

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** August 5, 2013

**PLACE:** Davy Crockett Tower – Conference Room 1-B  
500 James Robertson Parkway  
Nashville, Tennessee

**PRESENT:** Commission Members:  
Bobby Colson, Chairman  
Jeff Morris, Vice Chairman (Chairman-Elect)  
Marvin Alexander  
Gary Cunningham  
Howard Phillips (Vice Chairman-Elect)

**PRESENT:** Staff Members:  
Donna Hancock, Executive Director  
Mark Green, Chief Counsel of Litigation  
Julie Cropp, Assistant General Counsel  
Adrian Chick, Assistant General Counsel  
Susan Lockhart, Administrative Services Assistant 4

**GUESTS:** Rhessa Orr Hanson, Buford White and Thomas Chaffin

**CALL TO ORDER:** Chairman Colson called the meeting to order at 9:10 a.m. and the following business was transacted:

**NOTICE OF MEETING:** Ms. Hancock read the following statement for the record, "This meeting's date, time and location have been noticed on the Tennessee Auctioneer Commission's website, included as part of this year's meeting calendar, since August 8, 2012. The calendar was updated on February 1, 2013 to reflect the new meeting room number. Additionally, the agenda for this month's meeting has been posted on the Tennessee Auctioneer Commission's website since July 25, 2013."

**ROLL CALL:** Ms. Hancock called the roll. All members were present.

**AGENDA:** Ms. Hancock announced she had one item to add to the agenda and Mr. Colson requested the election of officers also be added. Mr. Morris made a motion to adopt the agenda as amended, seconded by Mr. Alexander, **MOTION CARRIED.**

**MINUTES:** Mr. Morris made a motion to approve the minutes of the May 6, 2013 meeting, seconded by Mr. Phillips. **MOTION CARRIED.**

**ELECTION OF OFFICERS:** Ms. Cropp opened the floor to entertain nominations for Chairman. Mr. Phillips nominated Mr. Morris. Being no other nominations, Mr. Morris was elected as Chairman by acclamation.

Ms. Cropp then opened the floor to entertain nominations for Vice Chairman. Mr. Morris nominated Mr. Phillips. Being no other nominations, Mr. Phillips was elected as Vice Chairman by acclamation.

Chairman Colson turned the meeting over to Chairman-Elect Morris for the remainder of the meeting.

**UPDATE ON SEMINARS & NEWSLETTERS – RHESSA HANSON, Nashville Auction School**

Ms. Hanson presented an oral report on the progress of the seminar schedule and newsletter. She advised the next seminar is scheduled for Monday, October 14, 2013 at the Car Barn in Chattanooga, Tennessee. She further advised that Justin Oaks, 2012 NAIC and NAA Champion, and a representative from the Tennessee Department of Revenue are both scheduled to attend the seminar as guest speakers.

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**APPRENTICE AUCTIONEER APPLICATION – DETERMINE ELIGIBILITY:  
APPEARANCE BY THOMAS CHAFFIN**

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Ms. Hancock presented the Commission with Mr. Chaffin's application for an Apprentice Auctioneer License for their review and Mr. Chaffin appeared before the Commission to answer any questions they may have. After some discussion, Mr. Phillips made a motion to approve the application and allow Mr. Chaffin to take the required examination. The motion was seconded by Colson. **MOTION CARRIED.**

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

Ms. Cropp advised the Commission that Mr. Chick was present and wished to provide an update to the Commission on formal proceedings against Vince Trotter and My Auction Connection. Mr. Chick reminded the Commission that the Administrative Judge had entered an order dismissing the cases last year, and that the Commission had subsequently set aside the order of dismissal. However, as a precautionary measure, a petition for review had been filed on the Commission's behalf in Chancery Court, and the Respondent had also filed a petition for review in Chancery Court. Mr. Chick also advised the Commission that in March of 2013 he attended a hearing in Bankruptcy Court where a creditor alleged that Trotter had committed misrepresentation and fraud in relation to a 2009 auction. That victim in that incident never filed a complaint with the Commission. In a written order entered in June, 2013, the Bankruptcy Court found Mr. Trotter had committed misrepresentation and made false statements and entered a non-dischargeable judgment against him of \$88,722. Mr. Chick stated that the

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Commission could consider this ruling in the event Trotter reapplies for licensure. Mr. Chick further advised that although the Commission could decide to close the complaints, he suggested waiting until resolution of the Chancery Court Petitions. The Commission agreed to the recommendation. Ms. Hancock inquired as to what status the complaints should currently be listed as in the complaint database utilized by the Commission and Mr. Green advised he would check into it.

