

**TENNESSEE
AUCTIONEER COMMISSION
MINUTES**

DATE: October 7, 2013

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

PRESENT: Commission Members:
Jeff Morris, Chairman
Howard Phillips, Vice Chairman
Bobby Colson
Ronnie Colyer
Gary Cunningham

PRESENT: Staff Members:
Mark Green, Chief Counsel of Litigation
Julie Cropp, Assistant General Counsel
Kimberly Whaley, Accountant 3
Susan Lockhart, Administrative Services Assistant 4

GUESTS: Wendell Hanson

CALL TO ORDER: Chairman Morris called the meeting to order at 9:22 a.m. apologizing for the delay citing technical problems with the video equipment. Then the following business was transacted:

NOTICE OF MEETING: Kimberly Whaley 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. Additionally, the agenda for this month’s meeting has been posted on the Tennessee Auctioneer Commission’s website since Monday, September 30, 2013. Further, this meeting has been notice on the tn.gov website since Friday, October 4, 2013.”

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

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

MINUTES: Mr. Phillips made a motion to approve the minutes of the August 5, 2013 meeting, seconded by Mr. Colson. **MOTION CARRIED.**

Chairman Morris introduced Ronnie Colyer and welcomed him as the newest member of the Auctioneer Commission. He advised Mr. Colyer was appointed to replace Marvin Alexander whose term recently expired.

Chairman Morris advised he would like to recognize Mr. Alexander's eighteen plus years of dedicated service to the Commission and the auction industry as a member of the Commission. Mr. Cunningham made a motion for staff to procure a plaque for Mr. Alexander on the Commission's behalf, seconded by Mr. Phillips. **MOTION CARRIED.** Chairman Morris advised Ms. Lockhart to draft a letter to accompany the plaque and forward it to Mr. Alexander on the Commission's behalf.

Chairman Morris announced that Donna Hancock, Executive Director for the Auctioneer Commission, retired since the last meeting. He stated she was not in attendance but would like to thank her for her service and wish her well on her retirement.

UPDATE ON SEMINARS & NEWSLETTERS – WENDELL HANSON, Nashville Auction School

Mr. Hanson presented an oral report on the progress of the seminar schedule and newsletter. He advised the next seminar is scheduled for Monday, October 14, 2013 at the Car Barn in Chattanooga, Tennessee. He 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. He advised the postcards regarding the seminar and the latest newsletter were recently mailed to the licensees.

LEGAL REPORT – JULIE CROPP, ASSISTANT GENERAL COUNSEL

Ms. Cropp announced the issues with the video equipment had been resolved and gave a brief accounting of the business conducted prior to this announcement so it would be included in the video posted to the Commission's website.

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

1. **2013010491**

License #:

First License Obtained: 6/15/77

License Expiration: 3/31/14

Type of License: Firm

History: None

Complainant states that Complainant supplied Respondent (firm) with coins and jewelry to auction. Complainant alleges that an auctioneer with Respondent stated that most items were sold and that a check was sent to Complainant in the amount of \$272.00 approximately two (2)

months prior, which Complainant states was never received. Complainant told the auctioneer that Complainant never received the check for \$272.00 and was then told that a check would be re-issued and mailed to Complainant, which Complainant states was also not received. Complainant states that Complainant then sent the auctioneer an email requesting the rest of the coins that were not sold and the money. Complainant states that a day later the auctioneer replied to Complainant's e-mail and told Complainant that he would check with the bank to see if the check ever cleared and would be in touch. Complainant states that Complainant again made e-mail contact requesting the status and was told that someone was at lunch and would verify the information when they got back. Hearing nothing after a week and a half, Complainant filed this complaint, alleging that Respondent did not send the check for \$272.00 and had not returned the coins that were not sold.

