



TENNESSEE AUCTIONEER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831

Board Meeting Minutes for October 3, 2016
First Floor Conference Room 1-A
Davy Crockett Tower

The Tennessee Auctioneer Commission met on Monday, October 3, 2016. Notice of the meeting was posted to the Auctioneer Commission's website on September 23, 2016.

BOARD MEMBERS PRESENT: Ronald Colyer (via teleconference), Bobby Colson, Jeff Morris (via teleconference), Adam Lewis.

BOARD MEMBERS ABSENT: Howard Phillips.

STAFF MEMBERS PRESENT: Kimberly Whaley, Cody Kemmer, Sarah Mathews.

ROLL CALL/NOTICE OF MEETING

Mr. Morris, acting vice chairman, called the meeting to order at 9:10 am. Roll was called and the Commission's legal counsel Sarah Mathews read the statement of necessity into the record. Kimberly Whaley, sitting in for the newly appointed executive director Roxana Gumucio, read the notice of the meeting into the record.

Mr. Morris asked for a motion to turn the meeting over to Mr. Colson, who was present in-person. Mr. Colyer made that motion and Mr. Lewis seconded it, the motion passed unanimously.

AGENDA

Mr. Colson asked for a motion to adopt the agenda as written, which was provided by Mr. Colyer and seconded by Mr. Lewis. The motion carried by unanimous vote.

MINUTES

After review, Mr. Colyer made a motion to adopt the minutes from the August 1, 2016 meeting as written. Mr. Morris offered a second, and the motion carried by unanimous vote.

EDUCATION REVIEW

The Commission then turned its attention to the new education courses recommended for approval. After review, Mr. Morris made a motion to approve the education which was seconded by Mr. Colyer. The motion passed by unanimous vote.

DIRECTOR'S REPORT

In Ms. Gumucio's absence, Ms. Whaley offered a brief director's report recapping quarterly expenditures and projected budget. She then presented the Commission with proposed 2017 meeting dates, which

Ms. Mathews had made an amendment to in order to avoid a previously scheduled State holiday. The Commission agreed with the new dates, and asked that the licensees be notified via the newsletter.

LEGAL REPORT

1. 2016029201

(Unlicensed Activity)

History: None.

This is a re-presentation from the August 2016 meeting:

This complaint was filed anonymously for unlicensed activity. Complainant alleged that while watching television, the Respondent ran an auction advertisement.

Respondent stated that Respondent's real estate company runs three (3) 30 second commercials every Sunday on during a sports show on television. Respondent states that none of the commercials have any auction content and are just promoting the Respondent's career as a leading realtor. Respondent states that this complaint pertains to a 10-15 second "mention-in" by the host. Respondent's office sends the host and producer an email every week prior to the telecast. Respondent submitted the email that was sent to the producer that week, which stated who was the auction company and auctioneer for the farm sale. It was not Respondent or his real estate company. Also submitted was a brochure for the auction which was advertised in the name and license number of an auctioneer and stated in "Conjunction with Respondent."

Reasoning and Recommendation: Counsel recommends this matter be **dismissed**.

Decision: The Commission voted to keep this matter open pending further investigation.

New Information: Counsel again reviewed the brochure received and it appears to have been the actual auction company's advertisement, which does state that the auction will be conducted "in conjunction with...Respondent." Counsel also had the opportunity to watch the 30 second commercial that aired on television and I have provided a couple of excerpts below:

May 1, 2016 Commercial: "There is an auction coming up, talk about owning a piece of Americana. On Saturday the 14th, 136 acres will be sold at auction in 14 estate size home sites in 5 to 28 acres each. Country cottage, stocked lakes, oak barns. Call Respondent and his team for more information, it coming up May 14."

May 8, 2016 Commercial: "This segment of our show brought to you by Respondent. Talk about owning a piece of Americana. Check this out on Saturday the 14th, 136 acres will be sold at auction in 14 estate size home sites in 5 to 28 acres each. Country cottage on this land, stocked lakes on this and, oak barns. Get ahead of the pack. Get a leg up on everyone else. The auction is May 14, but you should call Respondent this week. TO learn more go to the Respondent's website or call Respondent at XXX-XXX."