*Mr. Chick left the meeting at the conclusion of his report.*

### **Presentation of the Legal Report -**

Ms. Cropp presented the following complaint report for the Commission's consideration:

**1. 2013005121**

License #:

First License Obtained: 8/14/12

License Expiration: 8/14/14

Type of License: Apprentice

History: None

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Complainant alleges that Respondent was Complainant's apprentice for approximately four (4) weeks. During that time, Complainant alleges that Respondent sold guns at auction. Complainant also alleges a number of other matters regarding Respondent, including: ~~(1) bidding on items to increase the bid and after winning giving the item back~~ instead of using a reserve; (2) not using sales contracts; (3) having checks made out to Respondent's wife in order to avoid paying sales tax; (4) selling raffle tickets, which Complainant compares to running a lottery; and (5) not having a closing statement at the end of auctions. Complainant states that, after Complainant removed Respondent from his firm, that Respondent was calling bids on one occasion with no other auctioneer on site.

Respondent states that Complainant filed the complaint against Respondent in retaliation because Respondent had recently reported several auction companies that were using non-licensed auctioneers. Respondent states that Complainant was the auctioneer for Respondent's gallery during the five (5) months prior to this complaint with no trouble, and, a few weeks before the complaint, Complainant approached Respondent about changing to have Complainant as Respondent's sponsor. Once Respondent made the change, Respondent states that Complainant seemed to try to take full control of Respondent's business, stating that Complainant's wife was to be the clerk for the business, which Respondent refused. Respondent admits that there were a few guns from various estates sold through the auction, but Complainant was auctioneer during these gun sales and never voiced a complaint. Respondent states that Respondent has placed bids on items during an auction that Respondent was calling (as has Complainant, according to Respondent), but Respondent states that it is always announced that Respondent plans to bid, and if Respondent wins, Respondent does not give the item back. Respondent denies the allegation that Respondent does

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not use a sales contract. Respondent states that Respondent has an open and active escrow account and denies having checks addressed to anyone else, stating that Complainant had no involvement in the financial aspect of the gallery other than to call the items brought to sell. Respondent denies selling raffle tickets, stating that vendors are allowed to offer their own raffle tickets for a drawing and prize, but Respondent accepts no money or commission for this. Respondent denies that Respondent does not give a closeout statement. Further, Respondent denies calling auctions without a sponsor present. Respondent states that the complaint is due to bitter feelings, and Respondent denies doing anything illegally.

**Recommendation: Dismiss.**

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

2. **2013005161**

License #:

First License Obtained: 6/27/08

License Expiration: 6/16/14

Type of License: Auctioneer

History: None

3. **2013005201**

License #:

First License Obtained: 3/28/79

License Expiration: 2/28/07

Type of License: Firm (expired)

History: None

These complaints were opened due to findings from a previous complaint, where an investigator determined that Respondent 2 (expired auction firm) and Respondent 1 (auctioneer) were holding auctions in Respondent 2's firm name despite the expired firm license. Respondent 1 admitted to calling bids for Respondent 2 since August 1, 2010 (well after the firm license expired on 2/28/07).

Respondent 1 states that the owner of Respondent 2 asked Respondent 1 to work for Respondent 2 after attending one of Respondent's auctions. Respondent 1 states that Respondent 1 agreed to start calling auctions and assumed Respondent 2 had a firm license since the firm had been in business for approximately thirty (30) years. Respondent 1 states that Respondent 1 hung Respondent 1's license beside Respondent 2's firm license but failed to look at the date on the license and was unaware that Respondent 2's firm license was expired until the investigator for a previous complaint told Respondent 1 this fact. Respondent 1 states that Respondent 1 is not working for Respondent 2 anymore. The spouse of the owner for Respondent 2 expired firm submitted a response stating that they failed to mail the money in for the firm license and that the owner has had health problems which prevented the owner from taking the thirty (30) hour course to regain an active firm license for Respondent 2

firm. The owner and spouse of Respondent 2 state that they were unaware that the firm license had expired, and, once they were notified of this fact, all future sales were stopped and all advertisements for future sales were stopped, and there are no plans for future sales.

