



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

**Board Meeting Minutes for September 18, 2017
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on September 18, 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 BY TELECONFERENCE: Ronald Colyer, Jeff Morris, and John Thorpe

BOARD MEMBERS ABSENT: Adam Lewis

STAFF MEMBERS PRESENT: Glenn Kopchak, Aisha Carney, Robyn Ryan, Erica Smith, Rianna Womack, and Sarah Mathews (teleconference).

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 September 18, 2017 meeting of the Tennessee Auctioneer Commission was posted to the Auctioneer Commission's website on September 11, 2017."

MINUTES

Mr. Colyer suggested one edit to the minutes as written. He detailed that at the last meeting he was requesting an update regarding a newsletter for the Commission not initiating a request for the newsletter. Mr. Morris made a motion to adopt the minutes from the June 19, 2017 meeting as amended. Mr. Colyer seconded. The motion carried by unanimous roll call vote.

EDUCATION APPLICATION REVIEW

The TN Auctioneers Association and the Nashville Auction School presented their Continuing Education course approval for review. The application and supporting documentation was complete and submitted in a timely manner.

Mr. Morris motioned to approve the TN Auctioneers Association application for Continuing Education. This was seconded by Mr. Colyer. The motion carried by unanimous roll call vote.

Mr. Morris motioned to approve the Nashville Auction School application for Continuing Education. This was seconded by Mr. Thorpe. The motion carried by unanimous roll call vote.



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MEMORANDUM

TO: TENNESSEE AUCTIONEER COMMISSION

FROM: ERICA SMITH, Assistant General Counsel
ROBYN RYAN, Assistant General Counsel

SUBJECT: SEPTEMBER LEGAL REPORT

DATE: September 18, 2017

**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.*

Robyn Ryan

- 2017027371**
Type of License: Unlicensed
History: None

Complainant is estranged child of Respondent (this not made known in initial complaint) and Respondent is one of the owners below. Complainant states Respondent is illegally acting as an auctioneer and auctions estates, firearms, and vehicles. Complainant attached videos wherein Respondent is identified as one of the auctioneers by Respondent's spouse. Complainant states that Respondent employees underage children to work in the auction

Respondent, through Respondent spouse, states that Complainant has not been to any auction and that Respondent company employees a Tennessee licensed auctioneer who does all auctions. Respondent is licensed in two other states but states does no auction in Tennessee. Videos in question are for advertising auctions. Respondent states that on Facebook are videos of Respondent doing auctions in states where licensed, and are from years ago. Respondent states Respondent is opening another auction house in state where Respondent is licensed and will also work to get personal license in Tennessee. Respondent states that Respondent does not employ underage children but that teenage granddaughter and step granddaughter sometimes check customers in and out while being supervised by Respondent in effort to include them in family business. Respondent states pictures of cars from Complainant are landlord's personal vehicles located at back of antique mall.

Rebuttal from Complainant states that Respondent does not have a high school diploma nor a GED and that Respondent faked a transcript to secure a GA non-resident auctioneer license. Complainant states Complainant has seen what appeared to be shot guns and other weapons on Facebook page in the past but Complainant believes Respondent has deleted pictures.

Video shows people in auction house and Respondent spouse is recording. Respondent spouse does refer to Respondent as one of the auctioneers. Nothing on the video or other videos show Respondent acting as auctioneer. This does appear to be an angry child and while Respondent is referred to as an auctioneer, there is no supporting evidence to show that Respondent, not licensed auctioneer, is doing any auction. Respondent firm below is licensed as a firm license.

Recommendation: Letter of Warning regarding any appearance of auctioning without license.

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

2. 2017027411

First License Obtained: 5/13/15

License Expiration: 5/12/19

Type of License: Gallery

History: None

Respondent is gallery for Respondent owner above.

Recommendation: Dismiss.

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

3. 2017029491

First License Obtained: 11/18/11

License Expiration: 11/17/13

Type of License: Gallery

History: None

Complainant alleges Respondent advertising on Facebook for auction after expiration of license.

No response was filed. Firm license expired on April 7 and auction referred to was listed for May 3. An investigation found that there was only cleaning activity at the site in question but that the expired licenses were posted on the walls. Owner and also expired licensee did not provide statement to Investigator as requested. Research on firm shows nothing posted since the May 3 matter, no new listings, nothing further on Facebook and nothing on firm website at all. License is past two month renewal period.

