



TENNESSEE AUCTIONEER COMMISSION
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831

**Board Meeting Minutes for February 13, 2017
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on February 13, 2017 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Phillips called the meeting to order at 9:02 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Howard Phillips, Ronald Colyer, Jeff Morris, John Thorpe, and Adam Lewis.

BOARD MEMBERS ABSENT: None.

STAFF MEMBERS PRESENT: Sarah Mathews, Glenn Kopchak, Cody Kemmer.

ROLL CALL/NOTICE OF MEETING

Mr. Phillips called the meeting to order with Ms. Mathews taking roll. Ms. Mathews then read the notice of the meeting into the record as follows: "Notice of the February 13, 2017 meeting of the Tennessee Auctioneer Commission was posted to the Auctioneer Commission's website on February 9, 2017."

AGENDA

Mr. Morris motioned to adopt the agenda as written. This was seconded by Mr. Colyer. The motion carried by unanimous vote.

MINUTES

Mr. Morris made a motion to adopt the minutes from the December 5, 2016 meeting as written. Mr. Colyer seconded. Mr. Thorpe, the Commission's newest member, abstained from voting on the grounds he had not been present for the meeting. Among those remaining, the motion passed unanimously.

EDUCATION REPORT

The Commission reviewed the response it had requested from ATBetterCE, LLC., an online course provider operating out of Texas. At the December meeting, Mr. Morris had expressed concerns that the courses it had submitted for approval were too broad in scope and had requested further information regarding the instructors and their qualifications pertaining to the continuing education of auctioneers. Mr. Morris remained unsatisfied by the provided response, and made a motion to deny the proposed courses. Mr. Colyer offered a second, and the motion to deny passed unanimously.

The Commission then reviewed a report from the Nashville Auction School, informing them of upcoming seminars the NAS was planning to hold. Lastly, the Commission reviewed several courses contained in an

upcoming seminar from the Missouri Professional Auctioneers Association, but determined more information would be needed for how these courses would specifically benefit Tennessee auctioneers. At Mr. Phillips' direction, the Commission abstained from a vote until more information could be provided.

DIRECTOR'S REPORT

Ms. Mathews informed the Commission of the absence of its Executive Director, Roxana Gumucio, and introduced Glenn Kopchak as the new Assistant Director. Mr. Kopchak then presented the director's report in Ms. Gumucio's absence. He presented the current monthly expenditures and projected budget.

The Commission then reviewed a request submitted by the Alabama State Board of Auctioneers regarding their planned revisions to the process granting reciprocal licensure between the two states. The Commission found no concerns with the new proposal, and Ms. Mathews, acting as legal counsel for the Commission, concurred. Mr. Lewis motioned to approve the agreement as written, and Mr. Thorpe provided a second. The motion passed unanimously.

APPLICATION REVIEW

The Commission reviewed the case of Mr. Joseph Stellino, an auctioneer who had been licensed in Florida but moved to Tennessee and allowed his Florida license to lapse. Mr. Stellino did not realize that without his license active in another state he would be subject to apprenticeship requirements. Mr. Stellino requested that the Commission waive those requirements based on his previous history of licensure in Florida. Ms. Mathews raised a concern that the Commission likely did not have the authority to waive the statutory requirements in this instance.

LEGAL REPORT

1. 2016064781

Type of License: Unlicensed

History: None

2016064872

Type of License: Unlicensed

History: None

Anonymous complaint filed with a copy of an advertisement of a personal property auction. The advertisement has the name of firm and the auctioneers, but also has the names of the listing agents for the Estate.

Respondents who are the real estate agents states they were not aware that they could not be on an advertisement concerning an auction when they were and are the listing agents.

There were licensees listed as doing the auctions and the names of the two respondents appear only to reflect that through this firm, which is an auction firm and real estate firm, the two respondents are the listing agents for the real property.

Recommendation and Reasoning: Close and dismiss. Licensed auctioneers and firm are the business that is handing the auction and respondents do not appear to be involved at all nor were they advertising.

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

2. 2016072161

First License Obtained: 2/27/06

License Expiration: 10/2/18

Type of License: Auctioneer

History: None

This complaint was opened against Respondent following as a result of a previous complaint opened against a company. The Respondent is licensed but does not hold a broker or affiliate's broker license as required when the auction involves real property as this auction did.