**Recommendation:** Authorize formal hearings for both Respondents with authorization to settle by Consent Order with civil penalty of \$250.00 for each Respondent for violation of T.C.A. § 62-19-102(a)(1).

**DECISION:** Mr. Alexander made a motion to accept the recommendation of legal counsel with the revision that the Consent Order for each Respondent should contain a civil penalty of \$1,000.00. The motion was seconded by Mr. Colson.  
**MOTION CARRIED.**

**4. 2013005481**

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: Unlicensed

History: None

~~Complainant alleges that Respondent (unlicensed company located out of state) is neither a licensed real estate firm nor a licensed auction firm and is conducting an auction of multiple properties located in Tennessee. Specifically, Complainant alleges that Respondent has sent out numerous sales packages to prospective purchasers soliciting sealed bids for the sale of several properties and that Respondent is requiring earnest money to be submitted to Respondent in another state (where Respondent is located). Complainant alleges that Respondent is misrepresenting itself in Respondent's advertising, which states that Respondent's auction is being conducted in conjunction with an individual who is a licensed broker and auctioneer.~~

Respondent submitted a response through an attorney stating that the complaint and allegations are not clear and appear to be a "blanket-type" complaint submitted to TAC, TREC, and possibly more regulatory agencies. Respondent's attorney states that Respondent is working with a properly licensed Tennessee real estate broker who is also a properly licensed Tennessee auctioneer and has been taking sealed bids with regard to real property in Tennessee. Respondent quotes T.C.A. § 62-19-101(2), that an "auction" is defined as "...a sales transaction conducted by means of oral or written exchange between an auctioneer and members of the audience, which exchange consists of a series of invitations for offers for purchase of goods or real estate made by the auctioneer and offers to purchase made by members of the audience culminating in the acceptance by the auctioneer of the highest or most favorable offer made by a member of the participating audience." Respondent's attorney states that, here, there is no written exchange, no audience, and no series of invitations for offers. Respondent's bid packet (a copy of which was submitted by Complainant) indicates that Respondent would be the recipient of all sealed bids and present said bids to the seller, with the

seller then having the right to either accept or reject the bids. However, the materials also state that, after receiving said sealed bids, the seller may elect to solicit a "best and final offer" from bidders, which can then be accepted by the seller.

Respondent's attorney submitted additional information stating that, as soon as complaints were filed against Respondent, Respondent obtained Tennessee counsel, and, after discussing the matter with legal counsel took a number of steps, including terminating Respondent's sealed bid agreement with the property owner (and the property owner engaged a licensed auction firm/real estate firm as broker for the sale), removing all advertisements for Respondent conducting the sale from Respondent's website and reflecting the auction firm/real estate firm as broker in advertisements, all bids were sent to the property owner with bid deposit checks made to the owner's title company, and the bid deadline was pushed back slightly to ensure a smooth transition for the broker/auctioneer and his firm who handled the sale. Respondent's attorney states that Respondent expended significant effort and cost in ensuring that Respondent did everything necessary to address the complaint allegations and ensure that they are compliant with Tennessee law in the future. Respondent's attorney states that any wrongdoing was not intentional and has been corrected.

