

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** February 4, 2013

**PLACE:** Andrew Johnson Tower – 3<sup>rd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

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**PRESENT:** Commission Members:  
Bobby Colson, Chairman  
Marvin Alexander  
Gary Cunningham  
Howard Phillips

**ABSENT:** Jeff Morris, Vice Chairman

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**PRESENT:** Staff Members:  
Donna Hancock, Executive Director  
Julie Cropp, Assistant General Counsel  
Mark Green, Assistant General Counsel  
Susan Lockhart, Admin Services Asst. 4

**GUESTS:** Luellen Alexander, Wendell Hanson, James "Danny" Lewis, and Grant Carey

**CALL TO ORDER:** Chairman Colson called the meeting to order at 9:00 a.m. and the following business was transacted:

**ROLL CALL:** Ms. Hancock called the roll. Four (4) of the five (5) Commissioners were present. Mr. Morris was absent.

**AGENDA:** Mr. Phillips made a motion to adopt the agenda, seconded by Mr. Alexander. **MOTION CARRIED.**

Ms. Hancock read a statement regarding when and where prior notices of this meeting were made available to the public pursuant to open meeting requirements.

**ROBERTS RULES OF ORDER:** Mr. Alexander made a motion to adopt Roberts Rules of Order, seconded by Mr. Phillips. **MOTION CARRIED.**

**MINUTES:** Mr. Phillips made a motion to approve the minutes of the December 3, 2012 meeting, seconded by Mr. Cunningham. **MOTION CARRIED.**

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**AUCTIONEER APPLICATION – APPEARANCE BY JAMES D. LEWIS, JR.**

Ms. Hancock presented previous apprentice license information for Mr. Lewis along with his written request for a waiver of the apprentice logs. Mr. Lewis appeared before the Commission to present additional information regarding his education and experience. After some discussion, Mr. Alexander made a motion to deny Mr. Lewis's request for a waiver; authorize him to take the apprentice auctioneer exam without additional education; and advise Mr. Lewis that he must serve an additional two (2) years as a licensed apprentice before he will become eligible to upgrade to an auctioneer. The motion was seconded by Mr. Colson. **Mr. Colson, Mr. Cunningham and Mr. Alexander voted "yes." Mr. Phillips voted "no."**  
**MOTION CARRIED by a vote of 3-1.**

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#### **AUCTIONEER APPLICATION – APPEARANCE BY GRANT CAREY**

Ms. Hancock presented previous auctioneer license information for Mr. Carey along with his written request for a waiver of additional education and proof of his apprenticeship. Mr. Carey appeared before the Commission to present additional information regarding his education and experience. After some discussion, Mr. Alexander made a motion to waive the additional thirty (30) hours of education and authorize Mr. Carey to take the auctioneer exam stating Mr. Carey had provided proof that he has maintained licensure in a reciprocal state and of his education being current. The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

#### **UPDATE ON SEMINARS & NEWSLETTERS – WENDELL HANSON, Nashville Auction School**

Mr. Hanson presented an oral report on the progress of the seminar schedule. He advised the next seminar is scheduled for February 18, 2013 at Natchez Trace State Park and the course material will include selling firearms, contracts, and commercial codes. He further advised that the middle Tennessee seminar will be held in May 2013 in the Mt. Juliet/Lebanon area.

Ms. Hancock asked Mr. Hanson when the next public automobile auctioneer course is scheduled at the Nashville Auction School as they are currently the only approved course provider. Mr. Hanson advised the course was held in November 2012 and the next class is tentatively scheduled for May 2013 and will be subject to meeting the school's requirement for a minimum of five (5) students per class.

Mr. Green asked Mr. Hanson if he was aware of any legislative issues he would like to discuss relating to recent rules enacted by the Higher Education Commission. Mr. Hanson advised the new rules require all students enrolled in their school to provide proof of completion for high school or its equivalent but pointed out the laws governing the auctioneer industry do not require it. He further advised he has a "Memo of Understanding" from the Higher Education Commission regarding this exception which must be renewed on a year to year basis.

