



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

**Board Meeting Minutes for February 12, 2018
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on February 12, 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, Adam Lewis, John Thorpe, Ronald Colyer, and Randy Lowe

BOARD MEMBERS ABSENT: None

STAFF MEMBERS PRESENT: Glenn Kopchak, Dennis O'Brien, 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 February 12, 2018 meeting of the Auctioneer Commission was posted to the Auctioneer Commission website on February 5, 2018."

AGENDA

Mr. Morris requested that the agenda be amended to allow the Tennessee Auctioneers Association (TAA) to speak after the "Legislative Updates". 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 October 16, 2018 meeting as written. Mr. Colyer seconded. The motion carried by unanimous vote.

EDUCATION REPORT

The Commission reviewed a request from the Nashville Auction School to grant four (4) hours of Continuing Education (CE) credit for an online course titled, "Ethics and Escrow" and to grant six (6) hours of Continuing Education (CE) credit for a classroom course titled, "Advanced Bid-calling Summit".

Mr. Morris motioned to approve both courses for the CE credit requested. This was seconded by Mr. Lewis. The motion carried by unanimous vote.

The Commission reviewed a request from Cornerstone-edu to grant three (3) hours of Continuing Education (CE) credit for the following six (6) online courses: "Communication, Part 1", "Communication, Part 2", "Ethics and the Professional Auctioneer", "Selling to Millennials", and "Using Storytelling Marketing Techniques in the Auction, Part 1", and "Using Storytelling Marketing Techniques in the Auction, Part 2".

Mr. Colyer motioned to approve all six (6) courses for the CE credit requested. This was seconded by Mr. Lowe. The motion carried by unanimous vote.

The Commission reviewed a request from National Flood Services, Inc. to grant one (1) hour of Continuing Education (CE) credit for a classroom course titled, "Understanding Flood Maps" and to grant two (2) hours of Continuing Education (CE) credit for a classroom course titled, "Private Flood Insurance Versus the NFIP".

Mr. Morris motioned to deny both courses 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 accounting of budget revenue and expenditures, to include line item and trend analysis. He also provided a report of the overall health of the budget in his summary of Fiscal Year 2017.

At the end of Director Kopchak's summary of all financials to include, the total reserve balance, Mr. Morris provided the "Sunset Hearing Update" and informed the Commission that it's term was extended another six (6) years. In summation of last week's Sunset hearing, Mr. Morris further expressed his concern about the reserve balance getting too high. Director Kopchak informed the Commission that administration is already monitoring and will keep them informed when they hit a threshold that would warrant potential fee reductions. The Commission requested to also hear from the Accounting Director regarding the process of determination and possible resolutions once that threshold is exceeded.

Regarding newsletters, Director Kopchak explained that although executive management has indicated licensing revenue is typically not used to produce industry updates because these updates are outside the mandate of regulatory boards. Executive management further believes that these industry updates are best left to the professional associations; however, the education recovery fund has been used in the past to produce or contract the production of a newsletter. As a result, Director Kopchak informed the Commission that a request for proposal (RFP) has been created and will be issued at the end of February which will solicit bids from vendors who would be interested in providing the newsletter requested.

LEGAL REPORT

Mr. David Allen, President of the Tennessee Auctioneers Association (TAA), provided a justification for seeking a legislative sponsor on HB2036/SB2081. Mr. Allen then introduced Addison Russell who provided a summary of what the proposed legislation would change if accepted. This bill amends Title 62, Chapter 19 regarding auctioneers by replacing the word "Apprentice" with "Affiliate" throughout the chapter and changes the year requirement for Affiliate Auctioneer from two (2) years to one (1) year. This bill adds language which allows any licensed auctioneer to sponsor an affiliate and does not limit the number of affiliates they can sponsor. Additionally, this bill provides a definition for "timed listing" and adds an exemption for internet-based trading platforms that primarily sell motor vehicles.



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MEMORANDUM

TO: TENNESSEE AUCTIONEER COMMISSION

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

SUBJECT: LEGAL REPORT

DATE: February 12, 2018

**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.*

1. **2017058981**

Type of License: Unlicensed
History: None

Complainant is the owner of a Tennessee licensed auction gallery. Complainant states Respondent advertised in a Tennessee city's newspaper on September 3, 2017, soliciting for consignments without a firm or auctioneer license in Tennessee. Complainant provided a copy of the advertisement which did list an auction license number in Louisiana. The advertisement states Respondent has been "representing estates and important collections for over 25 years," and further states "Invitation to Consign – Estates Auction: October 14-15," and includes a contact phone number, email and website address. The advertisement also includes a picture of a titled painting with an estimated value of \$20,000-\$40,000, stating that it sold for \$44,000 as well as a picture of a Rare Antebellum Tennessee Agriculture Premium Coin Silver Julep Cup with an estimated value of \$1,500-\$2,500, stating that it sold for \$8,125. The advertisement states "contact us today to receive a complimentary expert valuation" and mentions a 25% Buyer's Premium.