**Recommendation: Letter of warning regarding T.C.A. §§ 62-19-101(2) definition of "auction" and 62-19-102 license requirements.**

~~**DECISION: Mr. Cunningham made the motion to accept the recommendation of legal counsel, seconded by Mr. Alexander. Mr. Phillips abstained from voting ON this matter and all other members voted, "Yes." MOTION CARRIED.**~~

**5. 2013005491**

License #:

First License Obtained: 11/21/05

License Expiration: 11/20/13

Type of License: Firm

History: None

Complainant (an auctioneer/broker) alleges that his client wanted to place an offer on a property, but was told that the property was just listed under auction terms with Respondent (which is an out of state online auction company). Complainant alleges that he looked at the property on Respondent's website, and a bid could not be placed at that time. Further, Complainant states that the website stated an auction date, which was the middle of the following month. Complainant states that his client was interested in placing a bid, and, when the client visited Complainant's office approximately one (1) week before the auction date to determine whether an early bid could be made, Complainant states that Respondent's website already showed the property as sold. Complainant contacted Respondent regarding the sale of the property prior to the listed auction date and states that Complainant was told that if Respondent received an "acceptable bid," that Respondent could sell it.

Respondent submitted a response stating that there was a system/process issue with Respondent's website which caused confusion over how the auction dates for this property were displayed. Respondent states that they were unaware of their website issue until this complaint. Respondent states that there was no intent cause confusion, and the property was not sold prior to the intended auction date. Typically, Respondent states that Repondent's online only auction begins when the property is loaded to Respondent's website and ends in approximately twenty-eight (28) days (which is the auction end date which is specified on the screen). Respondent states that a property is sold when a bid is made through the online system which the seller accepts. Respondent states on this same screen, there are bidding instructions and a "BidNow!" button and a countdown indicator that allows bidders to know how much time remains before the auction end date. As to the seller of the subject property, Respondent states that Respondent was asked to modify the timing on the property for a twenty-one (21) day marketing period followed by a seven (7) day online auction where the "BidNow!" button would be displayed and the "days left to bid" is shown. Respondent states that, if the property had not sold, there would be an additional fourteen (14) day post-sale period which would also allow bidding. At the end of the fourteen (14) day post-sale period, Respondent states that the auction would end and be taken from the website if no acceptable bid was made and accepted by the seller.

With regard to the subject property, Respondent states that the system incorrectly listed the auction date as a date certain instead of the intention that the date should have been listed as the end of the fourteen (14) day post sale period. Additionally, Respondent states that the "BidNow" button was not visible until after the twenty-one (21) day marketing period, which would explain why the button and the wording regarding the time remaining to bid was not displayed on Respondent's website when Complainant viewed it the first time. Respondent states that, had this additional wording already been included on the website, it would have assisted in clarifying as to when bids could be made and accepted. Respondent states the "BidNow!" button for the subject property was first displayed on their website at the end of the twenty-one (21) day marketing period, and another buyer submitted an online bid on the property on the following day. Respondent states that when a bid is received, Respondent notifies the bidder that the bids will be considered in the order they are received and may be approved by the seller at any time. Respondent states that the seller accepted the bid. Once the bid is accepted, Respondent states that the SOLD banner on Respondent's website is automatically displayed on the property that is sold, which is why, when Complainant viewed the website a second time with the intent of making an early bid, the subject property was listed as sold.

Respondent admits that Respondent's website system/process issue caused the online information for the subject property to be potentially confusing depending on when the site was viewed but states that the error has been corrected to eliminate confusion in the future. Respondent states that there was no intent to mislead or to sell a property prior to the intended auction period, but was simply a case of their computer system not displaying the information as intended for an auction involving a timeline that varied from a customary timeline.

**Recommendation: Dismiss.**

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

**6. 2013005731**

License #:  
First License Obtained: 10/15/09  
License Expiration: 10/14/13  
Type of License: Gallery  
History: None

Anonymous complainant submitted a complaint naming multiple individuals and entities for various violations. With regard to this Respondent (gallery) the Complainant seems to allege that Respondent gallery is unlicensed and uses unlicensed auctioneers to call bids. The anonymous Complainant also suggests that an individual (the owner of the Respondent gallery in the following complaint) and "his brother" are operating this Respondent gallery.

A response was submitted by the owner of Respondent gallery. The owner states that the anonymous Complainant misidentified the owner of this Respondent as a brother of the other individual who the Complainant addressed in the complaint, and they are merely friends who both own galleries. The owner states that Respondent is a licensed gallery (and enclosed a copy of said license), and states that a licensed auctioneer has been calling auctions for Respondent for several years (a copy of that auctioneer's license was also provided). Respondent states that these licenses are displayed for anyone to see. Legal counsel contacted the licensed auctioneer named by Respondent's owner who confirmed the information provided by Respondent's owner. There does not appear to be any evidence of a violation by Respondent.

