



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

**November 2nd, 2015 Minutes
First Floor Conference Room (1-B)
Davy Crockett Tower**

The Tennessee Auctioneers Commission met on November 2nd, 2015, in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Chairman Ronnie Colyer called the meeting to order at 9:00 a.m. and the following business was transacted. All five members were present.

BOARD MEMBERS PRESENT

Ronnie Colyer
Bobby Colson
Howard Phillips
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 November 2, 2015 meeting of Auctioneer Commission was posted to the Auctioneer Commission's web site on October 29, 2015

ADOPT AGENDA

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

MINUTES

The August 3rd, 2015 minutes were reviewed. Mr. Morris made the motion to accept the minutes as written. It was seconded by Mr. Colson. The motion carried unopposed.

EDUCATION PROVIDER REPORT

In the Nashville Auction School report, Rhessa Hanson presented that they were ready for the upcoming education seminar in Knoxville in November. The newsletter for the 1st quarter of 2016 had been distributed and was also on the website. She requested that staff get the spring and summer editions posted to the website as well. She ended by requesting that the members remit their suggestions and ideas for upcoming newsletters.

The Nashville Auction School had 3 courses for approval

Vote: Mr. Morris made a motion to approve the courses as submitted. This was seconded by Mr. Phillips. The motion carried unanimously.

Cornerstone also submitted three courses for approval.

Vote: Mr. Phillips made a motion to approve the courses as submitted. This was seconded by Mr. Lewis. The motion carried unanimously.

LEGAL REPORT

1. **2014016041**

License #: 5870

First License Obtained: 6/3/13

License Expiration: 6/2/15

Type of License: Gallery

History: No history of disciplinary action.

This matter was originally presented at the November, 2014 board meeting as follows:

Complainant consigned personal property items with Respondent in January. Complainant states that within the first week some items sold, and Complainant was promptly paid the following week. Complainant states that Respondent moved cities, and Complainant's items were listed as last sale and Respondent was going out of business. Complainant states that phone calls were not returned and Complainant requested a check via email. Complainant states that a representative of Respondent called Complainant and stated the landlord locked Respondent out of the building, stole Respondent's computer and files. Complainant states that Complainant has not heard from Respondent since then, and Respondent still owed Complainant money.

Respondent did not submit a timely response to the complaint.

Previous Recommendation: Authorize formal hearing with authority to settle by Consent Order upon payment of a \$ 1,000 civil penalty by the Respondent for violation(s) of T.C.A. § 62-19-112 (b)(4) and Rule 0160-01-.24.

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

New Information: Office of legal counsel has had some correspondence with Respondent who stated that the landlord put locks on the door of the gallery, and Respondent called police and was able to get some stuff out of the building but not all of it. Respondent states that the landlord took all the computers and cabinets and is unsure how to handle the matter. Respondent did not provide a written response, as requested. Respondent is no longer in the auctioneer business and service on Respondent has been difficult. Further, the Complainant is no longer cooperative and has not provided an affidavit of the events. Respondent's license expired in June, 2015.

New Recommendation: Close and flag should Respondent seek license renewal or reapplication.

Vote: Mr. Colson made a motion to accept counsel's recommendation. This was seconded by Mr. Morris. The motion carried unanimously.

2. **2015016331 (unlicensed auctioneer)**

History: No history of disciplinary action.

Complainant states that Respondent has been advertising on a community Facebook page for auctions to occur on Friday and Saturday starting at 6:00 p.m. Complainant provided the address of the auction stating this is a building for sale, and Respondent backs an Uhaul truck up to the building and sells from the truck.

Office of legal counsel requested an investigation, which yielded the following information. The Investigator stated that the subject property in which the auction allegedly was held was unoccupied and listed for sale. The listing agent for the property advised the Investigator that an individual (hereinafter "Unlicensed Auctioneer") contacted her to inquire about purchasing the property to be used as an auction site. The listing agent provided an affidavit who stated that the Unlicensed Auctioneer and an individual who is likely Respondent, met with the listing agent and the property owner to view the property. The Investigator also contacted the owner of the subject property who states that the Unlicensed Auctioneer leased the building and held at least one auction before abandoning the building, stole a \$200 fire extinguisher, and left the building full of trash and damages. The Investigator was unable to identify the Respondent.

However, the Investigator was able to identify the Unlicensed Auctioneer who has been involved in criminal activities involving check fraud, and conviction of misapplication of contract funds. The Tennessee Board for Licensing Contractors obtained a Final Order by default in the amount of \$10,305.00 against the Unlicensed Auctioneer for unlicensed contractor activity. The Investigator obtained information from the County Sheriff's Department that the Unlicensed Auctioneer may be operating an unlicensed auction firm. It further appears that an individual with the same last name as the Respondent may be working for the Unlicensed Auctioneer at the auctions. The County Sheriff's Department also provided the Investigator with recently issued arrest warrants for violation of bad check law and failure to pay restitution in the contract funds case.

