

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** August 6, 2012

**PLACE:** Andrew Johnson Tower – 2<sup>nd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

**PRESENT:** Commission Members:  
Dave Cole, Chairman  
Gary Cunningham, Vice Chairman  
Marvin Alexander  
Bobby Colson  
Jeff Morris

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

**GUESTS:** Luellen Alexander

**CALL TO ORDER:** Chairman Cole called the meeting to order at 9:05 a.m. and the following business was transacted:

**ROLL CALL:** Ms. Hancock called the roll. Four members were present. Mr. Cunningham arrived shortly after roll call.

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

**MINUTES:** Mr. Morris made a motion to approve the minutes of the June 4, 2012 meeting, seconded by Mr. Colson. **MOTION CARRIED.**

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

Julie Cropp reported that Ms. Orr had contacted her and informed her that she could not make the meeting.

**LEGAL REPORT - JULIE CROPP, ASSISTANT GENERAL COUNSEL**

Ms. Cropp presented the following Legal Report for the Commission's consideration:

1. 2012011211
2. 2012012401
3. 2012012402

TAC opened complaint based on copy of newspaper advertisement received which advertises an auction of antiques, furniture, home décor, etc., which lists the name of an unlicensed entity (Respondent 1). Based on information in newspaper advertisement referencing an auctionzip.com ad, which contained the license number of Respondent 2 (auctioneer) and the name of Respondent 3 (auction firm), complaints were opened against these Respondents.

Response was received stating that Respondent 3 was unaware that Respondent 1 (a separate business) needed a separate license since Respondent 1 mostly auctioning its own property. Respondent 3 states that Respondent 1 has ceased any consignment auctions until the complaint is resolved and they are instructed on how to comply. Regarding the newspaper advertisement's lack of including the firm name and license number of Respondent 3, Respondent 3 states that this was an inadvertent error on the part of the newspaper which has been addressed (and a letter from the newspaper was included confirming this). A telephone call with the owner of Respondent 3 firm confirmed that Respondent 1 is a separate business owned by one of Respondent 3's apprentice auctioneers. The apprentice has closed Respondent 1 business, and plans to obtain a gallery license before engaging in activity of this kind in the future.

**Recommendation:** As to Respondent 1, letter of warning regarding T.C.A. § 62-19-125's gallery license requirement. As to Respondents 2 and 3, letter of warning regarding Rule 0160-01-.20(1)'s requirement that auction advertisements must contain the name and license number of the auction firm or gallery responsible for holding the sale.

*Mr. Cunningham arrived at 9:12 a.m. during presentation of complaint report.*

**DECISION:** Mr. Alexander made a motion to defer this matter in order to send it out for investigation to determine how many auctions Respondent 1 did and whether Respondent 3 properly sponsored all auctions. The motion was seconded by Mr. Morris. **MOTION CARRIED.**

4. 2012012051

Complainant is the beneficiary of an estate for which Respondent contracted with the executor to hold an auction sale. Complainant was unable to attend the sale and states that, after the sale, neither the executor nor Respondent sent Complainant copies of documentation showing the items that sold at the sale and who bought the items, despite Complainant's requests for said documentation. Complainant attached a list, consisting of various jewelry items, which Complainant states Complainant does not know where the items went. Complainant is asking for all papers relating to the estate sale.

Respondent submitted a response stating that Respondent was contacted by the estate's executor to conduct the auction. After the auction was conducted, Respondent states that settlement was made with the executor, and the executor received copies of all clerking tickets, a settlement sheet, and payment. Respondent states that Respondent does not give out the registration sheets due to inclusion of bidders' personal information. Respondent states that business was conducted through the executor, with the executor to disburse all information and money to the heirs or attorney. Respondent states that Respondent did not sell all of the jewelry in Complainant's list and was not involved in those transactions, as the family sold some of the items in a separate transaction. Respondent also submitted documentation from the executor wherein the executor expresses satisfaction with Respondent's services in conducting the auction and stating that Respondent provided a detailed disclosure of the items auctioned.

**Recommendation: Dismiss.**

**DECISION: Mr. Morris made a motion to accept the recommendation of legal counsel, seconded by Mr. Alexander. MOTION CARRIED.**

#### 5. 2012012951

Complainant was the successful bidder on a storage unit at an auction held by Respondent. Complainant states that, prior to the auction, bidders were allowed to look inside the lockers, but were not allowed to enter or touch the items. Due to Complainant seeing several computer boxes (which appeared unopened) and opened laptops in the subject locker, Complainant decided to bid on, and won, the locker. After paying and entering the locker, Complainant found the computer boxes to be empty and the computers which were in the locker allegedly "had anything worth money taken out of them." Complainant states that the subject locker was not listed in the advertisement, that the owner's locks were not on any of the units being sold, and that the locker appeared staged. Complainant contacted police and the district attorney regarding these issues.

