



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

**Board Meeting Minutes for May 2, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneers Commission met on May 2, 2016 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Morris called the meeting to order at 9:02 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Bobby Colson, Adam Lewis, Jeff Morris.

BOARD MEMBERS ABSENT: Ronnie Colyer, Howard Phillips.

STAFF MEMBERS PRESENT: Nikole Avers, Cody Kemmer, Sarah Mathews, Jennaca Smith.

ROLL CALL/NOTICE OF MEETING

Mr. Morris called the meeting to order in Mr. Colyer's absence. Director Avers read notice of the meeting into the record, as follows: "Notice of the May 2, 2016 meeting of the Auctioneer Commission was posted to the Auctioneer Commission's website on March 15, 2016."

AGENDA

Mr. Colsen motioned to adopt the agenda as written. This was seconded by Mr. Lewis. The motion carried by unanimous roll call vote.

MINUTES

Mr. Lewis made a motion to adopt the minutes from the April 4, 2016 meeting as written. Mr. Colsen seconded. The motion carried by unanimous roll call vote.

APPLICATION REVIEW

The commission considered the matter of George W. Wallace, a retired auctioneer needing to reactivate his license. After a review of Mr. Wallace's qualifications and experience, the commission decided to allow Mr. Wallace to reactivate his retired license via Rule 0160-01-.23 (5).

DIRECTORS REPORT

Director Avers reviewed the board's expenditures and projected budget. Next she apprised the board of the recently completed legislative session, specifically the passage of SB 2469 HB 2201, or "Right to Earn a Living Act." This new law creates requirements that subject regulatory agencies to an annual review of their licensure procedures.

Director Avers advised the board of its abilities to suggest legislation for next year's session. She provided a list of necessary criteria that would meet the new guidelines.

LEGAL REPORT

1. 2016009711

(Unlicensed Activity)

History: 2013009711 Letter of Warning
2013012681 Letter of Warning

This matter is being re-presented from the April 2016 Commission meeting, at which time the Commission authorized a civil penalty in the amount of One Thousand Dollar (\$1,000) for unlicensed activity. The facts of the case were presented as follows:

This complaint was filed by a licensed auctioneer and alleges that Respondent was conducting unlicensed online auctions. Complainant stated that the Respondent is running an online auction and closing time to bid on items is extended. Counsel reviewed the Respondent's webpage, provided by the Complainant, which explains how its online auctions are conducted. According to the webpage, Respondent's system is set up where if any item gets a bid in the last two (2) minutes, time will be extended by a couple of minutes to prevent anyone from getting 'sniped.'

After the April 2016 Commission meeting, it was discovered that the complaint was not sent to the Respondent, providing Respondent with the opportunity to respond to the complaint.

Respondent stated that Respondent has been compliant with TCA § 62-19-103(9) since the Commission inquired into this same situation in July 2013 (Complaints 201300971 and 201301268). Respondent states that since July 2013, all online auctions are fixed timed auctions. This is stated in the terms section preceding the auction lots, stating in part that "*auctions have fixed end times, there are no extensions, even if there are bids in the last minute.*" In regards to the Respondent's webpage, Respondent states the text in question was simply the use of an "outdated" FAQ and Respondent corrected it promptly upon receipt of this complaint. Respondent again stated that the text from the webpage does not reflect the actual conduct of the Respondent's auctions.

Counsel has reviewed the Respondent's webpage and it has been updated, it now states in part, "*When does the Bidding End? For most sales bidding will end after the first day of the tag sale, which allows people to view the items on day one. The website will show a timer on the last day so you can count it down. **Items end when the timer runs out; there are no extension, even if someone bids in the last second.***"

Respondent would like to apologize for any confusion the text on the webpage may have caused and appreciates the efforts of the Complainant for bringing this error to its attention. Additionally, Counsel spoke with Respondent and confirmed that after the July 2013 complaints were filed against the Respondent, the Respondent changed its online policies.

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

Decision: The Commission voted vacate the previously authorized civil penalty and to dismiss this matter.

2. **2016007281**

First License Obtained: 06/19/1996

License Expiration: 02/28/2017

Type of License: Auctioneer

History: None.

This complaint was filed by two (2) consumers (Complainant 1 and Complainant 2). Complainant 1 alleges that Respondent starts auctions by stating there is a \$1.00 minimum bid, and sellers/consigners are allowed to have only two (2) reserves during the auction. Complainant 1 alleges that Respondent puts a reserve on his personal items for a minimum bid of \$10.00 or \$20.00. Complainant 1 alleges that Respondent allows sellers/consigners to bring stuff up front to sell and places a \$5.00 minimum bid on those items.

Complainant 2 alleges that he consigned three (3) tables at one of Respondent's auctions and that Respondent represented that he wanted to sell the tables, one at a time, as cheap as he could. Complainant 2 alleges that Respondent placed a reserve of \$5.00 or \$10.00 on his personal items.

Office of legal counsel requested an investigation, which yielded the following information. On March 29, 2016, Investigator received communication from Complainant that the auction house had burnt down and was unsure if the auction barn will ever re-open.

Reasoning and Recommendation: Dismiss.

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

3. **2016016361**

First License Obtained: 03/16/2011

License Expiration: 03/15/2017

Type of License: Firm/Gallery Branch

History: 201102671 – Closed with Letter of Warning

2016016362

First License Obtained: 08/08/2006

License Expiration: 08/07/2016

Type of License: Auctioneer

History: None.

