



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

**Board Meeting Minutes for February 25, 2019
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on February 25, 2019 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, Heidi Flick

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 February 25, 2019 meeting of the Auctioneer Commission was posted to the website on February 19, 2019."

AGENDA

Mr. Morris made a motion to adopt the agenda as written, which was seconded by Mr. Lewis. 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.

DIRECTOR'S REPORT

Budget

Director Kopchak reviewed the overall expenditures for FY18 and current trending noting that there were some spikes in expenses for several individual months due to travel, payments to system vendors for enhancements, and legal costback adjustments.

NAA Conference

Mr. Colyer made a motion for Jeff Morris to attend the 70th National Auctioneer's Association (NAA) Convention on July 9-13, 2019, in New Orleans, Louisiana, which was seconded by Mr. Lowe. The motion carried by unanimous vote.

Roberts Rule of Order

Mr. Morris made a motion to agree and adhere to Robert's Rule of Order, which was seconded by Mr. Lowe. This motion carried by unanimous vote.

Election of Officers

Mr. Morris made a motion to nominate Mr. Thorpe as Chairman and Mr. Colyer as Vice-Chairman, which was seconded by Mr. Lowe. This motion carried by unanimous vote.

LEGAL REPORT (*Presented by Keith McCarthy*)

1. Complaint Number:	2018075901
First License Obtained:	7/26/1977
License Expiration:	12/31/2018
Type of License:	Firm
History:	2001 Consent Order

Complaint received October 25, 2018.

Complainants attended an auction on October 6, 2018. Complainants bid on a piece of furniture and won. Auctioneer re-opened the auction and said "they tell me I have to re-open it." Complainant alleges this was because a family member of the estate wanted to bid and alleged that she wasn't paying attention.

Respondent Firm submitted a written response stating the auction was attended by approximately 500 people. Bidders were around the tent holding the auction and outside of it. The Firm's newest auctioneer was serving as the Auctioneer. Other auctioneers were taking bids as well and communicating them to the podium. The item in question was sold, and the Firm alleges that the Auctioneer did not hear a more senior and seasoned auctioneer shout that he had a competing bid. The Firm states the second auctioneer was more senior, and made the call to re-open the bidding because he allegedly yelled in his bid prior to the first auctioneer saying "sold." The owner of the Firm feels that both auctioneers were trying to be fair to all parties during the chaos of the auction. Respondent Firm adds that they have no idea if the other bidder was a family member.

In Complainants' rebuttal, they stated that they have attended auctions for over 40 years, and have never seen an auction re-opened after an item was sold and a winner announced. Additionally, Complainants said they wanted to "reiterate that the lady outside the tent (a family member) standing near me never bid" until after she told licensed auctioneer she wanted to bid and bidding was re-opened.

Counsel recommends a letter of Instruction to the Firm, and both auctioneers, for re-opening an auction after Licensee Auctioneer completed the sale and sold the item to the Complainant winning bidder as the same may be a potential violations of Tenn. Code Ann. § 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:

...

(12) Any conduct of any auctioneer that demonstrates ... incompetent ... dealings.”

Pursuant to Rule 0160-01-.19:

(1) Absolute auction/auction without reserve - 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.

(2) At auction/auction with reserve - An auction at which the seller or his agent reserves the right to establish a minimum bid, to accept or reject any and all bids, and to withdraw the property at any time prior to the completion of the sale by the auctioneer.

Recommendation: Counsel recommends a Letter of Instruction to the licensee Firm, and both licensed auctioneers for the above potential incompetent dealing.

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

2. Complaint Number:	2018077891
First License Obtained:	9/12/2001
License Expiration:	9/30/2019
Type of License:	Firm – Owned by Auctioneer
History:	None

Complainant alleges Respondent was going to conduct an auction but had not advertised their firm license number, only their Georgia auctioneer license number. Additionally, Complainant alleged that no licensed Tennessee auctioneer was conducting the auction and that Respondent was charging a buyer’s premium and not disclosing the same. The Complainant submitted two (2) screenshots, one of a Facebook and one of a seizedsales.com advertisement, in support of the complaint. The submitted screen shots do not contain a license number and do not set forth the nature of the governmental action if any, but do state “Seized and forfeited goods public auction.”