Respondent submitted a response through an attorney denying that the sales were conducted in a fraudulent manner, but stating that Complainant has received a refund of the money paid for the subject unit and the parties signed a settlement agreement. Respondent states that the sale was conducted for units with delinquent renters, thus falling under the § 62-19-103(2) exemption. However, Respondent admits that, prior to the delinquency sale, Respondent was contacted by the owner of the subject unit purchased by Complainant as well as one of Respondent's employees who owned a unit, asking Respondent to sell these units which were not delinquent. The attorney's letter acknowledges that these sales were not exempt from auction laws and states that Respondent has been made aware of this and will not auction any non-delinquent units for owners in the future.

**Recommendation: Letter of warning regarding unlicensed activity under T.C.A. § 62-19-102(a)(1).**

**DECISION: Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Morris. MOTION CARRIED.**

**6. 2012013181**

Complainant was the winning bidder on property sold at auction by Respondent. At that time, Complainant paid earnest money and entered a sales contract. Complainant states that the contract stated that "good and marketable title was to be furnished and the transaction closed within 30 days." After 40 days, Complainant states that Complainant requested return of the earnest money due to failure to comply with the contract, and Complainant states that Respondent altered the original contract to extend the terms to 45 days, said Respondent was ready to close, and refused the refund. After Complainant's attorney sent a demand letter, Complainant states that Respondents said Respondent would be willing to refund the money, but the seller refused.

Respondent submitted a reply stating that the contract's terms required a 10% deposit and a balance due in 45 days, which was included in the ads, brochures, and announcements for the auction. Respondent states that Complainant's allegations are false and it was Respondent's attorney who first contacted Complainant to inform Complainant that the 45 days were up and Complainant needed to pay the balance. One day later, Respondent states that Respondent received the request for return of the deposit. When Respondent's attorney demanded specific performance from Complainant, Respondent states that Respondent got an attorney who accused Respondent of altering the contract. Respondent states the form is pre-printed to state the transaction is to be closed in 30 days, but prior to signing the subject contract, the auction clerk made the notation of 45 days in accordance with the ads and announcements for that sale.

Initially, neither party initially provided documentation to support their version of these events. Counsel requested, in writing, documentation from both parties, and received a response from only Respondent. Respondent provided a copy of a letter from Complainant to Respondent which appears to have been sent on the forty-sixth (46<sup>th</sup>) day after the contract, requesting return of the earnest money and referencing a thirty (30) day contract period. There is also a copy of a letter from Respondent's attorney to Complainant from the following day stating that the contract period was forty-five (45) days, and attempts by the attorney's office to contact Complainant to close prior to that deadline were met with Complainant stating Complainant was busy and would call back (but did not do so) and requesting specific performance. There are also multiple letters between the parties' attorneys disputing the contract period, and Complainant's attorney references pursuing litigation and filing a complaint because Respondent altered the contract. Respondent also provided a copy of the contracts from the date of the auction, all of which have the forty-five (45) day reference written in, and copies of advertisements for the auction, all of which state in its terms, "10% deposit the day of the sale. Balance due within 45 days" which is also referenced in the auction announcements (audio CD provided). Based on the information within the file, there does not appear to be a violation of TAC's statutes and/or rules on the part of Respondent.

**Recommendation: Dismiss.**

**DECISION: Mr. Morris made a motion to accept the recommendation of legal counsel, seconded by Mr. Colson. MOTION CARRIED.**

**7. 2012013611**

Complainant was the successful online bidder in an auction held live by Respondent as well as online through proxibid.com. Complainant was the successful bidder for an item listed as "forks for skid steer" which Complainant found were actually forks for a tractor when the items were shipped to Complainant. Complainant states that Respondent told Complainant that Complainant should have known by the price that these were not skid steer forks, so Complainant alleges advertising misrepresentations as well as failure by Respondent to include Respondent's firm number on the proxibid auction listing.