These commercials make no mention of the auction company or an auctioneer, but only the Respondent and his real estate company. Additionally at the bottom of the screen during the commercial it states "AUCTION!" along with the address of the property. Again, as stated above the "mention-in" says nothing about an auction company or the auctioneer, but only the Respondent's name and real estate company.

Reasoning and Recommendation: Counsel recommends the authorization of a **Letter of Warning** in regards to T.C.A. § 62-19-102(a)(1), which defines unlicensed activity and Rule 0160-01-.20(1), which explains advertising.

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

2. **2016029181**

First License Obtained:

License Expiration:

Type of License: Auctioneer

History: None.

This is a re-presentment from the August 2016 meeting:

This complaint was filed by five (5) separate consumers and alleged that the Respondent reopened the bid for a late-comer, who was allowed to bid and take the entire property from the other individuals who had already won the bid.

Complainants attended an auction conducted by the Respondent on May 7, 2016. The auction consisted of twelve (12) lots of real property; one lot included a house and in addition to the real property the auction included household goods and farm equipment. Auction advertisements indicate this was an absolute auction.

Complainant 1's allegations of the May 7 auction events:

- *Complainant attended the auction because he was interested in the house, which was located on Lot #4.*
- *Lot #4 was the first land parcel to be auctioned for one money and Complainant was the successful bidder on this lot for \$90,000.*
- *After all 12 lots were sold, the auctioneer offered to the crowd that any of the lots to be re-grouped and re-bid.*
- *A bidder requested to group three (3) lots, including lot #4. The new bidder that requested the re-grouping was successful in purchasing this group for \$198,000.*
- *Respondent again offered additional groupings and there was none. After this, the Respondent asked if anyone wanted to bid for the entire plot of land together, the Complainant alleged that considerable time passed and there appeared to be no one that wanted to purchase the entire plot.*
- *At this time, the Respondent proceeded to auction off the smaller household items and farm equipment.*
- *Complainant approached the new successful bidder of lot #4 to ask if the buyer would be interested in selling the house. Complainant states that he agreed to sell the house and the two shook hands on this transaction. Complainant accompanied the land surveyor to the house to decide exactly how to establish boundaries for the house.*
- *Complainant alleges that about an hour had passed when it was discovered that someone had arrived at the auction and wanted to re-open the bid for the property.*
- *Complainant states that quite a few people at the auction expressed dissatisfaction with this development, as most thought it was an "absolute auction" for the property.*
- *Complainant states the late-comer was allowed to re-open the bid and purchased the entire plot of land.*

The remaining Complainants submitted together the following allegations from the May 7 auction:

- Respondent sold the tracts of land individually and after selling all the tracts, the Respondent allowed for regrouping of the tracts, upon request.
- The regrouping of different tracts was sold to six (6) different buyers.
- The property was then offered as a whole and no one made a bid. The complainant alleges that at this time, the Respondent said the land was "SOLD" and no tract was sold online.
- Complainants alleged there were some issues with tracts sold and some tracts had to be divided. Complainants discuss agreements made between buyers to sale portions of their tracts, etc. Complainants provided a list of the 6 buyers and what tracts each buyer had purchased.
- Complainants state the auction continued with the selling of farm equipment and approximately 1 hr to 1 ½ later, Respondent stopped the auction and stated that he had someone who wanted to buy all the tracts as a whole. Complainants states that property had already been regrouped and sold.
- Complainants state that during the 1 hr to 1 ½ hr break, two of the successful land bidders attempted to pay for their tracts and were told by Respondent's employee that they needed to wait until they got the paperwork ready.
- All buyers were present when the land was later sold because they were all waiting to pay for their tracts.
- Complainants alleges that buyers (including some of the Complainants) asked the Respondent why he was selling the property as a whole after the original sale had already occurred, Complainant alleges that Respondent stated because no one had signed a contract and no one had paid any money for their tracts.

Counsel received a copy of the auction advertisement which laid out a timeline of the events for the auction.