**Recommendation: Dismiss.**

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

**7. 2013005761**

License #:  
First License Obtained: 11/18/11  
License Expiration: 11/17/13  
Type of License: Gallery  
History: None

The same anonymous complainant above included this Respondent (gallery) within the complaint. The complainant seems to allege that this Respondent gallery is unlicensed and uses unlicensed auctioneers to call bids. Complainant states that the owner of



Respondent and "his brother" are operating this Respondent gallery and the previous Respondent gallery.

A response was submitted by the owner of Respondent gallery. The owner states that Respondent is a licensed gallery and that Respondent always used a licensed auctioneer to call auctions for Respondent until such time as the owner (formerly an apprentice auctioneer) obtained an auctioneer's license (which occurred around the same time as the complaint was filed). Legal counsel contacted the licensed auctioneer named by Respondent's owner, who confirmed that he called auctions for Respondent gallery until the owner obtained an auctioneer's license. Respondent's owner states that the allegations are false and appears to have been filed by a competitor, and Respondent follows all rules and regulations. At the current time, Respondent's owner is a licensed auctioneer, the owner of a licensed auction firm, and the owner of Respondent gallery. There does not appear to be any evidence of a violation by Respondent.

**Recommendation: Dismiss.**

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

*Ms. Lockhart left the room at 10:05 a.m. and returned at 10:08 a.m.*

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8. **2013005771**

License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed  
History: None

9. **2013005801**

License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed  
History: None

Complaints opened against Respondents (Respondent 1 is an unlicensed gallery; Respondent 2 is an unlicensed individual) based on information contained within the anonymous complaint referenced in the previous complaints. The anonymous complainant states that Respondents do not have a license of any kind. In the anonymous complaint, the Complainant referenced Respondent 2 by a first name as the auctioneer for Respondent 1. Based on the complaint, which did not include an address or other identifying information for Respondent 2 other than a first name, legal counsel located an internet advertisement referencing auctions held by Respondent 1 and noting Respondent 2's full name as the auctioneer.

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Complaints were sent to Respondents at the address listed on the advertisement. The complaints were returned with notations of "no such number" and "unable to forward." Legal counsel called the telephone number referenced on the online advertisement and reached an individual identified as Respondent 2. Respondent 2 stated that Respondent 2 has an auction house (Respondent 1) where consigned items are sold, which is held twice weekly. Respondent 2 admitted that there was no gallery license for Respondent 1 but denied that Respondent 2 was acting as the auctioneer, stating that a licensed auctioneer calls the auctions. Respondent 2 claims that Respondent 2 did not place the online advertisement.

**Recommendation:** Authorize formal hearings for both Respondents with authorization to settle by Consent Order. For Respondent 1, a consent order with a civil penalty of \$500.00 for violation of T.C.A. § 62-19-125. For Respondent 2, a consent order with civil penalty of \$500.00 for violation of T.C.A. § 62-19-102(a)(1).

**DECISION:** Mr. Phillips made a motion to accept the recommendation of legal counsel with the revision that the Consent Order for each Respondent should contain a civil penalty of \$1,000.00. The motion was seconded by Mr. Colson. **MOTION CARRIED.**

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10.2013006931

License #:

First License Obtained: 4/7/11

License Expiration: 4/6/15

Type of License: Auctioneer

History: None

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Anonymous complaint received against Respondent (auctioneer – owner of Respondent gallery named in anonymous complaint 2013005761) which states that Respondent is conducting auctions without a sponsor at "different locations" (at the time that the complaint was written, Respondent was still an apprentice – Respondent became licensed as an auctioneer shortly after).

Respondent submitted a response denying the allegations of the anonymous complainant and stating that the anonymous complainant is a fellow auctioneer who has a history of filing anonymous complaints. Respondent states that Respondent had a sponsor "...since Day 1..." of being an apprentice auctioneer until Respondent became a licensed auctioneer. Respondent states that Respondent always used a licensed auctioneer when Respondent only owned the gallery. However, Respondent states that Respondent now has an auctioneer's license and a firm license, as well, and Respondent has always operated legally. There does not appear to be any evidence of a violation by Respondent.