*The Commission to a break at 9:55 a.m. and reconvened at 10:05 a.m.*

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#### **LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL**

Mark Green, Assistant General Counsel, advised the formal hearing (Docket #12.15-117956A) (Ken Roebuck) originally scheduled to be heard during the meeting had been continued pending a settlement offer received from the Respondent. *After a brief discussion, the Commission took a break at 10:22 a.m. to allow counsel time to research additional information requested by the Commission. The meeting reconvened at 10:35 a.m.*

After further discussion, Mr. Alexander made a motion to make a counter settlement offer to include a civil penalty of \$10,000; voluntary revocation of the Respondent's license; and an agreement that the Respondent will not be eligible to reapply for licensure and appear before the Commission until such time as he has reimbursed the Commission for the \$2,900 claim against the Education and Recovery account and proof that any restitution as ordered by the court has been paid in full. The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

Julie Cropp, Assistant General Counsel, reminded the Commission of the Open Meetings Act, T.C.A. 8-44-101, and advised it is policy of the state that meetings of governing bodies be made public and not held in private and minutes of such meetings are to be kept and available for review. Ms. Cropp also advised that the only legislation she would like to mention is the Sunset Bill that recently passed to extend the expiration of the Auctioneer Commission from June 30, 2013 to June 30, 2018.

#### **Presentation of the Legal Report -**

Ms. Cropp then presented the following complaint report for the Commission's consideration:

1. **2012011211**  
License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: N/A  
History: None
  
2. **2012012401**  
License #:  
First License Obtained: 11/23/76  
License Expiration: 7/16/14  
Type of License: Auctioneer  
History: None
  
3. **2012012402**  
License #:  
First License Obtained: 7/16/10  
License Expiration: 7/15/14  
Type of License: Firm  
History: None
  
4. **2012025891**  
License #:  
First License Obtained: 2/11/11  
License Expiration: 2/10/13  
Type of License: Apprentice Auctioneer

History: None

5. **2012025901**

License #:

First License Obtained: 2/23/11

License Expiration: 2/22/13

Type of License: Apprentice Auctioneer

History: None

**August 2012 Meeting:**

*TAC opened complaint based on copy of newspaper advertisement received which advertises an auction of antiques, furniture, home décor, etc., which lists the name of an unlicensed entity (Respondent 1). Based on information in newspaper advertisement referencing an auctionzip ad, which contained the license number of Respondent 2 (auctioneer) and the name of Respondent 3 (auction firm), complaints were opened against these Respondents.*

*Response was received stating that Respondent 3 was unaware that Respondent 1 (a separate business) needed a separate license since Respondent 1 mostly auctioned its own property. Respondent 3 states that Respondent 1 has ceased any consignment auctions until the complaint is resolved and they are instructed on how to comply. Regarding the newspaper advertisement's lack of including the firm name and license number of Respondent 3, Respondent 3 states that this was an inadvertent error on the part of the newspaper which has been addressed (and a letter from the newspaper was included confirming this). A telephone call with the owner of Respondent 3 firm confirmed that Respondent 1 is a separate business owned by one of Respondent 3's apprentice auctioneers. The apprentice has closed Respondent 1 business, and plans to obtain a gallery license before engaging in activity of this kind in the future.*

**Recommendation:** *As to Respondent 1, letter of warning regarding T.C.A. § 62-19-125's gallery license requirement. As to Respondents 2 and 3, letter of warning regarding Rule 0160-01-.20(1)'s requirement that auction advertisements must contain the name and license number of the auction firm or gallery responsible for holding the sale.*

**DECISION:** *The Commission voted to defer this matter in order to send it out for investigation to determine how many auctions Respondent 1 did and whether Respondent 2 properly sponsored all auctions.*

*An investigator was sent to obtain additional information regarding this matter. The investigator's report indicates that the investigator spoke with and obtained an affidavit from the owner of Respondent 3 firm, who stated that an apprentice auctioneer with the firm owned Respondent 1. The owner stated that Respondent 1 held approximately eight (8) auctions consisting of household goods, furniture and antiques. Respondent 2 (the principal auctioneer for Respondent 3 firm) was present and supervised at all auctions. Further, the owner of Respondent 3 states that Respondent 1 has held no additional auctions after being notified of this complaint. The investigator also interviewed the apprentice owner of Respondent 1 and requested copies of listings of items sold, bid sheets, and invoices from the eight (8) auctions held by Respondent 1. According to the investigator, the apprentice owner of Respondent 1*

*promised to provide copies of the documents, which were in storage. The investigator made multiple unsuccessful attempts to obtain the documentation.*

***New Recommendation: Discuss.***

***DECISION: The Commission voted to open complaints against the apprentice auctioneer who owned/operated unlicensed Respondent 1 and the apprentice auctioneer who is the owner of Respondent 3 and handle all of these complaints together at an upcoming meeting.***

Pursuant to the direction of the Commission, complaints were opened against Respondent 4 (the apprentice auctioneer who was the owner/operator of Respondent 1 unlicensed entity) and Respondent 5 (the apprentice auctioneer who is the owner of Respondent 3 licensed firm). Respondent 4 and Respondent 5 submitted responses to the complaint stating that Respondents were unaware that Respondent 4 needed a gallery license for Respondent 1 entity because Respondent 4 was selling over sixty percent (60%) of Respondent 4's personal property. Respondents state that all auctions for Respondent 1 unlicensed entity have ceased until the complaint is resolved and they are instructed on how to comply. No information has been received to indicate that the unlicensed entity has engaged in any auctions since the time this complaint was filed.

