



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

**Board Meeting Minutes for August 20, 2018
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on August 20, 2018 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: Jeff Morris, John Thorpe, Ronald Colyer, and Randy Lowe

BOARD MEMBERS ABSENT: Adam Lewis

STAFF MEMBERS PRESENT: Glenn Kopchak, Heidi Flick, Mark Green

ROLL CALL/NOTICE OF MEETING

Mr. Thorpe called the meeting to order at 9:00 a.m. with Director Kopchak taking roll. Director Kopchak then read the notice of the meeting into the record as follows: "Notice of the August 20, 2018 meeting of the Auctioneer Commission was posted to the Auctioneer Commission website on August 13, 2018."

AGENDA

Mr. Thorpe made a motion to move the Newsletter Proposal discussion with Kelly Vanderpool after May Minutes. Mr. Morris made a motion to adopt the change in the agenda. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

MINUTES

Mr. Lowe made a motion to adopt the minutes from the May 21, 2018 meeting as written. Mr. Colyer seconded. The motion carried by unanimous vote.

NEWSLETTER PROPOSAL

Kelly Vanderpool, representative from the Nashville Auction School, presented 3 newsletter templates via teleconference to the board members. All board members agreed that the templates need to reflect the wording, "Tennessee Auctioneer Commission", and further requested more logo and design options. Mr. Morris added the following suggestions to be included in the newsletters:

- Licensing and renewal requirements
- Educational / Professional development opportunities
- Professional associations information

- Disciplinary actions

CE SEMINARS

The Commission reviewed a request from the Nashville Auction School to grant four (4) hours of Continuing Education (CE) credit for a classroom course entitled, "Professional Auctioneering" and to grant two (2) hours of Continuing Education (CE) credit for a classroom course entitled, "TN Sales Tax Update and Review".

Mr. Morris motioned to approve the courses for the CE credit requested to be provided free of charge to current licensees as a part of the CE Seminars contract. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

EDUCATION REPORT

The Commission reviewed a request from the Tennessee Auctioneers Association to grant a total of six (6) hours of Continuing Education (CE) credit for three classroom courses collectively entitled, "2018 TAA Winter CE".

Mr. Colyer motioned to approve the course for the CE credit requested. This was seconded by Mr. Lowe. The motion carried by unanimous vote.

DIRECTOR'S REPORT

Director Kopchak provided a detailed analysis of the budget, to include current monthly trend analysis with a comparison to prior fiscal years. Director Kopchak addressed the "Education & Recovery Fund" noting that CE seminar expenses were being debited out of regular expenditures. These CE seminar expenses have since been appropriately reallocated to the education recovery fund.

LEGAL REPORT

Mark Green, Chief Legal Counsel, presented the following cases for review:

1. 2018020801 – RESPONDENT 1

First License Obtained: 6/11/2001
License Expiration: 6/30/2013
Type of License: Apprentice Auctioneer - EXPIRED
History: NONE

2018020781 – RESPONDENT 2

First License Obtained: 3/15/2016
License Expiration: 3/14/2020
Type of License: Gallery
History: NONE

Complaint was filed by a consumer and alleges that Respondent 1 (expired apprentice auctioneer) has been calling auctions for Respondent 2 (gallery) on an expired license.

Investigation:

On April 6, 2018, Investigator Williams attended an auction at Respondent 2's location in an attempt to verify who was calling the auctions. Investigator Williams spoke with Respondent 2's owners and in the course of the interview, both owners identified Respondent 1 as the auctioneer calling the bids at their auctions. Investigator Williams explained that our records indicate that Respondent 1's license is expired. At that time, one of Respondent 2's owners agreed to inconspicuously ask Respondent 1 for a copy of this auctioneer license. Respondent 2's owner told Investigator Williams that Respondent 1 stated he did not possess a valid auctioneer's license. Investigator Williams stated that both of Respondent 2's owners were very apologetic and stated they didn't know and would rectify the situation and ensure that all future auctioneers were properly licensed before holding another auction.

Recommendation:

Respondent 1 (Expired Apprentice) – Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** against Respondent 1 for violation of T.C.A. § 62-19-102(a)(1).

Respondent 2 (Gallery) – Counsel recommends the authorization of a **Letter of Warning (LOW)** against Respondent 2 citing T.C.A. § 62-19-125(b).

Decision: Mr. Lowe motioned to fine Respondent 2 a civil penalty in the amount of one thousand dollars (\$1,000). Mr. Morris seconded the motion. The motion carried by unanimous vote.

2. 2018023511

First License Obtained:	9/24/2009
License Expiration:	9/23/2019
Type of License:	Firm
History:	2013000241 – Letter of Warning

Complaint was filed by a consumer against an auction firm alleging unfair practices.