An investigator was sent to the auction. The license information for the firm and the auctioneer was posted at the auction. The auctioneer was a licensed Tennessee auctioneer. Additionally, the buyers’ premium was posted near the entrance where buyers signed up to bid and it was announced before the auction began. The investigator photographed posters stating “Seized assets from violator of the law” with the caption in equal size font stating “Seized assets from police, US Marshalls auctions, together with other merchandise which constitutes the majority of 300+ lots.”



Rule 0160-01-.20 sections (1) and (2)(f) require the following:

“(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.

(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:

...

(f) Advertises any auction using descriptive words such as “Seized,” “Confiscated,” “Forfeited,” or any other word which connotes a governmental action; the sale of items seized or taken by a government department, agency or commission; or that buyers will for some governmental reason be in a position to reap some unusual bargain, without specifically disclosing the exact nature of the governmental action. In a written advertisement, the nature of the governmental action shall be set forth in a print size equal to the descriptive word used.”

Recommendation: Letter of Instruction on the above advertising requirements.

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

3. Complaint Number:	2018076411
First License Obtained:	10/29/2007
License Expiration:	10/28/2019
Type of License:	Firm – Owned by Auctioneer
History:	None

Complainant purchased a damaged car online which they believed was a 2011 Cadillac SRX with 15,451 miles on it. However, when the car arrived, Complainant discovered it actually had 117,661 miles in addition to the other damages. When Complainant confronted the Firm about the car, Complainant alleges they were offered \$500. Complainant states they have been ripped off.

Respondent replied that the vehicle was sold "as is" without any representation or warranty. The firm specifically disclaimed any reliance on the information provided on the vehicle as it is an auction house selling vehicles on behalf of others. Complainant agreed to inspect the vehicle prior to purchase, but did not do so. Respondent Firm states that this claim with the buyer has been settled since the complaint was filed.

Vehicle has Tennessee Salvage Certificate of Title titled to an insurance company and shows 15,451 miles. Odometer shows "Trip 15,451" in center of odometer with the bottom side of odometer reading "117,661".

Recommendation: Refer Matter to Tennessee Department of Revenue and dismiss.

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

4. Complaint Number:	2018082441
Type of License:	Unlicensed
History:	None

Complainants hired firm to sell the contents of a two bedroom apartment online and **at auction for a fee**. The contents of the apartment were picked up November 7-9, 2017. It was agreed that Complainants would receive a check for all items sold in 3-6 months. After contacting the company in February 2018, a check was supposed to be delivered in 30-45 days. However, the check never arrived and despite numerous attempts to contact the company, there has been no response. Additionally, the Better Business Bureau ("BBB") lists several similar complaints against this company for actions occurring prior February 2018.

Respondents are unlicensed and did not reply to the complaint. It appears as though this is a scam company and it will be difficult to locate the company as more than a year has passed since most recent actions complained of on BBB website.

Tenn. Code Ann. § 62-19-102(a)(1) provides:
"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;"

Rule 0160-01-.11 permits up to a \$1,000.00 civil penalty per violation.

Recommendation: Refer matter to the Division of Consumer Affairs and issue a civil penalty in the amount of \$1,000.00 for the above unlicensed activity.

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

5. Complaint Number: 2018091421
First License Obtained: 6/2/1992
License Expiration: 7/31/2020
Type of License: Auctioneer
History: None

Complainant is from out of state and purchased two milk tanks at auction from Respondent. Complainant had a representative at the sale that made the bids. Complainant called Respondent prior to auction and were "told on the phone that the tanks were both in working condition with emphasis that the cooling plates were in good condition as well and never been worked on." The Respondent assured the Complainant that the milk tanks were in good working order and that the cooling plates worked. When Complainants received the milk tanks, Complainant discovered that one milk tank did not work. Complainant called to discuss the matter with the Respondent, who was allegedly very unhelpful and then stopped taking Complainant's phone calls. Complainant feels they should have been allowed to return the item and that it was advertised deceptively.

