

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: March 5, 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 (*left early*)
Marvin Alexander
Bobby Colson (*arrived late*)
Jeff Morris

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

GUESTS: Rhessa Orr

CALL TO ORDER: Chairman Cole called the meeting to order at 9:07 a.m. and the following business was transacted:

Ms. Hancock called the roll. Four (4) of the five (5) Commission members were present. She advised Mr. Colson would be late. He did not participate in the formal hearing proceedings.

The Auctioneer Commission Meeting went into recess while the following Formal Hearing was conducted:

Formal Hearing for complaint 200800374-1 (docket no. 12.15-115375A) regarding Timothy Dewayne Haynes and Laura Hale of D & L Supplies and Rentals; Assistant General Counsel Adrian Chick, Litigator for the State of Tennessee. Conducted and presided over by Administrative Law Judge Mary Collier.

BREAK: The hearing concluded at 10:37 a.m., a copy of the court reporter's transcript will be requested for record keeping purposes. The Commission took a break and reconvened at 10:57 a.m. to conduct the following business:

AUCTIONEER COMMISSION MEETING RESUMED -

ROLL CALL: Ms. Hancock called the roll. Four (4) of the five (5) Commission members were present. *(Mr. Colson joined the meeting and Mr. Cunningham left during the break).*

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

MINUTES: Mr. Alexander made a motion to approve the minutes of the January 9, 2012 meeting, seconded by Mr. Morris. **MOTION CARRIED.**

UPDATE ON SEMINARS & NEWSLETTERS – RHESSA ORR, NASHVILLE AUCTION SCHOOL

Ms. Orr advised the recent seminar at Union University in Jackson received great reviews and the next seminar is planned for May 2012 in Murfreesboro. She gave an update regarding the latest newsletter and advised there were a number of incorrect addresses identified by the mail center. After some discussion, she advised that she would provide a list of auctioneers and firms with incorrect addresses to the administrative office for their reference. Mr. Morris inquired as to whether or not the newsletter could be distributed via email and Ms. Orr advised she believed the contract specified that it be mailed.

LEGAL REPORT – MARK GREEN, ASSISTANT GENERAL COUNSEL

Mr. Green introduced Julie Cropp to the Commission as their new Assistant General Counsel. He advised he would continue working with the Commission as a litigator for formal proceedings.

Ms. Cropp presented the following Legal Report for consideration:

1. **2011029661**

First License Obtained: 6/27/94

License Expiration: 11/30/12

Type of License: Firm

History: None

Complainant bought an automobile at auction held by Respondent. After winning the automobile, Complainant's friend retrieved the automobile and received the title from the bank, which yielded information that the automobile had been salvaged and rebuilt.

Respondent answered that it conducted the subject auction on behalf of a bank, and the auction included the contents (office/shop equipment and approximately twenty (20) vehicles) of a foreclosed used car lot. Respondent claims that all items were owned by the bank, and Respondent worked under a bank representative, who was in contact with the DMV regarding title issues relating to the sale. Allegedly, the bank representative was instructed by the DMV regarding the paperwork specifics for the sale. Further, Respondent states that all vehicles at the auction were sold on an "as is" basis with no condition guarantees. When Complainant bought the vehicle, Respondent states that Complainant picked up the title and related paperwork from

the aforementioned bank representative. Respondent claims that it was not until this time that Respondent knew that the automobile had a salvage title. Respondent further states that Complainant did not file this complaint until approximately two (2) months after the sale.

Recommendation: Dismiss.