Complainant alleges Respondent held an annual spring absolute auction on April 7, 2018. Around 3:30 pm, Respondent was selling lot #671. Complainant was the opening bid at \$1900. Complainant states he then placed a bid of \$2100, but the auctioneer recognized on onsite bidder at \$2100. Complainant then bid \$2200 and it was acknowledged online. Complainant states however, the auctioneer sold the lot to the onsite bidder. Complainant states he heard the person handling the internet bidding state they had a \$2200 bid, but the auctioneer ignored him. Complainant states the auctioneer allowed that winning bidder to take the next lot (672) at the same bid. Complainant feels this is a deliberate violation of the concept of a fair auction.

Respondent states that during their annual spring absolute auction they had 1,343 lots and at time, three (3) rings running at once. Respondent states they did move swiftly as they had a lot to get through. Respondent provided an audio clip of lots 671 and 672. Respondent states they offered choice on lots 671 and 672 – which means the winning high bidder has choice on which lot he takes, with the option of taking both lots. Respondent also states that right after the auctioneer called sold, the Proxi-Bid agent said "I have \$2,100 on the net" but Respondent stated we already said sold. Respondent states the onsite bidder took both lots.

Complainant stated in response to the Respondent response that after listening to the recording the Respondent does have a legitimate argument, but that is not the way it happened online. Complainant states the Proxi-Bid agent told the auctioneer of his bid and it was shown on Complainant's computer screen.

Counsel confirmed via the audio provided that prior to the sale of lots 671 and 672, the auctioneer on the block indicated the high bidder would get choice. Also from the audio it was determined that the online bid came after the auctioneer said sold.

Recommendation: Counsel recommends this matter be **CLOSED WITH NO ACTION**.

Decision: The Council accepted the recommendation of legal counsel.

3. 2018029971

First License Obtained:	2/25/2015
License Expiration:	2/24/2019
Type of License:	Apprentice Auctioneer
History:	None

This is an anonymous complaint against an auctioneer alleging advertising violations.

Complainant alleges that on Respondent's billboard advertisement, the size of the Respondent's name is much larger than the letters in the name of the brokerage and that the office phone number is not on the sign, only the agent's phone number.

Respondent states that he has reviewed the Auctioneer Commission statutes and rules and does not believe this advertisement violates any of the statutes or rules. Respondent specifically states that Rule 0160-01-.20, which may apply to his billboard, includes both the name and license number of the auction firm or gallery responsible for holding the sale, as required. Respondent states this billboard is simply that, a billboard and not advertising of an upcoming auction.

Counsel has reviewed the advertisement submitted by the Complainant. The violations alleged by the Complainant are violations of the Real Estate Commission rules (specifically 1260-02-.12). In the opinion of Counsel, the Respondent is advertising his auction/auctioneer services only and although he does include both the name of his firm and firm's license number on the billboard as required by Rule 0160-01-.20, the Respondent is an apprentice auctioneer and must abide by Rule 0160-01-.12(7). This advertisement violates Rule 0160-01-.12(7), because the advertisement does not clearly identify the Respondent as an apprentice nor does it contain Respondent's license number.

0160-01-.12 APPRENTICES - SPONSORS - SUPERVISION.

(7) Any advertisement placed by an apprentice auctioneer must clearly and conspicuously identify the apprentice auctioneer as such, contain his/her license number, and the name and license number of his/her sponsor's firm.

Recommendation: Counsel recommends a **Letter of Warning (LOW)** explaining the advertising rules for apprentice auctioneers and advises in the letter that all advertising be updated immediately.

Decision: The Council accepted the recommendation of legal counsel.

4. 2018030961 – RESPONDENT 1

First License Obtained: 2/27/1991
License Expiration: 6/30/2019
Type of License: Auctioneer
History: 2009003901 Letter of Warning

2018030941 – RESPONDENT 2

First License Obtained: 12/12/1996
License Expiration: 7/25/2020
Type of License: Firm
History: 2017039371 Close & Flag
2010002941 Letter of Warning
2009003881 Consent Order (\$750 Civil Penalty)
2001034261 – Agreed Citation

Complaint was filed by a consumer and alleges the following:

- On March 24, 2018, the Complainant attended an auction at which Respondent 1 was the auctioneer and Respondent 2 was the auction firm.
- At the auction, all terms of the sale were announced. A plat and survey were presented to all of those bidding. Complainant states, through their attorney, in a letter to Respondent 1 that Complainant's made their bid based on the terms as announced and as represented in the plat.
- Complainant was the high bidder on a six (6) acre tract of land which included a steel building and a four (4) bedroom perk site.
- Complainant alleges that immediately following the auction he was ready to close ASAP, no financing needed and cash ready.
- Complainant alleges that the Respondent 2 (auction firm) kept delaying and provided the following detailed timeline of events.