Respondent states that they did tell the Complainant prior to the auction that the two milk tanks were in working order, which they believed to be true. The morning of the sale the representative came and signed the bidder contract, which states, "NO WARRANTY: ALL ITEMS ARE SOLD AS IS, WHERE IS, WITHOUT GUARANTEE OF ANY KIND." The representative could have inspected the tank before or during the auction. When Respondent heard about the problem, the original owner was contacted, and the original owner stated that the tank was working properly when it was picked up. Additionally, Respondent looked up the service records on the tank, which stated that as recently as September 2018 the tank was working and cooling properly. Respondent also pointed out that the tank was hauled over 1,000 miles to Complainant's property and is approximately 35 years old.

Recommendation: Dismiss.

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

6. Complaint Number: 2019001641
Type of License: Gallery
History: None

A sparse Complaint received January 7, 2019 alleged Respondent Firm is "operating a weekly auction in Knoxville TN advertising a firm number from Newport Tennessee Gallery License. I cannot find where this company has any type of Firm License." No further information was provided in the complaint.

Respondent replied and admits that they were in the process of changing their name as their business location had changed. Respondent had already sent in change of name and address. Respondent is licensed and license shows Knoxville, TN address. As of February 20, 2019, Tenn. Code Ann. § 62-19-125, for gallery licenses provides:

"(a) Any person who desires to own and operate an auction house, auction barn, **auction gallery** or any other type of auction **operating at a fixed site** for the purpose of selling consigned or purchased goods at a fixed location **is required to first obtain a gallery license**. If the gallery

license holder operates more than one (1) auction, the licensee shall be required to obtain a branch license for each permanent location and pay the appropriate fees. If the auction house, auction barn or auction gallery is owned and operated by a licensed auctioneer holding a valid firm license, no further license shall be required." (Emphasis added).

Rule 0160-01-.24 for notification of change of information provides:

"(1) Within sixty (60) days of occurrence, a licensee shall notify the Commission in writing of any change in information previously submitted by the licensee to the Commission. Such information includes but is not limited to the licensee's business address, auction escrow account data and the employment, termination or resignation of any apprentice."

Recommendation: Letter of Instruction on the above requirement.

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

Re-Present

7. Complaint Number:	2018071181
First License Obtained:	2/2/2016
License Expiration:	2/1/2020
Type of License:	Gallery
History:	None

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.

Previous 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.

Previous Decision: At the November 19, 2018 meeting, the Commission voted to have the matter investigated and defer this complaint to the February 2019.

Update: This matter was investigated. Ten (10) auction attendees at random were selected from bidder cards and were interviewed telephonically by the State's investigator. No evidence to support the allegedly homophobic remark was uncovered. Evidence shows a minor was allowed to call auction(s). No evidence to support the other allegations was uncovered. All licensees were interviewed.

Licensed auctioneer provided a sworn affidavit that states the minor was allowed to call bids on charitable items where all proceeds are given to a toy drive. Auctioneer states they have never heard the minor say anything inappropriate, and that they were nearby when the minor called bids.

Licensed apprentice and gallery owner, along with his spouse provided sworn affidavits. The affidavits provide the minor was allowed to call bids on three (3) different occasions from August to September of 2018; minor was monitored closely by Auctioneer and apprentice/gallery owner; all items sold by minor were all donated with proceeds going to the Annual Toy Drive for Christmas with all proceeds split between two churches.

As to the raffle, the licensed apprentice/gallery owner states neither they nor their spouse changed or tampered with the outcome. They said they use an "app" called Randomized and the number chosen by the "app" is the winner. They said the money given away is their money and it cost others nothing to have a chance to win, and all they have to do is be present. They advised if the person with the number is not there then the money would be rolled over to the next week's auction.