**New Recommendation: Close as to Respondents 3 and 5. As to Respondent 1, letter of warning regarding license requirement of § 62-19-102. As to Respondents 2 and 4, letters of warning to each regarding § 62-19-125's gallery license provisions.**

**DECISION: Mr. Phillips made a motion to accept Legal's recommendation and withdrew the motion for lack of a second. After further discussion, Mr. Phillips made a motion to authorize a Consent Order for Respondent 2 and a Consent Order for Respondent 4, including a civil penalty of \$500.00 for each Respondent for operation of an unlicensed gallery in violation of T.C.A. § 62-19-125 and § 62-19-112(b)(7). Close as to Respondents 1, 3, and 5. The motion was seconded by Mr. Cunningham. Mr. Alexander recused himself from the vote on this matter. MOTION CARRIED.**

**6. 2012020151**

License #:

First License Obtained: 4/18/07

License Expiration: ~~4/17/11~~

Type of License: Apprentice

History: None

**7. 2012020161**

License #:

First License Obtained: 6/7/06

License Expiration: 6/6/14

Type of License: Auctioneer

History: None

Complainant states that Complainant purchased a truck from Respondents' firm (Respondent 1 is an apprentice auctioneer whose license is currently expired; Respondent 2 is an auctioneer and is Respondent 1's sponsor) in May 2012. At that time, the vehicle did not run, so Complainant had the vehicle towed home. Complainant states that Complainant was told that the title would be mailed to Complainant's home. Complainant states that, despite multiple attempts by Complainant, Complainant has not received the title for the truck. There was no response to the complaint.

An investigator was sent to obtain additional information regarding this matter. The investigator met with Respondents to discuss the complaint. As to Respondent 1's expired license, the investigator obtained a sworn affidavit from Respondent 2 stating that Respondent 2 is the only licensed auctioneer at the firm and is present at all auctions, and Respondent 1 only solicits equipment from clients for inclusion in sales but does not hold any auctions. With regard to the subject truck, Respondents state that the vehicle was offered via timed online auction only, and the title for the truck was lost and Respondents could not get the cooperation of the original owner to secure a replacement. Respondents told investigators that they are in the process of attempting to obtain a bonded title for Complainant. The investigator was also provided with copies of lots offered by Respondents' firm during the year 2012. Based on the information contained within the file, there does not appear to be any proof of unlicensed activity by Respondent 1 (whose license is expired). It is difficult to determine, based on the information within the file, whether Respondent 2 should have a public automobile auctioneer license. Therefore, it is recommended that this matter be referred to the motor vehicle commission for a determination of whether licensure as a motor vehicle dealer is required.

**Recommendation: Close and refer to the Motor Vehicle Commission with possibility of re-opening complaint depending upon the Motor Vehicle Commission's determination of this matter.**

**DECISION: Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Phillips. MOTION CARRIED.**

**8. 2012023181**

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: N/A

History: None

**9. 2012023201**

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: N/A

History: None

Complainant is a licensee who submitted copies of advertisements for an auction of land to take place approximately one (1) month after the complaint was received. The advertisements

contained the names of Respondents (both are unlicensed; both are companies located outside of the state). Complaints were opened and sent out for a response. Executives with Respondents contacted the TAC office and a telephone conference took place with these individuals, the executive director, and legal counsel. At that time, the executives stated that their plan was to reactivate one of the executives' Tennessee auctioneer license to hold the auction. At that time, they were advised of the statutes requiring an entity auctioning real property must be properly licensed as an auctioneer and real estate broker with a licensed real estate firm and auction firm. The executives for Respondents indicated that they were not aware of these requirements and they planned to pull all advertisements and postpone the sale until such point as the auction could be held in compliance with the law. Complainant was alerted to this development by the executive director and agreed to update the office if Complainant became aware of any further non-compliant ads or if the auction was held by Respondents.