Respondent states it is an auction house located in New Orleans, Louisiana and further states it does not conduct auctions or execute contracts in Tennessee. Respondent consulted their attorneys and believe they are not subject to the rules of the Tennessee Auctioneer Commission. Respondent confirms they have an active license with the Louisiana Auctioneer Board which appears to have similar regulations to the Tennessee Commission, and they are in compliance with the Louisiana rules. Respondent specifically included their Louisiana license number in the advertisement per Louisiana's auction rules.

Counsel finds evidence in the advertisement provided by Complainant that Respondent is engaged in unlicensed activity because the advertisement is an open invitation to consign and would most likely lead consumers in Tennessee to believe Respondent is able to conduct auctions in Tennessee, as the advertisement mentions an

estate auction on October 14 and 15, 2017. Counsel feels this advertisement is vague, unclear and misleading because there are no details about where and what time an estate auction will be taking place in Tennessee, but it does provide dates and does not clearly state that Respondent is not licensed in Tennessee. Counsel recommends a Letter of Warning regarding the requirements for auctioneer licensing in Tennessee.

Recommendation: Letter of Warning regarding unlicensed activity (T.C.A. § 62-19-102(a)(1))

Decision: The Commission voted to accept the recommendation of Counsel.

2. 2017062271

First License Obtained: 2/28/1995

License Expiration: 7/31/2017

Type of License: Auctioneer

History: None

An administrative complaint was opened against Respondent for advertising and conducting an absolute auction on April 22, 2017, without listing his name and license number on the auction advertisement. The complaint was opened after it was discovered that Respondent was hired by a trucking company to conduct this one-time auction to sell goods that were stored inside of a building the company had used for business purposes because the building was set to be demolished soon after the auction took place. This information regarding Respondent being hired to conduct the auction was provided in a statement written by an employee of the trucking company who hired Respondent to conduct the auction. The employee's name was listed in the advertisement along with her cell phone number as a contact person in case anyone interested in the auction had questions. Counsel spoke with the employee and the employee confirmed the information she provided in her written statement and provided the Respondent's auctioneer license number, as he was actively licensed at the time he advertised the auction and conducted the auction.

Our office sent a copy of this complaint by mail to Respondent on September 20, 2017 and again on October 19, 2017. The mail has not been returned to our office and Respondent has failed to respond to this complaint, and his license expired on July 31, 2017.

Counsel recommends a Letter of Warning considering this was a one-time auction as confirmed by the employee who hired Respondent, and considering Respondent has no history of discipline in over 22 years, is no longer a licensed auctioneer and has not attempted to renew his license.

Recommendation: Letter of Warning for violation of Tenn. Comp. R. & Regs. 0160-01-.05(1)

Decision: The Commission voted to authorize a letter of warning to both the auctioneer and the trucking company, flag the auctioneer's license, and to not allow renewal if the auctioneer tries to renew their license.

3. 2017063521

First License Obtained: 5/31/2007

License Expiration: 5/30/2019

Type of License: Auctioneer

History: None

Complainant is a resident of Michigan and states that she and her husband were interested in a home that Respondent was selling through an online auction. Complainant states she bid on the home and had the highest bid, but it did not meet the reserve price. Respondent called Complainant to confirm that Complainant's bid did not meet the reserve price but asked her if she would meet the seller halfway on the difference between her bid and the reserve price. Complainant states that she declined the offer proposed by Respondent, and further alleges Respondent communicated this to the seller and the seller confirmed he would not accept Complainant's high bid. Complainant states Respondent called her back and "asked again and [Complainant and her husband]

told him they would go ahead.” Respondent sent Complainant the paperwork and Complainant states she and her husband immediately decided they did not want to go through with the transaction after all. Complainant alleges Respondent has proceeded to email and call Complainant and her husband informing them that they are obligated to purchase the home, and is threatening Complainant by stating the seller could sue her. Complainant states neither she nor her husband signed any paperwork that Respondent sent them and never agreed in writing to purchase the home after the auction closed and the reserve was not met. Complainant feels Respondent has been hostile towards her and has yelled at her, continuing to threaten her by stating the seller could sue her and her husband. Complainant does not provide any evidence or documentation to support the allegations made in the complaint and sent the Department an email 2 days after she filed this complaint stating that she wanted to withdraw the complaint against Respondent.

