

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: October 3, 2011

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

PRESENT: Commission Members:
Dave Cole, Chairman; Gary Cunningham, Vice Chairman; Marvin Alexander; and
Jeff Morris

ABSENT: Bobby Colson

PRESENT: Staff Members:
Donna Hancock, Executive Director; Mark Green, Assistant General Counsel; and Judy
Elmore, Administrative Reg. Board Assistant 3

GUESTS: Luellen Alexander and Cal Turner

CALL TO ORDER: Chairman Cole called the meeting to order at 9:15 a.m. and the following business was transacted:

ROLL CALL: Ms. Hancock called the roll. Four (4) of the five (5) Commission members were present. Mr. Colson was absent. Chairman Cole welcomed new Commission member Jeff Morris.

AGENDA: Mr. Alexander 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 August 1, 2011 meeting as amended, seconded by Mr. Alexander. **MOTION CARRIED.**

NASHVILLE AUCTION SCHOOL REPORT

Ms. Hancock advised that Rhessa Orr of the Nashville Auction School could not attend the meeting and had requested that Ms. Hancock present the school's report on her behalf. Ms. Hancock presented the school's proposed outline for the 2011-2012 Tennessee Auctioneer Commission Seminars for consideration. She noted that the first seminar is scheduled to be held on October 10, 2011 in Knoxville, Tennessee. Mr. Morris made a motion to approve the outline and course content for the seminars as submitted, seconded by Mr. Cunningham. **MOTION CARRIED.**

Ritchason Auctioneers, Inc. – Public Automobile Auction Application - Ms. Hancock presented this application for the Commission's consideration. After some discussion, Mr. Morris made a motion to approve the application, seconded by Mr. Alexander. **MOTION CARRIED.**

2012 Meeting Schedule – Ms. Hancock presented a copy of next year's meeting schedule for consideration. After some discussion and notice of a typo, the schedule was approved contingent on correction of typo.

Ed Cope – Request to Waive Rule 0160-01.12(5) – Ms. Hancock presented a request from Mr. Cope to allow him to change his sponsoring auctioneer and firm affiliation to a sponsor and firm located in Russellville, Kentucky. Mr. Cope resides in Springfield, Tennessee. After some discussion, Mr. Morris made a motion to grant the request citing Rule 0160-01.12(5), seconded by Mr. Alexander. **MOTION CARRIED.**

OLD BUSINESS: No old business was discussed.

NEW BUSINESS: No new business was discussed.

Being no further business to discuss, Mr. Cunningham made a motion to adjourn, seconded by Mr. Morris. The meeting adjourned at 11:30 a.m.



David Cole, Chairman



Gary Cunningham, Vice Chairman



Marvin Alexander

Bobby Colson

Jeff Morris

LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL

Mr. Green introduced Administrative Law Judge Rob Wilson from the Tennessee Secretary of State's Office. Judge Wilson advised that Judge Collier agreed with opposing counsel's argument regarding expert witness testimony for the charges to be presented at the formal hearing in June 2011. He explained that the Commission could overrule Judge Collier's decision and have a hearing before the Commission and that opposing counsel could file an appeal with Chancery Court. Mr. Green presented the Commission with a proposed Order overruling Judge Collier and requesting a hearing before the Commission. After some discussion, Mr. Alexander made a motion to approve the proposed Order as presented, seconded by Mr. Cunningham. **MOTION CARRIED.**

Mr. Green then presented the following Legal Report for consideration:

OLD MATTER**1. 2011010031**

Complaint alleges that the Respondent was conducting Public Automobile auctions without being licensed and conducting auctions with an invalid firm license. Respondent failed to file a response.

NEW INFORMATION: This Respondent has been working with Assistant General Counsel litigating another matter and had agreed to cooperate with the Commission unbeknownst to Counsel at the time of the previous legal report.

Recommendation: Letter of Instruction

Action: Mr. Morris made a motion to table this complaint until the November meeting and requested Attorney Green to present additional information at that time. The motion was seconded by Mr. Alexander. MOTION CARRIED.

NEW MATTERS**1. 2011015021****2. 2011014991**

Complaint alleges misconduct by firm and auctioneer where an auction had been advertised as an absolute auction. It appears that the sellers, during the middle of the auction (according to statements of witnesses) changed their mind and wanted to switch to a reserve auction. The Respondent announced two items would have a reserve on them prior to the bidding. One item met the reserve price and one did not. After these two items were auctioned the seller stated they wanted reserves on all of the items. The Respondent stopped the auction and stated that they could not do that. They ordered the auction stopped. It stopped then and the Respondent notified the bidders that the auction would be discontinued.

Further complicating the matter is that three of the bid spotters/assistants assisting the Respondent signed up as bidders and did bid on some items. These people are not employed full-time by Respondent but were paid for that job to assist. It appears they bid on items that they purchased themselves. However, when combined with the perception that the auction switched from an absolute auction to a reserve auction, a complaint was received about the overall handling of the matter.