**Recommendation: Dismiss.**

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

**11.2013008261**

License #:  
First License Obtained: 11/12/10  
License Expiration: 11/11/14  
Type of License: Auctioneer  
History: None

Complainant alleges that Respondent (auctioneer) posted an ad on Craigslist advertising an auction without including Respondent's firm name within the ad. Complainant attached a copy of the ad, which includes Respondent's name and license number as the auctioneer and includes the gallery license number where the sale is taking place.

Respondent submitted a response stating that Respondent and the gallery were unaware of the advertisement until Respondent received a copy of the complaint. Respondent states that a customer was trying to be a good Samaritan and post the auction on Craigslist to assist in advertising but was not aware of the rules and regulations governing auctioneers. Respondent states that Respondent has run an honest and respectable operation for many years without a complaint and hopes that this issue, which was out of Respondent's control, does not jeopardize that reputation. There is no evidence contradicting Respondent's explanation regarding the ad.

**Recommendation: Dismiss.**

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

**12.2013009691**

License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed  
History: None

Anonymous complainant submitted copies of newspaper advertisements which included the name of Respondent (unlicensed). It appears that the anonymous complainant was attempting to point out that Respondent is attempting to represent itself in the auction advertisements as an auction firm without holding a firm license.

A response was submitted by the individual who placed the ad (who is a licensed auctioneer and whose name is included within Respondent's name). The individual states that he has been the principal auctioneer for a licensed auction firm since 1997

and that all appropriate licenses and names were included on the advertisements submitted by the anonymous complainant. The advertisements do contain the name of the licensed firm at which the individual is the principal auctioneer and also includes the firm license number as well as the individual's auctioneer license number. The individual states that referencing Respondent, which includes the individual's name and has been used for many years, is listed for the purpose of showing that Respondent is the responsible auctioneer for the auction and not with the intent to mislead anyone. There does not appear to be a violation.

**Recommendation: Dismiss.**

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

**13. 2013009781**

License #:

First License Obtained: 8/17/12

License Expiration: 8/16/14

Type of License: Apprentice

History: None

~~Complainant is Respondent's former sponsoring auctioneer who listed a number of allegations against Respondent, including, performing auctions without Respondent's consent, advertising without a license number, advertising on the MLS, utilizing non-conforming signs and ads, and removing a listing under false pretenses. Complainant included a photograph of a sign advertising an auction which does not appear to include the firm's license number.~~

Respondent submitted a response stating that Respondent did not need Complainant's consent to perform an auction because Complainant was no longer Respondent's sponsor (Respondent has a new sponsor). With regard to the yard sign, Respondent states that there was an error with the sign company wherein the firm numbers were left off, but the problem was corrected on the following day, and Respondent attached a picture indicating proof of this. Respondent states that Respondent has a right to advertise on the MLS, and all advertising is compliant. As to the allegation of removing a listing under false pretenses, Respondent states that Respondent received the auction while working under Complainant, and, due to the actions of Complainant, Respondent states that the property owner became upset and fired the two, and Complainant placed the advertising and removed the listing. It appears that there are negative feelings between Complainant and Respondent surrounding the end of their former working relationship. The only issue appears to be regarding the sign, to which Respondent promptly corrected inclusion of the firm license numbers and the designation of Respondent as "apprentice auctioneer;" however, the sign does not include Respondent's license number. However, Respondent acknowledged the mistake and stated that it will not happen again in the future.

**Recommendation:** Letter of instruction regarding Rule 0160-01-.12(7) which states that any advertisement placed by an apprentice must identify the apprentice as such, include the apprentice's license number, and the name and license number of his/her sponsor's firm as well as Rule 0160-01-.20(1) which states that advertising designed to give notice of an upcoming auction must have the name and license number of the firm or gallery responsible for holding the sale.

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

*The Commission recessed at 10:20 a.m. for a short break and reconvened at 10:30 a.m.*

Ms. Cropp announced Mark Green was recently promoted from Assistant General Counsel to Chief Counsel of Litigation. Everyone congratulated Mr. Green.