Respondent states Complainant registered online for one of his recent online auctions and accepted all terms and conditions of the online platform and accepted the terms and conditions of buying the property “as is.” Respondent states Complainant placed 2 bids on the property with the last bid for \$195,000 made 11 minutes before the auction ended, and this bid did not meet the reserve amount of \$200,000. Respondent confirms that he called the sellers to let them know the reserve had not been met and the sellers asked Respondent to contact Complainant as the highest bidder to ask if she would be willing to pay \$200,000. Complainant declined to pay \$200,000 and Respondent was then instructed by the sellers to ask if Complainant would pay \$197,500, and Complainant’s husband confirmed with Respondent they would purchase the property for \$197,500. Respondent explained the steps necessary to complete the transaction to include a \$10,000 down payment within 5 days, and Respondent would email the Complainant and her husband a contract to sign. Respondent states Complainant’s husband stated he would review the contract and get back with Respondent. Respondent did not hear back from Complainant or her husband after he emailed the sales contract and property condition exemption and lead based paint disclosure and once he was able to get in contact with them, they stated they had some questions and needed some more time, but ultimately told Respondent that one of their relatives drove by the property and they no longer wanted to purchase it. Respondent was in shock and asked Complainant why she and her husband registered to bid, accepted the terms and conditions and bid 2 times on the property if they had not looked at it or weren’t serious about purchasing it. Respondent states Complainant did not really answer these questions and Respondent proceeded to explain that Complainant and her husband could be open to litigation from the seller, informed them of possible consequences of their decision but denies ever yelling or threatening Complainant. Respondent informed Complainant he could make their bid of \$195,000 work by reducing his commission, sent a copy of the terms and conditions Complainant had accepted to her by email, and was eventually told by Complainant that she had spoken with other auctioneers and she felt she had no obligation to purchase the property. Respondent restated the possibility that the sellers could file suit against Complainant but informed her that he would not file any lawsuit against them or anyone else, he just could not speak for the sellers and their decision to file a lawsuit. Respondent’s last communication with Complainant was by email on the day this complaint was filed reiterating the possible consequences of their decision not to purchase, providing another copy of the terms and conditions they accepted when they registered and bid, and Complainant responded by stating she would be contacting a lawyer and would follow up with Respondent. Respondent does not feel that he did anything wrong but would like to be informed if he did commit a violation.

Counsel considers the fact that Complainant asked to withdraw this complaint, and did not provide any further information once she received a copy of the Respondent’s response and stated she would speak with a lawyer. Further, Respondent has no disciplinary history and Counsel does not find any evidence that Respondent violated any statutes or rules and therefore recommends dismissal.

Recommendation: Dismiss

Decision: The Commission voted to accept Counsel’s recommendation.

4. 2017063411

First License Obtained: 2/1/2005

License Expiration: 12/18/2018

Type of License: Firm

History: 2016 Letter of Warning

Complainant states Respondent was “brought in to auction off his personal collectibles store” and further states the auction was to be held in Complainant’s building. Complainant states Respondent began taking the items to be auctioned to their location in another city where Complainant has never been. Complainant alleges Respondent took 400 of his high priced Barbies and sold some of them for amounts ranging from \$5-\$15 and Complainant alleges he had originally bought some of these Barbies for upwards of \$100. Complainant further alleges Respondent took Complainant’s personal things that were not to be sold, including a couch that Complainant had just reupholstered for \$1,500 and sold it for \$50. Complainant states Respondent has billed him for \$1,000 but took \$500 off for the couch that never went through an auction. Complainant also alleges Respondent told him they would not release Complainant’s inventory or release the money owed from the sale of his auctioned items for 9 weeks. Complainant states Respondent has all of the cabinets for his Barbies, a serving cart, server tables, and a hutch, but Complainant has no way of knowing what else Respondent may have as Respondent allegedly refused to give Complainant an inventory list. Complainant states Respondent told him he had until the end of the month to get everything out or he would get rid of Complainant’s items. Complainant does not provide documentation or proof to support the allegations made against Respondent.

