



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

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

The Tennessee Auctioneer Commission met on August 1, 2016. Although notice was posted that the meeting would be held in first floor conference room 1-B, due to technical issues the meeting was moved to Room 1-A immediately prior to its scheduled start time.

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

BOARD MEMBERS ABSENT: None.

STAFF MEMBERS PRESENT: Roxana Gumucio, Cody Kemmer, Sarah Mathews.

ROLL CALL/NOTICE OF MEETING

Mr. Colyer called the meeting to order at 9:01 am. Roll was called and Director Gumucio read notice of the meeting into the record, as follows: "Notice of August 1, 2016 meeting of Auctioneer Commission was posted to the Auctioneer Commission's web site on July 27, 2016."

AGENDA

Mr. Morris made a motion to adopt the agenda as written, which was seconded by Mr. Phillips. The motion carried by unanimous vote.

MINUTES

Mr. Morris made a motion to adopt the minutes from the May 2, 2016 meeting as written, which Mr. Lewis seconded. The motion carried by unanimous vote.

ELECTION OF OFFICERS

Mr. Colson motioned to elect Mr. Phillips to serve as the new chairman, which Mr. Morris to serve as his vice chairman. Mr. Lewis offered a second to Mr. Colson's motion. The motion passed unanimously. Mr. Colyer would serve as chair for the remainder of the meeting.

EDUCATION REVIEW

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

FORMAL HEARING

At this point Director Gumucio made the recommendation that the Commission move into the formal hearing that had been scheduled, with the meeting's usual business to resume at its completion. The hearing concluded at 10:25 am.

DIRECTOR'S REPORT

Director Gumucio reviewed the board's expenditures and projected budget. She noted several of the costbacks associated with board operations. There were no legislative updates as the legislature had been out of session since the Commission's previous meeting.

Board counsel Sarah Mathews presented recommendations from the Attorney General's office on several changes to legal definitions relating to the Commission.

LEGAL REPORT

1. 2016014591

(Unlicensed Activity)

History: None

This complaint was filed anonymously for alleged unlicensed activity. Upon receipt of this complaint, Counsel reviewed Respondent's webpage which states the Respondent offers full service estate liquidations and appraisals. Respondent's company is focused on high-end estates with period antique furniture, fine and decorative arts, currency, coins, firearms, gems and jewelry. Respondent's webpage explains that Respondent performs all aspects in conducting a liquidation of estate contents. After an initial appointment, the actual sale is scheduled for 2 or 3 days over a weekend.

Complainant submitted a webpage from estatesales.net for an estate sale that the Respondent was performing. The webpage stated that for this particular estate sale, "bid sheets available at the estate sale."

Respondent stated the Respondent is not an auction company, does not have an auctioneer license, nor has the Respondent ever represented to be an auctioneer. Respondent states that the "bid sheets" allow customers to make offers on tag sale items that they do not want to pay full asking price. Respondent states that they call them bid sheets, but they should probably change the name to offer sheets in order to avoid confusion.

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

Decision: The Commission voted to authorize a Letter of Instruction in regards to T.C.A. § 62-19-101(2), which defines an auction. Additionally, the Commission has requested that language is added to the Letter of Instruction, requesting that the Respondent stop providing bid sheets and allowing offers to be made on items without an auctioneer's license.

2. 2016022741

First License Obtained: 03/29/2007 License Expiration: 3/28/2017

Type of License: Firm/Gallery Branch History: None.

This complaint was filed anonymously and alleged that no firm license number was listed on an advertisement. Complainant submitted an advertisement for an upcoming auction and no firm license number was listed on the advertisement.

Respondent stated it sent an auction flyer to a local newspaper to be placed as an advertisement in the newspaper. The flyer included the firm license number. Additionally, the Respondent submitted an email from the advertising manager at the newspaper which stated that when the artwork was received from the Respondent, it did have the firm license number on it, but when the newspaper advertisement was resized the firm license number got left off and it was printed without the firm license number.

Reasoning and Recommendation: Counsel recommends that this matter be dismissed. Decision: The Commission voted to accept the recommendation of legal counsel.

3. **2016022761**

First License Obtained: 05/16/2011

License Expiration: 05/15/2017

Type of License: Firm/Gallery Branch

History: None.

2016022762

First License Obtained: 04/24/2007

License Expiration: 04/23/2017

Type of License: Auctioneer

History: None.

This complaint was filed anonymously alleging a violation of T.C.A. § 35-5-112. Complainant submitted three (3) newspaper advertisements and circled the Buyers Premium amount listed on all three (3) advertisements. The following information was received:

- February 20, 2016 – Auction advertisement stated the Buyers Premium to be charged was eight percent (8%).
- February 27, 2016 – Auction advertisement stated the Buyers Premium to be charged was ten percent (10%)
- March 5, 2016 – Auction advertisement did not state the amount of Buyers Premium to be charged.

T.C.A. § 35-5-112 states in pertinent part:

(a) Whenever real or personal property is to be sold at public sale under any order or decree of any court in this state, the court, judge or chancellor under whose jurisdiction the sale is to be made has the discretionary authority to secure the services of an auctioneer licensed in this state to conduct the public sale and to fix the auctioneer's fee, the fee to be not more than eight percent (8%) of the sale price on sales of real property and not more than ten percent (10%) of the sale price on sales of personal property, these fees not to include the expenses of the sales, and to order the fee to be paid out of the proceeds of the sale.