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

2. 2011029691

First License Obtained: 3/1/85

License Expiration: 7/31/13

Type of License: Firm

History: Four

Complainant was the successful bidder in an online real property auction held by Respondent. Complainant states that he inquired as to the penalties if he did not go through with the sale and was informed that he must deliver the executed contract and earnest money by 3 p.m. the following day or be subject to suit. When Complainant met with Respondent's representative at a designated location on the afternoon following the auction to deliver the earnest money check and the signed contract, Complainant informed the representative that Complainant had changed a sentence in the contract because Complainant did not agree with the provision. The representative informed Complainant that changes to the contract were not permitted and walked away without taking the check or contract. Later that afternoon, after Complainant agreed to sign the contract without the adjustment, Complainant again met Respondent's representative at the designated location. When Complainant asked for a receipt and to see the representative's identification, Complainant states that the representative informed Complainant that the representative did not have a receipt and representative's monogrammed shirt with the company name served as identification. Complainant alleges that the representative became very agitated and upset, refusing to produce representative's driver's license to Complainant for inspection, when the representative realized that Complainant was employed by the Department of Homeland Security. Ultimately, the representative would not show identification and walked away without the contract and check. Complainant telephoned Respondent's office and was informed that Complainant was required to deliver the check and contract to Respondent's office by 5 p.m. that day. Due to traffic, Complainant states that Complainant would have been unable to make it to the office in time, so Complainant's attorney contacted Respondent's office requesting that all documentation relating to the property be sent to the attorney by e-mail, to which no response was received from Respondent's office. Two days later, Complainant's attorney again requested documentation relating to the property as well as the legality of the sale. Complainant's attorney was contacted by an attorney for Respondent, stating that if Complainant did not deliver the check and contract within three (3) days, suit would be filed against Complainant.

President of Respondent Company responded to the complaint, confirming that he was the representative who met with Complainant twice and asserting that there is no basis for the complaint. Respondent confirmed that, on his first meeting with Complainant, the contract and

check were not exchanged due to Complainant's wish to change a term in the contract. Respondent further states that when he met Complainant a second time, he claims Complainant acted in an intimidating manner, by demanding to hold Respondent's driver's license, showing Respondent a badge, and grabbing Respondent's arm on two occasions. Respondent further confirms the information described by Complainant relating to communications between the parties' attorneys regarding the matter. Respondent further asserts that Complainant was merely looking for a way to get out of the contract, based on Complainant's actions and Complainant's inquiries just after the auction regarding penalties if he did not buy the property.

Recommendation: Dismiss.

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

3. **2011030151**

First License Obtained: 12/12/91

License Expiration: 12/31/12

Type of License: Firm

History: Five

4. **2011031681**

First License Obtained: 12/12/91

License Expiration: 12/31/12

Type of License: Firm

History: Six

Two complaints opened against same Respondent (auctioneer firm). First complaint arose out of Complaint by agent of potential buyer of a short sale condo unit which was auctioned by Respondent. Complainant dropped first complaint. Therefore, complaint was taken over by TAUC and second complaint was opened due to information contained in Respondent's internet advertisement for condo auction. In said advertisement, Respondent provided an unregistered name.

Respondent submitted response stating that the advertisement contained the names of the licensed auction company as well as the name of another company which is licensed by the state.

Recommendation: As to first complaint, dismiss. As to second complaint, authorize formal hearing with authorization to settle by consent order with civil penalty of \$500.00 for violation of T.C.A. § 62-19-113(b)(7), T.C.A. § 62-19-118(c)(2), and Rule 0160-01-.05(1).

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

Mr. Morris requested the Legal Report include a list of both the number of prior complaints and previous disciplinary actions in the "History" portion for each new complaint being presented in the future to the Commission.

5. **2011031961**

First License Obtained: 08/25/10

License Expiration: 8/24/12

Type of License: Auctioneer/Apprentice

History: One

Complaint instituted by TAUC against Respondent (apprentice auctioneer) for Respondent's failure to affiliate Respondent's license with a licensed firm within the state. Specifically, TAUC received a letter in July 2011 from Respondent's former employer, returning Respondent's license and stating that Respondent is no longer employed with his firm and he is no longer Respondent's sponsor. Respondent did not respond to letters from TAUC which were sent in October 2011, informing Respondent that license was no longer affiliated and instructing Respondent to contact TAUC regarding any transfer or changes to Respondent's license.

Respondent submitted no response.

Recommendation: Authorize formal hearing with authorization to settle by consent order with civil penalty of \$500.00 for violation of T.C.A. § 62-19-111(g) no affiliation with a licensed firm.

Action Taken: Mr. Colson made a motion to accept Legal's recommendation with addition to consent order that Respondent's license is invalid and Respondent shall not engage in any activity defined in T.C.A. § 62-19-101(3) until Respondent obtains a new sponsor and receives a new license and pocket card bearing the name and address of the new employer in compliance with T.C.A. § 62-19-111(l). The motion was seconded by Mr. Morris. MOTION CARRIED.