Responses were then submitted on behalf of Respondents advising that the auction was to be conducted by an individual who was licensed as an auctioneer and real estate broker who is with a licensed auction firm and real estate firm. The response stated that Respondents have done no further advertising of the auction, and all advertising would feature the names and license numbers of the licensed firm and auctioneer who were going to conduct the auction. To date, the auction has taken place and the TAC office has received no further information (from the Complainant or otherwise) of any violations in advertising or conducting the sale.

**Recommendation: Letter of warning to both Respondents regarding T.C.A. § 62-19-102 license requirements.**

**DECISION: Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Cunningham. Mr. Phillips recused himself from the vote on this matter. MOTION CARRIED.**

**10. 2012026341**

License #:

First License Obtained: 12/17/03

License Expiration: 12/31/13

Type of License: Firm

History: None

Complainant states that Complainant contacted Respondent (a licensed firm located out of state) regarding selling some of Complainant's restaurant equipment. Complainant states that Respondent sent Complainant a contract, but Complainant was not happy with the contract and did not sign it. Complainant states that Respondent then advertised the products in the local newspapers and in a flyer, and, as a result, everyone thought Complainant's restaurant was shut down.

Respondent submitted a reply stating that Complainant contacted Respondent regarding Complainant's plans to close Complainant's restaurant and asking about selling Complainant's restaurant equipment as soon as possible. Respondent states that Complainant sent photos and a complete listing of items to be sold, and Respondent informed Complainant of the auction

process and associated costs. Respondent, who claims to specialize in sales of this type, states that Respondent was already scheduled to conduct another similar auction in the vicinity of Complainant's location a few weeks after Complainant contacted Respondent. Respondent states that Respondent told Complainant that if Complainant's auction could be held on a day following shortly after the similar auction, the marketing already in place could increase exposure to Complainant's auction. Respondent states that a contract was sent to Complainant for review and signature, and after speaking numerous times with Complainant by phone, Respondent states that Complainant said the contract was under review by Complainant's attorney but would be signed and sent back and, in the meantime, Complainant gave approval to move forward with marketing. Respondent states that Respondent marketed the auction by mailing a brochure, placing newspaper ads, adding the auction to Respondent's website, and e-mailing Respondent's marketing database. A week prior to auction, Respondent states that Complainant said Complainant's attorney had issues with the Choice of Law and Forum clauses, which Respondent was willing to change, and Complainant wanted explanation about the buyer's premium, which satisfied Complainant. Two days prior to auction, Respondent states that Respondent was contacted by Complainant's business asking Respondent to cancel the auction due to personal issues with Complainant's family, and Respondent posted a cancellation on Respondent's website, sent an e-mail blast and placed an ad, on two (2) occasions, ran an advertisement regarding Complainant's location remaining open. Respondent states that this resulted in cost to Respondent for which Respondent has not held Complainant responsible. Based on the information contained within the file, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

**DECISION: Mr. Cunningham made a motion to accept the recommendation of legal counsel, seconded by Mr. Phillips. MOTION CARRIED.**

**11. 2011026741**

License #: Unlicensed  
First License Obtained: NA  
License Expiration: NA  
Type of License: NA  
History: NA

***January 2012 Meeting:***

*Complaint alleges that Respondent failed to include it's license number on advertising in violation of 62-19-118-(c)(2) and TAUC Rule 0160-01-20(1). A copy of the advertising was sent with the complaint.*

*Upon review, Respondent is not licensed as an auctioneer firm within the State of Tennessee. Additionally, Respondent did not answer the complaint.*

***Recommendation: Consent order with a civil penalty of \$500.00 for violating 62-19-118(c)(2) and Rule 0160-1-.20(1) and a \$1000.00 civil penalty for the violation of 62-19-102, unlicensed activity.***

**DECISION:** *The Commission voted to authorize a Consent Order with a civil penalty of \$500.00 for violating § 62-19-118(c)(2) and Rule 0160-01-.20(1) and a \$2,000.00 civil penalty for the violation of § 62-19-102 (unlicensed activity).*

The Consent Order was mailed to Respondent in January 2012. Because Respondent did not choose to settle the matter informally, the matter was forwarded to litigation, and, in August 2012, formal disciplinary charges were filed. However, service was not able to be affected on Respondent, and Respondent can no longer be located. There is no indication that Respondent is still operating.

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**New Recommendation:** Close.

**DECISION:** Mr. Phillips made a motion to accept the recommendation of legal counsel, seconded by Mr. Alexander. MOTION CARRIED.

