

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: January 9, 2012

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
Bobby Colson

ABSENT: Jeff Morris

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

GUESTS: Scott Hanni, Division of State Audit

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. Morris was absent.

AGENDA: Ms. Hancock advised the NALLOA Teleconference had been added to the agenda since its posting to the internet as the information was only recently received. Mr. Alexander made a motion to adopt the agenda as amended, seconded by Mr. Cunningham. **MOTION CARRIED.**

MINUTES: Mr. Alexander made a motion to approve the minutes of the October 3, 2011 meeting, seconded by Mr. Cunningham. **MOTION CARRIED.**

iPad Overview/Demonstration: Ms. Hancock advised the Commission to expect the use of iPads in the near future in lieu of the books and documents given to them for their reference during each meeting. Susan Lockhart then gave the members a demonstration of the iPads assisted by Kimberly Whaley of the Assistant Commissioner's Office.

NASHVILLE AUCTION SCHOOL REPORT

Ms. Hancock advised that Rhessa Orr of the Nashville Auction School could not attend the meeting and presented an oral report on her behalf. She announced the winter newsletter had been approved and

would be mailed out in the near future. She also advised the next seminar would be held in Jackson, Tennessee and the information is listed on the Commission's website.

LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL

Mr. Green presented the following Legal Report for consideration:

1. 2011025311

Complaint alleges that a bidder (Complainant) was the highest bidder on a piece of real property at \$45,000 but was outbid after the conclusion of the bidding for \$50,000. Additionally, the Complainant states that he was unaware of a ten percent buyer's premium that he would have had to pay had he been the successful bidder.

Respondent answered that all the terms were explained to the bidders prior to the beginning of the auction and forwarded a signed copy of the bid sheet where Complainant did sign acknowledging the ten percent buyer's premium. Respondent denies that the bidding was closed after Complainant bid at \$45,000 and prior to the bidding being closed a buyer offered \$50,000 for the property. Respondent states the successful bidder was attempting to secure financing and once he did he bid the \$50,000. Apparently, Complainant had left to load some personal items he had bought and when he returned, the \$50,000 bid had been made and accepted.

Recommendation: Dismiss

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

2. 2011026691

Complaint alleges that Respondent failed to include its 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.

Respondent answered that its number is always on all advertising. Respondent does not address the specific advertising in question. Furthermore the Respondent stated that the intent of the law is to ensure that all auction firms may be found and since they have been in business for so long and are an established company they certainly can be found.

Recommendation: Consent order with a civil penalty of \$500.00 for violating 62-19-118(c)(2) and Rule 0160-1-20(1).

Action: Mr. Cunningham made a motion to authorize a Consent Order with a civil penalty of \$250.00 for violating 62-19-118(c)(2) and Rule 0160-1-20(1), seconded by Mr. Alexander. MOTION CARRIED.

3. 2011026711

Complaint alleges that Respondent failed to include its 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.

Respondent answered admitting the ad did not have its license number on it. Additionally, Respondent had the client write a letter confirming that he placed the ad in the newspaper without Respondent's knowledge. The Respondent stated he did not know it was placed and client confirmed such.

Recommendation: Letter of Warning

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

4. 2011026741

Complaint alleges that Respondent failed to include its 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.

Action Taken: Mr. Alexander made a motion to authorize a Consent Order with a civil penalty of \$500.00 for violating 62-19-118(c)(2) and Rule 0160-1-.20(1); and a \$2000.00 civil penalty for the violation of 62-19-102, unlicensed activity. The motion was seconded by Mr. Cunningham. MOTION CARRIED.

5. 2011026061

Complaint alleges misconduct against a firm (Respondent) by a Complainant who contracted with Respondent to auction his mother's real property. At dispute is the time after the auction that it took to close the property after a successful bid at auction. The property was sold at auction on May 7, 2011.

Prior to the auction the parties agreed to have a survey done of adjacent lots that were to be sold at the same time. After the auction a dispute arose as to an easement that belonged to a nearby company. The successful bidder disputed this as the survey did not include the easement. The

Complainant blamed the Respondent for not providing accurate information as to the property line. The Respondent blamed the Complainant stating he should have known where the property lines were.

Attorneys for both sides got involved. The original closing date was June 7 2011 but the bidder refused to close due to the dispute. In August 2011, an attorney for the bidder notified the Respondent he had two weeks to close the deal and he was having Complainant file a complaint with the Commission. The sale closed on September 16 and the Complainant received the funds from the sale.

Recommendation: Dismiss

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

6. 2011026751

Complaint filed by a property owner/Complainant who in March 2011 contracted with Respondent to conduct an auction of a piece of real property. The contract specified that the date of the auction was "to be determined by the auctioneer" with no end date of when that determination ended. The Complainant states he cannot get the auctioneer to conduct the auction and he claims that he will not release the contract.

Respondent states he has attempted to set a date but that he has been unable to reach the Complainant even though the record indicates that Complainant has hired an attorney who has sent three letters to the Respondent asking for a resolution. The Respondent appeared to have established a date of auction after the first letter from the attorney was received but it was to be held only with twelve days' notice and with no advertising done by the terms of the contract (which appears to be a breach). Complainant refused to allow the auction under these terms.

Complainant offered the Respondent \$1000.00 to release the contract and the Respondent has refused to enter into it stating that the "release" language only released the Complainant and not him. It is not certain what release the Respondent is seeking.

Respondent answered the complaint by stating he has a contract that allows him to set the date of the auction and the Complainant knew that going into the contract and therefore he has done nothing wrong.