Respondent states Complainant originally hired an unlicensed auction company to conduct his auction on site at his store but states no one showed up to the auction. Respondent further states Complainant fired the unlicensed auction company and signed a contract with Respondent on June 26, 2017 to conduct the auction. Respondent engaged in extensive advertising for Complainant’s auction for 3 weeks and attempted an on-site auction as Complainant requested but there was not sufficient attendance to conduct the auction as planned. Respondent then met with Complainant and discussed options to liquidate his merchandise, and advised him that Respondent felt the best option was to move the auction to a location where Respondent had access to an auction house, and Complainant verbally agreed to this plan. Respondent then began moving the items to the auction house and conducted several auctions on Saturday nights and Complainant received a check and a closing statement after each auction until they verbally mutually agreed to stop. Respondent states all of Complainant’s Barbies are still in boxes and stored at Respondent’s expense after he was only able to sell less than a dozen of them through the auctions, and Complainant agreed they may have better luck selling them closer to Christmas. Respondent states the couch referred to in the complaint had been in Complainant’s office that had been closed for several years and had been used for customers when the office was open. Respondent also states the couch had normal wear and tear from such use and because Complainant did not inform Respondent that the couch was not for sale, it was sold at auction for \$50. Respondent further states all items have been boxed up and Respondent is waiting for Complainant to secure a place to store the items because Respondent has been paying for storage. Respondent is unsure what Complainant takes issue with regarding the bill sent to him because it was invoiced and detailed that the costs were incurred as a result of 5 people working for 6 days to clean items and remove them from the closed office building, put the items in storage pods and the building was full of items from “floor to ceiling.” Respondent states Complainant refuses to pay the invoice despite the fact that Respondent has paid Complainant all monies owed from all items sold at the auctions. Respondent denies ever stating anything about holding any inventory or monies owed for 9 weeks, as Respondent provided copies of 5 checks totaling \$1,785.54 made payable to Complainant for auction proceeds for each auction held by Respondent for Complainant. Respondent has not given Complainant a 30 day notice regarding the items he is currently paying to store, and Respondent has sent Complainant a release form and is awaiting Complainant’s response. Respondent concludes by denying all allegations and stating Complainant has ignored all of the attempts Respondent has made to contact him while Respondent is patiently waiting for Complainant to obtain a storage unit so Respondent can release the items that were not sold.

Counsel finds no evidence that Respondent has violated any statutes or rules and recommends dismissal of this complaint.

Recommendation: Dismiss

Decision: The Commission voted to defer their decision to the following AUC Commission meeting to request further information for them to consider and look over. Commission requests that Counsel try to get the contract for the auction.

5. 2017068191

First License Obtained: 7/22/2002

License Expiration: 3/15/2018

Type of License: Auctioneer

History: None

Complainant is a licensed auctioneer and filed this complaint providing a copy of a flyer that he alleges was “dropped off at his office,” but does not state who dropped off the flyer or when the flyer was dropped off. The flyer appears to be an advertisement for an auction that was to be held on October 14, 2017, and states the auction is would be presented by Respondent’s auctioneer firm. The advertisement provides Respondent’s auctioneer license number (as discovered through internal research), but does not mention Respondent’s name or his firm’s license number. The advertisement is quite lengthy and Respondent’s firm name and the unspecified license number are the only references to Respondent in the advertisement, and the language does not clearly explain how Respondent or his firm would be involved in the auction. Additionally, the advertisement states this is an introductory auction for a new liquidation company at the liquidation company’s new business location where the liquidation company would be auctioning off thousands of tools from a recent liquidation. The advertisement states multiple times that the liquidation company is the one auctioning or selling items, that the liquidation company will have a shipping company on site and that any items not removed after purchase will be defaulted unless the purchaser contacts the liquidation company. The advertisement provides the first name of a person that can be contacted for more information who works for the liquidation company, along with his email address, Facebook page link, phone number and statement that pictures and videos will be uploaded to the liquidation company’s Facebook/business page. Further, the advertisement states any questions should be directed to this person as a representative of the liquidation company, and there is no instruction to contact Respondent about anything having to do with this auction/sale. Internal research shows the liquidation company’s Facebook page provides the same phone number and email address for the person whose first name was provided in the advertisement, but the Facebook page does not provide any mention of Respondent or his firm.

Respondent states that he knows Complainant because they have a history and “it is not a pleasant history.” Respondent further states this complaint is nothing more than a “childish vindictive attempt to cause Respondent and his company grief and aggravation.” Respondent states the flyer provided by Complainant was produced and distributed by his client, the liquidation company, who was simply attempting to make the local community aware of his newly opened business and the fact that he was conducting a sale to introduce his company to the area. Respondent’s client did not inform or request approval from Respondent regarding the creation of and distribution of the flyer, and Respondent did not know of its existence until he received a copy of this complaint. Respondent states that the only consignor was the liquidation company, other than a handful of items owned by Respondent’s auctioneer firm and put in the sale at the request of the consignor.

Counsel finds no evidence that Respondent knew about the flyer or had anything to do with using the flyer as an advertisement for an auction and the language used in the flyer leads Counsel to believe it was created and distributed by the liquidation company without Respondent’s consent or approval. Respondent has been licensed for over 15 years and has no disciplinary history. Counsel recommends dismissal based on the lack of evidence to prove Respondent violated any statutes or rules.