Recommendation: \$1,000.00 civil penalty for violation of T.C.A. 62-19-113(10).

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

3. 2016060841

First License Obtained: 2/28/96

License Expiration: 8/5/17

Type of License: Real Estate-Principal Broker

History: None

This matter was referred from TREC. Complainant states Respondent broke into Complainant's home, using a 4 wheeler to avoid gate and that these actions were caught on camera. Complainant states home is listed and that Respondent has no right to be attempting to sell.

Respondent states that a year earlier Respondent had been preparing for estate sale including property in question but prior to auction, it was sold to a group who buys and refurbishes. Respondent states Respondent was told by that buyer that Respondent could sell the property. Property was in a remote location and Respondent was given keys and had shown property on other occasions. Respondent states Respondent received a call from a party interested in development and Respondent gave directions to that party with instructions to call if interested. Respondent states party called and said there was a gate on the property which was news to Respondent as Respondent states it had been two to three months since being on the property. Respondent told potential buyer that if 4 wheeler could go around gate Respondent would access property. Respondent and buyer met at property and Respondent states that keys would not fit front door so Respondent proceeded to basement and used key, walked to back door and used key and parties viewed property. Then all left and home was locked. Respondent states Respondent did not know that the property had already been sold. Respondent met with local detective and Complainant and explained the situation and gave Complainant keys and Complainant told Respondent that Complainant had reported to TREC. Respondent states that had Respondent known home had been sold, this incident would not have occurred. Complainant states Respondent was very apologetic.

Recommendation and Reasoning: This matter is also a complaint in TREC. Here, Respondent was not acting in licensee role in this incident and did not use or representing self in auctioneer role. Therefore, recommendation is to dismiss.

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

4. 2016072571

First License Obtained: 3/11/14

License Expiration: 3/10/16

Type of License: Gallery

History: None

Complainant states Complainant used Respondent for auction and was paid in a check that bounced. Requests were made to Complainant for copies of contract, cancelled check. Complainant provided copy of agreement shows another location and license number for same name, but the check in question was from this location and license number. The date in question for the activity is after the expired date of this license and apparent closing of this business at address stated. It would appear that perhaps this was opened against the wrong Respondent and therefore that Respondent has not had a chance to respond to the allegation. Each location has different owner.

Respondent's mail has been returned and license is expired.

Recommendation and Reasoning: Close and flag. Open complainant against correct Respondent and send for response.

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

5. 2016063111

First License Obtained: 6/3/94

License Expiration: 8/12/18

Type of License: Auctioneer

History: None.

(Failure to Remit Proceeds)

This complaint was filed by the consumer. Complainant alleges that she contacted the Respondent to sell some of her household good items after deciding to move into an assisted living community.

The Complainant states that the Respondent did not make a list of the items he took from the house to be auctioned. Also, that he didn't communicate a price at which he planned on listing the property at. Finally, when the property did sell, the Respondent failed to tell the Complainant what the items sold for and struggled to obtain the proceeds. Some sale proceeds were, apparently, received, but nothing legible was provided to explain which items brought what prices.

The Respondent did not respond to the complaint.

Reasoning and Recommendation: Counsel recommends the authorization of a **Consent Order with a \$500.00 civil penalty** in regards to T.C.A. § 62-19-112(b)(4), which addresses the failure of a licensee to account for or remit money belonging to others in the licensee's possession.

Decision: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty multiplied by the number of items that the Respondent sold for the Complainant.

6. 2016064361

First License Obtained: 4/23/04

License Expiration: 4/30/12

Type of License: Gallery

History: 2012 Advertising Complaint (Advertising violation)

This complaint was filed anonymously. The complaint alleges that the licensee advertised an auction (via newspaper) without listing a name, location or auctioneer's license number. The Complainant did attach a copy of the advertisement and those items were, in fact, missing. Additionally, another internet advertisement lists the same auction; however, it lists an auctioneer's (apprentice) license number and shop license number that are expired with the Auctioneer's Commission.

The Respondent responded by explaining that the newspaper ad was placed in the paper by a consignor without their knowledge. Regarding the internet ad, the Respondent explains that the expired auctioneer's license (apprentice) belongs to her. Her husband, however, still maintains a current one. According to the Respondent, she and her husband are not conducting auctions on a regular basis and are changing careers.