4/6 – 1st set closing date, cancelled because of septic certification delay. Complainant asked about the closing date and was told Sellers should be ready by the end of the 30 days. The contract Complainant signed stated they would close on or before April 24, 2018.

Complainant emailed Respondent 1 and asked if there were any problems with the septic. On 4/11, Respondent 1 responded and stated that to his knowledge there were no problems.

4/16 – Respondent 1 emailed stating that the health department emailed him that approval would be done by that Tuesday and Respondent 1 would let the closing company know.

4/19 – The closing company emailed Complainant and said they were looking to close on 4/24/18. Later that day, the closing company emailed Complainant and stated the certification never did come through but middle of the week looked promising and sellers were traveling so they would have to work around that.

4/21 – Complainant emailed Respondent 1 asking if there were problems concerning the septic. Complainant stated he needed to have access to the steel building on the property for storage.

4/21 – Respondent 1 emailed Complainant stating that he could take possession of the steel building now and that Complainant's septic was approved; however, the lot next to Complainant's needs to have a curtain drain for septic that will extend onto Complainant's property.

4/21 – Complainant emailed Respondent 1 stating that he was not in agreement with this because he has had drainage and septic issues in the past that have negatively impacted quality of life and doing this could cause Complainant problems. Complainant also states this is not part of his agreement/contract that was signed and he would have to grant an easement onto the property which may affect where Complainant can build, drive or other things.

- Complainant alleges that after the above occurred, Respondent 1 told him he would not sell him the property unless he agrees to this and he would contact the next highest bidder or resale if necessary. Complainant states at that point Respondent 1 couldn't tell him where the curtain drains or easement were going to be on the property.
- Around 4/26, Respondent 1 presented a new plat to Complainant, which included a proposed easement. According to the Complainant the proposed easement was ten (10) ft. wide and over 500 ft. long completely cutting Complainant's property in half and limiting where the Complainant could build drive. Additionally, affected the value of the land. Complainant states Respondent 2 told him to take it or leave it and Complainant might get his 10% back; Complainant wants the original deal only.

Within the documents provided by the Complainant, there was a letter to Respondent 1 from an attorney that has been retained by the Complainant. It lays out a breach of contract claim, stating that in the revised survey provided to the Complainant in April 2018 there is an easement that runs literally across the property and this easement is a significant change in the nature of the property's character and use compared to what was presented for sale. The attorney reiterates that there is nothing in the contract, which was signed by the parties at the auction that says this property will be sold subject to this easement. The letter states that its purpose is to make demand that the transaction be closed without the easement and if the seller refuses to comply with those terms, the Complainant intends to file a lawsuit.

Respondent 1 & 2 responded to the complaint together.

Respondents were charged with selling four (4) parcels of property, Respondent's marketed the property a home and 12+/1 acres. Respondent hired two (2) individuals, one to perform a soils

evaluation and the second was a land surveying company to perform a new survey on the property. The soil evaluation was completed in mid-February 2018 and the information was forwarded to the survey company in order to complete the necessary elevation shots to be able to submit to the TN Dept. of Environment and Conservation ("TDEC") for septic site approval.

Respondent 1 states that the original elevations were submitted on 3/26/18, the Monday after the auction. A TDEC representative originally confirmed that TDEC's evaluation would be completed by 4/10/18, but when Respondent 1 contacted TDEC on 4/11/18, Respondent 1 was informed that the company would need to re-shoot the elevation shots. The elevation shots were re-shot and resubmitted on 4/16/18. On 4/18/18, Respondent 1 contacted TDEC and was informed that the only way to approve the subdivision evaluations was to extend the interceptor drain to the lowest point on the property.

Respondent 1 states that as soon as he was informed how the sites were going to be approved, he phoned the Complainant and informed him of the approval. Respondent 1 states Complainant was upset. At which time, Respondent 1 suggested that that Complainant should wait and see what the easement entailed and would get Complainant a copy as soon as TDEC signed them.

Respondent 1 states the title company informed him that the title of the property was complicated since there were four (4) different entities that had ownership interest. The information was given to Complainant on 4/20/18 and Complainant set the closing with the title company himself. All documents were mailed to the seller in Texas, executed on 4/30/18 and returned. Respondent 1 stated that the Complainant wanted to postpone closing beyond 4/30. Respondent 1 stated that Complainant asked in an email on 4/21/18 if something were to happen who his earnest money would come from. Additionally, the in the email the Complainant alleged that the sellers had postponed the closing twice, to which Respondent 1 states is incorrect. Neither the seller nor Respondent 1 had ever set a closing time until the septic approval was in hand. Complainant set the closing for 5/2/18, but on 4/30/18 called Respondent 1 and requested postponement for a week to gather information on interceptor drains. The seller agreed.

