



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

**Board Meeting Minutes for May 20, 2019
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on May 20, 2019 in the first floor conference room of Davy Crockett Tower in Nashville, Tennessee. Mr. Thorpe called the meeting to order at 9:00 a.m. and the following business was transacted:

BOARD MEMBERS PRESENT: Jeff Morris, John Thorpe, Ronald Colyer, Randy Lowe

BOARD MEMBERS ABSENT: Adam Lewis

STAFF MEMBERS PRESENT: Glenn Kopchak, Anna Matlock, Denard Mickens

ROLL CALL/NOTICE OF MEETING

Mr. Thorpe called the meeting to order at 9:00 a.m. with Director Kopchak taking roll. Director Kopchak then read the notice of the meeting into the record as follows: "Notice of the May 20, 2019 meeting of the Auctioneer Commission was posted to the website on May 13, 2019."

AGENDA

Mr. Morris made a motion to adopt the agenda as written, which was seconded by Mr. Colyer. The motion carried by unanimous vote.

MINUTES

Mr. Morris made a motion to adopt the minutes from the February 25, 2019 meeting as written. Mr. Lowe seconded. The motion carried by unanimous vote.

DIRECTOR'S REPORT

Budget

Director Kopchak reviewed the overall expenditures for the months of January through March 2019 noting that there were some spikes in expenses, particularly the legal costbacks in February 2019, which was due to an increase of litigation work. Director Kopchak stated that the budget is in good fiscal health and is expected to remain in surplus.

Education Review

Mr. Colyer made a motion to approve the three (3) hours of CE credit for the summer conference that is being presented by the TN Auctioneer Association. This motion was seconded by Mr. Lowe. The motion carried by unanimous vote.

Instructor Review

Mr. Morris made a motion to approve John Bobich as the new instructor for the ATF Laws and Regulations class for the Nashville Auction School. This motion was seconded by Mr. Colyer. The motion carried by unanimous vote.

Newsletter

Mr. Lowe made a motion to approve the newsletter as written. This motion was seconded by Mr. Morris. The motion carried by unanimous vote.

CE Seminar Dates

Mr. Lowe made a motion to approve the CE seminar dates as written. This motion was seconded by Mr. Morris. The motion carried by unanimous vote.

LEGAL REPORT (Presented by Denard Mickens)

1. **2019005221**
First License Obtained: 10/11/2006
License Expiration: 10/10/2020
Type of License: Firm
History: None

Complainant purchased a gumball machine during an online auction. Although pictures of the item were posted, there was no description beyond "AMERIVEND TABLETOP GUMBALL MACHINE MEASUREMENT: 9" RD X 17" H." When the Complainant received the item, they discovered it was made of plastic and were very unhappy. Complainant contacted the auctioneer and was told, "what you buy is what you get." Complainant is unhappy that there was no opportunity during the online auction to ask questions about the item. Complainant feels that the auctioneer misrepresented the item and failed to disclose an honest description. Complainant would like to be reimbursed.

Respondent replied that all items were listed online for 12-14 days prior to the auction, and were available to view in person. Additionally, the auction house's phone and email were posted so that customers could ask questions. Although the auctioneer is not available to answer questions during the auction, staff on site can answer phone calls and questions. There is no record of Complainant inquiring about the item by visit, phone, or email before the auction. Finally, Respondent has the following policy:

NOTICE
[RESPONDENT] WILL ALWAYS
DESCRIBE ALL LOTS
TO THE BEST OF OUR ABILITY. HOWEVER,
[RESPONDENT] MAKES
NO CLAIM WHATSOEVER AS TO

THE PROVENANCE OR AUTHENTICITY
OF ANY LOT.
ALL LOTS SOLD AS IS – WHERE IS.
ABSOLUTELY NO WARRANTY
EITHER EXPRESSED OR IMPLIED.

In Complainant's rebuttal, they state that this policy is posted at the auction house and not available to the online bidder. Complainant also reiterates that that they feel the item was not accurately described because Respondent only posted the manufacturer and item dimensions. Complainant feels this misleads online bidders.

Counsel believes Complainant had multiple opportunities to ask questions about the item before purchasing it. Additionally, Counsel believes that it is incumbent upon the purchaser to ask those questions before buying.

Recommendation: Dismiss.