Recommendation: Close and Flag and a penalty of \$500 to be paid if reapply for license.

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

4. 2017039371

First License Obtained: 12/12/96

License Expiration: 3/20/18

Type of License: Firm

History: 2002 Agreed Citation: Improper Advertising

2002 Agreed Citation: Failure to be duly licensed

2009 Consent Order: Advertising violation

2010 Letter of Warning

Complainant is attorney who works for seller of property involved in auction. Complainant states that Respondent held auction for personal property for seller and that sale resulted in revenue of \$43,000 plus with \$750 advertising leaving a balance for seller of \$42,000. Complainant states seller also contracted with Respondent to close two properties and for one, buyer did not close on original date but promised to close. Complainant states this late closing was problematic for Respondent and Respondent "maliciously disseminated material falsehoods" about seller's intention to go forward with sale. Complainant further states that Respondent withheld funds from the other property sale until completion of closing, gave seller a settlement sheet that offsets funds due from auction with expenses and commissions for real estate. Complainant states this is comingling of funds owed to seller.

Respondent states that seller contracted for an auction of one of the real properties and during the marketing time for the same, contracted for three other auctions for contents of one of the homes, a gun collection and another real property auction. One home auction was cancelled because when receiving the title information it was learned that seller did not own home in question but instead was owned by Complainant obtained through a tax sale and this property was redeemed by owner. Concerning the sale of the other property, the closing was set for June 5 but buyers and seller agreed to an extension and told Respondent's agent to draft the same. Buyers signed the extension but seller did not. Seller contracted chief manager agent of Respondent and requested that no other contract be made by agent and that buyers be contracted. An appointment was made to sign the extension and settle the personal property auction sale but at that appointment, seller decided not to sign extension or the settlement or the commission due on the other property sale. Seller left meeting without instructions on how to proceed but Respondent agent told seller that if decision not made, earnest money would have to be interplead. After that meeting, buyers requested return of deposit but neither seller nor Complainant gave any direction.

In rebuttal, Complainant states buyers were the non performing parties and that no extension should be made due to their breach of contract. Complainant also states that Respondent was instruction to disburse funds from personal property sales to seller as the real estate sales issues were different contracts. Complainant believes that moneys deposited in account were co-mingled.

Requests were made to Complainant for proof of co-mingling, for clarification on ownership of second property, and follow up on the issue of earnest money, but no information was provided. The documents show that there was an accounting for all sales, monies owed to both seller and Respondent but nothing to show co-mingling. These documents show offsets of what was collected and what was owed.

Recommendation: Dismiss.

Decision: The Commission voted to close and flag the complaint and reopen if additional information is received.

5. 2017049321

First License Obtained: Unlicensed

History: None

Complainant is licensee who states Respondent posted an advertisement for "silent auction" Complainant included copies of advertisements for a silent auction wherein highest bidder wins.

This matter was investigated and Investigator visited the site on one of the days in question. In that visit, Investigator found an individual who asked all interested to fill out information and then received a bidder card. The offerings were small items, furniture, lamps, etc., all labeled with ****business name**** silent auction bid sheet. Attached to each item was a description, estimated value, minimum bid amount and minimum bid increments. Investigator observed individuals answering questions, but not soliciting bids.

There was no response filed.

It does appear from the pictures that items were being offered for silent bids, but no live bidding activity was taking place.

Recommendation: \$1,000.00 civil penalty for advertising as an auctioneer in violation of Tenn. Code Ann. §62-19-102 (unlicensed activity).

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

Erica Smith

6. 2017017451 - REPRESENT

Type of License: Unlicensed

History: None

The following information was presented at the June 2017 meeting:

Complainant bought various items for his restaurant from Respondent through bidding on the Respondent's auction website. Complainant states that many of the items, such as a drink display cooler, a refrigerator and a freezer were all in bad shape and at least 6 items had electrical cords that had been cut and were not in operating condition. The Complainant further states the items were not advertised to be in the condition they arrived in after he purchased them, and alleges that Respondent is misrepresenting the items they sell. Complainant also alleges that Respondent is operating without the proper license but provided screenshots from the Respondent's website which states Respondent "is not a licensed auctioneer or auction firm and operates as an auction mediation company only." Complainant also provided an invoice for the items purchased from Respondent and the invoice states that items can be picked up at the Respondent's warehouse location and to "look for the [Respondent's] Auction Signs."