Recommendation: Dismiss

Decision: The Commission voted to accept Counsel’s recommendation.

6. 2017068261

First License Obtained: 3/16/2016

License Expiration: 3/15/2018

Type of License: Firm

History: None

This complaint is the same as the complaint above and Respondent is the auctioneer firm mentioned above. The information included in this complaint file is exactly the same as the information summarized above, as it only includes the same complaint and response to the complaint. There is no additional information provided, and no evidence that Respondent violated any statutes or rules, therefore Counsel recommends dismissal.

Recommendation: Dismiss

Decision: The Commission vote to accept Counsel's recommendation.

7. 2017068771

First License Obtained: Unlicensed

History: None

This complaint was opened by our office based on the complaint referenced above, Complaint Numbers. 2017068191 and 2017068261. Specifically, the advertisement provided in the complaint referenced above was created and distributed by the liquidation company who does not have an auctioneer license or a firm/gallery license. Respondent's Facebook page shows that they are holding their company out to be an auction house, wholesale and supply store which would lead consumers to believe Respondent is licensed and therefore able to conduct auctions and operate an auction house.

Respondent responded to this complaint and confirmed that on their own accord, they created the flyer as an advertisement to help generate interest into their new business without consulting the auctioneer firm or the auctioneer referenced in Complaint Numbers. 2017068191 and 2017068261 above. Respondent states they do not believe they did anything wrong and thought having an auction was a good way to get their name out to the local area. Respondent states they had an "absolute contract and it was their understanding that if it brought an accepted bid, the item would sell to the highest bidder which it did." Respondent put their owner's name in the advertisement as the contact person so he could help the bidders know what items were being sold. Respondent states he is aware the licensed Complainant who filed the complaint and provided the flyer to our office has a personal problem with the licensed auctioneer referenced in the complaints above after the Complainant solicited the licensed auctioneer's primary salesperson and attempting to use the salesperson to get to Respondent's suppliers. Respondent states he knows what the Complainant looks like and Respondent was present the entire time the auction was being conducted and he never saw Complainant at the auction. Respondent also confirms that the licensed auctioneer and his firm did not do anything wrong and states the allegations made by Complainant are unfounded and meritless, and hopes the Commission will take action against Complainant for filing a false complaint and lying about the fact that he is a licensee in the complaint. Respondent states the licensed auctioneer did everything he said he would do and although he didn't sell as much as he would have liked, he considers him one of the best auctioneers he has ever seen and would use him again.

Counsel finds evidence that Respondent used language in the flyer that would lead the public to believe he authorized to be involved in conducting auctions but considers the fact that Respondent did hire a licensed auctioneer to conduct the auction. Counsel considers Respondent failed to consult with the licensed auctioneer to properly draft the advertisement in a way that meets the requirements of the statutes and rules for auctioneers, and failed to obtain approval to use the licensed auctioneer's information in the flyer, thereby unintentionally engaging in unlicensed activity by creating and distributing the flyer without including the proper information to prevent the public from possible confusion as to who was conducting the auction and who was and was not licensed and allowed to conduct the auction. Counsel feels Respondent did not intend to engage in unlicensed

activity because he hired the licensed auctioneer and does not believe Respondent will make the same mistake in the future, therefore recommends a letter of warning regarding unlicensed activity.

Recommendation: Letter of Warning regarding unlicensed activity (T.C.A. § 62-19-102(a)(1))

Decision: The Commission voted to accept Counsel's recommendation.

8. 2017070161

First License Obtained: 9/17/1981

License Expiration: 8/31/2018

Type of License: Firm

History: None

Complainant alleges that on September 23, 2017, he attended an auction conducted by Respondent. Complainant further alleges that it was represented to him that a vehicle "runs and drives" but the keys were not available in order for Complainant to verify this alleged representation. Complainant states all other vehicles started except this particular 2008 Nissan Sentra. Complainant concludes by stating if the keys had been available and the vehicle started, it would have been apparent that the vehicle needed a new motor and was not, in fact, "running and driving." Complainant does not provide any further details in this complaint, and did not provide any evidence or documentation to support the allegations made in this complaint.

