

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: June 1, 2009

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Commission Members:
Marvin Alexander, Chairman
Bobby Colson
Mary Francis Rudy

ABSENT: Commission Members:
Kenneth Dreaden
Howard Phillips

PRESENT: Staff Members:
Donna Hancock, Director
Adrian Chick, Staff Attorney
Susan Lockhart, Executive Administrative Assistant
Sheila Piper, Administrative Assistant

CALL TO ORDER:

Chairman Alexander called the meeting to order at 9:15 a. m. and the following business was transacted:

AGENDA: Ms. Rudy made a motion to adopt the agenda as is. Seconded by Mr. Colson.
MOTION CARRIED.

MINUTES: Mr. Alexander inquired as to why the minutes from the formal hearing was not included in the minutes presented. Mr. Chick advised that formal hearings are transcribed by the court reporter and he had requested a copy but they were not yet available.
Mr. Colson made a motion to approve the minutes of last meeting. Seconded by Ms. Rudy.
MOTION CARRIED.

1. L09-AUC-RBS-2009005801 CRYE LEIKE AUCTIONS - CLEVELAND

2. L09-AUC-RBS-2009005802 JOHN PAUL LEWIS, JR.

Complaint: This complaint arises out of an advertisement which lists a man and his wife as auctioneers. The wife is not licensed as an auctioneer.

Response: The Respondent acknowledged that the wife is not licensed as an auctioneer, but states it was a misunderstanding and that there was no intent to violate statutes, and the problem will be resolved within two weeks.

Complaint History: None.

Recommendation: The advertisement makes a substantial misrepresentation that the wife is licensed as an auctioneer. Consent Order assessing a civil penalty of \$1000 against the firm for violation of TCA 62-19-112(b)(1) (making any substantial misrepresentation), and authorization for hearing.

MOTION: Mr. Colson to accept legal recommendation, seconded by Ms. Rudy.

ALL APPROVED. MOTION CARRIED.

3. L09-AUC-RBS-2009004551 LYNN JACKSON AUCTION & REALTY

Complaint: This complaint arises out of an absolute realty auction that took place in January, 2009. According to the complainant, a registered bidder had bid \$1,950/acre, then the Respondent auctioneer attempted to get a bid for \$2,000/acre. When nobody bid, the Respondent announced that he'd buy it himself for \$2,000/acre. Shortly thereafter, the complainant bid \$2,050/acre and bought the property.

Response: The Respondent denies placing the \$2,000/acre bid himself, and claims the bid was made by a certain registered bidder. This registered bidder also sent a statement to the commission stating that he (the registered bidder) had in fact made the \$2,000/acre bid.

Complaint History: none related.

Recommendation: While the complainant is adamant that the Respondent placed the \$2,000 bid, the Respondent is equally adamant that it was placed by the registered bidder. Due to insufficiency of evidence of violation, Legal recommends dismissal.

MOTION: Mr. Colson to accept legal recommendation, seconded by Ms. Rudy.

ALL APPROVED. MOTION CARRIED.

4. L09-AUC-RBS-2009002781 (JOHNNY C. BARNES)

Complaint: This anonymous complaint was received February 7, 2009 and alleges that the Respondent conducts auctions on Friday nights without being licensed. Legal requested an investigation of this complaint on February 17, 2009. The assigned investigator located the Respondent's parole officer, talked with an investigator at the local district attorney's office, and coordinated a visit to the location provided in the complaint along with the district attorney investigator. On the day of the scheduled visit, the district attorney investigator informed our investigator that according to interviews with several local sources, there had been no activity at the location in several months. Our investigator continued the investigation, and learned that the location is now a "saloon". An interview was conducted with the Respondent, who states that he may have assisted in several benefit sales in late 2008, but he denies any auctioneering. Our investigator also interviewed the owner of the location (which is now a saloon) who stated that the Respondent had been present and worked the floor at several auctions, but that the Respondent did not do any "auctioneering". The investigation, although not substantiating the complaint against Respondent, does indicate that the owner of the location had operated it as a gallery without a gallery license, and that another auctioneer had conducted several auctions in violation of the auctioneer statutes and rules. Complaints will be opened against these additional persons.

Recommendation: Dismiss complaint, but open additional complaints against appropriate persons.

MOTION: Mr. Colson to accept legal recommendation, seconded by Ms. Rudy.

ALL APPROVED. MOTION CARRIED.

5. L08-AUC-RBS-2008015701 NORM HARBIN

Complaint: The Respondent was issued three citations by the administrative director pursuant to TCA 62-19-126, each citation assessing a penalty in the amount of \$2,500. The citations were personally served on Respondent on April 18, 2009, and the Respondent has failed to appeal the citation. Pursuant to statute, the administrative

director will now request the AG's office to seek a judgment in chancery court for the total civil penalty, court costs, and an order to restrain Respondent from further violations.

Recommendation: Close. This matter requires no further action by the commission.