Respondent submitted a reply stating that Respondent is careful to include its license number on all advertisements and states that proxibid had that information but proxibid did not include that information for Respondent's listing or any of the other Tennessee firm's information on the site. Respondent has added the license number parenthetically to its name on proxibid. As to the forks, Respondent states that the announcements state that any announcements at auction take precedence over information provided in catalogs. Respondent states that even though the listing stated skid steer forks, the photo of the forks on the website was of the tractor forks and the auctioneer announced them as such. Respondent states that proxibid usually has a process of notifying online bidders of changes through pop-ups which bidders must click "okay" to continue bidding, but Respondent contacted proxibid after receiving the complaint and learned Complainant did not receive the pop-up. Therefore, Respondent states no fraud or misrepresentation was intended, and Respondent offered to exchange the forks for skid steer forks or provide a universal backplate or refund Complainant's purchase if the forks are returned.

**Recommendation: Discuss.**

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

**8. 2012014191**

TAC opened complaint based on advertisement received for auction of "new & used hotel/office furniture," which did not include information regarding who was conducting the auction. Expedited investigation prior to the auction date was requested in order to determine whether this auction was being conducted by an unlicensed entity.

The investigator met with the president of the company whose items were to be auctioned as well as the licensed auctioneer who was hired to conduct the subject auction. Based on the information obtained from these individuals, including affidavits, contracts, and other ads regarding the auction, it appears that the licensed auctioneer placed several ads (which appear to be in compliance with TAC's statutes/rules), but the president of the company placed the subject advertisement, and the telephone number on the subject advertisement was the company number.

**Recommendation: Dismiss.**

**DECISION:** Mr. Colson made a motion accept the recommendation of legal counsel, seconded by Mr. Alexander. Commissioner Morris abstained from the vote. **MOTION CARRIED.**

**9. 2012014311**

TAC opened complaint regarding advertisements placed by Respondent advertising listing packages for Respondent to conduct auctions for clients. Said advertisements included information regarding what services were included in each auction package and the price of each package. The advertisement also contained Respondent's name, the name of the broker/managing auctioneer, phone numbers, and e-mail address and website but no firm number.

Respondent submitted a reply apologizing for the inadvertent error of neglecting to include the firm license number, stating that it was a mistake by the art department, and Respondent is correcting the mistake immediately. Although Respondent, a licensee, did not include a firm number on these ads, these ads do not appear to advertise a specific auction or "give notice of an upcoming auction" as stated in the rule which requires a license number, but instead only advertise Respondent's pricing for handling auctions.

**Recommendation: Dismiss.**

**DECISION:** Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Morris. **MOTION CARRIED.**

**10. 2012014831**

Complainant submitted advertisement placed by Respondent. Said advertisement has a heading advertising it as an absolute auction, but the fine print in the advertisement states that it is an absolute auction above the loan payoff amount.

Respondent submitted a reply stating that Respondent understands the importance of truthfulness in advertising and does not want to mislead anyone. Respondent states that the owner does want to sell the property once it exceeds the mortgage obligation, which Respondent states is included in the advertisement and will also be announced at auction.

**Recommendation: Letter of instruction regarding Rule 0160-01-.20(3) which states that written advertisements for a sale at which some items will be auctioned with reserve and some items will be auctioned without reserve shall use the same font size, style and case of the type to advertise the part of sale to be held without reserve that is used for the part of sale which is publicizing the part of sale to be held with reserve.**

**DECISION:** Mr. Morris made a motion to accept the recommendation of legal counsel with the alteration that a letter of warning be sent instead of a letter of instruction and also

**instructing Respondent as to what an absolute auction is (Rule 0160-01-.19). The motion was seconded by Mr. Cunningham. MOTION CARRIED.**

**11. 2012015411**

Complainant is the purchaser of a truck which was auctioned by Respondent (firm – also licensed as public automobile auction). Complainant states that the truck was advertised as four wheel drive, but when Complainant later went to trade in the truck, Complainant was offered a much lower trade in price because the VIN number of the truck came back as a two wheel drive truck. It appears that the lot was described, in part, with the notation “4wd” and this was also included in the description on the invoice. Complainant states that the truck has a four wheel drive insignia, the frame does not match the top of the vehicle, and “had 4 wheel drive salvage like components underneath that were not hooked up to anything.” Complainant states that Respondent offered to re-auction the truck without auction fees and would guarantee \$500 over the winning bid, but Complainant wants a full refund of the purchase price.

Respondent submitted a reply stating that Complainant contacted Respondent regarding the difficulties in trading the vehicle. Respondent states that Complainant, when asked, said that Complainant had not inspected or had a mechanic inspect the truck prior to bidding. Respondent claims that it had no knowledge that the vehicle was not four wheel drive, due to the fact that the vehicle “looks like a four-wheel drive, has four-wheel drive insignia, and is on a four-wheel drive chassis” and was described as such based on these factors. Respondent states that the title does not indicate that the truck was salvaged or rebuilt. Respondent states that the truck was auctioned on an “as is – no warranty” basis. Respondent has spoken with Complainant’s attorney and made offers to resolve the issue, which have been rejected. Respondent states that the title was assigned to Complainant at purchase, but Complainant has not transferred the title.

