



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

**Board Meeting Minutes for April 4, 2016
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneers Commission met on April 4, 2016 in Nashville, Tennessee, in the first floor conference room of Davy Crockett Tower. Mr. Colyer called the meeting to order at 9:22 a.m. and the following business was transacted.

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

BOARD MEMBERS ABSENT: None.

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

ROLL CALL/NOTICE OF MEETING

Director Avers took roll and read notice of the meeting into the record, as follows: "Notice of the April 4, 2016 meeting of the Auctioneer Commission was posted to the Auctioneer Commission's website on March 15, 2016."

AGENDA

Mr. Phillips motioned to adopt the agenda as written. This was seconded by Mr. Colson. The motion carried unanimously by roll call vote.

MINUTES

Mr. Lewis made a motion to adopt the minutes from the February 1, 2016 meeting as written. Mr. Morris seconded. The motion carried by a unanimous roll call vote.

APPLICATION REVIEW

Austin Ray Butler, Jr. appeared before the board regarding his recent application for an apprentice license. His license was granted.

DIRECTORS REPORT

Director Avers brought in Assistant Commissioner Brian McCormack to advise the board about a possible change in fee structure regarding reciprocal applications. Currently reciprocal applicants are required by the board to pay application and renewal fees in the same amount that they pay in their home state. It was the opinion of Director Avers and the assistant commissioner that these variable fees were creating an undue administrative burden on application processing.

VOTE: Mr. Morris put forward a motion to set the reciprocal fee flatly at \$275, the same fee charged for in-state applicants. This motion was seconded by Mr. Colyer and then put to a roll call vote. Mr. Morris, Mr. Colyer, and Mr. Lewis voted in the affirmative. Mr. Colson and Mr. Phillips dissented. Change to a flat \$275 fee for all applicants was thus carried 3-2.

Assistant Commissioner McCormack praised the recent efforts of the board and its staff and then excused himself from further business.

Director Avers advised the board that newly mandated requirements and a new, online licensing system necessitated changes to the board's applications. She presented new versions of these forms, as well as a new experience log. The board liked the changes to the applications, but needed further review of the experience log. It was agreed the experience log would be tabled for the board's next meeting.

VOTE: Mr. Morris made a motion to approve the revised applications. Mr. Colyer seconded. The motion was approved unanimously.

LEGAL REPORT

1. 2016009711 (Unlicensed Activity) History: No history of disciplinary action. 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.'

Reasoning and Recommendation: Counsel has evidence that Respondent conducts online auctions in which bidding time is extended, such action constitutes a simulcast of a live auction without a proper license to do so in violation of T.C.A. 62-19-102(a)(1). As such, Counsel recommends the authorization of a civil penalty in the amount of Five Hundred Dollars (\$500) to be satisfied within thirty (30) days of execution of the Consent Order.

Decision: The Commission voted for a civil penalty of One Thousand Dollars (\$1,000) to be satisfied within thirty (30) days of execution of the Consent Order.

2. 2016002211 First License Obtained: 09/03/2003 License Expiration: 09/30/2017

Type of License: Auctioneer History: No history of disciplinary action.

Complainant alleges that on or about July 17, 2015, the Respondent conducted an auction at which it sold firearms that were not part of the Seller's property. The Complainant alleges that the Respondent brought these firearms to the auction and they were the property of the Respondent. Complainant alleges that members of the Seller's family stated that none of these firearms sold belonged to the Seller.

Respondent provided a response which stated that all of the firearms belonged to the Seller and did not belong to the Respondent, nor were the firearms ever in the Respondent's possession. In addition to denying the allegations, the Seller stated in an affidavit that the firearms included in the July 17, 2015 auction belonged to him.

Reasoning and Recommendation: Dismiss.

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

3. 20150227421 (Unlicensed Activity) History: 2015020861 Formal Charges Pending

The complaint was filed by a consumer and alleges that Respondent has been conducting weekly auctions on Saturday night at which there is no auctioneer license number or firm license number on display in the building where the auctions are being held. Complainant alleges that she searched online for the firm license and found no results. The Complainant alleges that the Respondent posted advertisements for these auctions on Facebook with no license numbers included in the advertisements. Auction dates listed on Facebook include December 17, December 19, December 31, January 2 and January 7.

Respondent stated in his response that a licensed auctioneer and licensed firm (complaint 2016006261 and 2016006262, below) took over on his business on October 1, 2015. Office of legal counsel contacted the licensed auctioneer and firm (Respondents in 201600626 below) who confirmed the October 1, 2015 purchase.

Reasoning and Recommendation: Respondent sold the company prior to the advertised auctions, thus legal counsel finds no proof of violation on behalf of the Respondent. Dismiss.

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

4. 2016006261 First License Obtained: 02/01/2005

License Expiration: 12/18/2016

Type of License: Auctioneer

History: 200419365 closed with a \$500 consent order.

