

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: May 2, 2011

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

PRESENT: Commission Members:
Kenneth Dreaden, Chairman; Bobby Colson; and Gary Cunningham

ABSENT: David Cole, Vice Chairman and Marvin Alexander

PRESENT: Staff Members:
Donna Hancock, Executive Director; Susan Lockhart, Executive Assistant;
And Mark Green, Assistant General Counsel

CALL TO ORDER: Chairman Dreaden called the meeting to order at 9:03 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Three (3) of the five (5) Commission members were present. Mr. Cole and Mr. Alexander were absent.

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

MINUTES: Mr. Cunningham made a motion to approve the minutes of the April 4, 2011 meeting, seconded by Mr. Colson. **MOTION CARRIED.**

NASHVILLE AUCTION SCHOOL REPORT

Ms. Hancock advised Ms. Orr submitted an email stating that the next seminar is scheduled for June 21, 2011 in Clarksville and that the newsletter is expected to go out in June as well. She asked that the Chairman submit his letter for the newsletter no later than May 17, 2011.

LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL

Mr. Green presented the following Legal Report for consideration:

- 1. 2011000761**

Complainant alleges she purchased a motorcycle at auction but the Respondent has yet to provide the title to the motorcycle after several promises to do so. The Respondent failed to respond.

Recommendation: Authorize consent order with \$1,000.00 civil penalty for violation of 62-19-112(b)(12).

Motion: Mr. Cunningham made a motion to accept Legal's recommendation but if Respondent notifies the Commission within ten (10) days of receipt that the title has been given to Complainants then drop the civil penalty to \$250.00 for failing to respond to original notice of complaint. The motion was seconded by Mr. Colson. MOTION CARRIED.

2. 2011007041

Complainant alleged and Respondent admitted that the Respondent, a real estate company, was advertising an auction for eight (8) properties on its website and it is not a licensed auction firm. Respondent states that they were in error and have since filed for an auctioneer license.

Recommendation: Approve a consent order with a \$250.00 civil penalty for violation of 62-19-111

Motion: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

3. 2011007061

Complainant alleges that the Respondent advertised in a newspaper without listing the Auctioneer name and license number within the advertising. After an initial review and response by the Respondent, the Respondent used a licensed auctioneer and stated that they placed the advertising not knowing the rule regarding the name and license number. They provided the name of the auctioneer who conducted the auction.

Recommendation: Letter of Warning concerning advertising rules and open a complaint against the licensee who did the auction.

Motion: Mr. Cunningham made a motion to accept Legal's recommendation, seconded by Mr. Colson. MOTION CARRIED.

(Mr. Cunningham also suggested that guidelines be distributed to the publishers and members of the Tennessee Press Association to make them aware of the advertising requirements for public auctions. He further recommended that the commission contact the Tennessee Press Association to determine if it would be possible for a commissioner to address their members during a conference to further educate them regarding advertising for auctions. The Commission agreed it was a good idea but did not make a decision to pursue his recommendations at this time.)

4. 2010009741

An out of state corporation, complainant, filed a complaint alleging the Respondent ignored minimum reserve prices on everything and sold items at a loss to the Complainant of \$131,097. The Commission has tried on numerous occasions to get documentation from Complainant's attorney who refuses to cooperate. Though there is an actionable cause, the Complainant's failure to cooperate precludes getting the necessary evidence to proceed.

Recommendation: Dismiss

Motion: Mr. Colson made a motion to accept Legal's recommendation, seconded by Mr. Cunningham. MOTION CARRIED.

5. 2011003511

Complainant alleges that the Respondent conducted an auction for Complainant and paid him proceeds of \$3,640.00 for merchandise sold. The check for the proceeds was returned for insufficient funds. Respondent is unlicensed. Respondent has failed to respond. The certified mail sent to him was "unclaimed."

6. 2011002681

Complaint alleges that the Respondent conducted an auction for Complainant and paid him proceeds of \$2,000.00 for merchandise sold. The check for the proceeds was returned for insufficient funds. Respondent is unlicensed. Respondent has failed to respond. Respondent did receive the complaint and signed for it.

Recommendations for #5 & #6: Authorize consent order with \$1,000.00 civil penalty for violation of 62-19-112(b)(12) on each case for a \$2,000.00 civil penalty.

Action: After some discussion, the Commission requested that these complaints (#5 & #6) be deferred for further investigation.

7. 2011003531

Complainant alleges that the Respondent is conducting auctions in LaFollete, TN. Respondent is unlicensed and according to the Complainant is a partner of the Respondent listed in paragraph #5 and #6. Respondent failed to provide a response and the notice was returned "unclaimed."