This complaint was filed by a consumer and alleged that Respondent failed to stop the bidding at \$110 after the bid was not challenged or increased by another buyer, the bid went up to \$150. On or about March 4, 2016, Complainant alleges participating in an online auction held by the Respondent. The Complainant placed bids through auction zip.com. Complainant alleges that placed the high bid on a lot for \$150.00, when the item came up for bid, the bid increments were in \$10 increments. Complainant alleges that the Respondent acknowledged a bid of \$100 from another online bidder and that Complainant's top bid of \$150 allowed the clerk to bid \$110 on behalf of Complainant. Complainant alleged watching online as the auctioneer repeatedly asked for a bid of \$120 and there were no other bids at that point and the Respondent proclaimed, "sold, to online bidder at \$150." Complainant alleges surprise when bid went from \$110 to \$150 and no one else bid on the lot. Complainant alleges calling the Respondent on March 7, 2016 to inquire as to how the bid went from \$110 to \$150. Respondent's employee explained that this situation has occurred before and that Complainant needed to contact

Auction Zip because it was a problem with their computers. Complainant alleges calling Auction Zip and speaking with a representative who explained that this was the fault of Respondent's clerk who enters the bids from Auction Zip. Auction Zip maintained that the clerk failed to lodge the bid of \$110 as the highest bid and the Respondent then "hammered down" the \$150 top bid. Complainant alleges that Auction Zip told him there was nothing they could do for Complainant. Complainant alleges calling Respondent back, at which time the Respondent's employee agreed to a conference call with Auction Zip. Complainant alleges that during the conference call, both Auction Zip and Respondent's employee blamed each other for the problem and neither party would take responsibility. Complainant alleges that what should have cost the Complainant \$132 cost the Complainant \$177, essentially an overage of \$48 (\$40 in cost; \$8 in commissions). The Complainant asked for a refund of \$48 from the Respondent, but the Respondent told Complainant they claim no responsibility in the over charge.

Respondent stated that the auction was held on March 4, 2016 and it was an absolute consignment auction. Respondent states at the auction center there is a live crowd and also many people registered to bid online through Auction Zip. Respondent states that Complainant is disappointed that the item was purchased for \$150, but the Complainant agreed to \$150 when he entered that price into Auction Zip as the maximum bid. Respondent states that Complainant claims that no one else bid on the item between \$110 and \$150, but as the auctioneer, Respondent states he could easily accepted bids from the floor during the time in which the price increased. Respondent states since this complaint was filed two weeks after the auction, it is almost impossible for Respondent to remember exactly what floor bids were taken at that time. Respondent states that Complainant neglected to include in the complaint that Respondent provided Complainant with the option of cancelling the sale of the item and therefore would result in no charge to Complainant. After giving this option, the Complainant still wanted the item and agreed to the \$150. Respondent stated that out of respect, the price of packing and shipped the item was waived.

In addition to Respondent's statement, the clerk of the online bidding portion of the auction provided a response. Clerk stated that there are only two (2) ways in which Complainant's bid went from \$110 to \$150. Either the floor was bidding or another online person was bidding. Clerk explained that technically there is no possible way to jump a client's bid.

Reasoning and Recommendation: Dismiss. No violations.

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

4. 2016014091

First License Obtained: 09/04/2012

License Expiration: 08/22/2016

Type of License: Auctioneer

History: 201200695 – Consent Order for \$250

This complaint was filed by a consumer for bad check. Complainant alleges that on Saturday, October 17, 2015 Complainant took a pickup truck load of used furniture and collectibles intending to run through the auction that night. Complainant alleges that Respondent offered \$275 for the merchandise. Complainant alleges that Respondent wrote a check for \$275 and gave it to Complainant's roommate for rent payment. Complainant alleges that Complainant's roommate deposited the check and the bank informed them that it was not good. Complainant alleges they had to pick up the check from the bank and it was \$275, plus an additional \$30 service charge. Complainant alleges that other people have had the same problem.

Respondent stated that on Saturday, October 17, 2015, Complainant brought some things to sell that the auction and that Respondent told Complainant that the auction wasn't good at that time and people may not pay what Complainant thought it was worth. Respondent states that the items did not bring a lot and Complainant got mad. Complainant threatened that Respondent was a crook. Respondent wrote Complainant a check and it bounced. Respondent states it bounced because at the same time Respondent had someone write them a check for \$2,000 and it also bounced, causing the escrow account to be a mess. Respondent states everything was straightened out with everyone but the Complainant because he had moved to another state and Respondent didn't know how to get in touch with him. Respondent states they had every intention of making things right, but lost contact. Respondent states that if they could get Complainant's address, they would pay him.

Counsel called Respondent to ask if since receiving a copy of the complaint had Respondent attempting sending the Complainant a check. Respondent informed Counsel that they had not yet mailed the check, but would mail a check that day and send proof of mailing to Counsel. Respondent mailed a check to Complainant for \$340 via certified mail on March 31, 2016 and sent proof to Counsel via fax.

Reasoning and Recommendation: Counsel recommends a Letter of Warning regarding T.C.A. § 62-19-112(b)(4), which states in part, *"failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession..."*

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

NEW BUSINESS

There being no other new business, Mr. Morris adjourned the meeting at 10:45 a.m.