5. 2016006262

First License Obtained: 02/01/2005
License Expiration: 12/18/2016
Type of License: Auction Firm
History: No history of disciplinary action.

The Commission opened a complaint against the Respondent 1 Auctioneer and Respondent 2 Firm for a potential violation regarding unlicensed activity in above-mentioned complaint 20150227421. The online advertisement states that Respondent 1 Auctioneer is calling auctions on behalf of an unlicensed company.

Respondent 1 Auctioneer took over the alleged unlicensed company on October 1, 2015, and at that time placed Respondent 2 Firm license and auctioneer license on display in the auction area and the office. Respondent 1 Auctioneer has contacted staff to ask whether any additional licenses are needed but has not received a clear answer. Respondent 1 Auctioneer believes the advertisement and two (2) licenses are in compliance with the statutes and rule, but states that Respondent 1 Auctioneer will do whatever is needed in order to be compliant.

Reasoning and Recommendation: Because Respondent has taken the necessary precautions to determine the guidelines of the Tennessee Auctioneer Commission, Counsel recommends a letter of instruction regarding T.C.A. § 62-19-118 "Business location – Sign" and Rule 0160-01-.20 "Advertising Guidelines."

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

6. 20150220921 (Unlicensed Firm and/or Gallery) History: No history of disciplinary action.

The Commission opened a complaint against Respondent for potential unlicensed activity based on information received in a prior investigation. Information yielded in the prior investigation made it appear that Respondent (unlicensed firm) was advertising and operating an auction. Respondent advertised on Facebook stating, *"It's AUCTION time again Saturday July the 18th starts at 4 pm. We have a variety of different items. From w@l mart, km@rt and G@nder mtn. Lots of box deals. Everyone is Welcome. Absolutely NO Buyers PREMIUM."* Auction dates listed on Facebook include June 20, July 11 and July 18. Respondent did not advertise a license number.

Office of legal counsel requested an additional investigation, which yielded the following information. The Investigator went to the property where the auctions were occurring and observed a large amount of merchandise in the building, buyer numbers discarded on the floor and an "auction" banner displayed on the front awning of the location. In a subsequent investigation, the investigator contacted the owner of the property, at which

time the owner stated the property was rented for the purpose of conducting public auctions, but at the time of the investigation the tenants had been evicted.

Upon further investigation, the Investigator met with the employee of the Respondent, which is owned by unlicensed auctioneer (Complaint 20150220861, below). Employee admitted to working auctions for the Respondent. The Employee stated that she worked the back and would put bidder numbers on the merchandise that was sold. The Employee stated that there were two different people calling those auctions (hereinafter, "Auctioneer 1" and "Auctioneer 2")

The investigator contacted Auctioneer 2, who stated that he only provided sound equipment for the Respondent to conduct the auctions and did not call auctions. Auctioneer 2 also stated that he had been attending Respondent's auctions since about January 2015. Auctioneer 1 called the auctions in early 2015. Auctioneer 1 was not at some of the auctions in late 2015 but states that Respondent's owner, who is not a licensed auctioneer, conducted some of the late 2015 auctions or invited members of the crowd to try calling the auctions.

The investigator contacted Auctioneer 1, who said he called two (2) auctions for Respondent, and the Respondent's owner advised Auctioneer 1 that the firm was licensed. Auctioneer 1 is a licensed auctioneer and also owns a firm and gallery—both properly licensed. Auctioneer 1 states that during the second auction, he determined that the Respondent did not have a firm license, and Auctioneer 1 left the auction mid-way through calling.

Reasoning and Recommendation: There is evidence of at least (3) auctions which were advertised on Facebook, all of which constitute three (3) violations of T.C.A. § 62-19-102(a)(1). As such, Counsel recommends the authorization of a civil penalty in the amount of Three Thousand Dollars (\$3,000) to be satisfied within thirty (30) days of execution of the Consent Order.

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

7. 20150220861 (Unlicensed Activity) History: No history of disciplinary action.

The Commission opened a complaint against Respondent for potential unlicensed activity; Respondent is the owner of the above-referenced complaint (20150220921). Office of legal counsel requested an investigation, which yielded the following information. During a prior investigation, the investigator located a property at which an unlicensed auction was allegedly held at. That property was, at the time of investigation, unoccupied and listed for sale. The listing agent for the property advised the Investigator that the Respondent contacted her to inquire about purchasing the property to be used as an auction site. The listing agent provided an affidavit which stated that the Respondent met

with the listing agent and the property owner to view the property. The Investigator also contacted the owner of the property who stated that the Respondent leased the building and held at least one (1) auction at that property before abandoning the building, stole a \$200 fire extinguisher and left the building full of trash and damages.