Licensed apprentice/gallery said the changes they have made since this complaint was filed are that they use licensed auctioneers for all auctions, they have installed video & audio, and they have stopped giving money away.

New Recommendation: Dismiss.

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

8. 2016061691
Unlicensed Activity
History: None

This complaint was filed by two (2) consumers for unlicensed activity and further alleges that the Respondent is advertising an auction with no auctioneer or firm license.

The auction of the property was held on October 26, 2016, via live auction. This auction required bidder registration. Potential buyers had to submit a 'bidder registration' form via email prior to 5 pm on October 25, 2016.

Counsel pulled the following terms and conditions from the 'bidder registration' form:

- Respondent reserves the right to reject any bid in its sole discretion. The Bidder who submits the High Bid accepted by Respondent will be the buyer of the Property ("Buyer"). The "High Bid" shall mean the highest bid acknowledged by Respondent.
- In the event of any dispute between Bidders, or in the event of doubt on the part of Respondent as to the validity of any bid, Respondent will have the final discretion to determine the successful Buyer, cancel the Auction, or to re-offer the Subject Property(s) for auction.

Respondent's "Disclaimer" within some of the auction documents, states that the property is listed for sale by licensed real estate agent in Tennessee. Auctioneer activities will be conducted by Auctioneer 1 (licensed TN Auctioneer) of Auction Firm 1 (licensed TN Firm).

An investigation was conducted and the following:

- A representative for the Respondent stated that all the information the complaint was concerned with could be found in the auction packet that was being handed out.
- Additionally, he provided the auctioneer of record, which Counsel confirmed was listed in the advertisement and packet. Auctioneer 1 has an active license in Tennessee, as well as an active firm license in Tennessee. The Respondent's representative stated that all of this information is located in the disclaimer in each advertisement and available on their website.
- Representative confirmed it was a live auction, held on site.
- Representative stated the following:
 - **Registering to Bid.** A prospective bidder may be allowed to attend if he/she completes and executes the Terms of Sale and complies with the escrow requirement.
 - **Reserve/Minimum.** There is no reserve or minimum for this sale.
 - **Rejecting Bids.** Yes, under certain circumstances. This is also included in Terms of Sale.

After reviewing the file, it is concerning that Respondent's name includes the term "auction" in it and therefore, Counsel believes the Respondent is holding themselves out to be an auction firm.

Previous Recommendation: Counsel recommends the authorization of a **civil penalty in the amount of One Thousand Dollars (\$1,000)** for violation of T.C.A. § 62-19-102(a)(1), which states it is unlawful for anyone to 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.

Previous Decision: The Commission voted to authorize a civil penalty in the amount of One Thousand Dollars (\$1,000) for violation of T.C.A. § 62-19-102(a)(1), which states it is unlawful for anyone to 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. The Commission also asked a complaint be opened against the auctioneer in this matter for violations of T.C.A §62-19-101, et. al.

Update: The Respondent has agreed there was a violation and has signed the Consent Order and paid the \$1,000 civil penalty. The Respondent has also come into compliance by obtaining an auctioneer firm license from the Tennessee Auctioneer Commission.

New Recommendation: Close.

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

LEGISLATIVE UPDATE (*Presented by Anna Matlock*)

Ms. Matlock provided an update in reference to House Bill 797 which would amend TCA 62-19-112, adding a new subsection requiring that the auctioneer commission post the names of licensees whose licenses have been suspended, revoked, or not renewed due to false or fraudulent misrepresentation on the commission's website within 10 business days of such act being taken. If passed, this bill will take effect upon signing. Ms. Matlock also noted that since Chapter 19 opened for the legislative session, counsel anticipates more amendments and/or bills forthcoming.

NEW BUSINESS / ADJOURNMENT

There being no new business, Mr. Colyer made a motion to adjourn, which Mr. Lowe seconded. Chairman Thorpe adjourned the meeting at 9:37 a.m.