Respondent 1 received a letter from Complainant, dated 4/26/18, in which Complainant expresses disappointment. Respondent 1 states that in a conversation with Complainant on 4/23/18, he could only offer two (2) remedies to the contract. (1) Close, or (2) Complainant could not close and ask the seller to refund his earnest money due to the easement. Respondent 1 states he did reach out to Complainant's agent, in order to get some assistance, but received no response. Respondent 1 states the next correspondence he received was from Complainant's attorney on 5/2/18. Respondent 1 received another letter from Complainant's attorney in which he stated that Complainant wanted to reduce the selling price by \$54,000. Respondent 1 states that Complainant's attorney has placed a lien on all of the seller's property and therefore she cannot complete any other sales at this time.

Complainant filed a rebuttal response and stated that the sales contract he signed upon winning the auction guaranteed a 4 bedroom soil site and sold AS IS. Complainant was prepared to close in cash that day and still is for the property under title and plat that existed at the time of the sale. Complainant states that the title/deed and the plat that was part of the sale information did NOT include a 500 foot long 10 foot wide easement. Complainant states it was not until 31 days after the sale that the soil work and new plat were presented to him. Complainant states the reason the date

of the closing was changed is because when the title company originally talked with him, they said there were no changes to the original title/deed or sales agreement, but then a few days later when they emailed the Complainant the closing materials there was an easement.

Recommendation: Respondent 1 (Auctioneer) – Counsel recommends the Commission **DISCUSS** this matter.

Respondent 2 (Firm): Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** for participating in an auction with an expired license. ***The firm license expired on 3/20/18 and was therefore expired at the time of the auction. It appears that the license was renewed as of 7/22/18.***

Decision: The Council accepted the recommendation of legal counsel.

5. 2018030851

First License Obtained:	8/27/1990
License Expiration:	8/31/2018
Type of License:	Firm
History:	None.

Complainant was filed by a consumer and alleges the following:

- On April 14, 2018, Complainant attended an auction conducted by the Respondent auction firm.
- Complainant purchased several items and because of pressure to check out, the Complainant did not study the receipt until after the Complainant arrived home. Complainant states the cashiers had already closed out and were trying to resolve a cash discrepancy when he arrived, so Complainant just paid.
- Complainant states the receipt had an odd entry.
- Complainant inquired about it via email stating that Complainant was charged for an item not purchased. Complainant had kept notes during the auction of items purchased.
- Complainant provided Counsel with the email chain between Complainant and Respondent's owner. Complainant asked for a description of the lot and upon being provided that description informed the Respondent's owner that Complainant did not purchase the item in question.
- Respondent stated that he would review the auction tape.
- Approximately three (3) days later the Complainant emailed Respondent again asking when they could come pick up their refund (\$60.50).
- Respondent's owner stated the tape had been reviewed and the invoice was correct. After some back and forth between the Complainant and Respondent, the Respondent stated that he will no longer respond to this issue. Both Respondent and spouse reviewed the recording and Respondent will not be refunding any money.
- Complainant did ask for a copy of the recording.
- Additionally, Complainant states that during the auction, the Respondent's auctioneer sold an item to someone for a lower amount that confirmed and completely ignored Complainant's bids.

Respondent states the following in response to the complaint.

- Respondent has been involved in the auction business for 42 years and has never had any complaints in the past.
- Respondent feels the Complainant is a chronic complainer without any basis for Complainant's actions.
- Respondent employees had parking issues with the Complainant at the beginning of the auction.
- Respondent states they did ask her to pay her bill so they could close their books. It is company policy not to leave without collecting everything owed.
- Near the end of the auction, Respondent noticed that someone had removed tags from several box lots; so Respondent had to combine several lots of low end merchandise and pick a tag to send to the clerk in order to collect the funds for the auction.
- Respondent informed Complainant that the description on her invoice was wrong and after several emails addressing this situation Complainant still complains she did not purchase the item.
- Respondent record their auctions, both Respondent and spouse listened to the recording and checked off all items on the invoice. The item is described wrong but the recording shows Complainant purchased vintage Christmas items for \$55. After informing Complainant of the findings, she continued to complain.
- Respondent states that at the end of the auction the Complainant complained that Respondent did not take her bid. Respondent spoke to a bid assistant and they stated that she never did bid on the item she was upset about.
- Respondent stated that Complainant loaded her items before paying her invoice and had she paid and got a printed invoice she could have checked off the items and corrected any problems onsite that day.
- Respondent states additionally the Complainant loaded an item that Complainant did not purchase and an employee of Respondent had to ask her to remove it from her car and Complainant refused to do so until the actual purchaser confronted the Complainant.

Recommendation: Counsel recommends this matter be **CLOSED WITH NO ACTION**.

