



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

**Commission Meeting Minutes for February 22, 2021
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on February 22, 2021 via a WebEx Teleconference. The following business was transacted:

COMMISSION MEMBERS PRESENT: Jeff Morris, John Thorpe, Randy Lowe, Kimball Sterling, and Dwayne Rogers

COMMISSION MEMBERS ABSENT: None

STAFF MEMBERS PRESENT: Glenn Kopchak, Anna Matlock, Shilina Brown, Carol McGlynn, Robert Hunter, and Angela Nelson

ROLL CALL

Director Kopchak called the meeting to order at 9:00 a.m. Director Kopchak took roll and established that a quorum was present.

NOTICE OF MEETING

Director Kopchak read the notice of the meeting into the record as follows: "Notice of the February 22, 2021 meeting of the Auctioneer Commission including date, time, and location has been noticed on the website since May 18, 2020; additionally, this month's agenda has been posted on the website since February 3, 2021."

STATEMENT OF NECESSITY

Ms. Anna Matlock read the statement of necessity into the record. Mr. Sterling made a motion to adopt the statement of necessity as written. This was seconded by Mr. Morris. The motion carried by unanimous roll call vote.

AGENDA

Mr. Thorpe made a motion to adopt the agenda as written. This was seconded by Mr. Morris. The motion carried by unanimous roll call vote.

NOVEMBER MINUTES

Mr. Sterling made a motion to adopt the minutes from the November meeting as written. This was seconded by Mr. Morris. The motion carried by unanimous roll call vote.

DIRECTOR'S REPORT

Budget Report

Director Kopchak briefed the Commission on the status of the budget for the previous fiscal year. He noted that the primary cause for the reduction in revenue during this time was the elimination of the firm and gallery licenses. Director Kopchak continued that the elimination of these license types has also impacted the Education and Recovery fund. As a result, the Commission will need to evaluate future expenditures from this account to avoid falling below the minimum balance of one hundred fifty thousand dollars (\$150,000) required per TCA 62-19-116. Director Kopchak also briefed the Commission on the status of the budget for the last three months of October through December. He stated that while revenues were down, this was not unexpected due to increased legal costs associated with investigations. Director Kopchak concluded by saying that the budget is trending normally and there was nothing out of the ordinary to report.

Election of Officers

Mr. Sterling made a motion to elect Mr. Lowe as the Chairman. This was seconded by Mr. Morris. The motion carried by unanimous roll call vote. Mr. Morris made a motion to elect Mr. Sterling as the Vice Chairman. This was seconded by Mr. Thorpe. The motion carried by unanimous roll call vote.

CE Seminar Date

Director Kopchak informed the Commission that the Middle Tennessee CE Seminar scheduled for February 18, 2021 at the Manchester/Coffee County Conference Center was canceled due to inclement weather. It has been rescheduled for March 3, 2021 and the Commission would need to vote to approve this date change. Mr. Morris made a motion to accept the new date. This was seconded by Mr. Thorpe. The motion carried by unanimous roll call vote.

LEGAL REPORT (*Presented by Shilina Brown*)

1. 2020076101

Opened: 11/10/2020

Unlicensed

Disciplinary History: None

Complainant is a Tennessee resident and the Respondent is an unlicensed Auctioneer.

The Complainant alleges the Respondent and others conduct estate sales in Tennessee. The Complainant purchased a 1996 Chevrolet Corvette from the Respondent on May 24, 2020. The car was advertised as part of the estate sale and listed as a consignment vehicle. It was advertised as a "Collector Edition" and had 50,000 miles on the engine and 100,000 total miles on the vehicle. The Respondent signed the title on behalf of the owner. The vehicle was owned by another individual and there was an open title on the car before selling it in a sale. The car was not part of the estate sale. Also, the car is not a 1996 "Collector Edition." Also, the actual mileage on the vehicle is 184,000. There are no service records of the engine ever being replaced. The Complainant has repeatedly tried to contact the Respondent by telephone and mail and has not received any response. The Complainant alleges the Respondent fraudulently signed the title. The Complainant would like a full refund and return the vehicle to the Respondent or partial refund of the money paid for the vehicle

because the value of the vehicle is less than the amount paid to the Respondent. The Complainant alleges the Respondent is engaged in fraud.

The Respondent failed to provide a response to the complaint.

Recommendation: Close the complaint and refer to the Motor Vehicle Commission.

Commission Decision: The Commission accepted counsel's recommendation.

2. 2020096441

Opened: 1/25/2021

Type of License: Principal Auctioneer

First Licensed: 1/24/1992

Expires: 10/31/2021

History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Auctioneer.