10:00 am	Personal Property
12 Noon	Real Estate and Farm

Equipment

- Home and 9.52 acres to be sold first
- Pick and Choice of remaining tracts
- Re-Grouping available upon request on first come, first served basis
- Farm Equipment
- Remainder of Personal Property if not sold earlier

Respondent stated that the Complainant's claim that they bought property (specific lots or parcels) and then lost those parcels due to regrouping, but were not aware that there was a final regrouping of the farm as a whole. Respondent states that Complainant's also claim that no one was allowed to bid against the winning bidder, a man who they say was a 'latecomer' to the auction. Respondent states the Complainant's did originally win bids, chose specific lots, then lost those lots due to regrouping. These Complainant's, after the original purchase of their lots began planning other deals, to either sell the house, buy the house or sell their lots to someone else – the Respondent states how did they expect to hear that a request had been made to regroup the entire farm together, then hear the starting bid, if they were outside the barn dealing with each other? Respondent states that additionally a portion of the auction was online. Respondent states his office assistant was on the phone with the representative the entire time, she was repeating every bid made in the room to Bidspotter over the phone so he could post it online.

All twelve (12) parcels of land were available online based on the list of online auction items that was provided by Respondent.

Reasoning and Recommendation: Counsel recommends this matter be **further discussed by the Commission.**

Decision: **The Commission voted to keep this matter open pending further investigation.**

New Information: An investigation was conducted by Investigator Commers, his findings are listed below. Investigator Commers informed Counsel that there was no video or audio recording of the action and that this case hinges on contradicting stories between the Complainants and Respondent.

- **August 26, 2016** - Investigator Commers received a notarized statement from Complainant #2 which stated that the auction was held on May 7, 2016 and was to be an absolute auction of personal property, the farm and farm equipment. Complainant #2 states the following schedule was advertised, but not followed.

10:00 am Personal Property 12 Noon Real Estate and Farm Equipment

- *Home and 9.52 acres to be sold first*
- *Pick and Choice of remaining tracts*
- *Re-Grouping available upon request on first come, first served basis*
- *Farm Equipment*
- *Remainder of Personal Property if not sold earlier*

Complainant #2 states that introductions were done at 10 am, but the rest of the schedule was not followed and the following is what actually happened. The sale started at 10 am with the selling of the personal property until noon at which time the selling of the real estate. They started with the home and the 9.52 acres, then the selling of the tracts per acres with choice of tracts. After selling all of the tracks, the regrouping upon request was made. The regrouping of different tracts was sold to six (6) different buyers. Then the tracts were offered as a whole – no one made a bid. Complainant states that the Respondent said the land sold and no tract was sold online. Complainant additionally stated the following:

- After the tracts were regrouped and sold, Complainant states there was a problem and it was recognized by an employee of the Respondent.
- During the sale, there was a mistake in selling one of the tracts and after the regrouping was over two (2) individuals met with the Respondent. Respondent made an agreement with a buyer to divide tract 11. Upon agreement Respondent offered to pay for a new survey. This corrected the problem made in selling tract 11 when they should not have sold it, unless it was regrouped.
- Complainant #1 bought the house and tract 4 at the beginning of the sale, which he lost when the tracts were regrouped and sold, but he worked a deal with that buyer to purchase the home. Complainant #1 walked the land with the surveyor and it was agreed on between buyers. The regrouping buyer asked Respondent if this could be done and to put Complainant #1's name on the contract to purchase the house and two (2) acres. Complainant #2 states that Respondent said okay.
- Tracts were regrouped and ending up in five (5) lots.

Complainant #2 states that the auction continued with the selling of the farm equipment. Approximately 1 to 1 ½ hours later, Respondent stopped the sale of the farm equipment and stated that he had someone who wanted to buy all the tracts as a whole. Complainant #2 states that all buyers were still present when this took place because they were waiting to pay for their tracts. Complainant #2 states

that when Respondent was asked why he was selling after the original sale, he stated because no one had signed a contract or paid any money for their tracts.