Decision: The Council accepted the recommendation of legal counsel.

6. 2018036801 – RESPONDENT 1

Type of License: UNLICENSED

2018036711 – RESPONDENT 2

First License Obtained: 05/11/2018

License Expiration: 05/10/2020

Type of License: Firm

History: None

Complaint was filed by a consumer and alleges that the transaction was misleading and did not fully disclose the circumstances surrounding the property.

Complainant alleges the following:

- Respondent 2 was in the process of conducting an online auction of real estate in Tennessee.
- The transaction details of the auction indicated that “This property is reported to be occupied and buyer is responsible for obtaining possession.” This is the detail in which Complainant alleges is misleading.
- The property was acquired by a bank in a foreclosure sale that occurred on January 18, 2011. Since that date, the property has been and remains occupied. The individuals that occupy the property claim the bank is barred from ejecting them from the property pursuant to T.C.A. § 28-2-103 (Tennessee’s defensive adverse possession statute).
- A judge recently dismissed the bank’s attempt to evict the individuals currently occupying the property. The matter is on appeal.

Both Respondent 1 and Respondent 2 responded to the complaint. I have incorporated the responses together.

- Respondent 2 stated that on Monday, June 4, 2018, Respondent 2’s legal department received a letter in the mail advising that the property in question was involved in litigation.
- Respondent 2’s legal department pulled the asset up in their database and records indicated that it was a Real Estate Owned (REO) asset and the online auction period was from 6/2/18-6/4/18, therefore the auction had already occurred prior to receipt of this letter.
- Respondent 2 escalated this information to the seller.
- Seller responded on 6/6/18 stating that there was indeed litigation. Seller advised that the property be removed and not re-auctioned until the litigation had been resolved.
- Respondent 2 contacted the Complainant to explain the situation and explained that Respondent 2 had no prior knowledge of the litigation and appreciated Complainant for bringing it to their attention.

Upon receiving the initial complaint against Respondent 2; Counsel, in error, requested a complaint be opened against Respondent 1.

Recommendation:

Respondent 1: Counsel recommends this matter be **CLOSED WITH NO ACTION.**

Respondent 2 (Firm): Counsel recommends this matter be **CLOSED WITH NO ACTION.**

Decision: The Council accepted the recommendation of legal counsel.

7. 2018040771

First License Obtained:	3/28/2018
License Expiration:	3/27/2020
Type of License:	Firm
History:	None

This complaint was filed anonymously and alleges advertising violations, specifically that the advertisement does not contain Respondent’s license number.

Complainant submitted an advertisement for an absolute auction to be held in Tennessee. Upon reviewing the advertisement, Counsel confirmed that the Respondent's firm license number was not on the advertisement in violation of Rule 0160-01-.20(1), see below.

*(1) Advertising in any form that is designed to give notice of an upcoming auction **must include the name and license number of the auction firm** or gallery responsible for holding the sale.*

Respondent stated in response that this was an honest mistake on behalf of the Respondent to leave off the license number on the advertisement.

Recommendation: Counsel recommends a **Letter of Warning (LOW)** explaining the advertising rules and advises that all advertising be updated immediately.

Decision: The Council accepted the recommendation of legal counsel.

8. 2018041031

First License Obtained:	06/15/1977
License Expiration:	03/06/2020
Type of License:	Firm
History:	None

This complaint was filed by a consumer and alleges unethical conduct by Respondent.

Complainant alleges:

- Respondent was hired to conduct an estate sale on Complainant's mother's home, which was to take place on May 19th & 20th, 2018.
- Respondent did not conduct the estate sale on the date agreed upon.
- Respondent did not call and let Complainant know that there was a family emergency so that delayed the sale.
- Estate sale took place on May 26th & 27th, 2018.
- As of the date of this complaint, June 22, 2018, the Complainant had not received her check for the sale.
- Respondent left the house in big mess after the sale, which is causing a delay in selling the home, since it cannot be shown.
- Respondent never returned the Complainant's key to the house and Complainant had to have the locks changed.

Respondent stated in response that in regards to the key, it was the Respondent understanding that the Realtor would get in touch with Complainant to pick up the key. Respondent also stated that upon receipt of this complaint, the Respondent states he did reach out to the Complainant and at that time the Complainant admitted this was a misunderstanding.

Complainant filed a rebuttal in which the contract was included. Complainant alleges that the Respondent violated their contract in at least two (2) places. Counsel believes the Complainant is referring to the following: (1) Sale Dates: 5/19-5/20 and (2) Owner will be paid portion due from sales within three business days, following the conclusion of the sale.

Upon receiving the Respondent's response, Counsel contacted the Complainant and asked if she had spoken with the Respondent since filing the complaint, to which Complainant stated no. Complainant states the misunderstanding that Respondent referred to is in regards to the key and that Complainant did tell Respondent that they had to have the locks to home changed since Respondent did not return the key.

Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of Five Hundred Dollars (\$500)** against Respondent for violation of T.C.A. § 62-19-122(b)(4) (*Failure to remit within in a reasonable time*).

Decision: The Council accepted the recommendation of legal counsel.

9. 2018041311 – RESPONDENT 1

First License Obtained:	10/28/2016
License Expiration:	10/27/2018
Type of License:	Apprentice Auctioneer
History:	None

2018041821 – RESPONDENT 2

First License Obtained:	3/14/2016
License Expiration:	3/13/2020
Type of License:	Gallery
History:	None

Complaint was filed by a consumer and alleged that Respondent 1 held himself out as an auctioneer and not an apprentice auctioneer.

Complainant alleges the following:

- On April 26, 2017, Respondent 1, representing himself as an auctioneer and claiming to have been in the business for over 30 years, came to Complainant's home to look at antiques and provide an estimate of the value and discuss auctioning off the antiques.
- Respondent 1 told Complainant the commission charge would be 25%.
- Complainant asked about the current market value and provided Respondent 1 with a listing of the items. Complainant had also researched the current values and provided Respondent 1 with that information.
- Complainant states Respondent 1 stated he could sell the property for current value and perhaps get a little more. Complainant didn't want to give away the antiques.
- Respondent 1 stated they have one (1) big auction per month.
- On June 26, 2017, Respondent 1 and two (2) other employees came to pick up Complainant's antiques.
- Respondent 1 began listing each item on a yellow form, but seemed to stop. Complainant asked if Respondent 1 was going to inventory everything and Respondent 1 said he would remember and fill in the details back at his store. Complainant provided Respondent 1 with a list of items and current values.

- Respondent 1 gave Complainant a consignment form to sign; the list was sparse and hard to read. Complainant states the form said 40% commission, when asked why it was not 25%, Respondent 1 stated that because he had to bring employees out to load the items it was 40%. Complainant had additional items and chose to deliver those to Respondent 1 on her own and Respondent 1 said he would only charge 25% for those items.
- The auction was set to be on Friday, July 7, 2017.
- On July 3, 2017, Complainant dropped off the remaining items and provided Respondent 1 another list. Respondent 1 stated that a check of the proceeds would be mailed to Complainant.
- Complainant states that she itemized and photographed each item provided to Respondent 1 to auction.
- At no time did Respondent 1 tell Complainant that he was an apprentice auctioneer or that his sponsor auctioneer would be calling the auction.
- On the consignment form, Respondent 1 signed as Auctioneer and the form was not signed by his sponsor auctioneer.
- Respondent 1 wrote a check to Complainant from the escrow account of an expired gallery. Upon reviewing the applications in our internal system for both the expired gallery and Respondent 2, it appears the same escrow account was listed and Respondent 1 is listed on the account for the escrow account.
- In addition to the check, Respondent 1 provided receipts for 42 items. Complainant alleges she provided Respondent 1 with 179 items.
- Upon receiving the check, Complainant called Respondent 1 in regard to the whereabouts of the remaining property as well as Respondent 1 selling the property grossly below value.
- Complainant explained that she was very upset with Respondent 1
- During a phone conversation, Respondent 1 asked Complainant what he thought he owed her and that he would write her a check. Respondent 1 stated he had some of Complainant's property stored at this auction location.
- Respondent 1 brought back the Complainant's items.
- After Complainant assessed the value of the items Respondent 1 had sold and those he had not, Complainant called Respondent 1. At this time Respondent 1 refused to speak to Complainant.

Neither Respondent 1 nor Respondent 2 responded to the complaint.

Counsel has reviewed the matter and it appears that all advertising provided by the Complainant was done online under Respondent 2's name (licensed gallery), which is owned and operated by Respondent 1. Respondent 1 is an apprentice auctioneer, but also owns a licensed auction gallery (Respondent 2). Counsel believes the main issues with regards to this complaint, is that the consignment contract does not state whether the Complainant is dealing with Respondent 1 in his capacity as Respondent 2's owner or if he is representing his sponsor auctioneer. Since Respondent 1 signed as the auctioneer, it may be misleading.

Recommendation: Respondent 1: Counsel recommends the Commission **DISCUSS** this matter.
Respondent 2 (Gallery): Counsel recommends this matter be **CLOSED WITH NO ACTION**.

Decision: Mr. Morris motioned to table this case until the next meeting and to bring in the Auctioneer as Respondent 3. Mr. Colyer seconded this motion. The motion carried by unanimous vote.

10. 2018041511

Type of License: UNLICENSED

Complaint was filed by a consumer and alleges potential unlicensed activity.