An auctioneer with Respondent submitted a response stating that Respondent did receive a consignment of coins from the Complainant to sell at auction, and Respondent did sell part of the coins, and, within the next week, a check was mailed to Complainant in the amount of \$272.00. Respondent states that, after speaking with Complainant weeks later to let Complainant know that all coins had not been sold, Respondent was first told Complainant had not yet received the \$272.00. Respondent states that Complainant and Respondent agreed that Respondent would continue to try to sell the remaining coins. Respondent was unable to sell any more coins. Respondent states that, a couple of weeks later, Complainant contacted Respondent and requested that the coins and money owed to Complainant. Respondent then called Respondent's bank and was told the check for \$272.00 had never cleared. Respondent contacted Complainant and told Complainant that Respondent was sending another check but wanted to make sure Respondent had Complainant's correct address. Respondent states that, a couple of days later, an e-mail was sent from Complainant including Complainant's mailing address, and the coins and check were sent via UPS. Respondent states that, just after the complaint was filed but before Respondent received a copy of the complaint, the two checks, totaling \$272.00, were sent and cashed by Complainant and provided copies of same. Complainant confirmed that the money and coins were received.

Recommendation: Dismiss.

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

2. **2013010971**

License #:

First License Obtained: 6/16/81

License Expiration: 7/31/97

Type of License: Firm

History: None

Complainant alleges that Respondent (firm) advertised a machinery consignment auction on Auctionzip and Craigslist, and Complainant copied the text of the advertisements into the online complaint. Complainant states that the Craigslist advertisement only contains two (2) telephone numbers and no names. Complainant states that the Auctionzip ad contained, as contacts, the names of three (3) individuals and telephone numbers but no firm name or number on either

advertisement. Two of the individuals who are listed as contacts appear to be unlicensed. The third appears to be a licensee who is the owner and principal auctioneer of a licensed firm.

It was intended that a complaint be opened against the firm who was holding the auction whose advertisements were referenced by Complainant. A response was received from an individual stating that he does not know any of the people listed in this complaint and does not have any knowledge of the activity listed in the complaint. The individual states that he has an active license with an active firm, and the Respondent which this complaint was mistakenly opened against was the individual's firm many years ago, which is now expired. The individual's expired firm had a firm license number which was the same number as the auctioneer license number of the above referenced individual who was the owner/principal auctioneer of the firm who appears to have placed this advertisement. Based on examining the complaint and response, this complaint was inadvertently opened against the wrong Respondent based on a mix-up in license numbers. A complaint has been opened against the correct auction firm related to the advertisements referenced within the complaint.

Recommendation: Dismiss.

DECISION: Mr. Cunningham made a motion to accept the recommendation of legal counsel, seconded by Mr. Colyer. MOTION CARRIED.

3. **2013011541**

License #:

First License Obtained: 10/20/09

License Expiration: 10/19/15

Type of License: Firm

History: 1

Complainant attended an auction for farm land property that was advertised by Respondent (firm) as an absolute auction. Complainant states that, before the auction began, Respondent told attendees that it was a confirmation sale and the advertisement had included a mistake. Complainant states that only one bid was made during the auction over the phone, but the bid was not accepted by the owner because it did not reach the reserve. Complainant states that after the auction was over, Respondent's principal auctioneer approached Complainant about buying a tract of the property. Complainant alleges that this was a sale agreement and not auction proceedings. Complainant alleges that Complainant and Respondent came to an agreement about price and the back of the contract described where the property line was to be located. Complainant alleges a contract was signed and was contingent on when the land was surveyed if property line would be as Complainant had requested. Complainant states that Complainant gave Respondent a deposit check with the agreement that once the property was surveyed and the property line could not be worked out as Complainant wanted it, then deal would be off and the deposit money would be returned. Complainant states that Complainant did sign a contract but was not given a copy immediately. Complainant went back to property a few days later and was told by a neighbor that fencing around the property was not included in the sale because the fence was actually put on the neighbor's property and did not belong to the owner. Complainant alleges that Complainant was told that the fencing was part of the owner's property by Respondent. Complainant alleges that the surveying pins on the property did not match what he

was told by Respondent. Complainant states that Complainant confronted Respondent with inconsistencies concerning the property. Complainant states that Respondent admitted the inconsistencies and states that Respondent claimed to have forgotten about these details. Complainant states, at that time, Complainant asked Respondent for Complainant's deposit money to be returned. Complainant states that Complainant was told by Respondent that Respondent could not return the deposit check because the owner of the property told him not to do so. Complainant alleges that Respondent and the property owner misrepresented details of the auction in advertisements and misrepresented details of the property that was to be auctioned. Complainant also attached a copy of a civil complaint which Complainant filed against the property owner, Respondent's principal auctioneer, and Respondent.

