



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

**Board Meeting Minutes for November 19, 2018
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on November 19, 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, Adam Lewis, and Randy Lowe

STAFF MEMBERS PRESENT: Glenn Kopchak, Anna Matlock, Keith McCarthy, Denard Mickens, Amanda Dean

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 November 19, 2018 meeting of the Auctioneer Commission was posted to the website on November 9, 2018."

AGENDA

Mr. Thorpe indicated that he would like to add an Auctioneer "Task Force Update" to the agenda at the end of the "Director's Report". 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. Morris made a motion to adopt the minutes from the August 20, 2018 meeting as written. Mr. Colyer seconded. The motion carried by unanimous vote.

APPLICATION REVIEW

Item #1-

Mr. Morris made a motion to approve Elaine Graham (F5114) to test. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

Item #2-

Director Kopchak notified the Commission that three (3) applicants are pending in need of an administrative workaround who have 30 hours of QE, and have completed their logs, and are only waiting on the 2 years to lapse per TCA 62-19-111(b)(2)(3) to be eligible for the upgrade. For these applicants who meet the requirements before expiration and have made application for upgrade

either before their apprentice license has expired or within 5 business days after, the law states 30 hours of QE, not 36 hours. Director Kopchak further pointed out that these applicants are in good standing and are waiting for their 2 years to lapse under statute, but will fall out of that standing because the Commission currently has no vehicle for making the transition without running into a renewal period. Until a long term fix is identified and without an administrative workaround, the Commission would be creating an administrative obstacle for these applicants that effectively requires 36 hours in contrast to the statute. Mr. Morris made a motion to approve administrative accommodation and continue providing a workaround for these applicants and others in the future like them who have also fulfilled the requirements for the upgrade prior to renewal. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

DIRECTOR'S REPORT

Budget

Director Kopchak presented the 2018 Fiscal Year reserve totals for both the General Operating Budget and the Education and Recovery Fund, both of which are fiscally healthy. Director Kopchak then fielded questions from the Commission.

Newsletter Update

Mr. Lewis made a motion to select draft #1 for the newsletter. This was seconded by Mr. Morris. The motion carried by unanimous vote.

CE Audit Update

Director Kopchak notified the board members that the 5% CE audit is moving along according to schedule and will be conducted within the next two weeks.

2019 Meeting Dates

Mr. Morris made a motion to accept the 2019 meeting dates. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

Task Force Update

Mr. Morris updated the board on the current status of items discussed at the last Task Force Update. Mr. Morris related that the task force created 3 classes of auctioneers in order to ease the entry into the auctioneer business: Class A, B, and C. Class C was designated as "bid caller" only with no CE requirement. Class B was designated as Business Auctioneer which is equivalent to the current auctioneer requirements. Class A was designated as the same as Class B with the inclusion of public automobile auctioneer. Mr. Morris stated that the requirements were the same as Class B, but were to include education in automobile laws. Another topic of discussion within the discussion was to replace the Recovery Fund account with surety bonds. Mr. Morris informed Director Kopchak that this item in particular required further discussion by the Commission.

LEGAL REPORT

Keith McCarthy, Disciplinary Counsel, presented the following cases for review:

- | | |
|-----------------------------|-------------------|
| 1. Complaint Number: | 2018041371 |
| Type of License: | Unlicensed |

Disciplinary History: None

Procedural History and Facts: This Administrative Complaint was opened on June 24, 2018. This complaint was opened on the basis that Respondent appeared to be auctioning property without an Auctioneer's license. Specifically, Respondent placed a property on the MLS and attached the "Disclosure for Highest and Best Offers" form shown *infra* which contained phrases such as "Opening Bid Price of" and "Seller has initiated a minimum Reserve".¹

