



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

**February 1st, 2016 Minutes
First Floor Conference Room (1-B)
Davy Crockett Tower**

The Tennessee Auctioneers Commission met on February 1st, 2016 in Nashville, Tennessee, at the Davy Crockett Tower in the first floor conference room. Mr. Colyer called the meeting to order at 9:05 a.m. and the following business was transacted.

BOARD MEMBERS PRESENT

Ronnie Colyer
Bobby Colson
Howard Phillips
Adam Lewis
Jeff Morris (by Teleconference)

BOARD MEMBERS ABSENT

None

STAFF MEMBERS PRESENT

Nikole Avers, Keeling Gamber, Jennaca Smith, Dennis O'Brien

ROLL CALL & NOTICE OF THE MEETING

Director Avers took roll call and read notice of the meeting into the record, as follows:
Notice of February 1st, 2016 meeting of Auctioneer Commission was posted to the Auctioneer Commission's web site on January 27th, 2016.

ADOPT AGENDA

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

MINUTES

Mr. Phillips made a motion to adopt the minutes from the November 2nd and December 7th, 2015 minutes as written. This was seconded by Mr. Colson. The motion carried unanimously by roll call vote.

FINANCIAL REPORT

Director Avers introduced Assistant Commissioner Brian McCormack and Bill Huddleston. AC McCormack then presented the fiscal information for 2014 - 2015.

LEGISLATIVE UPDATE

General Counsel Michael Driver presented the legislative update for Auctioneer licensees and each member was given a hardcopy of these recent developments.
Mr. Phillips inquired about the letter the Board had requested legal to prepare outlining their opposing view on the recently proposed legislature on public auto auctions.

Vote: Mr. Phillips made a motion to send a letter by the end of the day to the legislature stating the Auctioneer Commission's opposition to the proposed law on public auto auctions, since the members felt that all auctioneer activity should be regulated the same way and anyone holding auctions in the State of Tennessee should abide by the same rules as mandated by current law. This was seconded by Mr. Colson. The motion carried unanimously by roll call vote.

Ms. Gamber assured the members that the letter would be ready for the Chairman's signature by the end of the meeting.

DIRECTORS REPORT

Director Avers presented the current budget numbers as of November 30th, 2015 with the Education & Recovery Fund expenditure for the year 2015. She ended the report by mentioning that the Nashville Auction School's latest newsletter, their current contract and recent invoices, were on the members' iPads for their perusal as requested at the last meeting.

APPLICATION REVIEWS

Harold Wayne Cannada had requested he approach the Board on their earlier decision to deny his application. He took time to explain both his past and current circumstances, his continued dedication to the profession and the fact that he had more than a few positive recommendations from currently licensed auctioneers who had written in on his behalf. Based on the facts he presented, he requested that the Board reconsider and allow him to practice as an auctioneer in the State of Tennessee.

Vote: Mr. Colson made a motion to allow Mr. Cannada to make a new application for licensure as an apprentice so he could be guided and monitored by his sponsor in the State. This would allow Mr. Cannada to be approved to work with this character issue, which can be revisited should he apply to upgrade to auctioneer after the two year required apprentice period. This was seconded by Mr. Lewis. The motion carried unanimously by roll call vote.

David Ray Maynard sent in a written request that the Board approve his application to become an auctioneer in Tennessee.

Vote: Mr. Phillips made a motion to allow Mr. Maynard to apply for licensure as an apprentice so he could upgrade to a licensed auctioneer after two years. This was seconded by Mr. Colson. The motion carried unanimously by roll call vote.

Jack Schroder submitted two medical insurance courses he requested the Board to consider for auctioneer education.

Vote: Mr. Phillips made a motion to deny both course applications. This was seconded by Mr. Morris. The motion carried unanimously by roll call vote.

LEGAL REPORT

1. **20150213761**

First License Obtained: 5/22/15

License Expiration: 5/21/17

Type of License: Gallery Branch License

History: No history of disciplinary action.

A complaint was filed alleging that Respondent (Gallery) is advertising that anybody can sell their items at the auctions, but Respondent's owner refused to allow Complainant to auction their

merchandise. Complainant further alleges that Respondent's owner would not sell an item that Complainant bid on stating that the bid did not meet the reserve price, but Complainant states that a reserve price was not advertised prior to bidding. Complainant submitted no documentation and/or advertisements from the sale(s).

Respondent denies the allegation(s) of false advertising, stating that Complainant stole the items that Complainant attempted to consign for the auction.

Reasoning and Recommendation: Counsel recommends that this matter be closed due to insufficient evidence of a violation.

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

2. **20150219661**

(Unlicensed Firm and/or Gallery)

History: No history of disciplinary action.

3. **20150219662**

First License Obtained: 3/29/06

License Expiration: 3/28/16

Type of License: Auctioneer

History: No history of disciplinary action.

4. **20150219663**

(Unlicensed Firm and/or Gallery)

History: No history of disciplinary action.

Respondents 1 and 3 are unlicensed with the Tennessee Auctioneer Commission, and Respondent 2 is a licensed auctioneer and is principal of a licensed firm (unnamed in this Complaint). There were two complaints filed anonymously stating that Respondent 2, a licensed Auctioneer, owns and operates a business that has two locations (Respondents 1 and 3). Complainant states that this business is unlicensed and is operating as an auction firm and/or gallery. One of the complaints further states that the business is owned and operated by two individuals, who are not licensed as auctioneers. An investigation was initiated to determine what activities these Respondents are engaged in and whether such conduct constitutes unlicensed auction activity.