Respondent submitted a response through its attorney stating that the auction started with one bid and after several minutes of requesting bids, Respondent received no higher bids, therefore the reserve had not been met. With the owner's consent, Respondent then offered to parcel the property for the purpose of trying to auction off at least part of the property, but there were no bids made and the auction was adjourned with Respondent's principal auctioneer offering for attendees to meet with him personally later if they were interested in making a bid. Respondent states that during the auction, it was made clear that any sale was subject to owner confirmation. Respondent states that, with regard to the advertisement referenced by Complainant listing the auction as absolute, said advertisement was never approved by Respondent, and the newspaper wrote a letter indicating that the running of the ad was due to the newspaper's inadvertence. Respondent states that after the initial open bidding session was adjourned, Complainant approached Respondent about purchasing a smaller tract of land. Respondent states that, after discussions between Complainant, the property owner, and Respondent's principal auctioneer, that Complainant and the property owner entered into a Real Estate Auction Purchase and Sale Agreement, and Complainant gave a "non-refundable deposit." Respondent states that Complainant has participated in multiple auctions and is aware that virtually every auction sale includes a non-refundable deposit and in fact has purchased property from Respondent at auctions in the past. Respondent states that the property was surveyed twice to come to the agreement of what Complainant wanted as far as the property line. Respondent states Respondent and the property owner met all terms of the contract, but Complainant was not satisfied with the surveys and refused to finalize the purchase. The response states that Respondent's principal auctioneer never told Complainant that the deposit money would be returned to Complainant if the agreement was not finalized. The response states that Respondent and the property owner complied with all obligations in relation to the sale, and Complainant refused to abide by the sale agreement.

Currently, there is active litigation between the parties regarding the subject matter of this complaint. Based on the fact that this matter is currently in litigation, it is likely that more information will be uncovered through the course of the civil litigation which could be pertinent to the Commission's determination of this matter.

Recommendation: Consent Order for litigation monitoring.

DECISION: Mr. Phillips recused himself from discussing or voting on this matter. Mr. Cunningham made a motion to accept the recommendation of legal counsel, seconded by Mr. Colyer. MOTION CARRIED.

4. 2013011581

License #:

First License Obtained: 10/15/93

License Expiration: 4/30/13

Type of License: Firm (CLOSED)

History: None

Anonymous Complainant states that Respondent (firm – closed May 2013) was owned by an auctioneer who was also Respondent's principal auctioneer. The anonymous complainant states that the auctioneer who owned Respondent died in mid-May 2013 (approximately two (2) weeks before the complaint was filed at the beginning of June), and, since that time, an individual with no license of any kind is conducting auctions at Respondent's location. The anonymous complainant provided nothing but a name for the unlicensed individual (no address), and no advertisements for any auctions.

A complaint was opened against Respondent (the closed firm) and a copy sent to the mailing address on file with TAC, which was returned as "unclaimed" and "unable to forward." Upon reviewing this file for presentation to the Commission, legal counsel attempted to obtain information about any auctions taking place at Respondent's facility and located one Auctionzip ad for an auction taking place at Respondent's previous physical location. Said advertisement featured a sale which was to be conducted by a licensed auctioneer who was the owner and principal auctioneer of a licensed firm (all names and licensing information was contained on the advertisement). Legal counsel contacted the licensed auctioneer of the advertisement who stated that it was his understanding that some people (he did not know who) tried to keep the auction house alive shortly after Respondent's owner/auctioneer passed away, but those individuals were no longer there. The auctioneer states that this is no longer occurring because someone rented the building and this auctioneer plans to hold weekly auctions at the location, posting that auctioneer's license and firm license and not utilizing Respondent's license. There does not appear to be any violation on the part of this Respondent (which is a closed firm) that this complaint was opened against, and there does not appear to be sufficient information at this time to determine who, if anyone, was conducting auctions at the facility without licensure in May.