Disclosure for Highest and Best offers

- [REDACTED] ("Designated Listing Agent"), for [REDACTED] ("Broker") has been retained by [REDACTED] ("Seller") for valuable considerations for the duty to sell property Known as: [REDACTED] ("Property"), for a Highest and Best offer.
 - Seller has been presented supporting data of Comparable property values ("Comps") obtained from market data obtained from the Middle Tennessee Regional Multiple Listing Subscription ("MLS"), Rutherford County of Tennessee Register of Deeds. Sales Data including comparable property values, and trends were gathered for a period of 12 months beginning May 20, 2018.
 - Seller is aware that the actual value of the subject Property may range between, \$ 295,000 to 330,000.
- 4) Seller authorized and has legally requested that Designated Listing Agent and Broker to place property "For Sale" to the Highest and Best Offer with an Opening Bid Price of: . \$233,700 on MLS and any other form of advertisement for a period of 5 days.
- 5) Seller's requests:
- a. ...Will not accept any offers prior to "Open House Event" scheduled for 10th of June 2018 at 1:00 CST.
 - b. ...ALL Buyers or *Prospective* Buyers must be accompanied by a Buyer's Agent (signed RF 141/142 Or Broker equivalent) viewing period prior to the Open House Event.
 - c. ...Buyer' may produce an offer prior to Sale date, however offers will not be reviewed for acceptance until Seller presentation time
 - d. ...All offers will be presented to Seller at 8:00 PM CST, the 10th day of June 2018.
 - E. ... At 10:30 PM CST, 11th day of June 2018 upon Listing Agent's vetting of Highest and Best offers, each Buyer's agent shall be contacted via e-mail, text or voice as to the Result of the Sale.
 - F. ... Seller has initiated a minimum Reserve. Should the Highest and Best not meet the Reserve, property will remain "Active" on MLS at reserve amount
- This document herein is deemed a legal and binding agreement upon the certification of signature(s) and dates to follow.

In their Response, Respondent states the following of importance:

"[T]he open house took place on June 10, 2018. While well attended, and we thereafter received multiple offers, the highest offer we received that day was only \$285,500, which was rejected by the Seller, as she had had a dream that she would

¹ The name and address of Respondent's client Seller have been redacted.

ultimately receive more than that. Although this was a bit unusual and something I had never experienced before, I complied with my client's request.

"On June 14, 2018, based upon her dream, the Seller instructed me to increase her listing price to \$306,000." * * *

* * * "[I]n my situation, all of the buyers were communicating their offers directly to the seller in private without being part of a public 'audience.' In addition, from a technical standpoint, to the best of my understanding there was never a back and forth 'exchange' between myself and any 'audience' * * * in my case this was arguably a 'one-way' street with one single invitation to make an offer." * * *

* * * "Finally, with respect to the Real Estate Broker Act, which governs my profession, it is my understanding that the Act, at Tenn. Code Ann. § 62-13-102(4)(A), **defines a 'Broker' to include any person who 'auctions or offers to auction.'** Tenn. Code Ann. § 62-13-301) goes on to state that any person who acts as a 'broker' under such definition is required to have a license under the Real Estate Broker Act."²

Legal Analysis: The plain language of Tenn. Code Ann. § 62-19-102(a) states the two instances in which a real estate broker is legally required to have an auctioneer's license in Tennessee. First, the broker must have an auctioneer's license if the broker "[a]ct[s] as, or advertise[s] or represent[s] to be, an auctioneer, apprentice auctioneer, or firm[.]" Tenn. Code Ann. § 62-19-102(a)(1).

Second, the broker is required to have an auctioneer's license if the broker "[c]onduct[s], **or** offer[s] to conduct, an auction of real property unless . . . [the broker is] **not vocally conducting** an auction[.]" Tenn. Code Ann. § 62-19-102(a)(2) (emphasis added). Accordingly, provided the broker does not vocally conduct an auction, he or she is not required to have an auctioneer's license under Tenn. Code Ann. § 62-19-102(a)(2).³

² Respondent appears to make the argument that the definition of "broker" under Tennessee real estate licensing law permits her to act as an auctioneer; **this argument is wholly without merit.** Tenn. Code Ann. § 62-13-102(4)(A) does not "authorize" a licensed broker to do any activity whatsoever. This provision merely defines the term "broker" and conveys the breadth of activities licensed brokers perform in Tennessee. Because a licensed auctioneer is required to have a broker's license to auction real estate, it follows that the definition of "broker" would include those who "auction or offer to auction" real estate. *See* Op. Tenn. Att'y Gen. No. 08-89 (April 8, 2008).

³ Tenn. Code Ann. § 62-19-102(a) provides in part:

"It is unlawful for any person to:

"(1) Act as or advertise or represent to be an auctioneer, apprentice auctioneer or firm without holding a valid license issued by the commission under this chapter or prior state law;

"(2) Conduct or offer to conduct an auction of real property unless the person is duly licensed as an auctioneer or apprentice auctioneer and as a broker or affiliate broker under the provisions of the Tennessee Real Estate Broker License Act of 1973, compiled in chapter 13 of this title; provided, however, with respect to the authority of an apprentice auctioneer to conduct or offer to conduct an auction of real property, that the auctioneer for whom the apprentice auctioneer is employed for

Tenn. Code Ann. § 62-19-101 contains the following definitions for the terms “auction” and auctioneer”:

“(2) Auction" means a sales transaction conducted by means of oral or written exchange between an auctioneer and members of the audience, which exchange consists of a **series of invitations for offers** for purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience;” (Emphasis added).

