



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

**Board Meeting Minutes for October 16, 2017  
First Floor Conference Room 1-B  
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on October 16, 2017 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Thorpe called the meeting to order at 9:00 a.m. and the following business was transacted:

**BOARD MEMBERS PRESENT:** John Thorpe, Jeff Morris, and Adam Lewis.

**BOARD MEMBERS ABSENT:** Ronald Colyer

**STAFF MEMBERS PRESENT:** Glenn Kopchak, Robyn Ryan, Sarah Mathews, and Erica Smith.

**ROLL CALL/NOTICE OF MEETING**

Mr. Thorpe called the meeting to order with Director Kopchak taking roll. Director Kopchak then read the notice of the meeting into the record as follows: "Notice of the October 16, 2017 meeting of the Auctioneer Commission was posted to the Auctioneer Commission's website on October 9, 2017."

**AGENDA**

Due to the scheduling of a formal hearing requiring the presence of an administrative law judge and court reporter, it was determined that the formal hearing be heard first in sequence with the freedom to reorder the other items be granted as the Commission deems necessary for sake of efficiency.

Mr. Morris motioned to adopt the agenda as amended. This was seconded by Mr. Lewis. The motion carried by unanimous vote.

**MINUTES**

Mr. Morris made a motion to adopt the minutes from the September 18, 2017 meeting as written. Mr. Lewis seconded. The motion carried by unanimous vote.

**EDUCATION REPORT**

Since the Respondent, Jeremiah Totherow, was not present, it was determined to proceed through the agenda to provide further opportunity for him to appear. As a result, the Commission reviewed a request from the Nashville Auction School to grant 4 hours of Continuing Education (CE) credit for an online course titled, "Tennessee Law".

Mr. Morris motioned to approve the course and grant the 4 hours of CE credit assigned. This was seconded by Mr. Lewis. The motion carried by unanimous vote.

## **DIRECTOR'S REPORT**

Director Kopchak provided a detailed accounting of budget revenue and expenditures, to include line item and trend analysis. Director Kopchak spent some time focusing on "Administrative Costbacks", in particular, which include the Commission share of the liquidation of all administrative costbacks from all the programs. The share is determined by licensing count, number of complaints, and budget plan which accounts for 0.86% for the Auctioneer Commission resulting in the \$1508 noted on the expenditure sheet but not itemized for July out of 175,750 total expenses for all of the other programs in Regulatory Boards combined.

Regarding renewals, Mr. Colyer noted in a recent meeting that some renewal notices are not reaching the licensees. Upon further investigation, Director Kopchak reported that it was determined that the system, "Comprehensive Online Regulatory & Enforcement" (CORE), has experienced some technical issues that resulted in population of incorrect fields which would account for some of the mailing errors. That issue has since been corrected. Administration has received complaints for failure to receive renewal notices from licensees that did not notify the staff of a change of address as well. It was further noted that Administration makes an effort to ensure the licensees get a renewal notice, but the licensee is also reminded that renewals which occur every two years are their responsibility, and they must not rely solely on notice to keep their license current.

Regarding newsletters, Director Kopchak explained executive management's instructions that although licensing revenue has been used in the past to produce or contract the production of a newsletter, producing industry updates is outside the mandate of regulatory boards and is best left to the professional associations; however, executive management and the general assembly is currently reviewing the education recovery fund.

## **FORMAL HEARING**

In the matter of Jeremiah Totherow and Jeremiah Totherow d/b/a Jasper Trading House and Auction, docket no. 12.15-146605A, case nos. 20150220861, 20150220921, and 2016055781, the Commission determined that the state met the preponderance of evidence standard in proving the following allegations of fact:

1. Respondent Jeremiah Totherow is not licensed with the Tennessee Auctioneer Commission and he was not licensed at the time of these findings.
2. Respondent Jasper Trading House and Auction is not licensed with the Tennessee Auctioneer Commission and was not licensed at the time of these findings.
3. An initial investigation took place in July 2015 and in that investigation, Investigator Laurie Wilson-Weaver traveled to Tullahoma, Tennessee and found that at the location at least one auction had taken place and that Jeremiah Totherow and Jasper Trading House were the parties responsible for that auction.
4. Investigator learned through an employee Misty Meeks, that Ms. Meeks had worked more than on auction for Respondents, that auctions took place also in Jasper, Tennessee, and she provided an affidavit.
5. Ms. Meeks also told the Investigator that there was a person who did the auctions who was a licensee but that person quit and after that Respondent Totherow did auctions but then hired an unlicensed person, Chris Gully, to do the auctions.