Reasoning and Recommendation: Counsel recommends the authorization of a **Letter of Warning** in regards to Rule 0160-01-.12(7), which addresses the need for an apprentice auctioneer to clearly identify their name, license number and the name and license number of the sponsor firm.

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

7. **2016064481**

First License Obtained: 4/2/98

License Expiration: 12/5/18

Type of License: Auctioneer

History: None

(Failure to Remit Proceeds)

Complaint was filed by the executor of an estate who consigned goods to the Respondent for sale. The Respondent came to the decedent's home and removed the items to be consigned. After three (3) months the Complainant had not heard from the Respondent.

Respondent explains that in the process of moving his business, he had only one address and phone number for the Complainant. Once the complaint was received, the Respondent managed to find a good phone number and contacted the Complainant. The Respondent paid the Complainant and by all accounts the Complainant is now satisfied.

Reasoning and Recommendation: Counsel recommends this matter be **dismissed**.

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

8. **2016066901** History: None

(Unlicensed Activity)

Complaint is filed anonymously. Complaint alleges that Respondent is advertising and operating auctions without an Auctioneer's license. The Respondent has been investigated by TDCI while operating under a different name. The Commission previously authorized a Consent Order and \$1,000.00 civil penalty. Respondent did not respond to the complaint.

Reasoning and Recommendation: Counsel recommends the authorization of a **Consent Order with a \$1,000.00 civil penalty** in regards to T.C.A. § 62-19-125(a), which addresses the requirement for a Gallery license.

Decision: The Commission voted to authorize a Consent Order with a \$1,000 civil penalty multiplied by the number of items that were sold at the Respondent's auction with a maximum of \$5,000.

9. 2016074061

First License Obtained: 1/20/89

License Expiration: 11/30/18

Type of License: Firm

History: None

(Alleged Misrepresentation)

Complaint is filed by a consumer who states the house he bought from an auction was staged by the Respondent to deceive prospective buyers. Complainant also alleges the Respondent made false and misleading statements regarding the house. Complainant states that during the auction, the Respondent stated the house had mold, but that the mold had been treated. Respondent also allegedly stated the home's floor joists had been damaged and a repair of the joists would be approximately \$6,500.00. Complainant states the Respondent explained that the home had been inspected for termites, the home had no termites and a new vapor barrier was installed in the crawlspace.

After the sale, Complainant states the neighbor told him the water heater in the attic burst and the home suffered extensive water damage, which caused the mold and floor rot. When Complainant contacted Respondent to get the contact information for the contractor who quoted the \$6,500 for repairs, he learned that individual was unlicensed. Servpro quoted Complainant \$3,329.22 to treat the mold and Handipro quoted Complainant \$25,617.07 (\$10,867.07 for materials and \$14,750.00 for labor) to perform remedial measures (remove entire floor system, remove dry rotted joists which requires removing hardwoods and baseboards) and stated the house had the worst case of dry rot observed in 35 years of construction business; Complainant attached these quotes with the complaints.

Complainant refused to close on the property and attended the second auction conducted by Respondent to resale the house, and Respondent made the same representations he made in the first auction regarding the condition of the property, and only amended the offering to say "sold as is" on the flyer. Complainant retained an attorney who sent Respondent a demand letter for the \$7,400 earnest money that Complainant paid. Complainant states he has entered into litigation with Respondent. In his response, Respondent stated information was openly shared with prospective buyers and clearly announced at the auction and prospective buyers had the chance to perform inspections prior to the day of the auction. Respondent states mold treatment was completed prior to the sale. Respondent provided the quote for \$6,500 to sister in approximately 70 x 8 floor joists when severe decay has compromised the floor system, with his response, but did not provide evidence that the individual making the quote was licensed. Respondent also pointed out that the auction purchase and sale agreement that Complainant executed states if the purchaser defaults, the earnest money will be forfeited.

Counsel reviewed the auction contract, which Complainant signed, and it states that "on default of the buyer, seller may retain the earnest money..."

Reasoning and Recommendation: Counsel recommends this matter be **dismissed**.

Decision: The Commission voted to authorize a Litigation Monitoring Consent Order.