In response, the Respondent forwarded the Order and Decrees Confirming Sale of Property for each auction listed in the advertisements.

- February 20, 2016 – Auctioneer’s fee to be paid to Respondent as ordered by the Court was set at eight percent (8%).
- February 27, 2016 – The Chancellor approved the court sale to be conducted with a ten percent (10%) buyers premium and the notice of sale conformed to the order of the Court. Upon confirmation of the sale, the Chancellor ordered the auctioneer’s fee paid to Respondent to be eight percent (8%).
- March 5, 2016 – Auctioneer’s fee to be paid to the Respondent as ordered by the Court was set at eight percent (8%).

Respondent states the complaint was based upon the information contained in the Notice of Court Sale advertised by the Clerk & Master. When a sale is ordered by the Chancellor, the Clerk & Master is appointed as special commissioner to take possession of the property and conduct the sale; these duties include publishing the required notice. The auctioneer is ordered to assist the Clerk & Master in its duties as a subordinate, subject to the Clerk & Master order.

Reasoning and Recommendation: Although the advertisement for the February 27, 2016 auction states a Buyers Premium of ten (10) percent will be charged to the buyer, the Decree Confirming Sale from the Chancellor states that the Respondent will receive an eight percent (8%) commission. As such, Counsel recommends this matter be dismissed.

Decision: The Commission voted to authorize a Letter of Instruction regarding Rule 0160- 01-.21, “Disclose of Buyer’s Premium.”

4. **2016029201**

(Unlicensed Activity) History: None.

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.

5. **2016029181**

History: None.

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.

6. **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 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.

7. **2016039521** – Respondent 1
First License Obtained: 8/11/2005
License Expiration: 3/15/2018
Type of License: Auctioneer
History: None.

2016039522 – Respondent 2
First License Obtained: 3/16/2016
License Expiration: 3/15/2018
Type of License: Firm
History: None.

2016039523 – Respondent 3 (Unlicensed activity)
History: None.

This complaint was filed by a consumer and alleged that a fraudulent auction was to be held on July 16, 2016. Complainant alleged that there was no signature by the actual owner of the property, but instead the actual owner was misled by her stepson. Complainant states that the owner's stepson told the owner that a liquidator was going to buy and remove all of the surplus property from the business, which included light fixtures and other lighting inventory. Additionally, Complainant states that some of his personal property and vehicles were stored at the property and that he did not sell these items to the

Respondent's. Complainant states the sale of inventory was never signed by the legal owner of the business.

This complainant was not sent out for response, but instead sent to investigations. Our investigator stated the following:

- The stepson is the Vice President of the business that was liquidated.
- Actual owner that the Complainant refers to is the secretary of the business.
- Respondent and stepson provided documentation that the business sold off a majority of its surplus inventory to Respondent 1, 2 and 3 on April 27, 2016 and these are the items being sold at auction on July 16, 2016.
- Stepson told investigator that this was a business decision made by Vice President (Stepson) and Secretary (Mom/Actual Owner) and that Complainant has no authority in regards to the business and that this is Complainant's way to retaliate against the family.

- Stepson provided a statement to our investigator that he has the legal authority to sign contracts on behalf of the business.
- No estate items are included in the auction, only materials acquired and owned by the company.
- All of Complainant's personal items were excluded from the auction.

Investigator was also provided a copy of the contract between Vice President and Respondent's 1 and 3. All items that were sold at the auction on July 16, 2016 were the legal property of Respondent's 1 and 3 to sell.

Reasoning and Recommendation: Counsel recommends this matter against Respondent 1, 2 and Respondent 3 be dismissed.

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

8. 2016036341 – Respondent 1

First License Obtained: 11/12/2015 License Expiration: 11/11/17

Type of License: Gallery History: None.

2016036342 – Respondent 2

Gallery Owner

2016036343 – Respondent 3

First License Obtained: 9/7/1999

License Expiration: 6/28/17

Type of License: Auctioneer

History: None.

This complaint was filed by a competitor and alleged that the gallery owner is only present at about half of the auctions that are conducted at the gallery. Complainant alleges that Respondent 1 is an auction gallery and Respondent 2, gallery owner, is only present at about half of the auctions due to other obligations and is required to be present at all auction activities. Complainant states that every other week the auctions are conducted without Respondent 2 present which is in violation of the law. Complainant states this has been brought to Respondent 2's attention but has been ignored. Complainant alleges that Respondent 3 is currently conducting the auctions and that it is the auctioneer's

responsibility to ensure the auction is legal. Additionally, Complainant alleges that on a regular basis ghost bidders are used to run the bids up on attendees, although not illegal, it shows ethical issues at the gallery.

Respondent 2 states that she is present at the gallery for all auctions, but leaves during some auctions in order to go to her second job. Respondent 2 states that there is a licensed auctioneer present at all auctions for the duration of the auction. Additionally, Respondent 2 is not aware of any ghost bidding at the gallery.

Reasoning and Recommendation: Counsel recommends this matter against Respondent 1, 2 and 3 be dismissed.

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

NEW BUSINESS

Rhessa Hanson appeared before the board on behalf of Nashville Auction School in case the Commission had any questions about the proposed education. The Commission had already approved the courses.

Mr. Phillips mentioned that some licensees were having trouble contacting the board and renewing their license under the new system. Ms. Gumucio pointed to a new video, available on the Commerce & Insurance website, that demonstrates the new procedures.

There being no other new business, Mr. Colyer concluded the meeting at 11:12 am.