The Complainant submitted the legal section from a newspaper which includes a notice for a Trustees Sale. At the time of the complaint, this was all the information that the Complainant supplied; therefore, our centralized complaint department did reach back out to the Complainant in order to request additional information. Complainant provided the following:

- In June 2018, Complainant and spouse attended a Substitute Trustee's sales at a courthouse in Tennessee.
- Complainant states Respondent was holding the auction.
- Complainant had the winning bid (at \$10,100) and asked the Respondent what was needed to proceed (ex. signing papers, etc.).
- Complainant states Respondent stated a certified check was needed, to which Complainant stated they would have to run to the bank and get a certified check.
- Complainant alleges that Respondent stated that since Complainant did not have the money with them at that time, the Respondent would re-auction the property.
- Complainant states that Respondent started re-auctioning the property and told Complainant that Complainant could not bid because they did not have the money with them. The property sold for \$251.00.

We do not have an address for the actual Respondent; therefore, we did reach out to the law firm listed on the notice. The legal division spoke with the law firm who stated that this was a foreclosure sale and therefore the "auctioneer" does not need to be licensed according to Tennessee statutes.

Counsel reviewed the complaint and the notice of Trustee's Sale.

Recommendation: Counsel recommends this matter be **CLOSED WITH NO ACTION**, due to the fact that this was a Trustees sale and exemption under T.C.A. § 62-19-103.

Decision: The Council accepted the recommendation of legal counsel.

11. 2018034111

Type of License: UNLICENSED

Complaint was filed by a licensee and alleges unlicensed activity.

Complainant alleges:

- Respondent held auctions on Saturday, May 12 and 19th at a location in Tennessee.
- Respondent had previously attempted unsuccessful auctions in prior months at a different location.
- Respondent is not a licensed auctioneer and does not possess a gallery license.

- Respondent has been informed repeatedly by at least three (3) licensed auctioneers or gallery owners that his practice is in violation of the Auctioneer Commission statutes and rules.
- Respondent plans are to continue to sell every Saturday night at the location specified.

Respondent stated in response:

- Respondent states he only held one (1) sale; it was on May 19, 2018.
- Respondent was selling his own merchandise at the auction.
- Respondent named two (2) licensed auctioneers, which he stated he hires to conduct auctions. Both Auctioneer 1 and Auctioneer 2 have valid auctioneer and firm licenses.

Counsel sent out an investigator to the location and the following was observed:

- Investigator Rewalt started by doing some internal internet research. He found two (2) Facebook pages, the first was associated with the address of the auction house and claimed that weekly auctions were coming back to a Tennessee town. This Facebook page does not mention the Respondent, *but Counsel believes it is important to note that the auction house this Facebook page is set up under is the same auction house name that Respondent has a business tax license for.* The second Facebook page appears to belong to the Respondent's son in which it stated "started a new job at XXX Auction House - July 7th - Floor help."
- On July 6, 2018, Investigator Rewalt spoke with the Complainant. Complainant stated that he had not personally been to any of the Respondent's auctions.
 - In a sworn statement, Complainant submitted a sworn statement which included the following information:
 - Respondent held an unlicensed auction on May 19, 2018. At the time, Respondent had no gallery, no licensed auctioneer, no escrow account set up and was calling an auction using others license.
 - Respondent approached Complainant about selling his ware at Complainant's auction gallery and Complainant obliged. Complainant states that Respondent began telling patrons that he was starting a "gallery."
 - Respondent additional re-stated most of what was included in the original complaint.
- In addition, Investigator Rewalt spoke with two (2) individuals that were named in the complaint as having firsthand knowledge of the complaint; they will be referred to as Witness 1 and Witness 2.
- WITNESS 1 - On July 11, 2018, Investigator Rewalt contacted Witness 1. Witness 1 had a gallery license in Tennessee that expired in March 2018. Witness 1's gallery license address was for the building that the Respondent is now renting and holding auctions. Witness 1 attended the auction that was held by Respondent on July 7, 2018 and saw Respondent 1 calling bids (*Counsel makes note that there is no proof that Respondent called bids*). Witness 1 stated that a copy of an auctioneers license and firm license was on the wall, this auctioneer was not present at the auction.
 - In a sworn statement, Witness 1, stated the following:
 - Witness 1 is aware that Respondent has operated two (2) separate auction galleries in different towns without an auctioneer or gallery license.

