



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

**Board Meeting Minutes for December 5, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on December 5, 2016 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Howard Phillips, chairman, called the meeting to order at 9:01 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Howard Phillips, Jeff Morris, Ron Colyer, Adam Lewis, Bobby Colson.

BOARD MEMBERS ABSENT: None.

STAFF MEMBERS PRESENT: Roxana Gumucio, Sarah Mathews, Frankie Anderson, Mark Green, Cody Kemmer.

ROLL CALL/NOTICE OF MEETING

Mr. Phillips called the meeting to order and Executive Director Gumucio took roll, establishing all members present. Director Gumucio then read the notice of the meeting into the record.

AGENDA

Mr. Phillips asked for a motion to adopt the day's agenda. Mr. Colson made a motion to adopt the agenda as written, which Mr. Morris seconded. The motion passed by unanimous vote.

MINUTES

Mr. Colyer made a motion to accept the minutes from the Commission's previous meeting dated October 3, 2016. Mr. Lewis seconded Mr. Colyer's motion, and it passed by unanimous vote.

LEGISLATIVE UPDATE

At this point Ms. Sarah Mathews, the commission's legal counsel, requested a change to the agenda to accommodate the arrival of Frankie Anderson, the department's legislative liaison. Mr. Anderson provided an update on the General Assembly's Joint Operations Committee, which had recently stayed one of the commission's proposed new rules regarding timed listings. Mr. Anderson stated it was the joint-ops committee's intention to review the new rule further, and that such a stay would typically last around 60 days. Mark Green, co-chief counsel, informed the commission of the department's plans to attempt to move forward with the rest of the rules unaffected by the committee's review process.

DIRECTOR'S REPORT

Director Gumucio reviewed the board's expenditures and projected budget and introduced the commission members to the new format being used to track the commission's finances designed to give the members more detailed information.

EDUCATION REPORT

Director Gumucio then presented the commission with a list of proposed courses for their review. Mr. Morris raised a concern about the difference between online classes generated by commercial course providers versus those provided by local subject matter experts. Mr. Phillips suggested the provider should offer additional information about their background and training before the commission voted to approve the courses in question. Director Gumucio asked the commission to approve a letter being sent to the course provider asking them to provide additional information about their qualifications... Mr. Morris agreed, and made a motion for the courses to be put on hold pending that response. Mr. Colson provided a second, and the commission voted unanimously to defer the courses until the next meeting.

FORMAL HEARING

Mr. Phillips then turned over the meeting for a formal hearing procedure, docket no. 12-15-137558A, in the matter of Tim Fazio, d.b.a. Tri-Cities Sales & Auctions. The formal hearing portion began at 9:25 a.m. and concluded at 10:23 a.m. The commission meeting resumed after a ten minute break at 10:32 a.m.

LEGAL REPORT

1. 2016043221 – Respondent 1

(Unlicensed Activity)
History: None.

2016043222 – Respondent 2

First License Obtained: 06/29/1998
License Expiration: 06/30/2018
Type of License: Auctioneer
History: None

This complaint was filed by a concerned citizen for unlicensed activity and advertising without a license number. Complainant alleges that the Respondent 1 and 2 are running an auction without a license and advertising without a license.

Counsel discovered several Facebook posts which did not include the name or license number of the auction firm. These posts, along with the complaint were sent to investigations, for further review. Our investigator stated the following:

- Respondent #1 is unlicensed in Tennessee.
- Most of the Facebook posts were in Respondent #1's last name, "XXX Auctions."
- Respondent #1 does not have a gallery license in Tennessee.
- Respondent #2 has a valid auctioneer license and firm license. Respondent #2 was calling auctions for Respondent #1 a few months ago, but is no longer doing so.
- No firm or gallery license number was listed on the Facebook advertisements, as required under Rule 0160-01-.20(1).

Reasoning and Recommendation:

- Respondent #1 - Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** against Respondent #1 for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed). The Consent Order will contain language stating that if Respondent applies for a gallery license within thirty (30) days of receiving the Order, the civil penalty will be reduced to **Two Hundred Fifty Dollars (\$250)**.
- Respondent #2 - Counsel recommends this matter against Respondent #2 be **dismissed**.