Respondent confirms that they held an auction on the date referenced above and states that all announcements concerning the vehicles being sold were made at the beginning of the auction. Respondent states it was made public knowledge that information regarding these vehicles was believed to be true, but was not guaranteed, that all sales were final, and the vehicles were being sold in "as is" condition. Respondent also states that if the Complainant had been present at the beginning of the auction when the announcements were made to everyone who attended the auction, Complainant would have been fully informed of the sales process and the risks involved in purchasing vehicles that were repossessed and being auctioned. Respondent then states that the Complainant purchased the vehicle with full knowledge that it was repossession because this information was written across the window of the vehicle. The Respondent states that the vehicle did run and drive, but admits there was not a key available at the time it was put up for auction, and everyone who bid knew this and proceeded to place bids despite this information. Respondent states they make every effort to ensure their clients are satisfied with their purchases but in this instance, Complainant made an informed decision to purchase the vehicle despite the issues he is now complaining of, and Respondent assumes Complainant simply has buyer's remorse. Respondent denies any wrongdoing and denies the allegations made against them in this complaint.

This complaint was also sent to the Motor Vehicle Commission and an investigator provided a report with affidavits signed by the licensed dealer who was involved in this transaction as well as an affidavit signed by Respondent. The investigator confirms Respondent's statements and saw that the vehicle did have the information that it was a repossession written across its window, and verified the Respondent made the announcements regarding the conditions of the auction and any purchases made, and did not find any evidence that Respondent violated any statutes or rules.

Based on the vague complaint and lack of evidence provided by the Complainant, the information provided by the investigator regarding the Motor Vehicle Commission matter opened as a result of this complaint being filed, Counsel finds no evidence that Respondent violated any statutes or rules, considers the fact Respondent has been licensed for over 36 years without discipline, and therefore recommends dismissal.

Recommendation: Letter of Instruction

Decision: The Commission voted to accept Counsel's recommendation.

9. 2017071851

First License Obtained: Unlicensed

History: None

Complainant alleges Respondent is conducting weekly auctions on Fridays based on their Facebook posts/advertisements stating such, and states they do not have a gallery or firm license. The Complainant provided a screenshot of a post on Respondent's Facebook page stating that a consignment auction would take place on November 16, 2017 at 6 pm and provided a picture showing arcade games and that there was still space available of anyone was interested in consigning with Respondent for this auction. Screenshots also included posts advertising a toy auction on November 3, 2017, as well as an onsite furniture warehouse auction and a grocery auction on November 4, 2017. The posts also stated there would be no bidder fees, no reserves, and that cash, credit and approved checks would be accepted and items were guaranteed to work or money back. There was also a free raffle ticket offered to win a \$50 gift certificate to be awarded at the end of the night at the November 3, 2017 auction. Details were given about the location and the items that would be offered to include case lots of different items, and pallets of Halloween costumes. The post also mentioned the auctions would be conducted by a named auctioneer and listed the name of the auctioneer firm he worked for, and provided a license number which is active in our system.

This complaint was sent out to an investigator on November 1, 2017. The investigator went to the location where the auction was to be held on November 3, 2017 and upon the investigator's arrival, an auction was in process. The investigator confirms that the licensed auctioneer referred to above was in the process of conducting the auction, but states that Respondent does not have a firm license. Respondent's "operator" spoke with the investigator and confirmed that Respondent does not have a license and explained that he had been discussing the possibility of the licensed auctioneer transferring his firm license to Respondent's location or that he would apply for a firm license, and further stated he has been in contact with the Commission to learn what he needs to do to comply with the licensing requirements. Respondent's operator also told the investigator that Respondent had been operating at that location for a couple of months.

Counsel finds clear evidence through the investigator's report and findings, as well as the admissions of the Respondent's operator, that Respondent is engaged in unlicensed activity by allowing a licensed auctioneer to conduct auctions at their location without obtaining a firm license. Counsel recommends offering the Respondent two options as outlined below in the recommendation, both options including a civil penalty but offering a lower civil penalty if the Respondent applies and obtains a firm license within the time specified by the Commission. Counsel has researched past Consent Orders and located a Consent Order that offered similar options in a similar situation where a Respondent was engaged in unlicensed activity but wanted to get licensed.

Recommendation: Discuss the authorization of a Consent Order offering Respondent two options: either paying a civil penalty in the amount of \$3,000 for unlicensed activity in violation of TCA § 62-19-102 or paying a civil penalty in the amount of \$1,000 and requiring Respondent to apply for and obtain a firm license within a certain amount of time from the date the Consent Order is entered, such timeframe to be decided by the Commission.

Decision: The Commission voted to accept Counsel's recommendation, and approves opening an administrative complaint against the licensed auctioneer in this matter.

10. 2017075321

First License Obtained: 3/22/2016

License Expiration: 3/21/2018

Type of License: Firm

History: None

Complainant filed a complaint that is unclear as to the specific allegations being made against Respondent. The complaint states "I want to know why [Respondent] can run illegal with just an apprentice license by his self

but yet I have the same and I have to pay an auctioneer to be here...he has done it since he started. I've been 3 weeks in a row and he's illegally done it the entire time." Counsel assumes the allegation is Respondent is operating without proper licensure. Complainant does not provide any further details or documentation or evidence to support the allegations made in this complaint.