The Investigator conducted a site visit regarding the unlicensed auction house location and observed a large amount of merchandise in the building, buyer's numbers, and an auction banner displayed in the front of the building. The Investigator spoke to that building's owner who was also trying to contact the Unlicensed Auctioneer regarding vacating that building. The Investigator states that a business license for the unlicensed auction firm was issued using the Unlicensed Auctioneer's social security number.

The Investigator obtained further information indicating that the Unlicensed Auctioneer's spouse obtained another business license in a nearby city for a second unlicensed auction firm. The Investigator met with the employee of the Unlicensed Auctioneer (having the same last name as Respondent) who admitted to working for the Unlicensed Auctioneer and spouse at both unlicensed auction firms and locations. The employee states that there were two different people calling those auctions (hereinafter, "Auctioneer 1" and "Auctioneer 2")

The Investigator attempted to meet with the Unlicensed Auctioneer by visiting the residence and calling the Unlicensed Auctioneer. The Unlicensed Auctioneer returned the phone call but refused to meet for an interview.

The Investigator further contacted Auctioneer 1 who stated that he only provided sound equipment for the Unlicensed Auctioneer to conduct the auctions. The Investigator also contacted Auctioneer 2 who states that he called two (2) auctions for the Unlicensed Auctioneer, but the Unlicensed Auctioneer advised that the firm was licensed. Auctioneer 2 is a licensed auctioneer and also owns a firm and gallery—both properly licensed. Auctioneer 2 states that during the second auction, he determined that the Unlicensed Auctioneer did not have a firm license, and Auctioneer 2 left the auction mid-way through calling. Auctioneer 2 states that he believes the Unlicensed Auctioneer has tried to run the auctions on his own.

Reasoning and Recommendation: It appears to legal counsel that Respondent is no more than a falsified social media profile. Legal counsel recommends that the complaint against Respondent be dismissed and a subsequent complaint against the Unlicensed Auctioneer be opened, based upon the Investigator's findings.

Vote: Mr. Morris made a motion to accept counsel's recommendation. This was seconded by Mr. Colson. The motion carried unanimously.

3. **2015017241**

License #: 5990

First License Obtained: 3/23/15

License Expiration: 3/22/17

Type of License: Auctioneer Firm

History: 2014029491—\$2,000 Consent Order plus cease and desist (unlicensed activity)

Complainant participated in Respondent's online auction on June 30, 2015. Complainant placed a final bid on a chair, which was presented as the winning bid with 2 minutes left in the auction. Complainant states that the website then stated Complainant had been outbid, and the auction had been extended four (4) minutes, but Complainant did not continue to bid. Complainant stated that a couple of hours later Complainant received an email stating they had won the bid.

Respondent replied stating that their data does not support the claims made by Complainant. Respondent states that Complainant placed a final bid of \$315—which was the winning bid in the sale. Respondent further states that the assertion that Respondent has internal bidders is libelous. Respondent provided the bid history for the items in questions stating that another bidder placed a bid that extended the sale for five minutes, but that bidder was outbid by Complainant's account. Respondent states that the last outbid notification generated to Complainant was regarding the other bidder mentioned. Respondent also provided an independent click tracking software system that monitors Respondent's website, which tracks user activity by IP address and username. Respondent states that Complainant's entries show that the item was viewed and bid upon from Complainant's account. Respondent further provided information regarding the other bidder, stating she has been a registered user/customer with Respondent since July 23, 2014 and has made several purchases. Respondent states that this customer is not employed or associated with Respondent. Respondent provided information that the other bidder received notification of Complainant's final and winning bid. Respondent further provided information from their third party fraud detection software stating that this report also corresponds with Complainant's final and winning bid. Respondent states that whether Complainant intended to place the bid or not, an action was taken from Complainant's device to place the winning bid. Respondent states that in good faith Respondent did not make Complainant pay for the item. Respondent has over 200,000 registered users and almost 1,000,000 unique visitors every month. Respondent states that if Respondent conducted business in the way that Complainant asserted, Respondent would not be in business with their reputation intact.

Reasoning and Recommendation: Dismiss.

Vote: Mr. Morris made a motion to accept counsel's recommendation. This was seconded by Mr. Colson. The motion carried unanimously.

4. **2015018641**

License # 1: 5906

First License Obtained: 11/6/13

License Expiration: 11/5/15

Type of License: Gallery

History: No history of disciplinary action.

License # 2: 6001

First License Obtained: 5/22/15

License Expiration: 5/21/17
Type of License: Gallery
History: No history of disciplinary action.

License # 3: 6013
First License Obtained: 7/22/15
License Expiration: 7/21/17
Type of License: Gallery
History: No history of disciplinary action.