10. **2016075171**

First License Obtained: 12/11/84

License Expiration: 5/31/17

Type of License: Firm

History: 2001 (Not properly licensed to auction real property/Closed with letter of instruction)
(Alleged Misrepresentation)

Complaint is filed by a consumer regarding the auctioning of a car. The Complainant states he found the car listed on the internet to be auctioned on December 10, 2016. The Complainant called the Respondent to get more information about the car. He claims that he was referred to another auctioneer that worked for the Respondent who was more familiar with the vehicle. This auctioneer and the Complainant spoke prior to the auction and numerous emails and pictures of the subject vehicle were sent to the Complainant. On the morning of the auction, the auctioneer called the Complainant to ensure he was ready to bid. The Complainant states that he waited for several hours by the phone, waiting for the auctioneer's call.

The Complainant explains that there was no misunderstanding on his part that phone bids were acceptable. After days of emails and phone calls, the Complainant states he was ignored.

In the response, the Respondent claims that his auctioneer handled the matter, not him directly. His auctioneer also sent in a response claiming that the Complainant did call in before the auction, inquiring about the car, and that he sent him a number of pictures via email. However, he claims that had a 3rd auctioneer called the Complainant when the car was on the bidding block, but that the Complainant never bid. The auctioneer states that the phone service is bad in their location.

In rebuttal to the Respondent's response, the Complainant states the Respondent and his auctioneer are simply lying. There is the possibility that both parties were waiting for the other to call and, therefore, the auctioning of the car occurred without the Complainant's involvement.

Reasoning and Recommendation: Facts of the case are basically "he said, she said." There is the possibility that both parties were waiting for the other to call and, therefore, the auctioning of the car occurred without the Complainant's involvement. Alternatively, there is also the possibility that the Respondent simply had a better bid and did not call the Complainant. The Complainant is adamant he was lied to. If the Commission opts to move forward, recommend a **Consent Order with a civil penalty of \$1,000.00 and authorization for a formal hearing** (violation of T.C.A. 62-19-112(b)(2). Otherwise, recommend dismissal.

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

11. **2016075931**

First License Obtained: 6/7/06

License Expiration: 6/6/18

Type of License: Auctioneer

History: 2012 (Consumer did not receive a title for a vehicle bought at auction/Closed with no action)

(Alleged Misrepresentation)

Complaint is filed by the consumer regarding the auctioning of a car. The Respondent worked as an auctioneer in the same transaction giving rise to the complaint above (2016075171). The Complainant states he found the car listed on the internet to be auctioned on December 10, 2016. The Complainant called the Respondent to get more information about the car. He claims that he was referred to another auctioneer that worked for the Respondent and was more familiar with the vehicle.

This auctioneer and the Complainant spoke prior to the auction and numerous emails and pictures of the subject vehicle were sent to the Complainant. On the morning of the auction, the auctioneer called the Complainant to ensure he was ready to bid. The Complainant states that he waited for several hours by the phone, waiting for the auctioneer's call.

The Complainant explains that there was no misunderstanding on his part that phone bids were acceptable. After days of emails and phone calls, the Complainant states he was ignored. In the response, the Respondent claims that his auctioneer handled the matter, not him directly. His auctioneer also sent in a response claiming that the Complainant did call in before the auction, inquiring about the car, and that he sent him a number of pictures via email. However, he claims that had a 3rd auctioneer called the Complainant when the car was on the bidding block, but that the Complainant never bid. The auctioneer states that the phone service is bad in their location.

In rebuttal to the Respondent's response, the Complainant states the Respondent and his auctioneer are simply lying. There is the possibility that both parties were waiting for the other to call and, therefore, the auctioning of the car occurred without the Complainant's involvement.

Reasoning and Recommendation: Facts of the case are basically "he said, she said." There is the possibility that both parties were waiting for the other to call and, therefore, the auctioning of the car occurred without the Complainant's involvement. Alternatively, there is also the possibility that the Respondent simply had a better bid and did not call the Complainant. The Complainant is adamant he was lied to. If the Commission opts to move forward, recommend a **Consent Order with a civil penalty of \$1,000.00 and authorization for a formal hearing** (violation of T.C.A. 62-19-112(b)(2)). Otherwise, recommend dismissal.