“(3) Auctioneer" means any individual who, for a fee, commission or any other valuable consideration, or with the intention or expectation of receiving a fee, commission or any other valuable consideration, by the means or process of **auction** or sale at **auction, offers, negotiates or attempts to negotiate a listing contract**, sale, purchase or exchange of goods;” (Emphasis added).

Under the facts as currently known, Respondent’s actions do not fall under the plain meaning of the defined terms “auction,” and “auctioneer.” First, the “Disclosure for Highest and Best Offers” does not make a “**series of invitations for offers**” as required in Tenn. Code Ann. § 62-19-101(2), but only an opening price that was set by Respondent’s client. Second, without additional facts, Respondent’s action of soliciting highest and best offers to be “presented to Seller at 8:00 PM CST, the 10th day of June 2018” and her subsequent “vetting of Highest and Best offers” for Seller should not be considered as utilizing “means or process of auction” to offer a sale, or attempt to negotiate a listing contract as an “auctioneer” as the term is defined in Tenn. Code Ann. § 62-19-101(3).

In conclusion, by explicitly stating when a real estate broker must have an auctioneer’s license, the General Assembly effectively states when an auctioneer’s license is not required. A broker is not required to have an auctioneer’s license unless the broker acts as, advertises, or represents to be an auctioneer, apprentice auctioneer, or auction firm; or, the broker conducts an auction vocally or offers to conduct an auction vocally. Tenn. Code Ann. § 62-19-102(a). See Op. Tenn. Att’y Gen. No. 08-89 (April 8, 2008). Unless the facts are different than what has been presented herein, Respondent’s alleged conduct does not constitute a violation of Tenn. Code Ann. § 62-19-102(a)(1). Furthermore, unless Respondent “offered” to, or did in fact, “vocally conduct an auction” (and there are currently no facts before the Commission on this issue) Respondent’s alleged conduct does not constitute a violation of Tenn. Code Ann. § 62-19-102(a)(2).

Recommendation: Because there is currently insufficient evidence to show Respondent licensed Real Estate Broker violated Tenn. Code Ann. § 62-19-102(a), this Administrative Complaint must be dismissed.

such purposes must be on the premises of the property during the auction. **This subdivision (a)(2) shall not be construed to require ringpersons or other persons not vocally conducting an auction to be duly licensed as auctioneers**, nor to be duly licensed under chapter 13 of this title, unless the ringpersons or other persons act as an affiliate broker or broker within the meaning of chapter 13 of this title; * * * ” (Emphasis added).

Decision: The Commission voted to authorize a letter of warning.

2. 2018043501

Type of License: Unlicensed
Disciplinary History: None

Procedural History and Facts: Complaint was filed by a consumer and alleges potential unlicensed activity.

Complainant alleges that an individual opened an unlicensed auction gallery and may be calling bids at the auction. In addition, the Complainant alleges the individual may be using a relative's auctioneer license number to run the auctions.

Complainant provided two (2) dates at which auctions were to be conducted. The matter was investigated and Respondent admits to calling bids and conducting regular auctions; however, Respondent's defense is that all property auctioned was his own personal property and that he is exempt from licensing requirements pursuant to TCA 62-19-103(5). There is currently no evidence as to whether or not Respondent possesses sales tax receipts for the auctioned items. Counsel requested additional investigation but has not received pertinent information regarding Respondent's claimed exemption to licensing requirements pursuant to TCA 62-19-103(5).

Counsel recommends sending this complaint out for additional investigation or dismissal.

Recommendation: Dismiss.

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

3. Respondent 1: 2018046551
Type of License: Unlicensed
Disciplinary History: None

Respondent 2: 2018046531
Type of License: Unlicensed
Disciplinary History: None

Procedural History and Facts: This Administrative Complaint was opened on June 24, 2018. This complaint was opened on the basis that Respondent appeared to be auctioning property without an Auctioneer's license. Respondent was advertising on Facebook.

Respondent 1 is an individual and Respondent 2 is the unlicensed gallery or firm. An investigator was sent out to determine if Respondents were auctioning property without a license. The investigator determined that Respondents advertised for one auction without an auctioneer's license or firm number. However, Respondents stated they hired a licensed auctioneer to hold the auction which the licensed auctioneer confirmed. Respondents later corrected their advertisements.