The Complainant alleges the Respondent held an auction on October 10, 2019 at 2 p.m. The Complainant alleges the Respondent engaged in unethical actions and violated the Auctioneer standards while representing the Complainant. The Complainant alleges the Respondent misrepresented the quality of services and expected outcome of the auction in comparison to the actual results of the auction. The conduct engaged in by the Respondent and staff during the auction sale should be reviewed. The Complainant alleges those connected and employed by the Respondent were purchasing property and taking property from the auction. The Complainant states the Respondent and staff acted dishonestly, improperly, negligently, and fraudulently during the entire auction process. Also, the Complainant alleges advertising violations because there was a lack of advertising prior to the sale and the representations made to the Complainant were different from that the action sale. There were no signs on the road and the auction information did not appear in the local paper until the night before the auction. The Respondent created a false and unjustified expectations when compared with the actual outcome of the auction. The sale results were dismal. The Respondent later sent a bill to the Complainant for \$1,079.29, however, it was later revised by the Respondent. The total amount the Complainant received was \$200 and the Complainant returned this amount to the Respondent. The Complainant's personal items were being sold for \$5 or \$10. One individual was able to purchase over \$1,000 worth of tools for \$20. The Complainant alleges the Respondent sold the property in bad faith and gave those connected with the Respondent an advantage in purchasing items from the auction, including the date of the auction sale and time because the Respondent should have been aware the date and time would not draw a large crowd. In fact, the auction started with only five people in attendance and things were just in shallow cardboard boxes and being sold for little to nothing. The Complainant also states that several items that were advertised individually were later boxed up and sold as a large lot for far less than the Complainant was led to believe the items would bring. Lastly, the Complainant alleges the Respondent took advantage of the Complainant the entire time concerning the personal property. The Complainant had some serious medical issues and the Respondent was not thorough in the auction process and was misled. The Complainant alleges this was a "nightmare auction."

The Respondent provided a response and stated the Respondent has been an Auctioneer for over 30 years and conducted hundreds of auctions. When an auction is held, the Respondent tries to give a best estimate on the items when viewed at the time of the contract. When the contract was signed, many of the items advertised were no longer at the residence. On the day of the auction, the Complainant's grandson was walking around the tables set up to display the items for auction and was taking several items for himself. The Complainant had given permission for him to remove the items. Individuals connected with the auction are permitted to purchase property at the auction and have permission to bid on items offered for purchase. The Respondent does not believe anyone connected to the auction took any property without purchasing. Most of the Respondent's staff are family members and some of the other staff members are close friends. The Respondent treated the Complainant with honesty and respect. The Respondent agreed to sell all items absolute and to have items there for auction. The Complainant's grandson did start screaming at the Respondent's office manager stating, "stop the GD auction right now" and pounded his fist. The Respondent reminded the Complainant there was a contract for the Respondent to hold an absolute auction and would proceed with the auction. The Complainant's granddaughter also posted Facebook comments on the Respondent's Facebook page stating the Respondent was "screwing her grandmother out of a lot of money." The Respondent did not bring a civil action against the granddaughter for defamation of character and did not respond to the false statements posted by the granddaughter. The Complainant's auction was advertised in several publications. The auction was advertised on an auction website and had over 2,411 views online, radio ads, two signs, brochures were printed out and passed out. The Respondent conducted the auction in good faith and expected the Complainant to proceed with the terms of the contract, as agreed upon. The Complainant breached the terms of the contract by removing several items for the auction prior the auction and allowing the Complainant's grandson to take several auctions free of charge during the auction. The Respondent initially met with this Complainant as a favor to her brother who asked the Respondent to help his sister. The Respondent knew from the beginning the auction would not be a money-making auction but wanted to help the sister of someone who had known for many years and had asked for help. The Respondent was trying to assist by providing a service to a client in need of help. The outcome/price of the items sold in comparison to the amount of money given for the items was the result of an auction held where the price is derived from what the public would be willing to pay for each item. The Respondent believes his obligation was fulfilled by arranging and holding the absolute auction. The Complainant wanted to reduce the amount of property in her home and even mentioned several items had already been stolen from her prior the Respondent meeting with the Complainant at her home. The Respondent also allowed the Complainant's brother to purchase the remainder of the auction contents when requested and the Complainant authorized the purchase. There were several man hours involved with getting this auction ready for sale and the Respondent did not bill the Complainant for the labor involved due to the number of items that were not sold and those that had been sold in lots. The Respondent also covered much of the advertisement cost for this auction. If the Respondent had charged the Complainant the entire expense of the auction, the Complainant would have owed the Respondent's company money.

Recommendation: Close.

Commission Decision: The Commission accepted counsel's recommendation.

3. 2020072921

Opened: 11/2/2020

Type of License: Principal Auctioneer

First Licensed: 1/24/1968

Expires: 1/31/2022

History: None

Complainant is a Tennessee resident and the Respondent is a licensed Tennessee Principal Auctioneer.

The Complainant alleges the Respondent conducted an auction in September 2020 and the Complainant purchased an antique vanity and hinged three-sided mirror for \$90 with the winning bid. Later, the auction representative stated the item would not be sold to the Complainant and refused to honor the terms of the auction and refused to reauction the item. The Complainant also witnessed several items being reauctioned after the winner of the highest bid decided to no longer buy the item.