Respondent states that they are unsure what the allegations are but provides a copy of an active apprentice license for an employee acting as an apprentice, a copy of an active firm license in Respondent's name and a copy of an active auctioneer license for another employee.

Counsel finds no evidence that Respondent has violated any statutes or rules or is engaged in unlicensed activity and recommends dismissal.

Recommendation: Dismiss

Decision: Counsel is to verify the apprentice is being sponsored by the licensed auctioneer, and that the licensed auctioneer is present during any auction in its entirety that is conducted by the apprentice. Once Counsel confirms this matter can be dismissed.

11. 2017074811

First License Obtained: 12/8/2006

License Expiration: 12/7/2018

Type of License: Firm

History: Final Order with \$500 civil penalty in 2014

Final Order with \$500 civil penalty in 2016

Complainant states he participated in an online auction on September 21, 2017, held by Respondent to purchase land adjoining land Complainant owns. During the last few hours of the auction, Complainant noticed another bidder who began to rapidly bid on the same parcels Complainant was bidding on, and rapidly bid up the price but did not appear to be attempting to place a winning bid which drew Complainant's attention. After a considerable amount of legal and real estate research, Complainant alleges he determined that the bidder had an extremely high probability of being employed by Respondent and engaging in schill bidding. Complainant states the rules of this particular auction clearly stated "the owner is contractually prohibited from bidding on his or her own property in this auction." Complainant provided an extensive list of the usernames and bids made during this auction.

Counsel requested an investigator obtain the real names of the bidders listed in the document provided by Complainant but Respondent refused to provide this information stating that this auction is not regulated by the Auctioneer Commission pursuant to the 2006 Ebay exemption and subsequent legislation passed in the 2017 legislative session.

Counsel agrees with Respondent's argument in this instance and finds that this auction is not subject to the jurisdiction of the Auctioneer Commission and therefore he is not required to produce the requested documentation. Counsel recommends dismissal of this complaint.

Recommendation: Dismiss

Decision: The Commission voted to accept Counsel's recommendation.

REPRESENT:

12. 2013022691

First License Obtained: 1/14/77

License Expiration: 3/29/2019

Type of License: Firm

History: None

Presented at the February 3, 2014 Meeting:

Complainant states that Respondent (firm) conducted an auction for Complainant, and Respondent failed to conduct the auction pursuant to the terms and conditions set forth in the contract. Complainant does not specify what Respondent did that was in conflict with the contract but states that Complainant raised repeated concerns throughout the auction as to how the auction was being conducted and the results it was bringing. Further, Complainant states that Complainant instructed Respondent on five (5) different occasions to stop the auction and put no more items up for sale but states that this was ignored by Respondent's representatives. Complainant alleges that, because of Respondent's actions, Complainant suffered large monetary damages. Complainant further alleges that Respondent has not provided an accounting of all monies received by Respondent on Complainant's behalf, and Respondent has not submitted the collected funds to Complainant.

Respondent submitted a response stating that Complainant entered into an Exclusive Absolute Auction contract (and provided a copy) with Respondent to liquidate Complainant's business at absolute auction. Respondent states that the auction was held as scheduled but was stopped with at least two thirds (2/3) of the inventory remaining due to Complainant's behavior toward staff and bidders alike. Respondent states that, pursuant to Auctioneer Commission Rule 0160-01-.19 (which, in part, defines an absolute auction), Respondent does not believe Complainant had cause to stop the auction event, but Respondent felt that Complainant's behavior resulted in cancellation being the only choice. On the following morning, Respondent states that Complainant demanded a meeting with a complete accounting of the auction and a check for the auction proceeds, and Complainant stated that Complainant would not release any merchandise to any buyer until Complainant had been paid in full, although Complainant had previously agreed to allow buyers three (3) days to load merchandise. Respondent states that Respondent agreed to give Complainant a full accounting of the auction but could not settle with Complainant until the buyers had been given a receipt of their merchandise, and the buyers had purchased the merchandise at the sale expecting to have three (3) days to pick it up so there was a possibility for financial implications resulting from that. Respondent provided the total amount of the sale proceeds, the amount deducted from escrow as of the date of the complaint due to refunds and stopped payments as a result of Complainant's actions, and the amount of the buyers' goods which are still in the possession of Complainant. Respondent states that the case is in litigation, and Complainant's attorney has been provided an accounting.

Complainant submitted a reply disputing the statements within the response, stating that Respondent has swindled Complainant out of merchandise worth a large amount of money, that Respondent has commingled Complainant's auction funds, and that a full and/or accurate accounting of the funds has not been provided.