Recommendation: Because there is currently insufficient evidence to show Respondents violated Tenn. Code Ann. § 62-19-102(a), Counsel recommends that this Administrative Complaint be dismissed.

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

4. 2018043681

First License Obtained:	2/28/1995
License Expiration:	11/30/2019
Type of License:	Auctioneer
History:	None

Procedural History and Facts: Complaint received on July 2, 2018 alleging bid rigging at an absolute auction. Licensed auctioneer allowed seller to bid at the auction driving the price up for a 100 acre family farm from \$535,000.00 wherein no other bidders bid against Complainant until property sold for over \$800,000.00 to Complainant. Family farm was owned by 2 brothers and their wives wherein one of the seller brothers successfully drove up the price and did not purchase at the absolute auction. Respondent Licensed Auctioneer signed contracts with all four sellers including the seller brother to sell the property at absolute auction. The seller brother signed Respondents auction contracts as a "Seller" along with the other 3 owners. The seller brother also signed a bid card and received a bidding number from Respondent. Respondent clearly advertised an absolute auction. Complainant attached a letter from the Sullivan County District Attorney's office which explains the alleged actions that occurred and requests the Attorney General's Office investigate; the letter is included in the complaint file.

Legal Analysis: This sale was an absolute auction, defined by 0160-01-.19 (1) as, "an auction at which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, where the seller may not bid himself or through an agent, and where the seller will deliver marketable title." This conduct is a violation of T.C.A. § 62-19-112(b), which states:

"the commission may suspend, revoke or refuse to renew any license issued under this chapter where the license has been obtained by false or fraudulent representations or for any of the following causes:

(1) Making any substantial misrepresentation;

...

(11) Knowingly using false bidders, cappers or pullers;

...

(12) Any conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings."

Where the auction contract sets up an absolute or no minimum bid auction, real property is sold to the highest bidder regardless of price. This guarantees that a sale will occur. "[I]n an auction held 'without reserve,' the opening of bids by the auctioneer constitutes a firm offer, as opposed to an invitation to make an offer" as in a reserve auction. It is inconsistent with this type of auction, and illegal, for sellers to bid at the auction to insure that the mutual assent that is necessary for a contractual relationship will remain. If sellers were permitted to bid, they could effectively reject the

highest bid. Auctioneers conclude, "Absolute auctions typically attract the most bidders because of the lure of the bargain," and for that reason, absolute auctions bring the highest price.

Counsel believes there are advertising violations, specifically Tenn. Comp. R. & Regs. 0160-01-.20 (2) (d), which states:

"Any advertisement or advertising shall be deemed to be false, deceptive, misleading or untruthful, if it:

...

(d) Contains any representation or claim that the advertising licensee in bad faith fails to perform.

Recommendation: Counsel recommends the Commission DISCUSS the authorization of a Consent Order offering Respondent Auctioneer to pay a civil penalty in the amount of \$2,000 for violation of TCA § 62-19-112(b)(12) "conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings; and rule 0160-01-.20(2)(d)(advertising guideline, that prohibits conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings).

Decision: The Commission voted to dismiss the complaint.

5. 2018061251

First License Obtained:	2/21/2012
License Expiration:	12/6/2019
Type of License:	Firm
History:	None

Procedural History and Facts: A licensee submitted a complaint on August 24, 2018 alleging unlicensed auctioning of automobiles. Respondent licensed Auctioneer admits they do not have a public automobile auction license and that they sold an automobile without a Tennessee "Public Automobile Auction License." This matter has been investigated as part of a Motor Vehicle Commission case as well as an Auction case.

Respondent provided the investigator and Counsel with a written statement stating that only one car was sold during the auction and that Respondent believed the person they were conducting the sale for had an auto dealers' license. Respondent did not receive any compensation for the auction. Additionally, Respondent stated that they would most likely retire their license in 2020 because they are not in good health.

Respondent's actions are a violation of Tenn. Code Ann. §62-19-102, which states in part:

(a) It is unlawful for any person to:

(3) Act as or advertise or represent to be a public automobile auctioneer unless the person is duly licensed as a public automobile auctioneer and as a motor vehicle dealer under title 55, chapter 17, part 1.