It appears the respondent attempted to satisfy difficult clients by putting two reserves on two items. When they wanted to put reserves on all the items, he stopped the auction. What troubles counsel is that it was an absolute auction admittedly communicated as such in the ad. It turned into a mixed auction. The Respondent allowed his agents to sign up and bid on these items prior to the beginning of the sale. This is not in compliance with Rule 0160-1-.19(1). There is no proof that the bid spotters/assistants were purchasing the items on behalf of the Respondent but the rule is clear that "seller may not bid himself or through an agent." Furthermore, the auction was clearly identified as an absolute auction and under Rule 0160-1-.20(3) Advertising, an auction where some items will be sold with a reserve while others won't must be "clearly and conspicuously indicated to the public."

In his response, Respondent stated he had followed the law and Rules because the assistants and spotters that bid had registered. Counsel does not believe the fact that they registered at an absolute auction clears them from still being the "seller's agent." Additionally, Respondent claimed that as long as he announced the reserve prior to the opening of bids, then he complied with the rule. Counsel disagrees with this reading of the rule requiring notice in the advertising of the mixed type of auction.

Recommendation: Consent order for \$500.00 for violating Rule 0160-1-.19(1) and \$250.00 for violating Rule 0160-1-.20(3).

Action: Mr. Alexander made a motion to dismiss these complaints, seconded by Mr. Morris. MOTION CARRIED.

3. 2011014841
4. 20110014971

Complaint received that Respondents, Firm and Principal Auctioneer, paid client in the amount of \$4,025 for items sold on its behalf. The check was presented to Complainant on September 8, 2010 and was returned for insufficient funds on October 18, 2010. The Complainant secured a judgment in General Sessions Court. A copy the complaint from the Commission was received by Respondents on June 2, 2011. Respondent has not answered the complaint.

Recommendation: Consent Order of \$1000.00 for failure to answer a complaint within the proscribed time, \$1,000.00 each for violations of 62-19-112(b)(4)(12) for a total civil penalty of \$2,000.00

Action: Mr. Alexander made a motion not to renew the license related to these complaints unless the entered judgment has been fulfilled and the Consent Order and civil penalties

not less than \$2,000.00 have been received by the Commission. The motion was seconded by Mr. Cunningham. MOTION CARRIED.

5. 2011015091

Complaint alleged that the Respondent listed an advertisement in a newspaper for notice of a motor vehicle auction. The advertisement did not include the name of the Auctioneer, the Auctioneer firm number, the Motor Vehicle Dealer number or the nature of the auction. The auction was to be open only to dealers as Respondent does not sale to the public. The Respondent admits that due to a communication error with the company contracted to prepare the notice, this was not done.

Recommendation: Letter of Warning to comply with notice and advertising requirements.

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

6. 201101859

Complaint alleges an advertisement posted in newspaper includes the Respondent as being listed as a "Realty and Auction" Company. Respondent's auction license is expired and no principal auctioneer is listed with the Commission. Respondent failed to respond. There is no evidence that the Respondent has conducted any auctions and the advertisement wasn't specifically advertising auctioneer services. However, the ad does include the expired license number in it. This is in violation of 62-19-102(a)(1).

Recommendation: Consent order for \$500 civil penalty for advertising as an auctioneer without holding a valid license.

Action: Mr. Morris made a motion to issue a Consent Order to cease and desist all unlicensed activity and to assess a civil penalty of \$500, seconded by Mr. Alexander. MOTION CARRIED.

7. 2011018601

Complaint alleges misleading advertising as it advertises for a sale of real property "without reserve" but includes the language: "May be subject to Bank Credit Bid." The question then becomes is this in reality a reserve auction advertised as an absolute auction (though that term isn't used).

Respondent answered sending a letter that stated the requirement to "see Auction Terms and Conditions for full details" and featured a link (the advertising was from an e-mail) to where the people could go to see the full details of the sale. The terms of which, according to Respondent, stated that "the properties are selling without reserve subject to lender credit bid. The Lender

with an outstanding lien and or who have title to the Property will have the right to bid on the Property.” Additionally, the link went on to explain “any information on any website, brochure, email or postcard and any and all information available regarding the Properties shall not constitute an offer to sell or a solicitation of any offer to buy ay of the properties referenced herein.” The Respondent states that the bidders, prior to the auction were required to register and accept these terms and conditions. Because of the terms so expressed the Respondent claims that it was not false or misleading under Rule 0160.01-.20(2) as the information was provided within the advertisement. Secondly, Respondent argues that it could still hold its sale as an absolute auction because the seller in such case may not bid on a property at auction but it does not preclude a lender doing so because they are not the same.

