gallery in this matter.

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

4. **20150212402**

License

First License Obtained:

License Expiration:

Type of License:

History:

This Respondent is the owner of Respondent auction company listed in the previous complaint, #20150242401. The complaint alleges that Respondent is a 3 time convicted felon.

Respondent sent a response to the complaint stating that it is another obvious and blatant attempt by Complainant to drum up support of any kind in hopes of some sort of disciplinary action to be brought against Respondent. Respondent stated that he is growing tired of Complainant's repeated complaints and attempts to discredit Respondent since his termination with the company. Respondent stated in response to Complainant's allegations that a past felony conviction does not prohibit him from holding a gallery license in Tennessee. When applying for such license, Respondent owner stated he answered all questions honestly. Respondent also stated that Complainant was never involved in the consignment process for Respondent company and has no knowledge of consignment requirements because he was never there when the consignments took place. He was only an auctioneer as he previously stated and cannot attest to the consignments by Respondent company. Respondent owner stated that he was contacted by several people stating that they were approached by Complainant, asking if they would file some sort of complaint against Respondent, and even offering them money to do so. Respondent stated Complainant will stop at nothing to discredit Respondent company. Respondent stated that he has answered all complaints filed against him and has spoken with investigators on 3 different occasions, and they have concluded that Respondent was in compliance.

Reasoning and Recommendation: Dismiss. The Commission has the discretion to decline to open any formal complaints involving the same facts as presented here against this Respondent (e.g. that Respondent owner is not properly licensed and/or has a criminal history).

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

5. **20150213741**

History: No history of disciplinary action.

This complaint was filed by an auctioneer and alleged that Respondent had intentions of keeping his auctioneer block, cash register, and personal desk, and that he violated the code of ethics of the auctioneer profession. Complainant alleged that he decided to close his auction on July 3, 2015 and left town for a three day vacation. Complainant claimed that he had two weeks paid rent in advance to allow himself to remove his personal belongings from the building. Upon returning on July 6, Complainant found the doors of the building had new locks. The landlord informed Complainant that Respondent had rented the building and was told that Complainant had 2 weeks to clear the building. Complainant learned after entering the building that Respondent had removed his property and placed it in storage. Complainant noted upon further observance that Respondent had intentions of keeping his auctioneer block, cash register, and personal desk, as those items had not been removed. Complainant believes that Respondent's actions are very unbecoming of a gallery owner and should not be condoned by the Commission, as Respondent's actions are in direct violation of the Code of Ethics.

Respondent sent a response to the complaint stating that the landlord informed Respondent that he rented to Complainant by the week, and that the Complainant was 2 weeks behind on his rent and that he would be glad to rent Respondent the building. Respondent stated that he entered the building on July 5 and asked the landlord if he could store Complainant's belongings in the storage room adjacent to the auction, and the landlord replied in the affirmative. Respondent stated he paid to have Complainant's belongings move to storage. Nothing was harmed and no damage was done to any of the items, nor did Respondent impose on Complainant's rights to retrieve his belongings. Respondent stated he spoke with Complainant and informed him that his items were in the storage room and that Complainant was okay with it. Respondent stated that now that Complainant has locked arms with another individual who filed a complaint against Respondent, he all of a sudden has a problem with the way Respondent handled the situation. Respondent stated that this complaint is just another attempt to discredit Respondent, and that if Complainant had a complaint with the way Respondent handled the transition, he should simply contact the landlord who owns the property and rented it to Respondent.

Reasoning and Recommendation: Dismiss.

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

6. **20150213742**

License #:

First License Obtained:

License Expiration:

Type of License:

History:

This Respondent is the owner of Respondent auction company listed in the previous complaint, #20150213741.

Respondent sent a response to the complaint stating that the landlord informed Respondent that he rented to Complainant by the week, and that the Complainant was 2 weeks behind on his rent and that he would be glad to rent Respondent the building. Respondent stated that he entered the building on July 5 and asked the landlord if he could store Complainant's belongings in the storage room adjacent to the auction, and the landlord replied in the affirmative. Respondent stated he paid to have Complainant's belongings move to storage. Nothing was harmed and no damage was done to any of the items, nor did Respondent impose on Complainant's rights to retrieve his belongings. Respondent stated he spoke with Complainant and informed him that his items were in the storage room and that Complainant was okay with it. Respondent stated that now that Complainant has locked arms with another individual who filed a complaint against Respondent, he all of a sudden has a problem with the way Respondent handled the situation. Respondent stated that this complaint is just another attempt to discredit Respondent, and that if Complainant had a complaint with the way Respondent handled the transition, he should simply contact the landlord who owns the property and rented it to Respondent.

Reasoning and Recommendation: Dismiss.

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

7. **20150215881**

History: No history of disciplinary action.