Recommendation: Counsel recommends a Letter of Warning regarding unlicensed activity, a violation of T.C.A. § 62-19-102(a)(3) - Act as or advertise or represent to be a public automobile

auctioneer unless the person is duly licensed as a public automobile auctioneer and as a motor vehicle dealer under title 55, chapter 17, part 1.

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

6. 2018062221

First License Obtained:	11/20/1979
License Expiration:	10/31/2019
Type of License:	Auctioneer
History:	None

Procedural History and Facts: An anonymous complaint alleges that an absolute auction for real estate "subject to court approval" is a violation of the rules. Complainant submitted a newspaper clipping of the auction and a post-it note of the allegations. In their response, Respondent explained that they were selling the home and personal property of a deceased man who left no will, and that his four elderly sisters lived out of state. All four sisters agreed and were willing to sign the deed at closing; however, one sister was hospitalized during the process. At this point Respondent added "subject to court approval," because Respondent was not sure if the final sister could sign at closing. Respondent did this after discussion with the attorney for the estate and the estate's administrator. Although the fourth sister recovered and will be able to sign the deed, Respondent states it is still up to the attorney to decide if the estate sale needs court approval.

Legal Analysis: The advertisement stated the sale was an "absolute auction" but then added the term "subject to court approval." While confusing, modified, or unannounced auction terms may be sources of conflict, actual misrepresentations in auction advertising are greater cause for alarm. In *Mozingo v. National Auction Group*, the auction company knowingly misrepresented the nature of the auction itself. In that case, the court ordered the property's sale, and only one of twenty-six heirs who owned the real estate contracted with the auctioneer to sell the property at absolute auction. The auction company advertised the auction as an absolute auction even though discovery showed that it knew court approval of the sale was required and that there were many heirs who had not signed the auction contract. On the day of the sale, the auctioneer announced to the bidders, for the first time, that the sale was subject to court approval. Though this specific announcement was legal, it raises the question as to the legality of knowingly advertising an auction as absolute, then changing the terms once the bidders have gathered.

Counsel believes that this advertisement might be a violation of Tenn. Comm. R. & Regs. 0160-01-.20(2)(a),(b), and (5), which state in part:

(2) False, deceptive, misleading and untruthful advertising is expressly prohibited. Any advertisement or advertising shall be deemed to be false, deceptive, misleading or untruthful, if it:

(a) Contains a misrepresentation of fact.

(b) Is misleading or deceptive because in its content or in the context in which it is presented, it makes only a partial disclosure of relevant facts.

...

(5) An auctioneer, auction firm or gallery shall not permit its name or license number to appear on any advertisement not in compliance with Tennessee Code Annotated, Title 62,

Chapter 19 et seq. (Auctioneer Licensing Law) and the Rules of the Tennessee Auctioneer Commission.

Recommendation: Counsel recommends a \$500 civil penalty for violations of Tenn. Comp. R. & Regs. 0160-01-.20(2)(a), (b), and (5).

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

7. 2018069361

First License Obtained: 6/1/2006
License Expiration: 5/31/2020
Type of License: Auctioneer
History: None

Procedural History and Facts: Complainant alleges they made 2 high bids on a tractor via the internet and that Respondent did not accept their bid. Complainant alleges that "I could hear on the audio and see on the screen my higher bid was entered and accepted and repeated by the female in control of the internet bidding to auctioneer before he called it." Screen shots show the bid crossed out twice and audio has a female voice, potentially that of the online controller, notifying the auctioneer that there is a higher bid, and then Respondent's voice is heard asking for the same price Complainant allegedly bid twice, and then Respondent's voice says "Sold" and female voice is heard saying I have 25-5??? Respondent's voice is then heard saying sorry I just sold it. Complainant alleges an employee of Respondents says this is "business as usual" for this Respondent. Complainant states "I wanted at a minimum to make the Board aware of this negative reflection of auctioneer corruption on the state of Tennessee." On November 6, 2018 Counsel requested the matter be investigated.

Counsel finds that Respondent violated TCA § 62-19-112(b)(12) for violating any conduct of any auctioneer that demonstrates improper, fraudulent, incompetent, or dishonest dealing. Respondent through their actions has demonstrated incompetent dealings in the handling of Complainant's bid during the action, thus Counsel recommends a civil penalty of \$500.

Recommendation: Counsel recommends a \$500 civil penalty for violation of TCA § 62-19-112(12).

Decision: The Commission voted to authorize a letter of warning.