6. Investigator Wilson-Weaver also met with Chris Gully who stated that he provided sound equipment but in a later meeting said he attended auctions where Respondent called the auctions.
7. Respondents did have a licensee, Brent Myers, to call auctions but Mr. Myers quit after learning that Respondents held no licenses.
8. In the investigations, Investigator Wilson-Weaver found advertisements for auctions on July 18, July 11 and June 20, 2015 on a Facebook page under Jasper Trading Post and Auction.
9. In a later investigation, Investigator Wilson-Weaver traveled to Dunlap, Tennessee where a new location was being operated by Respondent Totherow under the name DGB liquidations. At that location, Investigator Wilson-Weaver learned auctions were held by Respondent Totherow.
10. Investigator Wilson-Weaver attempted to contact Respondent Totherow in Dunlap and discovered that Respondent Totherow was in the Sequatchie County Jail awaiting transfer to Cumberland and Campbell counties.
11. While in Dunlap on February 20, 2016, Investigator Wilson-Weaver observed an auction advertised, and cars in the parking lot and people in the building.
12. Investigator visited Respondent Totherow in jail and Respondent Totherow initially denied any operation of unlicensed auction gallery stating Brent Myer was the auctioneer. Respondent Totherow also asserted that he could sell his own property but admitted he had called one auction at the Tullahoma location but did not admit this in the affidavit he signed.
13. In February 2016, Investigator Wilson-Weaver found operations for Respondent for Whitwell, Tennessee. At that site, bidders were solicited online but had to appear at the physical location to secure the merchandise.
14. A Facebook page again advertised auctions for September 17, 2016 at the Whitwell site and pictures of items to be auctioned were posted by Respondent using Respondent's middle name.
15. Respondent declined to provide any documents concerning all of these auctions and could not show that he individually owned the property auctioned.
16. Investigator Wilson-Weaver testified that the items being sold by Respondent Totherow were purchased in bulk from supplier, then resold at auction.

Due to violations of statutes 62-19-102(a)(1) and 62-19-125(a), the Commission ruled to assess the maximum penalty of two thousand five hundred dollars (\$2,500) for each violation. There were four (4) violations of 62-19-102(a)(1) and four (4) violations of 62-19-125(a), for a total of eight (8) violations, totaling twenty thousand dollars (\$20,000) in penalties, to include payment of all hearing costs.

Motion made by Mr. Morris and seconded by Mr. Lewis to approve as so ordered. The motion carried by unanimous vote.

## **LEGAL REPORT**



**STATE OF TENNESSEE**  
**DEPARTMENT OF COMMERCE & INSURANCE**  
**OFFICE OF LEGAL COUNSEL**

Davy Crockett Tower,  
500 James Robertson Parkway  
NASHVILLE, TENNESSEE 37243  
(615) 741-3072 fax 615-532-4750

MEMORANDUM

**TO:** TENNESSEE AUCTIONEER COMMISSION  
**FROM:** ERICA SMITH, Assistant General Counsel  
**SUBJECT:** OCTOBER LEGAL REPORT  
**DATE:** October 16, 2017

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*\*Any consent order authorized by the Commission should be signed by Respondent and returned within thirty (30) days. If said consent order is not signed and returned within the allotted time, the matter may proceed to a formal hearing.*

**Erica Smith**

- 1. 2017051641**  
First License Obtained: 3/23/15  
License Expiration: 3/22/19  
Type of License: Firm  
History: None

Complainant originally submitted this complaint to Consumer Affairs, but it was referred to our division on July 28, 2017 because the complaint did not fall within their jurisdiction. Complainant states that he purchased quite a few items from Respondent's website but alleges Respondent misrepresented the pickup location and date for the purchased item referred to in the complaint, then issued him a refund for the item against his instruction.

Complainant states that he purchased the item for \$275.00 and was notified that he had won the auctioned item by an email from Respondent dated June 30, 2017. The email states that Complainant did, in fact, win the item and just needed to select a fulfillment preference and complete the purchase by paying for the item. The email also stated that the item could be picked up on July 6, 2017 at a specific warehouse location from 3:00 p.m.-6:00 p.m. Complainant completed the purchase immediately by using his credit card to pay for the item through Respondent's website. Complainant states that he was contacted by Respondent's representative a few hours before the pickup time on July 6 and told that the item had been listed with the wrong pickup location. Therefore, Complainant was told that the item was actually located at a different location and could not be picked up that day due to the error. Complainant further states that he had hired someone to pick up the item, along with the other items he purchased from Respondent that were available for pickup at the same warehouse (as listed on the confirmation email) and the same time. Complainant states that he told the representative he needed to talk with his wife about their options, such as a refund or getting the hired driver to pick up the item the following day from the correct location. Complainant states that he did not tell the representative that he wanted a refund during that initial phone call, but said he would call back once he spoke with his wife and the hired driver. Complainant states that he then called back 10 minutes later and the representative told him that someone "jumped the gun" and already told the seller of the item that Complainant no longer wanted the item and that they had already issued a refund to Complainant. Complainant feels that the item was sold to him for a very low price that the seller was probably not happy with, and believes that Respondent should not have refunded the money for the item because he did not authorize them to do so.