Recommendation: Authorize consent order with \$1000.00 civil penalty for violation of 62-19-112(b)(12)

Action: After some discussion, the Commission requested that this complaint be deferred for further investigation along with #5 and #6.

Attorney Green also presented an update of the Consent Order Log that he presented at the last meeting.

The Commission took a break at 9:50 a.m. and reconvened at 10:00 a.m.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

David “Chip” Winstead – Waiver Request – Ms. Hancock advised that this matter had been stricken from the agenda after it was determined by staff that Mr. Winstead met the guidelines previously determined by the Commission for the Director to administratively waive testing and additional requirements for licenses expired less than one (1) year upon reapplication.

Principal Auctioneer – Question submitted by Randy Land – Ms. Hancock advised that Mr. Land contacted her to ask whether or not an auctioneer can be the principal auctioneer at more than one firm/gallery and that she advised Mr. Land she would pose the question to the Commission. The Commission advised that it is not their intent to allow auctioneers to serve as principal at more than one business but they currently do not have rules or laws preventing it. Mr. Green advised the Commission this issue was included in the draft of rules by his predecessor and he would pursue rule making after he has had a chance to review them and meet with his supervisors. Ms. Hancock advised that she would respond to Mr. Land on the Commission’s behalf.

Information from the Packers and Stockyards Administration – Ms. Hancock advised the Commission that she contacted that Packers and Stockyard Administration regarding a question that arose during the last meeting and received the following answer:

How many livestock auctions can be held in the same location before the auction firm/gallery must register with the Packers and Stockyards Administration (P&S)? We (P&S) require a livestock market (a market providing stockyard services) to register and bond with P&S before they can have their first auction or they will be operating in violation of the P&S Act. Any facility that is going to bring buyers and sellers together and charge a commission for the selling of the livestock must register. The key word here is LIVESTOCK as there are such things as flea markets, and weekly community sales that sell everything except livestock (cattle, hogs, sheep, goats, horses and mules) and they do not have to register with us. The livestock market can have as many sales as they want once they are registered and bonded with P&S. I am listing below the definition of stockyard services as written in the P&S Act.

The term “stockyard services” means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce of livestock.

Complaint Status Report - Ms. Hancock presented a comparison of the complaints pending in April 2010 to those currently pending. She also gave a listing of the total active licenses for each profession (1,791 auctioneers/apprentices; 1,143 auction firms/galleries; 33 public automobile auctioneers; and 14 public automobile auction firms).

Consent Order Report for 2010 – Ms. Hancock presented a summary of the civil penalties assessed during 2010 and their dispositions. She also presented a chart indicating the percentage of each action type taken by the Commission for the eighty-eight (88) complaints presented to them during the 2010 calendar year.

NALLOA Conference July 12-16, 2011 – Orlando, FL – Ms. Hancock advised that Mr. Colson and Mr. Alexander have both been approved to attend the NALLOA Conference as representatives of the Commission. She further advised them to contact Ms. Lockhart regarding their travel and registration arrangements.

OLD BUSINESS: No old business was discussed.

NEW BUSINESS: Ms. Hancock announced that Mr. Bill Giannini has been named as the new Assistant Commissioner for the Division of Regulatory Boards as the former Assistant Commissioner, Steve Majchrzak, had been promoted to serve as the Deputy Commissioner for the Department of Commerce and Insurance.

The Commission took a break at 10:36 a.m. and reconvened at 10:45 a.m.

Attorney Green advised that he had three (3) additional complaints to bring before the Commission with a recommendation to summarily suspend the licenses involved and authorization of a formal hearing. The first two (2) complaints, 201101007 and 201101008, were the same matter regarding an auction firm and public automobile auction firm whose principal auctioneer was currently incarcerated at a federal facility. The Complainant alleged that the Respondents auctioned and sold a vehicle for the complainant and the check issued by the Respondent for more than \$10,900 was returned for insufficient funds. The third complaint was received by staff on April 28, 2011 and the allegations were similar in nature as the Complainant stated that the Respondent auctioned and sold a vehicle on their behalf and issued the Complainant a check for more than \$4,500 that was returned for insufficient funds. Mr. Cunningham made a motion to summarily suspend the licenses for auction firm #5619 and public automobile auction firm #17 pursuant to Tenn. Code Ann. 4-5-320(c) finding that the public's health, safety, and welfare is at risk and imperatively requires it. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

Being no further business to discuss the meeting adjourned at 11:00 a.m.

Kenneth Dreader, Chairman

David Cole, Vice-Chairman

Marvin Alexander

Bobby Colson

Gary Cunningham