Decision:

- **Respondent #1 - The Commission voted to authorize a civil penalty in the amount of One Thousand Dollars (\$1,000) for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed).**
- **Respondent #2 - The Commission voted to accept the recommendation of legal counsel.**

2. **2016055781**

(Unlicensed Activity)

History: None.

This complaint was opened by the administrative staff of the Tennessee Auctioneer Commission for unlicensed gallery location.

An investigation was conducted into the unlicensed activity. Investigator Wilson-Weaver learned that a licensed auctioneer with a licensed firm was conducting the auctions on behalf of the Respondent. Additionally, the Respondent does not have a gallery license at this time. Investigator Wilson-Weaver also determined that the location where the auctions are held, the Respondent holds a business license (in his name) for the location.

Reasoning and Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** for violation of T.C.A. § 62-19-125(a) regarding gallery license. The Consent Order will contain language stating that if Respondent applies for a gallery license within thirty (30) days of receiving the Order, the civil penalty will be reduced to **Two Hundred Fifty Dollars (\$250)**.

Decision: The Commission voted to authorize a civil penalty in the amount of One Thousand Dollars (\$1,000) for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed).

3. **2016056321**

First License Obtained: 03/29/2006

License Expiration: 03/28/2018

Type of License: Firm/Gallery

History: None

This complaint was filed by a consumer and alleged that the Respondent overruled this bid and sold the diamond to the lower bidder. Complainant alleges that on July 30, 2016, she attended an online auction in Tennessee. The following bids occurred on the 8.03 carat diamond:

- Bidder #1 at \$56,000 + 22% Buyers Premium = \$66,080
- Complainant at \$58,000 + 22% Buyers Premium = \$70,760

Complainant alleges that the Respondent owner said he overruled her final bid of \$70,760 and sold the diamond to Bidder #1. Respondent owner told Bidder #1 to call Complainant that he was the other bidder and Complainant purchased the diamond from Bidder #1 for \$75,000. Complainant states that Respondent provided bidder #1 with Complainant's contact information. Complainant believes Respondent and bidder #1 conspired against her.

Respondent stated the following in response to the complaint:

- Complainant was not an approved bidder at the auction and consequently, none of his bids were registered.
- Complainant submitted his absentee bid form after the 12:00 noon deadline of Friday, July 29th. It was submitted via email at 9:28 p.m. on July 29th.
- Complainant's absentee bid form was incomplete, no credit card information was provided.
- Complainant was identified in Respondent's registration records as someone Respondent no longer conducts business with, due to an incident in 2013.
- The July 30th auction had over 4500 approved bidders, which included live, absentee, internet and phone bidders.
- Following the sale, Complaint called more than once and complained he should have been the successful bidder and stated he wanted to buy the ring. Respondent states that per policy, Respondent owner did not release Bidder #1's contact information. Respondent owner contacted Bidder #1 after the sale and told him that Complainant expressed interest in purchasing the ring and provided Bidder #1 with Complainant's contact information.

Complainant stated in response to the Respondent's response that she has never attended one of the Respondent's auctions before and she provided him with excellent references prior to the auction so he could accept her payment by bank-wire. Complainant states that her reputation is flawless and she can supply multiple references.

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

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

4. **2016057391**

First License Obtained: 3/23/2015
License Expiration: 3/22/2017
Type of License: Firm/Gallery
History: 201402949 Closed with Consent Order (\$2000 Civil Penalty)

This complaint was filed by a consumer and alleged a violation of auctioneer laws and rules. Complainant alleges that he had a representative of the Respondent come to his house in preparation of an auction. The representative's business card stated she was a "relationship manager" and so does the contract. This representative was shown and took pictures of the items at Complainant's home. Complainant states she did not do an inventory and was in the house for less than thirty minutes. Complainant states the representative stated they always donate some items that would not bring much as a tax write off and Complainant informed the representative that he and his wife were on social security disability and could not take any tax write offs. Complainant stated he told her he did not want

anything donated and to call him if they found any that would not sell and he would come pick up those items. Complainant states the representative agreed. Complainant has the following issues:

- Contract. The contract was negotiated and signed by the Respondent's representative and Complainant alleges that she is not a licensed auctioneer.
- Auction Date. In the contract, the line for auction date was left blank. Complainant alleges that Respondent kept postponing the auction. The date was changed four (4) times.
- Donation. Complainant alleges that Respondent donated items without his consent. Complainant alleges that they told him he would get an itemized list of items that were donated, but when he talked to the warehouse manager he was told that Goodwill simply puts down the number of items and a price.
- Missing items at auction. Complainant alleges that items were missing from the auction and that Respondent's employees stated they had no record of them coming into the warehouse.
- Pulled Items. Complainant alleges that four (4) items were pulled from the auction and had he not complained they would have not noted those items and told him about them. Complainant alleges that when he went into the warehouse to get the four (4) pulled items, he found several (8) of his missing items just lying around. When he asked the warehouse manager about one of the items, he was told that the person who purchased it had not paid for it, it sold for \$23.00, he was told that he would get the \$23.00 and Respondent would put it in another auction.

Respondent stated the following in response:

- Date of Sale. Respondent states that they typically hand estate sales directly out of the customer's home, but that was not feasible in the Complainant's case and Complainant was determined to sell his items. Therefore, Respondent offered to hold the sale in their showroom, which they only do a few times a month and Respondent states it is more complex than a normal estate sell since the goods have to be transferred. Respondent states a 30-60 day timeframe is not unusual and this was told to the Complainant.
- Missing Items. Respondent states they have investigated these claims and feel strongly that this did not occur. Respondent provided an accounting of the items, this included a main settlement statement from the sale with all items sold listed and a listing of all items that did not make the sale for various reasons. Respondent states these are the items which Complainant asserts were stolen for personal gain. One item was pulled due to offensive nature and another because it contained medical bottles with contents. The other items did not meet Respondent's standards or issues generating shipping quotes occurred. There are items with a "C" behind them, indicating they were to be relisted in a future sale.
- Pulled Items. The item that sold for \$23.00 was a wooden rake and Respondent states that when Complainant saw it at the warehouse, it had been sold to a buyer who simply had not yet picked up the rake. But it was sold through a competitive bidding process.
- Respondent states that the Complainant raised these issues with them in advance to this complaint and this complaint was taken seriously as they tried to resolve his concerns.

Counsel reviewed the contract between Respondent and Complainant; the Respondent in this case is in the business of online estate sales.

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.

5. **2016057551**

(Unlicensed Activity)

History: None.

This complaint was filed anonymously for unlicensed activity. Complainant states that multiple auctions are listed online and fail to provide auctioneer or firm license information. The advertisements read as follows:

******LIVE AUCTION******

Auction EVERY Friday Night

Respondent Name

Address

Join us for a LIVE AUCTION, Friday at 7 p.m.. Beat the heat and get some great antiques, collectibles, vintage & mid-century furniture, glassware, washers, dryers, home décor, clocks, retro items, dolls, yard & garage sale items and much more.

**Different Items Every Week!!!*

*Doors open at 6 p.m. if you have any questions call *** at phone number.*

An investigation was conducted into the unlicensed activity. Investigator Wilson-Weaver went to the building at which the auction was to be held and registered as a bidder. Investigator Wilson-Weaver observed the auction for approximately thirty (30) minutes during a male subject called the auction and directed the activities of several individuals. Investigator Wilson-Weaver spoke with the person from whom she obtained a bidder number and identified herself as an investigator for the State of Tennessee, she requested to speak with the owner. Investigator Wilson-Weaver spoke with the Respondent owner and asked for a copy of the auctioneer, firm and/or gallery licenses. Respondent owner stated that his regular auctioneer was unavailable for this auction, so he engaged another auctioneer/firm to conduct the auction. Investigator Wilson-Weaver spoke with the owner of the auction firm who stated that his apprentice was calling the auction that night. The firm, sponsoring auctioneer and apprentice auctioneer all had active licenses with the state.