The Investigator attempted to meet with the Respondent by visiting the residence and calling the Respondent. The Respondent returned the phone call but refused to meet for an interview. Upon additional review it was determined via the County Sheriff's Department that Respondent had been arrested and was in jail awaiting transfer on pending criminal charges and violation of probation. The Investigator later interviewed the Respondent, who denied any operation of an alleged unlicensed auction gallery, stating he employed Auctioneer 1 as his auctioneer. Additionally, Respondent admitted to calling one auction. The Investigator requested auction records, which the Respondent admitted to having, but declined to provide. After the interview, Respondent provided an affidavit stating he hired Auctioneer 1 as a licensed auctioneer and stated he never called any auctions.

Reasoning and Recommendation: There is evidence of at least (3) auctions which were advertised on Facebook, all of which constitute three (3) violations of T.C.A. § 62-19-102(a)(1). As such, Counsel recommends the authorization of a civil penalty in the amount of Three Thousand Dollars (\$3,000) to be satisfied within thirty (30) days of execution of the Consent Order.

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

8. 20150220961 (Unlicensed Firm and/or Gallery) History: No history of disciplinary action.

The Commission opened a complaint against Respondent for potential unlicensed activity based on information received in a prior investigation. Information yielded in the prior investigation made it appear that Respondent (unlicensed company) was operating an auction.

Office of legal counsel requested an investigation, which yielded the following information. The investigator contacted the owner of the subject property and stated that no auctions were held at that location, but more or less offered yard sale items for sale on a daily basis. Additionally, the investigator located an application for a business tax license in the name of the Respondent. The Respondent described its business activities on the application to include resale of goods.

Reasoning and Recommendation: Dismiss. No violations.

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

9. 20150220941 (Unlicensed activity) History: No history of disciplinary action.

The Commission opened a complaint against Respondent for potential unlicensed activity. Respondent is the owner of record on the business license for previous Respondent Company in complaint 20150220961 above. Office of legal counsel requested an investigation, which yielded no information of unlicensed activity on behalf of the Respondent.

Reasoning and Recommendation: Dismiss. No violations.

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

10. 2016008621 First License Obtained: 01/04/1982 License Expiration: 2/28/2017
Type of License: Auctioneer, History: 200104985 closed with a civil penalty.

This complaint was filed by a consumer alleging that the Respondent has entered into a shady and illegal agreement with two siblings in order to cheat Complainant out of their portion of a property. Complainant states that Respondent telephoned Complainant's younger sibling and stated that the property, which was inherited by Complainant's father, was to be auctioned and that two other siblings were going to buy it. Complainant stated the property is owned by five (5) siblings.

The Respondent denies making any phone calls to any member of the Complainant's family. Respondent was not aware of a potential auction of the property and has not been contacted by any member of the Complainant's family about conducting an auction at the property. Upon receipt of the complaint, Respondent's attorney spoke with one of Complainant's siblings and was told that the family had a discussion about the possibility of an auction, and Respondent's name was mentioned as a suggestion by one of Complainant's siblings. Respondent stated that at no time was Respondent made aware that Respondent's name had been mentioned in this discussion.

Complainant submitted no supporting documentation that the Respondent contacted one of Complainant's sibling's regarding conducting an auction of the property. There is no documentation supporting any of the alleged violations; therefore counsel is unable to make a determination as to whether or not a violation has occurred.

Reasoning and Recommendation: Dismiss due to no evidence of a violation.

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

11. 2016009611 First License Obtained: 12/18/2014 License Expiration: 12/17/2016

Type of License: Auctioneer, History: None.

This complaint was filed by a consumer for outstanding payment for placing ads with the Complainant. Complainant alleges that Respondent has placed four (4) ads with Complainant since October 2014 and has paid for none of them. Complainant alleges that other newspaper in this area have had the same problem with Respondent. Complainant alleges that Respondent is not returning phone calls or emails. Complainant alleges that other than owing Complainant over \$600, that Respondent is taking sellers' money and then not paying the bills the seller is under the assumption that he is paying.

The Respondent stated that Respondent has no validation of this debt. At some point in 2014, an individual called asking if they could advertise Respondent's upcoming consignment auction, which had already been advertised in a different location. Respondent agreed verbally to the advertisement. Respondent states that Respondent never received a proof before printing and therefore does not owe this bill. Respondent also states that his company has held many consignment auctions, in which the consignors were never asked to pay for advertising. At this time, counsel has no documentation to support any alleged violations.

Reasoning and Recommendation: Dismiss due to no evidence of a violation.

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

NEW BUSINESS

Tennessee's Office of Attorney General submitted a revised definition of "timed listings." Mr. Morris proposed the motion to adopt the definition, Mr. Colson seconded. The motion passed unanimously. Director Avers presented an invoice from the Nashville Auction School's continuing education seminar in West Tennessee along with a statement from Ms. Rhessa Hanson who could not be present.

There being no other new business, Mr. Colyer entertained a motion from Mr. Morris to adjourn the meeting at 11 a.m.