- **August 29, 2016** - Investigator Commers met with Complainant #3, 4 and 5, who also provided sworn statements.
 - Complainant #3 states that he attended the auction and won the bid on two (2) different lots. Upon winning the bid, Complainant #3 states that Respondent dropped the gavel and announced "SOLD" on each of the two lots he purchased. Complainant #3 attempted to pay for his two (2) lots and was told that the paperwork was not yet ready. At this time, Complainant #3 drove down to look at the two tracts and then the surveyor called his and said they land had resold as a whole unit and that Complainant #3 didn't get any of it. He states this was approximately 1.5 hours after he had won his lots.
 - Complainant #4 states that he attended the auction and during the regrouping he told an employee of the respondent that if they grouped two tracts together that he wanted to buy them. The employee went up and saw that it could be arranged and told Complainant #4 that he won the bid on two (2) different lots. An hour or so later he was told that someone had bought the land as an entire unit and he did not get any.
 - Complainant #5 states that he attended the auction and won the bid on two (2) different lots. Upon winning his bid, Respondent dropped the gavel and announced "sold" on both lots. Then he announced that the tracts would be regrouped. After regrouping, they tried to sell the whole parcel of land and no one bid on it. About an hour, Complainant #5 tried to pay for his tracts and was told that the paperwork was not yet ready. Then about an hour later they announced that the land had been sold as a whole.
- **August 29, 2016** – Investigator Commers met with Respondent who stated that the Complainants claim that they bought property (specific lots/parcels) and then lost those parcels due to regrouping, but were not aware that there was a final regrouping of the farm as a whole. They also claim that no one was allowed to bid against the winning bidder, a man who they call a "latecomer" to the auction. Respondent states that actually the winning bidder was assigned a number that was lower than one of the Complainants, which proves he was, at the least, present before one of the Complainants. Respondent states that the Complainants are right only in one regard, they did originally win bids, chose specific lots, then lost those lots due to regrouping. IF you read their complaints carefully, it mentions that several deals were being made outside of the realm of the auction. Respondent states that basically these men, after the original purchase of their lots, were planning other deals to either sell the house, buy the house or sell their lots to someone else. Respondent states this fact because he wants to know, how did they expect to hear that a request had been made to regroup the entire farm, then hear the starting bid and the winning bid if they were outside the barn dealing with each other? Respondent states
- **August 30, 2016** – Investigator Commers spoke with an employee of the Respondent who stated that she was working the day of the auction and it appeared to her that the Respondent was professional and ethical in his dealings and that the Complainant's all had personal ties to the farm since their land bordered it. This employee admitted that one of the Complainant's came and attempted to pay for his tract of land but after speaking with the Respondent, she was told no because of all the confusion around the massive sale with no money attendants immediately available.

- **August 31, 2016** – Investigator Commers received a sworn statement from Complainant #1, which states that he was present at the auction and successful bidder for the first parcel of land that was sold. But bidders were made aware that the parcels could be regrouped at the end of the individual parcel bidding. The announcement was made that the bidding was open for regrouping and several people did have parcels that they wanted to put back together and one of those parcels included the lot with the house on it. Complainant #1 states it was too rich for him and he was out of the bidding at that point. When this portion of the auction was over, the Respondent asked if anyone wanted to put all the pieces back together as one property. The Respondent repeatedly asked for a bidder, but no one came forward for at least 20 minutes. The auction proceeded with farm equipment as advertised. At this point, the successful bidders must have been thinking that their bids were the winning bids. At least an hour after the regrouping had taken place; the Respondent announced that there was indeed someone who wanted to put all the parcels together. Respondent opened the bids at the combined price and the new bidder, who was the only bidder, took the bid.