Counsel conducted internal research on the Respondent's website and found the website states the Respondent operates restaurant equipment auctions, commercial auctions, industrial auctions, and various other types of auctions. The Respondent is one of three separately owned and operated divisions of a parent company.

Respondent states she sells items "as is" with no warranties, and at a price that is 70-90% lower than the retail price. Respondent does not understand why Complainant would expect the items to be in better condition based on the prices he paid for the items. Respondent denies that any electrical cords were cut or damaged on any items when they left her warehouse. Complainant used movers to deliver the large items to his restaurant and Respondent claims any damage could have been done by the movers or by Complainant.

Respondent's owner further states that she is not an auctioneer, but has an online bidding service comparable to Ebay and all auctions are timed listings. Respondent further states she does not need a license because she falls under an exception to the licensing requirements for auctioneers. Counsel emailed Respondent to request more details regarding her understanding of the exception she refers to but Respondent has not responded.

Recommendation: Dismiss as Respondent falls under the exception in TCA 62-19-103.

Decision: The Commission voted to close and flag the complaint.

New Information: Counsel called Respondent's phone number listed on their Facebook page on June 20, 2017 at 9:21 a.m. and then sent Counsel an email stating "I called Respondent at 1-888-***.**** to ask a question about bidding. A lady answered the phone, but I did not get her name. I asked, 'if someone bids in the last few

minutes of an auction, do you extend time on the auction?’ She stated, ‘yes, if someone bids in the last 3 minutes of the auction, time is extended by 3 minutes.’ For example, if you bid with 2 minutes left in the auction, time is extended to 5 minutes.”

Counsel also read through the Respondent’s website bidding instructions which state that they use “Dynamic Closing.” This is explained on the website stating “[t]he closing time of an item is automatically extended an additional 3 minutes whenever a bid is placed within the last 3 minutes of the item’s closing time.” TCA § 62-19-103(9) states “[t]he provisions of this chapter do not apply to: (9) Any fixed price or timed listings that allow bidding on an Internet web site but that do not constitute a simulcast of a live auction.” Because Respondent allows the time to be extended as stated on their website and as stated by a representative by phone, Respondent does not qualify for this exception and either needs a license to continue or needs to change their practice of extending time. Therefore, Counsel recommends a civil penalty be assessed for unlicensed activity.

New Recommendation: \$500 Civil Penalty for violation of TCA § 62-19-102 (unlicensed activity).

New Decision: The Commission voted to authorize a \$1000 Civil Penalty for violation of TCA § 62-19-102 (unlicensed activity).

7. 2017025031

An anonymous complaint was received in the form of a photocopy of a newspaper advertisement for an absolute auction occurring on April 22, 2017 at a warehouse location in Tennessee. After further research, Counsel came to the conclusion that the centralized complaint division opened up the above complaint against the incorrect Respondent.

Recommendation: Close the above complaint and open up complaint against licensed auctioneer who conducted the auction.

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

8. 2017024971

Type of License: Unlicensed

History: None

Complainant alleges that he bought a CB radio from Respondent on April 5, 2017 and states that it was “guaranteed to work.” Complainant further states that it did not have a power supply, and when he finally found the proper power supply and hooked it up, he found the radio did not transmit. Complainant states he called the Respondent and spoke to one of the owners who told him that electronics have a 24 hour return policy. Complainant states that the sales are “cash only” and he wonders if they pay taxes on their sales. Respondent states there are no communications or written policy posted regarding the sales terms and conditions.

Our department sent the complaint to Respondent on April 24, 2017 and has not received a response, and the mail has not been returned. Counsel has attempted to call the phone number provided on Respondent’s Facebook page and on internet phone books numerous times, but the phone rings without allowing Counsel to leave a voicemail.

Counsel looked at the Respondent’s Facebook page and found the Respondent advertises her business as a thrift/consignment store, and all the pictures and comments support this. Counsel finds no evidence that Respondent is auctioning any items or advertising auctions in any way.