Recommendation: Discuss – potential violation of 62-19-112(b)(9) for failing to enter terms and conditions and (b)(12) for improper conduct.

Action Taken: Mr. Alexander made a motion to dismiss the complaint with a letter of instruction to the Complainant advising should additional facts be garnered from litigation then the case can be re-opened. The motion was seconded by Mr. Colson. MOTION CARRIED.

7. 2011027891

Complaint filed by a bidder/Complainant at an auction where he purchased a motorcycle that was offered by Respondent as Principal Auctioneer of the firm conducting it. It appears he was the owner of that firm. The Complainant alleges he never received title to the motorcycle after the purchase.

Respondent admits he did not receive the title. He states that it is not his problem as the firm has filed bankruptcy and all such issues are being handled by the bankruptcy trustee. He claims he has been released of all financial obligations of the bankruptcy.

Recommendation: Consent Order for 62-19-112(b)(4) failing to account for money belonging to that of another and (12) improper, fraudulent, incompetent and/or dishonest dealings for \$1000.00 if the title is not delivered to Complainant within fourteen days of receipt of the order.

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

8. 2011025351

Complaint filed stating that an auction was advertised on a website and that Complainant contacted the Respondent wanting to submit a bid. The Respondent said he would not take bids from people not present at the auction. Complainant alleges this should have been advertised and believes it to be false and misleading.

Recommendation: Dismiss

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

9. 2011030171

Complaint filed against Respondent by Complainant who purchased a Jet Ski at an auction and received title upon the purchase but has never received the Jet Ski. Complainant paid \$7345.00 which included the purchase price and a 15% buyer's premium.

Respondent failed to answer. He and his company are unlicensed

Recommendation: Consent order for a civil penalty of \$1000.00 for failure to account for funds belonging to another under 62-19-112(b)(4) and \$1000.00 for unlicensed activity under 62-19-102.

Action Taken: Mr. Alexander made a motion to authorize a Consent Order for a civil penalty of \$1000.00 for failure to account for funds belonging to another under 62-19-

112(b)(4) and \$2000.00 for unlicensed activity under 62-19-102. The motion was seconded by Mr. Colson. MOTION CARRIED.

Adrian Chick, Assistant General Counsel joined the meeting at 10:20 a.m. to update the Commission on the case filings regarding My Auction Connection. He advised the Attorney General's office made a motion to combine the petitions filed separately by the Commission and the Respondent for judicial review. This motion is scheduled to be heard in Chancery Court on January 20, 2012.

Mr. Green resumed his Legal Report presentation at 10:25 a.m. as follows:

10. 2011028231

Complaint filed by Complainant which purchased a truck at a live web auction conducted by the Respondent in which Complainant paid \$36,332 for it. The Complainant understood the truck was being purchased "as is". When he went to title the vehicle the Department of Motor Vehicle would not issue the title because it was listed in New York state as "Salvaged." The Respondent, allegedly, told the Complainant that it was sold "as is" so it is not his problem.

Respondent did not answer the complaint so there is nothing in the record as to its side of the story. Consumer Affairs has issued two notices seeking a response prior to a complaint being filed with the Commission and the Respondent has refused to answer those as well.

Recommendation: Consent order for \$2000 under 62-19-112(1) Substantial Misrepresentation (12) for improper fraudulent, incompetent or dishonest dealings.

Action Taken: Mr. Colson made a motion to defer this matter and request additional information as to what type of auction it was.

Mr. Green then presented a list of pending consent orders. Mr. Alexander inquired as to the backlog of formal hearings. Mr. Green advised he would consult with the appropriate parties and report on his findings at the next meeting.

Mr. Green then handed out a draft of rule changes the Commission previously discussed. The Commission authorized Mr. Green to consult directly with Mr. Alexander on their behalf to revise the draft and represent for discussion at the next meeting.

NALLOA Teleconference - The commission adjourned from their regular business meeting at 11:00 a.m. to participate in the NALLOA Teleconference. The regular meeting reconvened at 11:55 a.m.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Auctioneer Reapplication for Terry M. Allen – Ms. Hancock presented an application for Mr. Allen to reapply for an auctioneer license and his request to waive retesting and the additional education requirements. After some discussion, Mr. Colson made a motion to waive both the retesting and additional thirty (30) hours of education, seconded by Mr. Alexander. **MOTION CARRIED.**

Auctioneer Reapplication for Sterling Ayers – Ms. Hancock presented an application for Mr. Ayers to reapply for an auctioneer license and his request to waive retesting and the additional education requirements. After some discussion, Mr. Colson made a motion to waive both the retesting and additional thirty (30) hours of education, seconded by Mr. Alexander. **MOTION CARRIED.**

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in January 2011 to those currently pending. Mr. Cunningham reiterated the Commission's concern with the backlog of formal hearings and asked Mr. Green for a complete status report at the next meeting. Mr. Green again advised he would consult with the appropriate parties and have information to report at the next meeting.

Budget Report – Ms. Hancock presented a report of the closing budgets for the last four (4) fiscal years.

OLD BUSINESS: No old business was discussed.

NEW BUSINESS: Chairman Cole inquired about the procedure for notifying Complainants of the outcome of complaints. Ms. Lockhart advised there are three (3) standard letters always mailed to Complainants – 1) acknowledging their complaint including their complaint number; 2) a cover letter for the response received by the Respondent; and 3) a letter notifying the Complainant of the Commission's findings.

Being no further business to discuss, the meeting adjourned at 12:32 p.m.



David Cole, Chairman

Gary Cunningham, Vice Chairman



Marvin Alexander



Bobby Colson



Jeff Morris