6. **2012001051**

First License Obtained: 1/3/96

License Expiration: 7/31/13

Type of License: Firm

History: Three

Complainant (successful bidder in real estate auction held by Respondent) alleged misrepresentation against Respondent. Complainant paid earnest money on the day of sale. The contract stated that the sale was "subject to bank approval." Complainant states that, soon after, he was contacted twice by Respondent and asked to raise the bid, as the bid was not enough to cover the cost of the mortgage at the owner's bank. Complainant refused to raise the bid. When Complainant was unable to obtain a loan on the property from Complainant's bank, Complainant

was informed that the earnest money would have to be forfeited. Complainant states that when Complainant pointed out that the contract was “subject to bank approval,” Respondent informed Complainant that the provision only applied to the seller’s bank.

Respondent replied, stating that the provision “subject to bank approval” meant approval by the seller’s lender due to the fact that it was a short sale auction, which was explained at the pre-sale announcements and never meant as a sale contingent upon the buyer obtaining financing. Respondent further states that Respondent has interplead the earnest money into the registry of a general session court within the state, and the matter is pending a hearing. Respondent states that Respondent has not asserted a claim for any portion of the earnest money.

Recommendation: Dismiss.

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

7. **2012003481**

First License Obtained: 9/21/98

License Expiration: 9/30/12

Type of License: Firm

History: One

Complainant (successful bidder at auction held by Respondent) alleges misrepresentation against Respondent. Specifically, Complainant alleges that Respondent “misrepresented common machine parts as highly collectible train whistles” and refuses to return and refund the items.

Respondent replied, stating that Respondent was contacted by Complainant just after the sale to complain regarding shipping charges, the terms of which were made available prior to bidding. Respondent states that Complainant contacted Respondent with complaints regarding the train whistle, requesting an item similar in value, which Respondent states it does not have. Respondent claims that it was never asked for an item return. Respondent asserts that all items were sold “as is” and at no time were the items represented as highly collectible. Respondent expressed willingness to refund the items without Complainant having to return the items.

Approximately one (1) week after Respondent sent response, Complainant contacted TAUC by e-mail to inform that a check was received from Respondent refunding the expenses, and Complainant was “satisfied with the refund.”

Recommendation: Dismiss.

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

8. **2012002891**

First License Obtained: 07/20/88

License Expiration: 10/25/12

Type of License: Auctioneer

History: Two

The department received information that Respondent conducted an auction on or about November 1, 2008, but failed to remit proceeds of approximately \$50,000.00 to the consignor. Respondent was indicted in 2010 and the case is still pending in criminal court.

A request for response was mailed to Respondent on February 2, 2012, but no response has been received.

Recommendation: Authorize formal hearing with authorization to settle by consent order of \$4,000.00 civil penalty for violation of T.C.A. § 62-19-112(b)(1)(2)(4)(12) and voluntary surrender of license.

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

Mr. Green then re-presented the following complaints previously authorized for formal hearings for further consideration by the Commission:

1. **2009023271**

Type of License: Firm

This Complaint was originally filed in 2009 and brought before the Commission in 2010 based on a failure to remit funds that belonged to Complainant. The Respondent did not answer the complaint and it was approved for litigation on March 7, 2011. A Consent Order was sent at that time.

Respondent has subsequently provided proof that shortly after the complaint was filed in August 2009, he submitted the balance owed to the Complainant but neither party submitted proof of this resolution at the time. Verification of this payment has been received and a copy of the check paid to the Complainant was forwarded.

Recommendation: Dismiss.

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

2. **2011014971**

Type of License: Auctioneer

3. **2011014841**

Type of License: Firm

This matter was filed with the Commission in April of 2011. The Commission previously authorized the matter for a formal hearing and letter and consent order was sent to Respondent shortly thereafter.

Complaint filed for an auction in which Respondent allegedly owed Complainant \$4025 for funds received on the Complainant's behalf. Proof was submitted that the matter was settled between the parties and funds were paid to the Complainant on June 11 2011 shortly after the complaint was filed.

Recommendation: Dismiss.

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

Mr. Morris left meeting at 11:54 a.m. and returned at 11:57 a.m.