MOTION: Ms. Rudy to accept legal recommendation, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED

6. L09-AUC-RBS-2009001591 CARL L. BROOKS

Complaint: This complaint was filed by the purchaser of real estate at an auction. After obtaining the winning bid and paying the 10% earnest money, the title company stated that the purchaser must pay additional closing costs. The purchaser believes the closing costs should be paid by the seller, and that there "seem[s] to be somewhat of a collusive relationship' between the auction company and the company they chose to close the sale".

Response: Respondent states that there is no collusion, and that it always uses a title company to handle closings.

Complaint History: none related.

Recommendation: Dismiss. There is no evidence of a "collusion" between the auction company and the closing company, and also it is not clear who's obligation closing costs were in this situation.

MOTION: Ms. Rudy to accept legal recommendation, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

7. L09-AUC-RBS-200900388 BOB PARKS AUCTION COMPANY

8. L09-AUC-RBS-200900390 STAN VAUGHT

Complaint: This complaint is based upon an advertisement for an "absolute auction" which also states in smaller print, "subject to bank confirmation".

Response: The Respondent states that the seller wanted to sell the property "absolute", but the bank wanted to avoid a "foreclosure auction". The involved parties agreed to conduct the auction, and then for the seller to make up the difference between the sale price and a payoff acceptable to the bank. The Respondent states that "the seller would sell to someone whether that was the high bidder or the bank."

Complaint History: none related.

Recommendation: Consent order assessing a civil penalty of \$750 against the auction firm, and letter of warning against the auctioneer, for violation of Rule 0160-1-.20 (advertising guidelines).

MOTION: Mr. Colson to accept legal recommendation, seconded by Ms. Rudy.

ALL APPROVED. MOTION CARRIED.

9. 12.15-100900A

FINAL ORDER regarding hearing for Jerry Hank Davis operating without a license was presented to Chairman Alexander for his signature. However, the transcripts were not available and it was agreed to revise the order if any errors are detected after the transcripts are received. Judgment was for \$500 per violation for a total of \$15,000; \$2000 investigation cost; and \$230 hearing cost.

John and Craig Butler Case – Mr. Chick advised this case was appealed by the defendants and the Commission's ruling was upheld by Chancery Court. Mr. Chick was not aware of any appeals regarding the latest judgment.

DIRECTOR'S REPORT – DONNA HANCOCK

Public Automobile Auction Application(s) Review

Horn Auctions, Inc. was presented for review and approval. Commission advised they would approve the application upon receipt of a signed copy of the page indicating the appropriate revision to answer #9 of the application form.

World Auction Company, LLC was presented for review and approval.

MOTION: Ms. Rudy made a motion to approve the application, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

American Motor Sports was presented for review and approval.

MOTION: Ms. Rudy made a motion not to review the application until the fees have been received, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

Ted Russell's application was mentioned by Mr. Chick as it was previously reviewed by the Commission and was similar to the case just reviewed. The statutory requirements for a company owner meeting the education requirements was discussed and the Commission asked that Ted Russell's application be reintroduced at the next meeting.

Travis Royston submitted a request for approval of his continuing education credits from the Certified Auctioneer Institute (CAI). CAI would not submit the hours to the Commission for his license because they had not been accepted by the Commission.

MOTION: Ms. Rudy made a motion to accept CAI's continuing education credits and issue them a provider number in compliance with Rule 0160-3-.04(10)(b), seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

Kentucky Auction Academy requested that their 83 hour course be recognized and accepted by the Commission.

MOTION: Ms. Rudy made a motion to issue a letter requesting their course outline and how it applies to Tennessee before agreeing to approve the course, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

Ms. Hancock reported that there are currently 20 open complaints and 12 of them are over 180 days old. Mr. Chick advised that a formal hearing is set for August due to continuation that should address most of the older complaints.

Ms. Hancock reviewed the expenditures and revenues for the education and recovery fund for the last 4 years.

Ms. Hancock introduced a new employee, Susan Lockhart, to the Commission.

Ms. Hancock advised that the travel and per diem for the Commission members have not been paid since September 2008. Therefore, the minutes were reviewed to determine who attended which meetings so claims could be submitted on their behalf. Ms. Lockhart advised that the per diem forms had been sent to Human Resources for processing but she needed the Commission

members' hotel information before the expense claims can be submitted for any members with overnight stays.

NASHVILLE AUCTION SCHOOL – Rhessa Orr

Ms. Orr indicated that the next newsletter should be available by the end of the month. She also discussed the next seminar and said they are considering several locations in Middle Tennessee.

NEW BUSINESS

A discussion ensued regarding whether or not a firm must have a principal auctioneer to operate in Tennessee. It was determined that an allegation had been made against a firm and that their license may be invalid.

MOTION: Ms. Rudy made a motion to bring this complaint before the Commission to determine the amount of the civil penalty if a violation is determined from the investigator's report, seconded by Mr. Colson.

ALL APPROVED. MOTION CARRIED.

Being no further business, meeting adjourned.

Marvin Alexander, Chairman

Mary Francis Rudy

Howard Phillips, Vice Chairman

Kenneth Dreaden

Bobby Colson