Recommendation: Dismiss.

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

5. 2013011591

License #:

First License Obtained: 9/15/94

License Expiration: 1/31/15

Type of License: Auctioneer

History: None

Complainant states that Complainant purchased a storage building on Respondent's firm's online auction site (Respondent is the firm's principal auctioneer). Upon arrival to pick up the building,

Complainant realized the storage building was firmly on a foundation and could not be removed. Complainant states that Complainant paid for a building which Complainant could not remove. Shortly after the complaint was filed and before a response was received, Complainant followed up, stating that Respondent had refunded Complainant's money. Complainant states that Complainant did not realize that Respondent would refund Complainant's money when the complaint was filed, and Complainant feels this issue has been resolved.

Respondent states that Complainant phoned Respondent about picking up the building after Complainant won the online bid for the storage building. Respondent states that Complainant asked for more pictures of the storage building so Complainant could figure out how to disassemble the building for removal. Respondent states that Respondent sent Complainant six (6) additional photos of the storage building. Respondent states that Complainant arrived and was unprepared to remove the building. Respondent states that Complainant paid for the building and left it. Respondent states that Respondent has spoken with Complainant and has resolved the matter. There does not appear to be a violation by Respondent.

Recommendation: Dismiss.

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

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.

- 1. 2010031561 (Unlicensed)**
- 2. 2010031562 (Unlicensed)**

January 2011 Meeting:

TAUC complaint filed after unlicensed activity discovered during separate, unrelated investigation. Investigator interviewed Respondent firm owner at Respondent firm auction house and she admitted that she had been operating an auction every Saturday night for the two and a half months prior to her formal response to this complaint. Respondent firm owner stated she operated under firm license of a third party and using a licensed fourth party as the actual auctioneer. The licensed third party firm owner was interviewed and he told investigator that he had only permitted Respondent firm owner to operate using his license for a single auction. The fourth party auctioneer has not been licensed since 2007.

Evidence of Respondent firm auction house exists in federal and state revenue filings, business license tax, and bank records – all of which identify Respondent firm owner and list the word “auction” in its firm name.

Respondent has also thusfar failed to answer complaint, though she has cooperated with investigators.

Recommendation: *Consent order for each Respondent agreeing to a civil penalty of \$1000 for performing auctions without a firm license (62-19-102) and authorize for hearing.*

DECISION: *The Commission voted to accept the recommendation of legal counsel.*

After the Commission authorized the aforementioned Consent Orders, the Consent Orders were sent via certified mail to the address contained within the revenue filings. Said Consent Orders were returned with the notation of “not deliverable as addressed.” A second attempt was made to send the Consent Orders to an address which appears to have been utilized by the Respondents at the time the original complaint was filed, which was also returned with the notation “not deliverable as addressed.” Therefore, the department has been unable to locate these unlicensed Respondents.

New Recommendation: Flag and Close.

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

Mr. Phillips raised some concerns regarding Consent Orders and whether or not a Respondent may appear before the Commission in response to a complaint. Ms. Cropp advised the identity of a Respondent remains anonymous unless formal proceedings ensue to prevent bias. She advised she would provide a blank draft of a Consent Order for the Commission’s review at the next meeting.

3. **2011018941**
License #: Unlicensed
First License Obtained:
License Expiration:
Type of License:
History: 3

4. **2011018961**
License #: Unlicensed
First License Obtained:
License Expiration:
Type of License:
History: 3

5. **2011020281**
License #: Unlicensed
First License Obtained:
License Expiration:
Type of License:
History: 3

October 2011 Meeting:

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

Authorize a Consent order for \$2000 civil penalty each for violations of Tenn. Code Ann. Section 62-19-102(3) for a total civil penalty of \$6,000.