Respondent's owner stated in an affidavit that he has been in business for approximately two (2) months and has hired a licensed auctioneer to call the auctions. Respondent stated he did not know anything about a gallery license until about three (3) weeks prior when one of the auctioneers asked him.

Reasoning and Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** against Respondent #1 for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed). The Consent Order will contain language stating that if Respondent applies for a gallery license within thirty (30) days of receiving the Order, the civil penalty will be reduced to **Two Hundred Fifty Dollars (\$250)**.

Decision: The Commission voted to authorize a civil penalty in the amount of One Thousand Dollars (\$1,000) for violation of T.C.A. § 62-19-125(a) regarding gallery license (unlicensed).

6. **2016061691**

(Unlicensed Activity)

History: None.

This complaint was filed by two (2) consumers for unlicensed activity and further alleges that the Respondent is advertising an auction with no auctioneer or firm license.

The auction of the property was held on October 26, 2016, via live auction. This auction required bidder registration. Potential buyers had to submit a 'bidder registration' form via email prior to 5 pm on October 25, 2016.

Counsel pulled the following terms and conditions from the 'bidder registration' form:

- Respondent reserves the right to reject any bid in its sole discretion. The Bidder who submits the High Bid accepted by Respondent will be the buyer of the Property ("Buyer"). The "High Bid" shall mean the highest bid acknowledged by Respondent.
- In the event of any dispute between Bidders, or in the event of doubt on the part of Respondent as to the validity of any bid, Respondent will have the final discretion to determine the successful Buyer, cancel the Auction, or to re-offer the Subject Property(s) for auction.

Respondent's "Disclaimer" within some of the auction documents, states that the property is listed for sale by licensed real estate agent in Tennessee. Auctioneer activities will be conducted by Auctioneer 1 (licensed TN Auctioneer) of Auction Firm 1 (licensed TN Firm).

An investigation was conducted and the following:

- A representative for the Respondent stated that all the information the complaint was concerned with could be found in the auction packet that was being handed out.
- Additionally, he provided the auctioneer of record, which Counsel confirmed was listed in the advertisement and packet. Auctioneer 1 has an active license in Tennessee, as well as an active firm license in Tennessee. The Respondent's representative stated that all of this information is located in the disclaimer in each advertisement and available on their website.
- Representative confirmed it was a live auction, held on site.
- Representative stated the following:
 - **Registering to Bid.** A prospective bidder may be allowed to attend if he/she completes and executes the Terms of Sale and complies with the escrow requirement.
 - **Reserve/Minimum.** There is no reserve or minimum for this sale.
 - **Rejecting Bids.** Yes, under certain circumstances. This is also included in Terms of Sale.

After reviewing the file, it is concerning that Respondent's name includes the term "auction" in it and therefore, Counsel believes the Respondent is holding themselves out to be an auction firm.

Reasoning and Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** for violation of T.C.A. § 62-19-102(a)(1), which states it is unlawful for anyone to act as or advertise or represent to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission under this chapter or prior state law.

Decision: The Commission voted to authorize a civil penalty in the amount of One Thousand Dollars (\$1,000) for violation of T.C.A. § 62-19-102(a)(1), which states it is unlawful for anyone to act as or advertise or represent to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission under this chapter or prior state law. The Commission also asked a complaint be opened against the auctioneer in this matter for violations of T.C.A §62-19-101, et. al.

NEW BUSINESS

Mr. Phillips asked Ms. Mathews what the commission's next steps should be regarding the proposed rule relating to timed listings under review by the legislature. Ms. Mathews advised the commission that even if the rule were to be changed or rejected, it would still be up to the commission what meets their current statutory standard and they would still have the authority to pursue complaints. Mr. Morris raised a concern that were the rule to be rejected, the online auction services could pose an unregulated risk to the public. Ms. Mathews informed the commission that she and a representative of the Office of the Attorney General would be present when the joint-ops committee's next review took place.

There being no other new business, Mr. Phillips concluded the meeting at 11:09 am.