Ms. Cropp then continued with her presentation of the Legal Report as follows:

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**14. 2013009711**

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: Unlicensed

History: 2013012681 – Under review by legal

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**15. 2013012681**

License #: Unlic.

First License Obtained: N/A

License Expiration: N/A

Type of License: Unlicensed

History: 2013009711 – Under review by legal

Two complaints were submitted against the same Respondent (unlicensed). One was anonymous and the other was not. Respondent conducts estate sales, and both complainants attached copies of Respondent's internet advertisements which include tag sales but also offer online auctions for a portion of the items (which seems to be the topic at issue here). Based on the information from Respondent's internet advertisements, it appears that the auctions are timed and online only. However, the website states that, on occasion, due to last minute bids, the bidding time may be extended by an additional minute.

Respondent's president sent responses on behalf of Respondent stating that it is their position is the estate sales that Respondent is running do not require licensure based on a conversation Respondent had with two employees in the Commission's office and

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a licensing exemption. Specifically, Respondent's president quoted T.C.A. § 62-19-103(9) "Exemptions," which states, "The provisions of this chapter do not apply to:...(9) Any fixed price or timed listings that allow bidding on an Internet web site but that do not constitute a simulcast of a live auction." Respondent's president states that Respondent is an estate sale company which is operated in a "tag sale" format with the recent introduction to Respondent's website that allows customers to bid online for certain items in an upcoming estate sale in a manner similar to eBay. Respondent's president states that all bidding is done online in a timed format and there is no live bidding, and high bidders are required to pay for and collect the items at the location where the rest of the contents are being sold in the tag sale. Respondent's president states that, based on the language from T.C.A. § 62-19-103(9), their position is that Respondent is operating legally and does not require licensure from the Commission. It does appear that Respondent is operating a timed online only auction without a simulcast; however, it appears that there is a possibility for the time to be extended in certain circumstances.

Additional information was submitted by an attorney on behalf of Respondent. Respondent's attorney states that Respondent has asserted that its auction format complies with the exemption found at T.C.A. § 62-19-103(9); however, Respondent's attorney states that Respondent recently made modifications to its auction format with auctions now ending at a fixed time instead of extending for additional minutes when a bid is placed at the last minute.

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**Recommendation: Discuss.**

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**DECISION:** Mr. Alexander made a motion to send a letter of warning to Respondent stating that, when an online only auction extends past the specified end time, it is no longer a timed auction falling under the exemption found at T.C.A. § 62-19-103(9). The motion was seconded by Mr. Cunningham. Mr. Phillips and Mr. Colson abstained from voting on this matter. All other members voted, "Yes." **MOTION CARRIED.**

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The following cases are being re-presented to the Commission. They previously had been authorized for a formal hearing. However, attempts at service upon the Respondents have warranted no result and accordingly it is the recommendation of the Chief Legal Counsel for Litigation to flag and close these matters. If these Respondents are located or should they contact the Commission to attempt to obtain licensure, these matters can be re-opened and proceeded upon.

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1. 2011003511
  2. 2011002681
- License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed
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**3. 2011003531**

License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed

These complaints were brought before the Commission in 2011, alleging unlicensed activity as well as fraud in failing to pay the seller of items bought by the unlicensed Respondents. The Complainant was able to get a judgment against the Respondents in one case, and there were criminal charges filed (or a criminal complaint was filed) against the Respondents. The addresses that the department investigators found when sent to attempt to locate the Respondents are now vacant or have someone else living there. The department has been unable to locate them since.

**Recommendation: Flag and Close**

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

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**4. 2010020651****5. 2010020652**

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~~This matter was opened in 2010 regarding a complaint and issue with this auction firm that declared bankruptcy in 2009 and a voluntary surrender of the firm license by consent order. Accordingly, this matter should have not been opened, as it was a part of that complaint. Further, the Respondent firm declared bankruptcy, and the Commission could not collect a civil penalty. However, all parties, including this Complainant, have received notice of the bankruptcy and the bankruptcy trustee in order to attempt to obtain relief.~~

**Recommendation: Flag and Close**

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

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**6. 2011008881**

License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: Unlicensed

~~This matter was brought before the commission in 2011 regarding unlicensed activity. The allegation involved an unlicensed person conducting an auction/gallery at a flea~~

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market. The initial Respondent was the owner of the flea market who rented out space to people – it was one of the people who rented space from the owner that was conducting the auction unbeknownst to him. The name of the unlicensed person was obtained; however, he has not been able to be located. The owner of the flea market appears to have had no knowledge of the auction. Legal has confirmed that the auction only occurred once and as far is known has not occurred again. Locating the person who conducted the auction has yielded no results.