The issue simply is, where an auction is advertised “without reserve” 1.) does the inclusion of subject term and conditions that may limit that “absolute” nature automatically knock the auction from an absolute to a reserve auction; and 2.) does the fact that a lender has to accept a bid (and not the seller or his agent) mean that in essence, you have a reserve auction.

It is counsel’s opinion that any restriction on the nature of an absolute auction does indeed affect the status of an auction being one of absolute terms to a reserve auction. The rule is clear that an absolute auction is one where property is offered at a sale until a bid is received and it is sold. The plain language of the rule does not allow for gray areas of interpretation; it is either an absolute auction or it is not. Additionally, the fact that a lender is not the seller is an argument counsel does not agree with. If anything, the auctioneer is the agent of the seller who by way of a lien the lender holds an equal status with. The property was distressed causing the lien holder/lender to step in the place of the seller and have equal say in approving the auction. The auctioneer becomes the agent in fact for both or for one in the same. The fact that seller could say it approved the sale but the lender wouldn’t does not change the nature of the restriction upon the auction. It was an auction with a reserve advertised as an absolute auction.

Recommendation: The Respondent has no prior complaints and it is the recommendation of counsel that either a letter of warning or a letter of instruction is appropriate.

Action: Mr. Morris made a motion to dismiss the complaint, seconded by Mr. Alexander. MOTION CARRIED.

8. 2011017951

Complaint alleges auction was advertised as an absolute auction of real property and then at the time of the auction the property was pulled from the auction after the first two parcels sold at a low price and the remaining parcels were pulled by the sellers and the auction canceled.

The Respondent answered that the event was advertised as three separate auctions of commercial property (five tracts), industrial (three tracks) and a multi-family property of one tract. The auction began and the first two tracks of Industrial property were auctioned at .85 cents per square foot. The third track was auctioned at .13 cents per square foot. The sellers asked to speak with the auctioneer after this last tract of Industrial was auctioned. The sellers asked to stop and not offer the Commercial or Multi-family properties for auction.

Counsel does not believe this violates any Rule as the property was pulled prior to any call for a bid.

Recommendation: Dismiss

Action: Mr. Alexander made a motion to accept Legal's recommendation, seconded by Mr. Morris. MOTION CARRIED.

- 9. 2011018941
- 10. 2011018961
- 11. 2011020281

These three complaints all allege misrepresentation at three separate auctions. The firm in question is not licensed and the auctions were not conducted by a licensed auctioneer. Additionally, the Respondent did not answer the complaint.

Recommendation: Authorize a Consent order for \$2,000 civil penalty each for violations of Tenn. Code Ann. Section 62-19-102(3) for a total civil penalty of \$6,000.

Action: Mr. Morris made a motion to issue a Consent Order to cease and desist all unlicensed activity and to assess a civil penalty of \$7,500, seconded by Mr. Alexander. MOTION CARRIED.

- 12. 2011021221
- 13. 2011021191

Complaint alleges that the Respondent, who is/was the Principal Auctioneer for the Complainant that owns the auction firm, took \$250.00 from Complainant to get a gallery license. Complainant states he never got the gallery license or got it for himself, it isn't clear. Respondent did not answer complaint other than have another auctioneer send an e-mail attesting to his honesty.

Counsel doesn't see any violation of the Rules or Statutes and it appears to be a civil/legal issue. Complainant has written a letter stating the issue had been settled between the parties.

Recommendation: Dismiss

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

- 14. 2011010001
- 15. 2011009961

Complaint alleges that the Respondent conducted an auction in which the Complainant was the highest bidder on an automobile that "died" as soon as he had driven it home. The Complainant,

after checking with the Commission, found the Respondent did not have an active license. Respondent failed to answer the complaint.

Recommendation: Combine with other matters presently before the Commission.

Action: Mr. Morris made a motion to accept Legal's recommendation, seconded by Mr. Alexander. MOTION CARRIED.

16. 2011018021

17. 2011022131

Complaints allege that Respondent contracted to pick up and auction inventory for the Complainants. The Respondent did receive the inventory and never paid the "guaranteed" minimum amount for the items sold. The amount of merchandise unpaid is over \$53,000.

Recommendation: Combine with other matters presently before the Commission.

Action: Mr. Morris made a motion to accept Legal's recommendation, seconded by Mr. Alexander. MOTION CARRIED.

18. 2011024711

Complaint alleges that advertising by the Respondent was not in accordance with the TAUC Rules requiring name and license number of the firm conducting the auction. The Respondent answered stating that he had been hired by the client to conduct the auction and did not know he had taken an ad out regarding it. He did not dispute the matter.

Recommendation: Letter of Warning or Instruction.

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

The Commission recessed at 11:00 a.m. and reconvened at 11:10 a.m.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in September 2010 to those currently pending.

World Automobile Auctioneers Championship – Ms. Hancock presented an email from Mr. Paul Behr with the World Automobile Auctioneers Championship advising that their event would not be held in Chattanooga, Tennessee as previously discussed.