Respondent states that Complainant is not correct in his recollection of what happened regarding this transaction. Respondent states that the representative explained that she called Complainant around 11:00 a.m. on July 6 to inform him that the item was incorrectly listed as being available for pickup at the warehouse, and that it was actually at the seller's home and not available for pickup that day because the sellers did not live at the home where the item was stored, and the home was in a gated community so they would need to coordinate a different pickup date and time. Respondent offered to coordinate with the seller so the Complainant could pick up the item the following day or any day after that but was told by Complainant that he had hired someone to pick up the other items from the warehouse and needed to check on his options before committing. The representative states that the initial phone call ended at that point. Respondent's representative further states that Complainant called back an hour later and stated that he could not pick up the item on any other day and asked for a refund, and stated his wife would be following up with a phone call to make sure everything was taken care of properly with the refund. The representative then told Complainant that she would refund the money immediately while on the phone with Complainant, which she did. The refund invoice was provided to Counsel and shows that the refund was processed at 1:27 p.m. on July 6. The representative explains that Complainant's wife called about an hour after the refund was processed and asked if they could pick up the item on July 8, and the representative informed her that the refund was already processed and the item could not be purchased again due to the seller's instruction. Respondent understands that this situation is unfortunate, but states that they did try to work with Complainant to arrange for a different pickup date the next day or any other time convenient for Complainant, and simply followed Complainant's instructions when issuing the refund.

Counsel did not have enough evidence to support the allegations made in the complaint, and requested proof from Complainant but did not receive any further documentation to prove that Respondent violated any statutes or rules. Counsel feels that the Respondent made an administrative error regarding one item out of the many items purchased by Complainant, and did everything they could to rectify the situation, therefore Counsel recommends dismissal.

**Recommendation: Dismiss**

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

**2. 2017050521**

First License Obtained: 12/14/98

License Expiration: 8/8/19

Type of License: Firm

History: None

An anonymous complaint was received on August 2, 2017 from a "concerned citizen" stating that Respondent appeared to be conducting real estate and gun auctions despite having an expired license. Complainant attached copies of advertisements as follows: 1) an advertisement for an absolute estate auction on June 15, 2017; 2) an advertisement for an absolute gun, ammo, gold, diamond, jewelry, and coins auction on June 24, 2017; and 3) an advertisement for an estate auction on August 12, 2017. Our department also sent a copy of the complaint to the Real Estate Commission for investigation on or around August 2, 2017.

Respondent responded to the complaint on August 4, 2017 and stated that as soon as he received the complaint on August 3, he contacted our licensing division about his expired firm license. Respondent states that he has been licensed as an auctioneer since 1990 and has never had this issue or any issue with his license before, and did not realize his firm license was expired until he received the complaint. Respondent states that it was an oversight on his part and he immediately filled out the renewal application and paid all fees due. Respondent's license was reinstated and is currently active. Respondent states he never received any notice that his firm license had expired until he received this complaint, and further states that he understands it is his responsibility to keep up with the licensing requirements whether he receives a notice or not. I asked Respondent to estimate how many auctions he conducted between March 2, 2017 and August 9, 2017, when his license became active

again, and Respondent estimates that he conducted 4 auctions. Respondent explains that he became an auctioneer at the age of 18, and his business is his life and sincerely apologizes for this oversight.

Counsel takes in to consideration Respondent's complete cooperation and transparency throughout the investigation of this complaint, and the fact that Respondent has never had any issues with his license prior to this complaint. Counsel therefore recommends a letter of warning.

**Recommendation: Letter of Warning for unlicensed activity in violation of T.C.A. 62-19-102(a)(1).**

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

### **ADJOURNMENT**

Mr. Lewis made a motion to adjourn, which Mr. Morris seconded. There being no other new business, Mr. Thorpe concluded the meeting at 11:45 am.