The Respondent failed to provide a response to the complaint.

Recommendation: Authorize contested case proceeding and assess a civil penalty of \$2,000 for violations of Tenn. Code Ann. 62-19-112(b)(2) (Pursuing a continued and flagrant course of misrepresentation or making false promises through agents or advertising or otherwise) and (12) (Any conduct of any auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings;)

Commission Decision: The Commission elected to defer this matter to the next meeting in order for counsel to send for investigation.

New Information:

This matter was sent for investigation. The investigator met with the Complainant about the auction that took place and confirmed what had occurred. The investigator requested copies of any documents from the auction along with a notarized statement. There were no documents provided by the Complainant. The investigator also contacted the Respondent by telephone and left a message. The investigator did not receive a return phone call and left another message with the Respondent. The investigator never received a return call and sent an e-mail requesting the Respondent contact the investigator. The investigator finally spoke with a secretary at the Respondent's office and she explained he was not in the office and was ill. The e-mail address was no longer valid and provided a different e-mail address. The investigator advised additional information was needed concerning the auction along with a notarized statement of what occurred. The secretary would contact the Respondent's wife and have her contact the investigator. The investigator received a written statement from the Respondent. The Respondent has been a licensed auctioneer for over 50 years. The Respondent stated that this item was sold on reserve and most individuals do not understand this terminology. This was explained at the auction in detail. Also, the item in question had been sold on reserve and the bidder with the registration number 10 was not the Complainant.

The Complainant was contacted again to find out if any documents were available. The Complainant responded by e-mail and stated he no longer wanted to pursue the case and wanted to close the complaint. The investigator received the advertisement for the auction; however, the copy was illegible, and the terms and conditions were not clear. The investigatory never received the info requested by legal counsel about the terms, conditions of the auction or any recordings.

New Recommendation: Close.

New Decision: The Commission accepted counsel's recommendation.

CASES TO BE REPRESENTED

4. 2019036521

Type of License: Unlicensed

History: None

Complainant is a licensed auctioneer firm. Respondent is an unlicensed individual. Complainant alleges that on March 26, 2019, Complainant received a mailing stating an auction is to be held on May 4, 2019 at 1:00 p.m. at a location in Tennessee. Complainant states the mailing did not contain a Tennessee license number or Tennessee firm license number. Complainant states this is in violation of the advertising rules and unlicensed activity.

Respondent did not answer the complaint. Based upon internal research, it appears that Respondent's license has been revoked or suspended in several jurisdictions. Furthermore, Counsel contacted the location to confirm an auction was held on that date at the location listed in the complaint. Counsel recommends a One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity.

Recommendation: One Thousand Dollar (\$1,000.00) civil penalty for unlicensed activity.

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

New Information: Legal Counsel is unable to locate the Respondent. The Respondent resides in Florida and there were several attempts to locate the Respondent. There is no valid address for the Respondent in Florida. The Respondent is no longer conducting auctions in Tennessee. Legal Counsel is unable to proceed with a contested case proceeding for unlicensed activity because the Respondent cannot be served with the Notice of Hearing and Charges.

New Recommendation: Close and Flag.

New Decision: The Commission accepted counsel's recommendation.

5. 2020079921
Opened: 10/26/2020
Unlicensed
History: None

Complainant is a Tennessee resident and the Respondent is an unlicensed auction firm.

The Complainant alleges the Respondent is operating as an unlicensed auctioneer in Tennessee. The Respondent holds an auction every Saturday at 6 pm. These auctions are advertised on Facebook. The Respondent also auctions several personal items.

This matter was investigated by the Investigations Division and confirmed there was unlicensed activity by the firm. The Respondent claims the proceeds from the auction are donated to a ministry and the auction is called by a licensed auctioneer. The licensed auctioneer's license expired in March 2020. The Respondent does not collect any salary and volunteers time to hold the auction. The Respondent also operates a flea market at this location. The Respondent is not licensed.

Recommendation: Authorize a contested case proceeding and authority to settle by Consent Order and payment of a \$1,000 civil penalty for violation of Tenn. Code Ann. 62-19-102(a)(1) (unlawful for a person to act as, advertise as, or represent to be an auctioneer without holding a valid license issued by the commission;

Commission Decision: The Commission accepted counsel's recommendation.

New Information: This Respondent involves a church/ministry and falls under the exemption at Tenn. Code Ann. §62-19-103(4).

New Recommendation: Close

New Decision: The Commission accepted counsel's recommendation.

Mr. Morris inquired about the timeline for the ongoing lawsuit regarding online auctions. Ms. Matlock stated that there is currently no timeline available, but if any updates were received, she would notify the Commission.

NEW BUSINESS/ADJOURNMENT

There being no new business, Mr. Thorpe made a motion to adjourn the meeting. This was seconded by Mr. Sterling. The motion carried by unanimous roll call vote. The meeting adjourned at 9:40 a.m.