Recommendation: Dismiss.

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

9. 2017026971

First License Obtained: 3/6/07

License Expiration: 3/5/19

Type of License: Firm

History: None

Complainant placed a Proxibid on an item (EZGO Golf Cart) that was listed by Respondent as an item up for auction during Respondent's live onsite auction on Saturday, April 29, 2017 at 9:00 a.m. CST. Complainant states his Proxibid was made online and had a maximum amount of \$600. Complainant alleges Respondent transferred his bid to an onsite buyer which cost him the item and cost the seller up to \$300. Complainant alleges Respondent had an employee that wanted the item and that is why Complainant did not get the item.

Respondent confirms that an onsite auction took place on April 29, 2017 at 9:00 a.m., and explains that Respondent allows for onsite live bidding as well as Proxibids from online bidders. Respondent works with Proxibid using a remote operator which means Respondent has an employee on a cell phone talking to a Proxibid employee throughout the auction. Online bidders bid through their computer to the Proxibid employee who is in another state working on a computer. When the Proxibid employee gets an online bid, such as Complainant's bid, the Proxibid employee tells the Respondent's employee over the phone that there is an online bid for a certain amount. The Respondent's employee then tells the auctioneer there is an online bid. During auctions, Respondent's employees cannot themselves see when someone bids, if they have a maximum bid, or who is doing the online bidding. The Respondent's employees rely on the Proxibid employee to relay each online bid. During the selling of the item referenced in the complaint, the Proxibid employee did not relay Complainant's bid to the Respondent's employee, so they never knew Complainant made his online bid for the item. The auctioneer sold the item for \$300 to an onsite bidder because \$300 was the highest bid known to Respondent and the auctioneer.

Complainant received the Respondent's response shortly after the complaint was filed and did not send a rebuttal or any evidence to prove his allegations, and Counsel has no proof that Respondent violated any statutes or law.

Recommendation: Dismiss.

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

10. 2017044121

First License Obtained: 8/23/10

License Expiration: 8/22/16

Type of License: Auctioneer

History: 2012 Consent Order: Advertising violation- \$250 civil penalty

May 2016 Letter of Warning: Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession

Complainant is a licensed auctioneer who alleges that Respondent has been having regular monthly auctions with an expired license since August 2016. Complainant further alleges that Respondent advertises the auctions on Facebook and other social media.

Respondent responded to the complaint stating that she did her continuing education at a Nashville Auction School in Tullahoma and was “told that everything was good.” Respondent further states that her business has slowed down from a weekly auction to a monthly auction and that she has been really busy starting a new business. Respondent states she is “now taking the steps to renew her license.”

Counsel viewed Respondent’s Facebook page and found Respondent had posted advertisements for monthly auctions, and auctions that occur more frequently on her Facebook page, as well as pictures of the items for sale. If Respondent does not accept the settlement offer and sign the Consent Order, Counsel will include the evidence for each auction advertised on Respondent’s Facebook page at the hearing.

Recommendation: \$1000 Civil Penalty for violation of TCA § 62-19-102 (unlicensed activity).

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

11. 2017043921

First License Obtained: 4/23/04

License Expiration: 4/30/12

Type of License: Gallery

History: 2010 Consent Order: \$500 civil penalty

This complaint is the same as the above complaint 2017044121 above. Complainant is a licensed auctioneer who alleges that Respondent has been having regular monthly auctions with an expired license since August 2016. Complainant further alleges that Respondent advertises the auctions on Facebook and other social media.

Respondent responded to the complaint stating that she did her continuing education at a Nashville Auction School in Tullahoma and was “told that everything was good.” Respondent further states that her business has slowed down from a weekly auction to a monthly auction and that she has been really busy starting a new business. Respondent states she is “now taking the steps to renew her license.” Respondent does not state anything further in her response regarding her shop but was not provided with a separate complaint to respond to regarding the shop.

Recommendation: A \$1000 Civil Penalty for violation of TCA § 62-19-102 (unlicensed activity).

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

ADJOURNMENT

Mr. Morris made a motion to adjourn, which Mr. Colyer seconded. There being no other new business, Mr. Thorpe concluded the meeting at 9:36 am.