- At the first location, Witness 1 states that Respondent played the part of auctioneer, but that location had been shut down by the fire marshal.
- At the current location, Respondent has had various licensed auctioneers to call bids, but does not have a gallery license.
- Witness 1 is of the opinion that Respondent go through the same requirements as Witness 1 and other gallery license holders.
- WITNESS 2 - On July 11, 2018, Investigator Rewalt spoke with Witness 2. Witness 2 is a licensed auctioneer and has called auctions for the Respondent in the past at a completely different location, never at this location. Witness 2 was very upset that the Respondent used his name in his response to this complaint.
 - In a sworn statement, Witness 2, stated the following:
 - Respondent contacted Witness 2 and asked him to auctioneer at his auction house a few times over the past three (3) months. Witness 2 said no each time.
 - Witness 2 has never called bids for the Respondent or given Respondent permission to use his firm or auctioneer license number.
- On July 14, 2018, Investigator McClain & Investigator Rewalt went to the location to observe the auction. Upon arrival there was no auction going on, but rather people were looking at items that were displayed on the tables and asking the Respondent how much it costs. Patrons were carrying bid cards with numbers. Our investigators approached the Respondent and asked what happened to the auction and Respondent stated that his auctioneer had been injured in a horse accident and was in the hospital (this was Auctioneer 2, referred to in Respondent's response above). Therefore they were just conducting a tag sale.
- While at the auction location, Investigators McClain and Rewalt took several pictures, including:
 - On the outside of the building, there was a sign which had written out - "XXXX Auction House Saturday Night 6:30 pm."
 - The second sign outside stated - "Consignors Needed, Call for Details XXX-XXX-XXXX." Investigator Rewalt determined that the phone number listed on the sign belongs to the Respondent.
 - Two (2) licenses displayed on the wall, a firm license and auctioneer license. Both licenses were valid and belonged to Auctioneer 2 and from the pictures presented by the investigators were copies (stating "VOID" all over the copies).
 - There were also business tax license, which listed the Respondent as the owner of the "auction house."
- On July 16, 2018, Investigator Rewalt spoke with the Respondent to obtain contact information for Auctioneer 2, as the information in CORE was old. Respondent provided that information and asked that since he is without a licensed auctioneer to call his auctions, could Respondent use those licenses - Investigator Rewalt advised against that.
- On July 17, 2018, Investigator Rewalt spoke with Auctioneer 2 (who holds a valid firm and auctioneer license). He stated that he had conducted three (3) auctions in June 2018 for the Respondent, but has not yet been paid. When asked about his licenses on the wall, the auctioneer stated he had no idea how they got there.

- In a sworn statement, Auctioneer 2 stated that he started in June 2018 and conducted three (3) auctions for the Respondent. Auctioneer 2 stated that he mailed a copy of his licenses to the Respondent to prove that he was licensed. Auctioneer 2 stated that he did not know the Respondent was in violation of any laws and did not know that the Respondent had placed copies of his licenses on the wall at Respondent's business. Auctioneer 2 has discontinued calling auctions for Respondent because it is not worth his time.
- Respondent provided a sworn statement, in which he provided a list of auction dates and the auctioneers hired to call those auctions.
 - Auctions were held on the following dates:
 - 5/19 – First auction and all items were Respondents.
 - 5/26 – Tag Sale
 - 6/2 – Tag Sale
 - 6/9 – Auctioneer 2 was auctioneer.
 - 6/16 – Auctioneer 2 was auctioneer.
 - 6/23 – Auctioneer 2 was auctioneer.
 - 6/30 – Auctioneer 3 was the auctioneer. Auctioneer 3 has a valid license with the commission.
 - 7/7 – Auctioneer 3 was the auctioneer.
 - 7/14 – Tag Sale
 - Respondent additionally stated that he spoke with someone at the Department on July 9, 2018 and was told as long as the auctioneer has an auctioneer and firm license and that person handles the money, it is okay.

Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** against Respondent for violation of T.C.A. § 62-19-125.

Decision: Mr. Colyer motioned to increase the civil penalty to the amount of one thousand five hundred dollars (\$1,500). Mr. Lowe seconded this motion. The motion carried by unanimous vote.

LEGISLATIVE UPDATES

Mr. Morris provided an update regarding the progress of the Auctioneer Law Modernization Task Force where discussion took place to develop courses of action to reduce barriers in obtaining an auctioneers license and that auctioneer apprenticeships should be reduced from two (2) years to one (1) year.

NEW BUSINESS

The newsletter proposal and CE seminars were discussed after the motion to adopt the May Minutes (referenced above).

NAA ANNUAL MEETING UPDATE

Mr. Morris attended the annual NAA Meeting on July 17-21, 2018 and provided an update of topics covered.

Chief Counsel Green provided an additional legislative update here in regards to HB2248/SB2465, referred to as the "Fresh Start Act", which generally speaking will not allow for denying an applicant for licensure due to a felony unrelated to the license for which the applicant applied.

ADJOURNMENT

Mr. Colyer made a motion to adjourn, which Mr. Lowe seconded. There being no other new business, Mr. Thorpe concluded the meeting at 10:36 am.