- **August 31, 2016** – Investigator Commers received 4 sworn statements on behalf of the Respondent from people who attended the auction.
 - Statement 1 stated that as far as the auction is concerned, he did not believe there was anything out of the ordinary except some slight confusion at one point. He believes that the auction was done professionally and on the up and up.
 - Statement 2 stated that he believes the auction was conducted in a professional manner with announcements made prior to the opening bids that the property would be offered in tracts or as a whole. The auction halted for a period of time to clear up confusion over some tract groupings and then the farm as a whole was offered for bids. There was a single bid for the farm as a whole and the bidder was declared successful.
 - Statement 3 stated that he heard the announcements prior to the sale regarding how the personal property, the farm equipment and the farm itself would be sold. As he recalls, the personal property and equipment would be sold first, and the acreage would be sold beginning at noon. Respondent's announcements included the notice that the farm would be offered in tracts and then the entire farm as a whole would be offered. The bids were made on the tracts, but a little confusion about one of the tract groupings, and the sale was stopped to clear that issue. At no time was there an announcement that the auction was over, because it had been made clear that the farm would be offered as a whole after the separate tracts had been bid. When the farm as a whole was opened for bids, only one person offered a bid and he was the winning bidder. At that point, the auction was announced to be over.
 - Statement 4 stated that he arrived at the auction and heard the announcements regarding the timeline and terms of the sale, which included the farm being offered in tracts or as a whole. The equipment portion of the sale was stopped before noon and the announcements were again made regarding the farm being for sale by tracts or as a whole. After bids on the different tracts, the sale was suspended for a little while to clear confusion on the grouping of some tracts. The farm was then offered as a whole to the bidders. There was one bid, who was announced as being the successful bid to purchase the entire farm.

Reasoning and Recommendation: This entire complaint hinges around contradicting statements from the Complainants and Respondent and it appears there is no actual evidence to prove a violation. Counsel recommends this matter be **dismissed**.

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

3. 2016030371 – Respondent 1

First License Obtained: 7/14/1999

License Expiration: 1/31/2018

Type of License: Auctioneer

History: None.

2016030372 – Respondent 2

First License Obtained: 1/14/1977

License Expiration: 8/31/2016

Type of License: Firm

History: None.

This is a re-presentation from the August 2016 meeting:

This complaint was filed by a consumer and alleged that Respondent 1 (auctioneer) took fictitious bids. Complainant alleged that on Saturday, April 30, 2016, the Complainant attended an auction for twelve (12) acres of land. Respondent 1 was the auctioneer. Complainant alleges to his knowledge there were nine (9) bidders present. Complainant alleges the following facts:

- *Respondent 1 had a hard time getting an opening bid, but finally pointed to a man in a van and started the bidding with him at \$20,000.*
- *The bidding stalled at \$32,500, at which time the Complainant was the high bidder.*
- *Unable to get another bid, Respondent 1 stepped down and gave the microphone to an assistant. Complainant alleges that the Respondent 1 stopped at the van, leaned inside the van and came back out of the van and raised his hand with a bid.*
- *Complainant placed a higher bid and the same scenario happened again.*
- *Complainant asked the Respondent 1 who he had bidding in the van and Respondent 1 became irate and stated he ran a big company (Respondent 2).*
- *Complainant bid again and so did the Respondent 1 with a higher bid.*
- *Complainant began to walk toward his truck and was approached by one of Respondent 1's assistants who apologized and asked Complainant to continue bidding.*
- *After a minute or so with no bids, Complainant bid again. Respondent 1 was still standing beside the van with the three (3) occupants and again raised the bid to \$50,000.*
- *Complainant was upset and started walking to his truck and again he was approached by the assistant who stated that the other bidder was done at \$50,000 and told the Complainant if he entered a bid at \$50,500 it would end the auction. Complainant decided to enter one last bid, at this time the auction closed with Complainant's high bid.*
- *Respondent 1 approached Complainant to sign the auction form. Complainant asked Respondent 1 who had been bidding against him in the van and Respondent 1 told him Bidder 1's name.*
- *Complainant located the three (3) men in the van, all of which Complainant knew and none of them are named what Respondent 1 told him. Additionally, all three (3) men said no one in the van was bidding. Complainant stated that all three (3) have offered to sign an affidavit stating they did not bid.*

- After writing a check and signing the paper work, Complainant was told an attorney would prepare the deed and would be in touch on Monday following the auction. After two (2) weeks, Complainant had heard nothing from the attorney or Respondent 1 or 2.
- Complainant called Respondent 1, stating that he had reservations about closing the sale and asked at that time if Bidder 1 would buy the land for \$50,000 and Complainant would forfeit his deposit that had already been cashed.
- Respondent 1 would not give the Complainant Bidder 1's contact information.
- Complainant stated that he would be willing to buy the property for an amount of \$32,500, which was the highest bid before the bidding stalled and Respondent went over to the van. Respondent 1 stated it was his job to get the most money he could for his clients and that he would not be able to reach them that day, but would call Complainant the next day.
- Respondent 1 called Complainant and asked if Complainant was going to purchase the property and Complainant stated, "no, not at \$50,500." Complainant called the title attorney later that day and told him not to prepare a deed and that he was forfeiting his deposit.