Respondent 1 advertised online stating that auctions are held on the 1st and 3rd Sunday of every month. The investigator visited Respondent 1's location, which displayed a banner with Respondent 2's firm name and license number and Respondent 2's license number. Respondent 1's location had several items for sale and on consignment. Respondent 1's business flyer states that Respondent 1 is a city market, antique mall and auction house. The investigator observed an auction at Respondent 1's location on 12/6/15, with Respondent 2 calling the auction. The next day, the investigator met with Respondent 1's business owner (the individual identified in the complaint) who advised that Respondent 1 does not conduct auctions but leases the space out to Respondent 2 and his firm. Respondent 1 states that it received a reduced commission for items sold during Respondent 2's auction at their location. Respondent 1 states that all auctions are called by and all records are handled by Respondent 2. Respondent 2 states that all of the owner's items are auctioned on zero commission in lieu of rent and the consignment items are split commission, using Respondent 2's normal commission rate that apply to approved sellers with consignment agreements.

Respondent 2's firm—along with an estate sale company name—advertised auctions at the firm's physical address on 11/19/15 and 11/21/15 and at Respondent 1's location on 12/6/15. Further,

Respondent 2's AuctionZip.com advertisements states that auctions are held at the firm's physical address every Thursday and Saturday. The investigator visited Respondent 2's firm physical address, which the address was given for Respondent 3 (a generic name, slightly different than that of the firm name). The firm location had a flyer with the name of the advertised estate sale company and a flyer that included Respondent 2's firm name and license number, Respondent 2's license number, and the estate sale company name. The investigator also visited the main address on file with Respondent 2 and Respondent 2's firm name and found a residential neighborhood. This address is also the business address on file with the assessor's website for the estate sale company. The investigator observed an auction on 12/3, with Respondent 2 calling the auction. The investigator met with Respondent 2 who also stated that Respondent 1's building location is leased by Respondent 2. Respondent 2 provided consignment agreements and updated flyers to include Respondent 1 and Respondent 2's full firm name. Respondent 2 states that all auctions are conducted in accordance with the laws and rules of the Commission.

Reasoning and Recommendation: It is legal counsel's opinion that because Respondent 1 holds a regular auction at a fixed location, it should maintain a gallery license. However, because Respondent 2 is fully licensed as an auctioneer and maintains a firm license, there is no violation on the part of Respondent 2. Thus, for Respondent 1, Counsel recommends the authorization of a civil penalty in the amount of \$1,000 for operating an unlicensed gallery in violation of T.C.A. § 62-19-125. For Respondents 2 and 3, Counsel recommends dismissal.

Decision: The Commission voted to dismiss the complaints as to all three (3) Respondents.

5. **2015003031**

License #: Unlicensed

History: Consent Order in the amount of One Thousand Dollars (\$1,000) pending for violation of T.C.A. 62-19-102(a)(1)

This matter is being re-presented from the May 2015 Commission meeting, at which time the Commission authorized a One Thousand Dollar (\$1,000) Consent Order for unlicensed activity. The facts of the case were presented as follows:

This complaint was filed alleging that Respondent is not licensed as an auction firm in Tennessee. As a result of the complaint, an investigation was requested at Respondent location. When the investigator arrived at the location, he saw there was a sign outside that read "Thrift Store". When investigator inquired as to an auction being held there, the lady working inside told him the auction was a mile down the highway. When investigator drove to the new location he saw a sign propped against a utility pole that read, "THUR AUCTION SAT 6:30 P.M.". Investigator attended the auction on Saturday, February 7, 2015 at 6:30 p.m. that was advertised on the sign. While the auction was being held, the investigator noted a sign posted inside the auction that reads, "Any Guarantees are between dealers and buyers! Please check your tickets before you leave! Thanks - Mgmt" and another sign that reads, "All Sellers are subject to 20% commission! - Mgmt". Investigator noted the auctioneer's name and the crowd of bidders. After the auction was over, investigator spoke with the auctioneer and the owner of the auction house. The owner agreed to give the investigator a sworn statement. In his statement, he states, "I presently have an auction businesses called (name of auction) that has operated at subject location since January 2014. Respondent admitted that the auctioneer at the auction on February 7, 2015 has never been licensed as an auctioneer. Investigator noted that he located a revoked license for the auctioneer that Respondent was referring to. The investigator witnessed and took photos of the unlicensed auctioneer at the February 7 auction.

The Respondent in this matter never complied with the terms of the Consent Order, so the matter was subsequently turned over to litigation for a formal hearing. On January 28, 2016, legal counsel received communication from the litigation attorney that the owner/operator of this unlicensed auction house passed away on June 3, 2015.

Reasoning and Recommendation: Counsel recommends that this matter be Closed with no further action.

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

NEW BUSINESS

Ms. Rhessa Hanson of the Nashville Auction School presented the current breakdown of costs for the newsletter and explained their fee structure to the members. She also covered the many uses of the newsletter, stating that relevant and timely matters to the auctioneer profession were usually covered. Director Avers explained that the State could send out these newsletters at no cost to the commission since our in-house office staff currently handled newsletters for other boards very successfully. She also mentioned that we could send out an RFP for schools who were interested in auctioneer education after the Nashville Auction School's contract ended in June 2016.

Vote: Mr. Colson made a motion to send out an RFP for auctioneer education after June 2016 and that the State office/staff could manage the newsletter going forward. This was seconded by Mr. Phillips. The vote carried by majority roll call vote with Mr. Morris in opposition.

There being no new business, Mr. Colson entertained a motion from Mr. Lewis to adjourn the meeting at 11:25 a.m.