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

12. 2016056321

First License Obtained: 03/29/2006

License Expiration: 03/28/2018

Type of License: Firm/Gallery

History: None

This complaint was filed by a consumer and alleged that the Respondent overruled this bid and sold the diamond to the lower bidder. Complainant alleges that on July 30, 2016, she attended an online auction in Tennessee. The following bids occurred on the 8.03 carat diamond:

Bidder #1 at \$56,000 + 22% Buyers Premium = \$66,080

Complainant at \$58,000 + 22% Buyers Premium = \$70,760

Complainant alleges that the Respondent owner said he overruled her final bid of \$70,760 and sold the diamond to Bidder #1. Respondent owner told Bidder #1 to call Complainant that he was the other bidder and Complainant purchased the diamond from Bidder #1 for \$75,000. Complainant states that Respondent provided bidder #1 with Complainant's contact information. Complainant believes Respondent and bidder #1 conspired against her.

Respondent stated the following in response to the complaint:

Complainant was not an approved bidder at the auction and consequently, none of his bids were registered.

Complainant submitted his absentee bid form after the 12:00 noon deadline of Friday, July 29th. It was submitted via email at 9:28 p.m. on July 29th.

Complainant's absentee bid form was incomplete, no credit card information was provided.

Complainant was identified in Respondent's registration records as someone Respondent no longer conducts business with, due to an incident in 2013.

The July 30th auction had over 4500 approved bidders, which included live, absentee, internet and phone bidders.

Following the sale, Complaint called more than once and complained he should have been the successful bidder and stated he wanted to buy the ring. Respondent states that per policy, Respondent owner did not release Bidder #1's contact information. Respondent owner contacted Bidder #1 after the sale and told him that Complainant expressed interest in purchasing the ring and provided Bidder #1 with Complainant's contact information.

Complainant stated in response to the Respondent's response that she has never attended one of the Respondent's auctions before and she provided him with excellent references prior to the auction so he could accept her payment by bank-wire. Complainant states that his reputation is flawless and he can supply multiple references.

Previous Reasoning and Recommendation: Counsel recommends this matter be **dismissed** due to no violations on behalf of the Respondent.

Previous Decision: The Commission voted to keep this matter open pending further investigation by Counsel.

Information Requested by Commission:

Can the Respondent provide proof that the Complainant was not registered for the sale?

Can the Respondent provide a copy of the email and proof of the registration deadline being missed?

Can the Respondent provide the Complainant's absentee bid form and how it was incomplete?

New Information:

The Respondent provided proof that the Complainant was on a "Blocked Bidder List" in the form of a screen shot from the list. Complainant is clearly listed.

Complainant's Absentee/Phone Bid Form came in AFTER the 12:00 noon deadline of Friday, July 29th. The form was submitted by fax at 6:09 PM on July 29th. Respondent provided a copy of the fax delivery information. Additionally, the Respondent provided the email where the Form was delivered at 9:28 PM

on July 29th. The Respondent also provided a link to their website where it explains “all Absentee and phone bids will not be accepted after 12pm Eastern on the Friday prior to the sale.”

The Respondent provided the Complainant’s Absentee/Phone Bid Form. The bottom portion where the bidder would fill in the credit card information was left blank (Visa/AMEX/Discover, V-Code and Expiration date).

Reasoning and Recommendation: Counsel recommends this matter be **dismissed**.

New Decision: The Commission voted to accept the recommendation of legal counsel.

NEW BUSINESS

The Commission discussed how to recognize the efforts of previous member, Bobby Colson, whose term had recently concluded. They agreed that he should be provided with a plaque for his distinguished service, provided the department could allocate the funds.

Ms. Mathews provided a request for information that she had received in conjunction with the Tennessee Alcoholic Beverage Commission. A package store was interested in holding a silent auction, which would include alcoholic items, and wanted to ensure they would not violate any rules in doing so. The Commission agreed that auctioneers could not participate in the sale of alcohol, however since the sale would be the store’s own property to begin with an auctioneer would likely not be necessary.

Mr. Phillips congratulated the Commission’s new member, Mr. Thorpe, who provided a brief introduction to himself and his history of auction work in Fayetteville.

Mr. Lewis made a motion to adjourn, which Mr. Colyer seconded. There being no other new business, Mr. Phillips concluded the meeting at 10:20 am.