**12. 2011020271**

License #:

First License Obtained: 3/19/10

License Expiration: 3/18/12

Type of License: Public Automobile Auctioneer

History: None

**April 2012 Meeting:**

*Complainant alleges that the firm for which Respondent is the principal auctioneer gave Complainant a worthless check for Complainant's vehicles which were sold at auction held by Respondent's firm. Additionally, Complainant alleges that Complainant has several vehicles which are inside the locked gate of Respondent's firm, which were taken there to be sold and Complainant cannot retrieve. Finally, Complainant alleges that Complainant has vehicles purchased and paid in full which Respondent's firm will not provide the titles.*

*Respondent submitted no response. Certified letter containing complaint was returned as "unable to forward."*

*There are multiple complaints against Respondent's firm which are currently authorized for formal hearing.*

**Recommendation:** Authorize for formal hearing.

**DECISION:** *The Commission voted to accept legal's recommendation.*

This matter was forwarded to be set for a formal hearing. The litigation attorney has obtained information that Respondent is incarcerated and will remain so for a lengthy period of time. Further, Respondent's license expired in 2012 and passed the two (2) month period within which T.C.A. § 62-19-111(j) allows licensees to renew following expiration of the license. Complaints

against Respondent's firm were closed and flagged by vote of the Commission due to expiration of the firm's licenses and the incarceration of the non-auctioneer owner of the firm.

**New Recommendation: Close and flag.**

**DECISION: Mr. Phillips made a motion to accept the recommendation of legal counsel with the addition of sending a letter of explanation to the Complainant regarding why the Commission was taking this action. Mr. Alexander seconded the motion. MOTION CARRIED.**

*The Commission took a break at 11:35 a.m. and reconvened at 11:43 a.m. Mr. Cunningham did not return to the meeting after the break.*

**Rule Discussion –**

Ms. Cropp presented a draft of the rules discussed during a previous meeting for the Commission's review. After some discussion, the Commission tabled the discussion until the next meeting and requested legal to draft definitions for a "sponsor," "principal," and "electronic (timed) auctions" in the meantime. Mr. Colson advised he would do some research and assist Ms. Cropp in this matter.

**ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR**

**Conflict of Interest Statements** – Ms. Hancock advised the Commission that the annual conflict of interest statements from employees and board members are due and asked them to submit their signed statements at the end of the meeting if they had not yet done so.

**Complaint Comparison Report** - Ms. Hancock presented a comparison of the complaints pending in February 2012 to those currently pending.

**Budget Report** – Ms. Hancock presented a comparison of the revenues and expenditures for the last three (3) fiscal years along with year-to-date information for the current fiscal year. She also presented a similar report for the education and recovery account for the Commission's review.

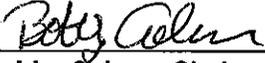
**Examination Contract** - Ms. Hancock advised the Commission that the current contract for the examination provider is scheduled to expire 6/30/13 and she asked if the Commission would vote to extend the contract until 6/30/14. The Commission tabled the matter and asked Ms. Hancock to prepare a report on the pass/fail rates, complaints, and any other pertinent data for their review at their March meeting.

**UNFINISHED / NEW BUSINESS – BOBBY COLSON, CHAIRMAN**

Mr. Phillips asked if the Commission should prepare and disseminate information regarding the auction sales of firearms in an effort to make it easier to understand and help auctioneers to be in compliance. The Commission agreed that it can be confusing and had made efforts to provide such information through their newsletters and seminars. However, they advised such sales are governed by law enforcement and the

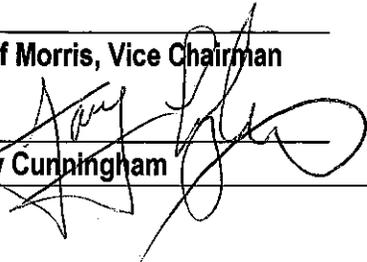
Bureau of Alcohol, Tobacco and Firearms (ATF) and are subject to their interpretation. Therefore, auctioneers are encouraged to contact the ATF office in their area if they have any questions.

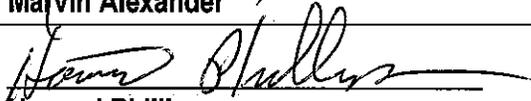
Being no further business to discuss, the meeting adjourned at 12:45 p.m.

  
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Bobby Colson, Chairman

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Jeff Morris, Vice Chairman

  
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Marvin Alexander

  
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Gary Cunningham

  
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Howard Phillips