**Recommendation: Flag and Close**

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

**Update on Proposed Rules -**

Ms. Cropp advised that a statute regarding military applicants had been passed which will involve rulemaking by all programs, including the Commission. Therefore, she plans to incorporate this rule with the proposed rules previously discussed by the Commission and would present them at the next meeting.

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

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~~**Complaint Comparison Report -** Ms. Hancock presented a comparison of the complaints pending in August 2012 to those currently pending.~~

~~**Budget Report –** Ms. Hancock presented a comparison of the revenues and expenditures for the last three (3) fiscal years along with the preliminary information for the current fiscal year. She also presented a similar report for the education and recovery account for the Commission's review.~~

~~**2014 Calendar –** Ms. Hancock presented a proposed 2014 Meeting Schedule for the Commission's review. After some discussion, Mr. Colson made a motion to adopt the calendar as amended, seconded by Mr. Phillips. **MOTION CARRIED.**~~

~~**Reciprocal Agreements – Discussion –** Ms. Hancock reminded the Commission that they currently have eighteen (18) states listed as having reciprocal agreements with Tennessee and that she had contacted each state requesting a copy of those agreements. Ms. Hancock stated that there were five (5) states she had yet to receive responses from but that she had once again contacted these states immediately following the last commission meeting. Copies of the thirteen (13) agreements she has obtained were presented to the Commission.~~

~~Ms. Hancock also presented a draft of a newly proposed agreement from the State of Ohio for the Commission's consideration. After some discussion, Ms. Cropp advised that she would contact Ohio's legal counsel to discuss the Commission's concerns~~

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regarding an applicant's state of residency. It is a concern of the Commission that the applicant be domiciled in the state from which he is seeking reciprocity with Tennessee.

**"Notify" – Email Alerts** – Ms. Hancock advised the Commission that they should have each received an email from the Commission office recently asking them to sign up for "Notify," the new email alert system for the Division of Regulatory Boards. She reminded the Commissioners to sign up if they have not done so already. She further advised that anyone who would like to receive email notifications from the Auctioneer Commission, or other board, may sign up to do so at each board's website. All staff and board members are urged to do so.

**NALLOA – Letters of Good Standing** – Ms. Hancock advise that she recently received an email from the Executive Director of NALLOA surveying whether or not each state would recognize letters of good standing from a licensing agency via email. Mr. Morris stated that he and Mr. Alexander attended the recent annual meeting of NALLOA and Mr. Morris gave a report of the meeting and the discussion that resulted in this survey. Following Mr. Morris' report, it was the Commission's consensus that Tennessee should accept such letters of good standing via email as long as it is apparent that the email was sent directly from the state licensing agency.

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**UNFINISHED / NEW BUSINESS – BOBBY COLSON, CHAIRMAN**

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Mr. Phillips inquired as to whether or not complaints could be filed anonymously. Ms. Cropp advised that the Commission currently accepts anonymous complaints but any information submitted is subject to the Public Records Act. Therefore, any contact information, names, fax numbers, etc. listed on a complaint are not redacted before they are forwarded to the appropriate party for response.

Being no further business to discuss, the meeting adjourned at 11:30 a.m.

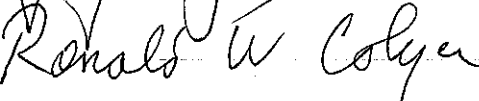
  
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 Jeff Morris, Chairman

  
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 Howard Phillips, Vice Chairman

  
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 Marvin Alexander

  
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 Gary Cunningham

  
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 Bobby Colson

  
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 Ronald W. Colyer