The parties are currently engaged in active litigation relating to the subject auction. Based on the fact that this matter is currently in litigation, it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

DECISION: *Commissioner Colson recused himself from the discussion and vote on this matter.* Mr. Phillips made a motion to accept the recommendation of legal counsel, seconded by Chairman Morris. MOTION CARRIED.

Update: Civil litigation was resolved as the parties entered an Agreed Order on October 5, 2017 whereby the parties dismissed with prejudice all claims, complaints, and counter-complaints the parties filed in Chancery

Court. All funds held by the court were paid to Respondent and Respondent paid court costs and taxes associated with this matter. Respondent and Complainant entered into a Settlement and Release of All Claims on October 5, 2017 where the parties reached an agreement with the desire to completely resolve all disputes between the parties and whereby Complainant agreed to request the complaint filed with the Tennessee Auctioneer Commission be dismissed. Without more information to prove Respondent committed violation(s) of any statutes or rules, Counsel recommends this complaint be dismissed.

New Recommendation: Dismiss

Decision: The Commission voted to accept Counsel's recommendation.

REPRESENTS

13. 2017018841

First License Obtained: 5/23/83

License Expiration: 1/31/18

Type of License: Auctioneer

History: None

Complainant is property owner and Respondent is licensee and owner of Respondent below.

Complainant and Respondent are now involved in a law suit concerning contract disputes with an auction that was to take place in June 2015. This was to be an absolute auction but on the day of the auction, there were only 3 bidders so after speaking with Respondent, Complainant cancelled auction. Complainant states Complainant was then charged with expensed but did not give that information prior to withholding the amount referenced in contract. Complainant further states the Respondent agreed to not charge for travel, lodging, eating but instead did so charge. Complainant states Respondent charged a fee for liquidated damages and with the expenses filed a lien on the property. Complainant paid the amount charged when Complainant sold the property later. Complainant states that Respondent had duty to secure enough financially capable bidders to assure a reasonable chance of a fair price for the property at the auction but did not.

- *Through the answer and counter claim to the pending suit, Respondent states Respondent was not a party to the contract as the contract was between Complainant and Respondent below.*
- *Respondent states that no guarantees or promises were made other than those in the contract.*
- *Respondent asked that this matter be held pending the results of the civil matter.*

This does appear to be a contract matter and that unless there is a finding in the civil matter of any misrepresentation (not alleged) or incompetency, (also not alleged) then there would be no violation of the Auctioneer's laws.

Recommendation: Litigation monitoring order to allow review on the conclusion of the civil matter.

Update: Civil litigation was dismissed by plaintiff (Complainant) in the matter. It was a voluntary dismissal with no findings and no settlement. There were no depositions and Complainant asked for mediation which Respondent denied after which Complainant dismissed the suit. In the original response to this matter with TREC, all allegations were denied. Without more, it would appear that there were no violations

New Recommendation: Dismiss

Decision: The Commission voted to accept Counsel's recommendation.

14. **2017018861**

First License Obtained: 10/4/13

License Expiration: 10/3/17

Type of License: Firm

History: None

Respondent is the auctioneer firm referenced above.

Recommendation: Litigation monitoring order to allow review on the conclusion of the civil matter

Update: Respondent was part of the civil litigation above that was dismissed by Complainant.

New Recommendation: Dismiss

Decision: The Commission voted to accept Counsel's recommendation.

NEW BUSINESS

Director Kopchak noted that past anonymous complaints with no identifying information or those that lacked enough supporting information to warrant an investigation were never referred to the Legal Division. Recently, it has been decided that each of those will be opened, and then closed if no corroborating information is provided. This will assist administration in tracking the volume.

Administration requested the Commission to vote on granting support services the authority to close these anonymous complaints without bringing each to the Commission.

Mr. Morris motioned to grant administration the authority to close anonymous complaints with no identifying information or those that lack enough supporting information to warrant an investigation. This was seconded by Mr. Lowe. The motion carried by unanimous vote.

Mr. Lewis moved to accept Robert's Rules of Order as the standard of practice governing board business transactions and procedures during this year's meetings. Mr. Morris seconded, and the motion carried by unanimous roll call vote.

Ms. Mathews provided one brief legislative update on HB2133/SB2050 regarding the Public Automobile Auctioneer which removes that license/designation and effectively allows any licensed auctioneer to conduct a public automobile auction without specific designation to the licensee in particular, although still requiring a separate Public Automobile Auction license.

ADJOURNMENT

Mr. Morris made a motion to adjourn, which Mr. Lewis seconded. There being no other new business, Mr. Thorpe concluded the meeting at 10:35 am.