5. **2015018642 (unlicensed auctioneer/gallery owner)**

History: No history of disciplinary action.

An anonymous consumer filed a complaint against Respondent 1 (gallery, 3 locations) and Respondent 2 (gallery owner) stating that the gallery is advertising and conducting auctions in two locations without the proper licensure to do so. Complainant further states that Respondent 2 is calling the auctions, without being a licensed auctioneer. Complainant further states that Respondent 2 has previously been convicted of fraudulent activity and statutory rape of a minor. Respondent 2 is the sole owner of Respondent 1 which is currently licensed with one Gallery and two (2) Gallery branches.

Office of legal counsel requested an investigation, which yielded the following information. Regarding the criminal convictions, it appears that on July 22, 1992, Respondent 2 pled guilty and was convicted of statutory rape. On August 25, 2005, Respondent 2 pled guilty and was convicted of two (2) counts for failing to register with the TBI sex offender registry. On June 6, 2008, the TBI released Respondent 2 from the sex offender registry. The Investigator states that the deputy at TBI explained that Respondent 2 no longer has to report to the sex offender registry after a certain point.

The Investigator observed an auction on August 29, 2015 at one of the gallery locations, which was called by a licensed auctioneer who also holds a valid firm license. The Investigator later interviewed Respondent 2 who states that the Complainant who keeps opening complaints against Respondents 1 and 2 is a competitor who vowed to put Respondent 2 out of business. Respondent 2 affirmed that Respondent 2 does not call bids at auctions and always hires licensed auctioneers. Thus, it appears to legal counsel that Respondent 1 and 2 are properly licensed with the Commission and are acting within their capacity.

Reasoning and Recommendation: Legal counsel recommends discussion regarding Respondent 2's criminal conviction. The Gallery Application asks, "Has any partner, officer, or director ever been indicted or convicted on charges involving embezzlement, obtaining money under false pretenses, larceny or extortion?" and "Are there any civil suits or judgments pending against any partner, officer or director at this time?" There are no other questions on the gallery license application with regard to any other convictions. T.C.A. § 62-19-125 Gallery License states, in part, "(c) The person who desires to obtain a gallery license shall submit an application to the commission on the prescribed form. A person who desires to obtain a gallery license for a firm shall request issuance of the license in the name of the firm with a specific person acting as principal. The application shall demonstrate satisfactory proof that the person has: (3) Provided other information as the commission may require to demonstrate honesty, trustworthiness, integrity, reputation and competency...(f) The gallery license holder must comply with all of the requirements of Tennessee license laws and regulations that apply to all licensees." Further, T.C.A. § 62-19-112 states, in part "(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where the license has been obtained by false or fraudulent representations or 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; (7) Violating any provision of this chapter, or any rule or regulation duly promulgated under this chapter." When discussing this matter, please keep in mind that Respondent 2 was convicted of the original offense in 1992, and Respondent 2 was released from reporting to the TBI registry in 2008. Since then, Respondent 2 has had no further convictions. Respondent 2 did not falsify the Gallery Applications, and Respondent 1 was first licensed as a gallery in 2013.

Vote: Mr. Phillips made a motion to dismiss the case. This was seconded by Mr. Morris. The motion carried unanimously, with Mr. Colyer having recused himself from the vote.

6. **2015020891 (unlicensed company)**

History: No history of disciplinary action.

A complaint was filed alleging that Respondent (unlicensed company) is conducting online auctions without proper licensure or a principal auctioneer. Complainant provided information for an auction advertised to occur online beginning August 5 through August 26, 2015 using BidSpotter.com.

Office of legal counsel reviewed Respondent's website, which states that the company is a cash buyer of used machinery equipment. Respondent performs online sales, liquidations, private sales, timed bid offerings, and auction services. Respondent's website states that online sales and timed auctions is one of the most popular tools for asset disposition, the online platform provides instant access to thousands of potential buyers and allowed marketing for strategic advertising to buyers. Respondent's website further states that auctioned liquidation methods are called for when immediate liquidation and removal are required, though it does not guarantee the high returns on investment. Office of Legal Counsel also reviewed BidSpotter.com, and it appears that Respondent conducted a Timed Online Auction via the website. There were no in-person auctions or any other online auctions advertised by Respondent on either website.

Respondent sent a response by and through an attorney who believes that Respondent violated no law and is acting under a clear exemption. Respondent does not hold itself out to be a licensed auction firm and does not use "auction" in its name. Respondent conducts timed sales on the internet without the use of auctioneers and solely by electronic media. The sale is conducted by a third-party platform, which is similar to ebay. The sale is conducted within a timed window and prospective buyers may follow offers and place their own bid without the assistance of an auctioneer. Further, the attorney states that Respondent does not fit the definition of auction and further cited the 2006 AG opinion regarding the definition of auction firms.