Respondent 1 states that the morning of the auction consisted of heavy rainfall prior to and during the sale and that bidders were scattered on both sides of the sound truck, across the street under a porch and a few bidders remained in their vehicles. Respondent 1 states that in addition to the bidders in attendance, he had two (2) separate absentee bidders, one of which was Bidder 1. Respondent 1 states that prior to the sale Bidder 1 gave an absentee bid of up to \$50,000. The van and men in it that Complainant discussed in his complaint had nothing to do with Bidder 1. Respondent 1 states that during the sale he personally went up to the van and every other occupied vehicle, as well as each individual, multiple times to invite bids during the sale. After the sale, Complainant signed the Sales Agreement, provided his earnest money and discussed the closing with Respondent 1. Respondent 1 and his auction crew left immediately to make it to the next sale. On May 10, 2016, Respondent 1 returned a call to Complainant, during which, Complainant stated he was upset and did not intend to honor his signed contract. Respondent 1 states that Complainant alleged that Respondent 1 was dishonest and had no other bidders at the auction and to just sell the property to Bidder 1. Respondent 1 explained that since it had been 1 ½ weeks since the sale, he was uncertain if Bidder 1 would still have interest in the property. Respondent alleged that Complainant stated he should have gotten the property for about \$32,000 and not the \$50,500 agreed upon in the contract. The next day, Respondent 1 followed up with the Complainant, who was still adamant about getting the property for a lower price. Respondent 1 said okay and this was the last communication Respondent 1 had with Complainant. Respondent 1 called Bidder 1, who agreed to buy the property at the auction price and signed a contract.

Reasoning and Recommendation: Counsel recommends this matter against Respondent 1 and Respondent 2 be **dismissed**.

Decision: **The Commission voted to keep this matter open pending further investigation.**

New Information: An investigation was conducted by Investigator Lively, his findings are listed below.

Investigator Lively sent Respondent 1 a list of questions, in order to gain some further insight into how the auction was conducted.

Q: Was the auction "with reserve" or "without reserve?"

A: The property did not have a reserve price. Please see auction agreement I provided.

Note: Legal received a copy of the auction sale agreement which stated that all properties were to be sold to the highest and best bidder on sale day.

Q: How many bids were there for this auction?

A: I do not know exactly how many bids were made. We do not have a "bid counter" at our auction sales. However, the audio tape provided of the auction has the entire sale recorded.

Q: Were there absentee bids?

A: Yes, 2.

Q: What was the form of the bids?

A: All bids at our auction sales are oral.

Q: Were the absentee bidders registered?

A: Yes.

Note: Legal received a list of registered bidders; both absentee bidders were listed as registered. Respondent 1 stated in addition, he feels he and Respondent 2 did anything wrong and that all of the documents provided show and confirm his original response to the complaint. Respondent 1 states that Complainant bid on the property multiple times at his own free will and accord and after receiving the winning bid, signing a contract and paying earnest money had a case of "buyer's remorse."

Respondent 1 provided a copy of the contract for the purchase of real estate, on which Respondent 1 wrote on the bottom "buyer is not going to close at contract price per our conversation on the phone for 2nd day in a row, 5/11/16."

Investigator Lively received two (2) sworn statements from individuals who were present the day of the auction, Witness 1 and Witness 2.