4. **2009016371**

Type of License: Firm

This Complaint was originally filed in 2009 and brought before the Commission for approval in 2010. It was for the operation of an unlicensed firm. The matter was authorized for a formal hearing and a consent order the matter was transferred to litigation. Upon investigation by the Commission in preparation of litigation an investigator for the Department found that in 2010 the owners of the firm sold the business to a licensed auctioneer who now has the firm properly licensed. Verification has been obtained.

Recommendation: Dismiss

Action Taken: Mr. Cole made a motion to accept Legal's recommendation and order individual complaints against the former owners to be opened. The motion was seconded by Mr. Morris. MOTION CARRIED.

Mr. Green then presented a copy of the proposed Consent Order Log for the Commission's review. He advised as litigator he is working on a plan to set more formal hearings to clear the backlog of complaints.

The Commission took a break at 12:08 p.m. and reconvened at 12:16 p.m.

ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR

Auctioneer Reapplication – Ms. Hancock presented an application for Larry Webb to reapply for an auctioneer license and his request to waive proof of apprenticeship, proof of original eighty (80) hours of education, retesting and the additional education requirements. After some discussion, Mr. Morris made a

motion that the expired licensee's length of service will serve as proof of an apprenticeship but because his license has been expired more than two years, all other terms of the new application process will apply. The motion was seconded by Mr. Alexander. **MOTION CARRIED.**

Auctioneer Reapplication – Ms. Hancock presented an application for Dale Nichols to reapply for an auctioneer license and his request to waive proof of apprenticeship, retesting and the additional education requirements. After some discussion, Mr. Morris made a motion that proof of apprenticeship will be waived but all other terms of reapplication must still apply. The motion was seconded by Mr. Alexander. **MOTION CARRIED.**

Complaint Comparison Report - Ms. Hancock presented a comparison of the complaints pending in March 2011 to those currently pending.

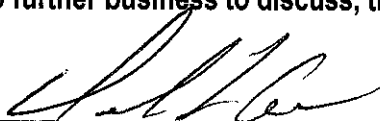
Apprentice/Auctioneer – Discuss Retirement & Reinstatement Fees – Ms. Hancock presented a copy of the rules and laws regarding retirement and reinstatement of apprentice/auctioneer licenses and advised the commission that a question recently arose concerning the total fees due to reinstate a retired license. The Commission advised that a retired licensee seeking to reinstate the license must pay the \$175 auctioneer license fee, the \$100 reinstatement fee and the \$50 education/recovery fee for a total of \$325 when applying to reinstate a retired license.

NALLOA Annual Meeting – July 19, 2012 (NAA Conference July 17-21, 2012) – Ms. Hancock presented the information regarding the annual NALLOA meeting and NAA conference scheduled for July in Spokane, Washington. The Commission asked Ms. Hancock to submit travel approval requests for Marvin Alexander and Jeff Morris to attend the full conference on the commission's behalf.

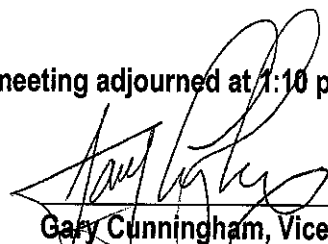
OLD BUSINESS: No old business was discussed.

NEW BUSINESS: Mr. Alexander advised Arkansas now requires background checks for auctioneers and being a reciprocal state inquired as to whether or not the Commission has the authority to require background checks for Arkansas applicants applying to Tennessee. After some discussion, Mr. Green was asked to research the Commission's authority concerning background checks / investigations / fingerprint reports for reciprocal applicants as well as in-state applicants.

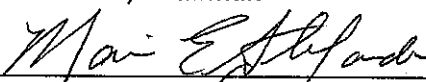
Being no further business to discuss, the meeting adjourned at 7:10 p.m.



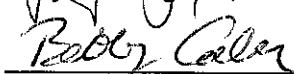
David Cole, Chairman



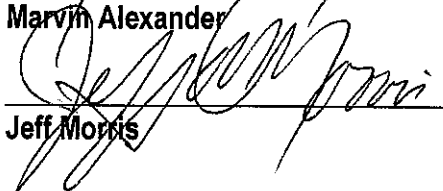
Gary Cunningham, Vice Chairman



Marvin Alexander



Bobby Colson



Jeff Morris