**Recommendation: Dismiss.**

**DECISION: Mr. Morris made a motion to accept the recommendation of legal counsel, seconded by Mr. Colson. MOTION CARRIED.**

**12. 2010015451**

**13. 2010015452**

***November 2010 Meeting:***

*Complaint: This complaint alleges that the Respondent conducted a real property auction using a false bidder, then the false bidder got “caught” with the bid and didn’t purchase it.*

*Response: The Respondent claims that there was one bid, and the property was sold to that bidder, but that he was contacted that night by the seller and buyer and voided the contract at their request. The property was then relisted.*

*Recommendation: Authorize formal hearing.*

*Action: Accepted recommendation.*

After being authorized for formal hearing, the matter was sent out for investigation. The investigator obtained an affidavit from Respondent 1, stating that Respondent 1 conducted the sale and that seller paid the successful bidder/buyer after the sale to void the contract. The investigation report also included the auction advertisement, the auction contract between the seller and Respondents, and the voided contract between the successful bidder/buyer and the seller. The report stated that the investigator spoke with seller, who stated that, to the best of seller's knowledge, Respondents "did everything right with the auction." Further, the auction did not bring what the seller wanted, so the seller contacted the successful bidder/buyer after the auction and paid to void the contract. Based on this information, it appears that the contract was voided by agreement of the parties to the contract and not based on any wrongdoing by Respondents.

**New Recommendation: Dismiss.**

**DECISION: Mr. Morris made a motion to accept the recommendation of legal counsel, seconded by Mr. Alexander. MOTION CARRIED.**

**14. 2010023791**

***April 2011 Meeting:***

*This complaint involves a Tennessee City School district who in July 2009 hired an Auctioneer licensed in Tennessee (principal place of business in Georgia) to conduct an auction for them. The auction netted \$50,494.16 owed to the school. In the complaint the school system stated they had conducted business with the respondent for several years. However, this auction, the respondent failed to remit the funds. After several attempts in contacting respondent, complainant finally received a response in January 2010. In the response, respondent stated that he had not paid "due to an accounting error by an interim accountant that worked for our company, proceeds were inadvertently deposited into an operating account instead of the escrow account." Respondent asked for more time. Complainant gave him until the next month. A request for investigation was made and the investigator discovered after speaking with the respondent and his accounting firm that apparently an employee of the firm had allegedly embezzled funds from the respondent and that the money had indeed been placed in an escrow account and not an operating account as reported by respondent to complainant at first. No criminal charges have been filed as of yet against that person.*

***Recommendation: Authorize formal hearing for the suspension or revocation violation of TCA 62-19-112(b)(4)***

***Action: Approved recommended action but added a civil penalty of \$1000.00. Additionally, the Commission recommended a letter to the Complainant regarding a judgment and application to the Education and Recovery fund. Also, the Commission voted to notify the Georgia Auctioneer Commission of the action.***



New information was received that Respondent passed away in November 2011.

**New Recommendation: Dismiss.**

**DECISION: Mr. Alexander made a motion to accept the recommendation of legal counsel, seconded by Mr. Morris. MOTION CARRIED.**

15. 2011000761

*May 2011 Meeting:*

*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).*

*Action: Approved consent order but if Respondent notifies Commission within 10 days of receipt that the title has been given to Complainants then Civil Penalty to drop to \$250.00 for failing to respond.*

Attempts to obtain service on Respondent by mail have been unsuccessful, and there does not appear to be any information to suggest that Respondent is still engaged in the auction business. Further, Respondent's license has expired.

**New Recommendation: Close and flag.**

**DECISION: Mr. Colson made a motion to accept the recommendation of legal counsel, seconded by Mr. Morris. MOTION CARRIED.**

16. 2009023082

This complaint was opened against this Respondent and Respondent's firm based on a Complainant's allegations that Respondents auctioned Complainant's automobiles for a lower price than the agreed upon reserve price and did not provide the money to Complainant or a copy of the contract signed by Complainant. It appears that when this matter was originally presented, the Commission authorized a consent order for revocation of Respondent's firm's license based on this complaint and others like it, which was signed by Respondent on behalf of the firm and the firm's license was revoked.