- **Witness 1:** Witness 1 was present at the auction on April 30, 2016, representing Respondent 2. It was a very rainy day for the auction and people were around different areas and mainly in their vehicles. Witness 1 states Respondent 2 has "ring men" that work to get the bids from bidders, especially during the weather they had that day. That day there were very few bidders, plus the absentee bidder. Witness 1 says this absentee bidder is a regular absentee bidder. Witness 1 says the absentee bidder either tells Respondent 1 or Witness 1 his top bid amount. Witness 1 has worked for Respondent 2 for about twenty (20) years and never saw a form pertaining to absentee bidders. Witness 1 does not recall any phone bids taking place at this sale. Although Witness 1 could not recall how many bidders were present, he did state that the absentee bidder was the runner-up bidder.
- **Witness 2:** Witness 2 was present at the auction on April 30, 2016, representing Respondent 2. Witness 2 works as a "ring man" and registers bidders for the sale. Witness 2 states it was rainy and not many people were there. There were two (2) absentee bidders and possibly a third, but these were normal absentee bidders. Witness 2 started working for Respondents 1 & 2 in November 2014. As a ring man, Witness 2 went around getting everyone registered and when the sale started he took bids from people under umbrellas and vehicles. Witness 2 took a few bids from the Complainant, who he says was getting agitated because he was getting out bid. Witness 2 states that Complainant followed Respondent 1 around when he was going around talking to people. Witness 2 says he stopped dealing with Complainant and left it up to Respondent 1 and other employees.

In addition to his conversations with the Respondent and sworn statements from witnesses, Investigator Lively was provided a cassette audio tape of the auction. Counsel has listened to the audio tape of the auction and it appears there are points in the auction in which bidding stalled and the auctioneer handed over the microphone to an assistant, but Counsel heard nothing in the audio tape that sounds unusual for an auction.

Reasoning and Recommendation: After review of all the facts and evidence presented, Counsel recommends this matter be **dismissed**, due to no violations on behalf of the Respondent 1 or Respondent 2.

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

4. **2016033691**

First License Obtained: 3/31/2011

License Expiration: 3/30/2017

Type of License: Firm/Gallery

History: None.

This complaint was filed by an auctioneer and alleged unlicensed activity. Complainant alleges that the Respondent is conducting real estate auctions "with no reserve" in Tennessee without the proper licensure.

Respondent is a licensed auction firm in Tennessee. Counsel reviewed the Respondent's website and it appears that the Respondent advertised an auction of real estate in Tennessee to be held online on June 29, 2016. At this time the bidding on the real estate has been closed, but it is available for offers.

Since this complaint was received after the actual date of the auction, Counsel cannot confirm that the auction was listed as "selling without reserve." And additionally, even if the property was to be sold without reserve, we have no evidence that any offers were received during the June 29, 2016 auction.

Reasoning and Recommendation: After review of the facts, Counsel does not believe we have sufficient evidence of a violation. Therefore, Counsel recommends this matter be **dismissed**.

Decision: The Commission voted to authorize a Letter of Instruction in regards to Rule 0160-01-.19, which defines the types of auctions, specifically an auction with reserve. Additionally, the Commission requested that language be added to the Letter of Instruction regarding advertising guidelines under Rule 0160-01-.20.

5. **2016035161**

First License Obtained: 12/22/1998

License Expiration: 12/31/2016

Type of License: Auctioneer

History: None.

This complaint was filed by a consumer and alleged that the Respondent was selling his own items at auction, which Complainant alleges is against the law. Complainant alleges that on June 10, 2016 she was

at an auction and the Respondent was selling his own items. Complainant states he put a camera up on the block to be sold and Complainant placed a bid at \$2.00, then the Respondent said \$5, 6, 7 and 8. Complainant asked the Respondent where his bid was and he said with himself. After the auction, Complainant talked with him and asked him if he knew it was against the auction laws to bid on your own items. Additionally, Complainant states he had no licenses displayed at all.

Respondent stated that the Complainant is upset because the merchandise she is selling is not what the people of that area are interested in and she has been there on the third and fourth weekends of the month and most of the customers in that area do not have the means to buy high end, expensive items. Respondent states she has not been happy with anything he has done. The night of June 10, 2016, there were only 20 to 25 people in attendance at the auction, so Respondent started the bidding on most of the items Complainant sold and ended up with the only bid, so Respondent purchased the items even though he was just trying to help by getting the bidding started. As for the camera, Respondent states that the Complainant bid \$2 and then he caught a couple of other bids and ended the bidding with a no sale on it. When the Complainant asked who had the bids, Respondent stated it was him because he has been told by NAA that it is very unethical to tell a bidder where another bidder is. As for the license, Respondent stated that he would have provided the Complainant with his pocket card and would have given her the correct firm license number, which is available for viewing each and every Tuesday at the auction house. Additionally, he works for a firm and his license number is available there also.