DECISION: The Commission voted to issue a Consent Order to cease and desist all unlicensed activity and to assess a civil penalty of \$7,500.

After the Commission authorized the aforementioned Consent Orders, the Consent Orders were sent via certified mail to the address where the complaints were sent. Said Consent Orders were returned and service was not achieved. Based on research of a possible alternate address for this unlicensed Respondent, a second attempt was made to send the Consent Orders, which was returned with the notation “vacant – unable to forward.” Therefore, the department has been unable to locate this unlicensed Respondent.

New Recommendation: Flag and Close.

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

Update on Proposed Rules -

Ms. Cropp presented a draft of the proposed rules in the form of a Notice of Rulemaking Hearing. She requested the commissioners review the draft before the next meeting in preparation for a discussion and advised the tentative date for the hearing is February 3, 2013.

Reciprocal Agreement Discussion & Present Proposed Renewal of Reciprocity with Ohio –

Ms. Cropp presented copies of two (2) reciprocal agreements proposed by the State of Ohio. She advised the first agreement would allow reciprocity between Ohio and Tennessee for both auctioneers and apprentices; and the second document would allow reciprocity between Ohio and Tennessee for auctioneers only. After some discussion, Mr. Colson made a motion to accept the first agreement that includes both auctioneers and apprentices. Mr. Colyer seconded the motion. **Vote: 4-yes (Morris, Colson, Colyer and Cunningham) & 1-no (Phillips). MOTION CARRIED by a vote of 4-1.**

The Commission recessed for break at 10:25 a.m. and reconvened at 10:35 a.m.

ADMINISTRATIVE REPORT – KIMBERLY WHALEY, ACCOUNTANT 3

Complaint Comparison Report - Ms. Whaley presented a comparison of the complaints pending in October 2012 to those currently pending.

Budget Report – Ms. Whaley presented a copy of the third run of the budget closing for the 2012/2013 fiscal year. She advised the final closing report should be available and presented by someone from administration at the next meeting.

NALLOA Information – Ms. Whaley presented a recent article regarding the National Auctioneer License Law Officials Association (NALLOA) for the Commission's reference. Chairman Morris advised he recently attended the national conference and NALLOA is trying to generate more participation from other states in an effort to standardize the auction industry.

UNFINISHED / NEW BUSINESS – JEFF MORRIS, CHAIRMAN


Chairman Morris inquired as to who would be replacing Ms. Hancock as Executive Director. Ms. Whaley advised that the Assistant Commissioner is currently assessing the situation. She further advised Ms. Lockhart and other staff members are still in place and could be called upon as usual or the Commissioners may contact Ms. Whaley or Assistant Commission Bill Giannini if necessary.

Mr. Hanson addressed the Commission and asked for their opinion as to whether or not a resident of Tennessee could serve as the sponsoring auctioneer for an apprentice residing in Canada. Ms. Cropp advised Rule 0160-01-12(5) states, "All auctioneers shall reside in the same state as his/her apprentice auctioneer(s). However, in appropriate cases, upon good cause being shown, the Commission may waive this rule." Ms. Cropp recommended the potential applicant submit a written explanation of such cause and request the Commission's review. Mr. Hanson advised the person in question has enrolled for an upcoming apprentice class and wanted to pose the question to prevent any unnecessary expense since the matter would not typically be presented for the Commission's consideration until an application for licensure is submitted after successful completion of the required education and exam. The general consensus of the Commission was in opposition of such an arrangement based on the information as presented.

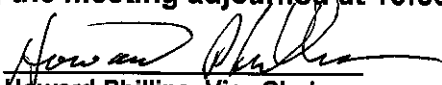
Being no further business to discuss, the meeting adjourned at 10:55 a.m.



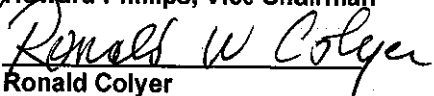
 Jeff Morris, Chairman



 Bobby Colson



 Howard Phillips, Vice Chairman



 Ronald Colyer

 Gary Cunningham