**Recommendation: Dismiss.**

*Complaint 16 & 17 are same Respondent and were voted on at the same time by Commission. Motion listed after 17.*

17. 2011027891

***January 2012 Meeting:***

*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: Accepted Recommendation***

This is the same Respondent as the previous matter. Though this complaint was filed in late 2011, the auction took place in mid-2009 when this Respondent was operating a different firm. As previously stated, Respondent signed a consent order in 2010, agreeing that the license of Respondent's firm which handled these matters (including this transaction) would be revoked. Because that firm's license has been revoked and that firm has filed bankruptcy (during which Respondent states Respondent settled with the trustee any personal financial obligations regarding the firm), it does not appear that there is anything that this Respondent can do to resolve this matter with this Complainant.

**New Recommendation: Dismiss.**

**DECISION: Mr. Morris made a motion to accept the recommendation of legal counsel for numbers 16 and 17 of the legal report, seconded by Mr. Colson. MOTION CARRIED.**

*Commission took a break from 10:10 a.m. until 10:20 a.m. Mr. Green left during break.*

**Proposed Rules Discussion** – Ms. Cropp presented a draft of the proposed rules discussed at the previous meeting referencing changes made based on that discussion. In addition, Mr. Alexander presented his draft of recommendations for discussion. After some discussion, Ms. Cropp advised she would incorporate the new information into her draft and represent it at the next meeting.

**ADMINISTRATIVE REPORT – DONNA HANCOCK, EXECUTIVE DIRECTOR**

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

**Monthly Budget Report** – Ms. Hancock presented a report of expenditures and revenues for fiscal year 2011-2012 for the Commission's review. She advised she will present a similar report at each meeting with more detail including fee reports, education and recovery reports and revenue trends regarding renewals and new applications.

**Education Provider-Review & Determination** - Ms. Hancock presented an application from Easy LR 24 Online Training School, Inc. requesting approval as an education provider for a six (6) hour continuing education course entitled "Tennessee 6 Hour Auctioneer Package." Mr. Morris made a motion to approve the application, seconded by Mr. Colson. Motion was withdrawn. After some discussion, Mr. Alexander made a motion to defer a decision regarding the application until the next meeting and for Ms. Hancock to request additional information regarding the instructor's qualifications. The motion was seconded by Mr. Cunningham. MOTION CARRIED.

*Commission took a break from 11:10 a.m. until 11:12 a.m.*

**Education Provider-Review & Determination** – Ms. Hancock presented an application from South Lake Technologies requesting approval as a continuing education course provider for a three (3) hour continuing education course entitled "Basic Internet & Computer Technology for the Auctioneer." Mr. Alexander made a motion to approve the request, seconded by Mr. Morris. Mr. Cunningham abstained from the vote. MOTION CARRIED.

**Education Provider-Review & Determination** – Ms. Hancock presented an application from Kentucky Auction Academy requesting approval as an education provider for the eighty (80) hour pre-licensing course for apprentice auctioneers. Mr. Morris made a motion to approve the request, seconded by Mr. Alexander. Mr. Cunningham abstained from the vote. MOTION CARRIED.

**UNFINISHED / NEW BUSINESS – DAVE COLE, CHAIRMAN**

**Absolute Auctions** - Ms. Hancock asked the Commission if they would like to draft a clarifying statement regarding absolute auctions. Mr. Morris stated that every auction is assumed to be a reserve auction unless stated as "absolute." After some discussion, the Commission declined to draft a statement and advised staff to refer anyone with questions to the definition as stated in the Rules.

**Recognition of Chairman Cole's Service** – As Chairman Cole's term on the Commission expires 8/31/12 Ms. Hancock presented him with a plaque of appreciation for his "outstanding and dedicated service to the State of Tennessee." In accordance with Tenn. Code Ann. 62-19-104(d) each member shall hold over after the expiration of the member's term until a successor shall have been duly appointed and qualified.

*Commission to a break from 11:45 a.m. until 11:50 a.m..*

**Elections** – Mr. Morris made a motion to nominate Mr. Colson for Chairman, seconded by Mr. Alexander. There being no further nominations, Mr. Colson was elected by acclamation.

Mr. Colson then made a motion to nominate Mr. Morris as Vice Chairman, seconded by Mr. Alexander. There being no further nominations, Mr. Morris was elected by acclamation.

Being no further business to discuss, the meeting adjourned at 11:53 a.m.

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David Cole, Chairman

*Marvin Alexander*

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Marvin Alexander

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Jeff Morris, Vice Chairman - Elect

*Jeff Morris*

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Gary Cunningham, Vice Chairman

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Bobby Colson, Chairman - Elect

*James H. Puller*