8. 2018071181

First License Obtained: 2/12/2016
License Expiration: 2/1/2020
Type of License: Gallery
History: None

Procedural History and Facts: Complainant alleges child is serving as auctioneer each month. Child is calling out bids as well as homosexual slurs to bidders. Complainant alleges Licensed Auctioneer and Licensed Apprentice are allowing "this kid to be an auctioneer." Complainant also alleges an illegal raffle as Licensed Apprentice's wife calls out a bidder's number each auction. If the

bidder has left the auction the raffle increases in dollar value. When the jackpot gets high, the Licensee's wife calls out the bidder number for whoever has spent the most money at the auction. Complainant alleges others have noticed this and no one can see the number the wife pulls. Complainant concludes by stating one "should not have to pay to qualify for the giveaway."

The Licensed Apprentice for the Gallery submitted a response to the Complaint. The response states from "September to early December we have Christmas fund for children in need for 3 counties that wouldn't have much of a Christmas otherwise." And that a donor's son aged 15 called a portion of the auction for the donated goods wherein all proceeds go to the "Christmas Fund." Licensed Apprentice also denies the child auctioneer's use of "inappropriate language or name calling of any kind!" The Licensed Apprentice's response regarding the allegedly illegal raffle states: "this is money that we freely give away and I do use the APP Randomized. This is an App that randomly picks a number. Those numbers consists of every registered bidder." Complainant submitted photos. There are no signs or notices about a Christmas Fund nor any charitable function depicted therein.

Recommendation: Counsel recommends a civil penalty of \$500 for violation of TCA §62-19-102(b)(12) for improper dealings and/or incompetent dealing by the licensed Auctioneer for permitting a minor to serve as an auctioneer.

Decision: The Commission voted to defer this complaint to the February 2019 meeting and to investigate this matter further.

Re-Present

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

Procedural History and Facts: 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:

- Respondents failed to remit payment for and/or return 145 items.
- 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 189 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.

First Recommendation:

Respondent 1: Counsel recommends the Commission DISCUSS this matter.

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

First Decision:

The Commission voted to defer these complaints to the next meeting, and to add the auctioneer apprentice's supervisor as Respondent 3.

New Information

10. 2018061811 **related to 2018041311 & 2018041821, opened by the board, Hereinafter "Respondent 3"

First License Obtained:	2/27/2007
License Expiration:	2/26/2019
Type of License:	Auctioneer
History:	None

Procedural History and Facts: Complaints 2018041311 and 2018041821 were presented to the Commission on August 20, 2018 and the Commission authorized opening a third, related complaint against this Licensed Auctioneer, i.e. Respondent 3 herein. On September 12, 2018 Respondent 3 submitted the following in response to the Commission's Complaint:

"A. Please retract the statement that a complaint has been filed against me. The complaint in question is on [Respondents 1 and 2] in Maryville, TN. Not [Respondent 3]"

"B. I, [Respondent 3], was the contract auctioneer the night the merchandise was sold. The items were offered to the general public at auction with no reserve and brought the value the public deemed."

"C. The remainder of the entire complaint revolves around the contract and negotiations between [Respondent 1, Apprentice Auctioneer] and the complainant, of which I have no purview or jurisdiction."

What Respondent 3 Auctioneer failed to say is that he is the signed and notarized rule 0160-01.12 sponsor for Respondent 1 Apprentice.

Recommendations:

Respondent 1(Apprentice): Counsel recommends the Commission authorize a Consent Order offering Respondent 1 to pay a civil penalty in the amount of \$1,000 for violation of TCA §§ 62-19-112(b)(3), 62-19-112(b)(9), and 62-19-112(b)(12), Tenn. Comp. R. & Regs. 0160-01-.20(1), 0160-01-.12(7), and 0160-01-.12(9)(a)

Respondent 2 (Gallery): Counsel recommends the Commission authorize a Consent Order offering Respondent 2 to pay a civil penalty in the amount of \$1,000 in violation of TCA §62-19-112(b)(12).

Respondent 3 (Auctioneer): Counsel recommends the Commission authorize a Consent Order offering Respondent 3 to pay a civil penalty in the amount of \$1,000 in violation of TCA §§ 62-19-112(b)(12) and 62-19-112(b)(9), Tenn. Comp. R. & Regs. 0160-01-.20(5), 0160-01-.12(4), (6), (7).

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

NEW BUSINESS

Election of Officers

Election of Officers will be conducted at the next board meeting in February 2019.

ADJOURNMENT

Mr. Colyer made a motion to adjourn, which Mr. Lowe seconded. There being no other new business, Mr. Thorpe concluded the meeting at 10:29 am.