Reasoning and Recommendation: There is not sufficient evidence to prove that the Respondent's license number was not displayed. Therefore, Counsel recommends this matter be **dismissed**.

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

6. **2016033931**

First License Obtained: 03/16/2011

License Expiration: 03/15/2017

Type of License: Firm/Gallery

History: 201102671

Closed with Letter of Warning

This complaint was filed by a consumer and alleged that the Respondent didn't reply to the Complainant's emails. Complainant was the successful bidder on some railroad books and a cast iron train set. Complainant received the books, but not the train set. Complainant sent two (2) emails, 5/14 and 5/21, concerning an online auction item which he won, but has not received a response.

Respondent stated that this complaint was the first they have heard about the Complainant not receiving the train set. Respondent stated that their phone number and email address is published on Auctionzip and included a copy of their website which shows the business email and phone number. The email address that the Complainant sent the emails to was Respondent's wife's private email which has not been valid (due to hacking) in three (3) years. Respondent also could have sent an inquiry through Auctionzip, which provides a messaging system for customers. Respondent states that since receiving the letter about the complaint, they have identified the location of the item in question and will be shipping it to the Complainant.

Reasoning and Recommendation: Counsel recommends this matter be **dismissed**, due to no violations on behalf of the Respondent.

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

7. 2016039391

First License Obtained: 8/19/1996

License Expiration: 8/4/2018

Type of License: Auctioneer

History: None.

This complaint was filed anonymously for unlicensed conduct while Respondent's license was expired. Complainant alleges that Respondent has been conducting 3 to 4 car auctions per week with no license since last July. Complainant sent in a copy of our "verify" webpage which shows Respondent's auctioneer license expiring on July 20, 2015.

Respondent did not respond.

Reasoning and Recommendation: Complainant provided no evidence that Respondent was conducting auctions during a time period that his license was expired and since Respondent's license is currently active we cannot investigate this matter. Therefore, Counsel recommends this matter be **dismissed**.

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

8. 2016048111

First License Obtained: 10/14/2014

License Expiration: 10/13/2018

Type of License: Auctioneer

History: None.

This complaint was filed by a consumer and alleged that several items had been auctioned off without the Complainant's permission. In 2008, Complainant purchased some real estate and all property at the location including equipment. Complainant alleges that auctions are held at this property and the Respondent has auctioned off several items without the Complainant's permission. Currently, the Complainant and her husband are in the middle of a bankruptcy case and an inventory of the equipment was been taken and used for collateral on a loan with a local bank and Respondent is selling some of that property. Complainant has called Respondent and instructed him to stop selling their property.

Respondent stated the following in response:

- Respondent currently holds a lease on the property where the auction is located and manages/oversees all activities at that location.
- Complainant and her husband filed bankruptcy on this property and approximately two (2) months ago they abandoned the property.
- Complainant's told Respondent's partner that they were not going to be back there cleaned out all personal items that were there. Complainant removed every item that was left in the kitchen,

except for larger items. Complainant hired someone to go into the place while it was closed and for him to remove any items that were left there. Respondent states he questioned him and he stated that he had removed what Complainant asked him to.

- A number of weeks ago, Respondent and Auctioneer (partner) discussed a couple of items that were abandoned and decided to sell them. This was approximately two (2) months after the Complainant removed items and left.
- Respondent states he has been in contact with two (2) financial institutions that have an interest in the property and its contents. Respondent states that no property believed to be financed was sold.

Reasoning and Recommendation: Counsel recommends the authorization of a **Letter of Instruction** regarding T.C.A. § 62-19-112(b)(9) for failing to enter into a written contract with the owner of the property to be sold.

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

NEW BUSINESS

Mr. Colyer brought up an issue he had heard about through contact with the Real Estate Commission, that notices of renewal should continue to be sent to all licensees as their license gets close to expiration. Ms. Whaley reminded the Commission that renewal notices aren't a statutory requirement, but the Department had no plans to discontinue sending renewal notices.

The Commission then discussed the next meeting, scheduled for December 5, and the TAA convention being held that weekend.

There being no other new business, Mr. Colson concluded the meeting at 10:19 am.