This complaint was filed by a consumer and alleged that Respondent extended closing time to match the Complainant's maximum bid. Complainant stated that Respondent held an online auction ending on August 26, 2015. Complainant bid on several items... two chairs and a table. Complainant alleged she was outbid on the table, but the two chairs closed at approximately 2:20 with her winning bids of \$850 and \$900. Her maximum bid on the chairs was approximately \$1,450 and placed at 9:40 that morning. About 47 minutes after closing the two chair lots were reported and bid up to \$1,400 and \$1,450 (exactly her maximum bid placed earlier that morning). The auctioneer stated that some closing times were extended due to computer system failure which may have been true but the lots in question had closed. She also stated that an anti-sniping feature is employed, whereby, if a lot receives a bid within 15 minutes of closing, it will automatically extend the closing time. This also did not apply to these lots. They clearly closed and were reopened for the purpose of shilling.

Respondent sent a very lengthy response to the complaint stating that it specializes in online auctions and hosts sales on a monthly basis. Respondent stated its online auctions are reminiscent of what people experience when they use eBay, but with a few key differences. During one of Respondent's auctions if a bid is placed on an item during the last five minutes before the item is scheduled to sell, the bidding is extended for another five minutes. This feature discourages what Respondent calls "sniping" and is standard for any software used in the online auction industry. With regard to the particular online auction in question, Respondent stated that their software suffered a glitch, which caused the bidding to shut down for approximately 15 minutes. Since the Complainant had placed a \$1,500 maximum bid on each chair, the software would automatically bid on his behalf if another customer placed a competing (but lower) bid on either item. It appears that two other bidders were actively bidding against the Complainant on each of the two chairs. The other bidder placed \$500 bids on each of the two chairs but was immediately and automatically outbid by the Complainant's maximum bid. The other bidder then stopped bidding on the chairs. Another bidder did the same. Both of these bids were placed before the software glitch occurred. The other bidders were legitimate people and not phantom bidders, as suggested by Complainant.

Complainant sent additional information after the Respondent responded to say that Respondent is new to the online auction business and does not have the skills necessary for operating a technology-based online business. Complainant does not question the glitch that affected the Web-based bidding platform. Complainant reiterates that the basis for her complaint was that the other bidder was informed of Complainant's maximum bid for the purpose of escalating the final price, evidenced by the fact that he stopped short (by 1 and 2 incremental bid amounts) of Complainant's maximum bid of \$1,500. When Complainant spoke to Respondent about the issue, Respondent stated that the other bidder would be the winner should Complainant default. Complainant then decided to let them go because she knew the chairs would not be going home with anyone. As expected, the lots were offered at Respondent's next auction the following month.

Reasoning and Recommendation: Dismiss.

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

8. 20150219701

This complaint was filed by an auctioneer for unlicensed conduct. Complainant requested that the Commission stop the auction from being held on November 7, 2015. The auction was advertised as a "Short Notice Important Auction," acquisition from settlement of divorce after 25 years of marriage. There was a second Complainant who alleged a second auction being held by Respondent on November 8, 2015. The flyer (advertisement) does not include the auctioneer or license number. It appears to be substantially similar to the flyer for the November 7 auction, but in a different location.

Legal counsel requested an investigation of Respondent which took place on or about November 7, 2015. Investigator located the facility where the auction was to take place and photographed the interior area, where several dozen rugs, pictures, and jewelry were on display. At the 2:00 p.m. start time, an individual stood in the front of the room and stated he had an announcement that earlier that day a government official with the Auctioneer Board said they did not provide the required documents to hold an auction. Therefore, the auction must be cancelled. Any single cash offer will be considered for each item on display. This individual contracted with Respondent to call and facilitate the auctions. He stated that until he is assured that proper licensure is obtained no auction will be conducted in Tennessee.

Reasoning and Recommendation: Respondent is an unlicensed firm. Office of legal counsel has evidence that Respondent advertised two separate auction dates, one on November 7, 2015 and one on November 8, 2015 without proper licensure to do so in violation of T.C.A. 62-19-102(a)(1). As such, Counsel recommends the authorization of a civil penalty in the amount of Two Thousand Dollars (\$2,000) 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: The Commission voted to accept the recommendation of legal counsel.

DIRECTORS REPORT

Director Avers presented the Auctioneer commission budget numbers, expenditure and revenue, current licensee counts and the status on complaints as of September 2015. She also mentioned to the Board that the administrative staff were currently creating and distributing newsletters for the other boards in-house, and could do so for the Auctioneers Commission as well. The members decided to re-visit this matter after the current contract with the Nashville Auction School expired in 2016.

The Healthy 4 Life Expo held in Nashville at the Convention Center on October 24th was attended by Mr. Colson and herself at which they greeted consumers, handed out gifts and gave away much sought after tickets to a Titans game.

She ended the report by sharing that the new software licensing system had been implemented and was already proving a boon to licensees making it easier to affect renewals by uploading education and making payments online. The software would offer many more advantages to licensees as the next phase of our customer service plan went into effect.

APPLICATION REVIEWS

Harold Wayne Cannada – Application denied by majority vote (Mr. Lewis in opposition)

David R. Maynard – Advised to get a Tennessee sponsor and apply for an apprentice license

John Scott McMullan – Approved for licensing by unanimous vote

HomePrep – Approved as course provider by unanimous vote

There being no new business, Mr. Colson entertained a motion from Mr. Lewis to adjourn the meeting at 10:05 a.m.