Reasoning and Recommendation: It appears that Respondent falls under the exemption regarding fixed price or timed listings in T.C.A. § 62-19-103(9), thus Counsel recommends this complaint be **closed with no further action**.

Vote: Mr. Morris made a motion to accept counsel's recommendation. This was seconded by Mr. Phillips. The motion carried unanimously.

7. **2015018671**

License #: 6002

First License Obtained: 5/27/15

License Expiration: 5/26/17

Type of License: Gallery License

History: No history of disciplinary action.

The Commission opened an anonymous complaint against Respondent (Gallery) for potential

unlicensed activity. Respondent advertised on Auctionzip.com for a sale to take place on August 11 and September 11.

Office of legal counsel requested an investigation, which yielded the following information. The investigator met with the spouse of the gallery owner who provided a copy of the gallery license and identified the licensed auctioneer who performs the auctions. The gallery owner subsequently provided a sworn affidavit stating that all auctions are conducted at the gallery location.

Reasoning and Recommendation: Dismiss.

Vote: Mr. Colson made a motion to accept counsel's recommendation. This was seconded by Mr. Phillips. The motion carried unanimously.

8. 2015018961 (unlicensed gallery)

History: No history of disciplinary action.

The Commission opened a complaint against Respondent (unlicensed auctioneer d/b/a Auction Company) for potential unlicensed activity. Respondent advertised on AuctionZip.com stating, "New truck load weekly. Every Saturday night at 7:00 p.m. Doors open at 6:30 p.m." Auction dates include August 15, August 22, August 29, September 12, September 19, and September 26. Respondent further advertised a license number, but it does not appear that Respondent is related to this license.

Office of legal counsel requested an investigation, which yielded the following information. The investigator attended the September 19, 2015 auction. The Investigator states that there were two individuals calling the auction. After the auction, the investigator approached Respondent who could not produce an auction firm license or the two auctioneers' license numbers. Respondent told the investigator that Respondent completed the thirty (30) hour gallery owner course and was scheduled to take the test 9/22/15. Respondent further provided the investigator with the city business license, the training certificate for the gallery owner course, and the results of the test. The investigator also obtained sign in sheets for the auction patrons between June 13 and September 19, which identified fifteen (15) separate auctions conducted during that time period. Respondent further stated that Respondent sold its own property.

Respondent submitted an affidavit that states the auction was opened June 13, 2015, and it is Respondent's understanding that Respondent is allowed to sell its own property without a gallery license. However, Respondent has received calls for consignment requests and will apply for a gallery license. Respondent further states that the first auctioneer—who is joint owner of the auction company—sold Respondent's items. Further, the second unlicensed auctioneer called for his property and Respondent's property with no pay, no commission, and no buyer premiums. Respondent further stated that one other unlicensed auctioneer, called one auction.

Though Respondent was selling Respondent's own property, it appears to legal counsel that the property was acquired for the purpose of resale and is not exempt pursuant to T.C.A. § 62-19-103(5).

Reasoning and Recommendation: Consent Order in the amount of \$3,000 for violation of T.C.A. § 62-19-102(a)(1) for unlicensed activity. This civil penalty represents \$200 per auction held by Respondent.

Vote: Mr. Philips made a motion to accept counsel's recommendation. This was seconded by Mr. Morris. The motion carried unanimously, with Mr. Colyer having recused himself from the vote.

Senior counsel Mr. Chick, re-presented a case where the respondent had requested that the civil penalty be paid in installments.

Vote: Mr. Morris made a motion to accept payments in installments. This was seconded by Mr. Phillips. The motion carried unanimously.

Ms. Gamber also requested that the Board consider whether legal could open complaints against unlicensed auctioneer and gallery activity, to which the members concurred.

Ms. Gamber also presented comments received from the office of the Attorney General on rule TCA 0160-01.128 concerning online auctions, after an initial review. She suggested language that could be used based on those comments.

Vote: Mr. Phillips made a motion that the new language on TCA 0160-01.128 be sent back to the office of the Attorney General. This was seconded by Mr. Colson. The motion carried unanimously.

At the end of the legal report Mr. Morris suggested that the character questions be amended to include felony convictions, where supporting court documents of proper disposition were to be submitted if answering 'yes'. Director Avers agreed to provide updated application forms that would cover this adequately at the next meeting.

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.

NEW BUSINESS

Mr. Phillips felt the Board needed to communicate its concerns on the rules for public automobile auctions as proposed by CoPart, to the office of the Attorney General. The members suggested a letter be sent to the effect that all auctioneers ought to be licensed the same way so everyone followed the laws on the practice of auctioneering as they currently existed. Ms. Gamber agreed to work on the format and content of the letter with Mr. Phillips.

There being no new business, Chairman Colyer entertained a motion from Mr. Morris to adjourn the meeting at 10:42 a.m.