Decision: The Commission voted to accept Counsel's recommendation.

RE-PRESENT

- 2. 2017074811**
First License Obtained: 12/8/2006
License Expiration: 12/7/2018
Type of License: Firm
History: Final Order with \$500 civil penalty in 2014
Final Order with \$500 civil penalty in 2016

Complainant states he participated in an online auction on September 21, 2017, held by Respondent to purchase land adjoining land Complainant owns. During the last few hours of the auction, Complainant noticed another bidder who began to rapidly bid on the same parcels Complainant was bidding on, and rapidly bid up the price but did not appear to be attempting to place a winning bid which drew Complainant's attention. After a considerable amount of legal and real estate research, Complainant alleges they determined that the bidder had an extremely high probability of being employed by Respondent and engaging in schill bidding. Complainant states the rules of this particular auction clearly stated "the owner is contractually prohibited from bidding on his or her own property in this auction." Complainant provided an extensive list of the usernames and bids made during this auction.

Counsel requested an investigator obtain the real names of the bidders listed in the document provided by Complainant but Respondent refused to provide this information stating that this auction is not regulated by the Auctioneer Commission pursuant to the 2006 Ebay exemption and subsequent legislation passed in the 2017 legislative session.

Counsel agrees with Respondent's argument in this instance and finds that this auction is not subject to the jurisdiction of the Auctioneer Commission and therefore he is not required to produce the requested documentation. Counsel recommends dismissal of this complaint.

Recommendation: Dismiss

Decision: The Commission voted to accept Counsel's recommendation.

New Summary: Complainant submitted additional documentation from the closing attorney for the property and Respondent and their employees alleging potential misconduct on behalf of the attorney, which is outside of this Commission's jurisdiction. Furthermore, Complainant provided information of potential bidders with names and accompanying usernames. However, Complainant provides no evidence, other than summaries of alleged conversations with Respondent, that these usernames actually match the identities that Complainant alleges.

As previously noted, this matter was sent for investigation. The investigator visited the site and spoke to Respondent briefly. Respondent then invoked his right to counsel and stated that his attorney will contact Counsel. Later, Respondent stated that online extended auctions were not regulated by the Auctioneer Commission pursuant to the 2006 eBay exemption and legislation passed in 2017.

Respondent provided Complainant a letter dated February 2, 2018 stated "I realize you have issues with your bidding and purchases in our action of [redacted] which we concluded on September 21, 2017. I am willing to discuss your concerns and work to resolve your issues. I want to bring this matter to a satisfactory conclusion and make right any problems you may have with me and my firm. Please call, email, or write me at your convenience. My information is below."

Counsel notes that T.C.A. § 62-19-103(9) states that "any fixed price or timed listings that allow bidding on an Internet web site but do not constitute a simulcast of a live auction" is exempted from the provisions of this chapter. Subsequently, Tenn. Comp. R. & Regs. 0160-01-.28 states "Pursuant to the exemption in T.C.A. § 62-19-103(9), "timed listings" do not include listings that are extended or those in which a bidder has the opportunity to increase a bid beyond the original deadline. Counsel concludes based on the information provided that this activity is most likely exempted under the Act.

Nevertheless, Counsel believes it is important to remind Respondent of certain prohibited activities. Therefore, Counsel recommends a Letter of Instruction to Respondent informing Respondent of the prohibitions listed in T.C.A. § 62-19-112(10), (11) &(12).

New Recommendation: Letter of Instruction advising Respondent to remain mindful of the prohibited acts listed in T.C.A. § 62-19-112(10), (11) & (12).

Decision: The Commission voted to accept Counsel's recommendation.

LEGISLATIVE UPDATE (Presented by Anna Matlock)

Ms. Matlock provided an update and a summary of changes outlined in Amendments #1 and #2 under House Bill 797. Ms. Matlock informed the board that the bill is waiting on the final signature from the Governor. It is expected that House Bill 797 will take effect on July 1, 2019. Ms. Matlock also provided refresher / update training in regards to the Sunshine Law, Open Records Act, Public Meetings Act, and the Supreme Court decision in regards to NC Board of Dental Examiners v. FTC.

NEW BUSINESS

Mr. David Allen representing the Tennessee Auctioneers Association appeared before the board requesting clarification for current apprentices and how they would be affected by the upcoming licensure changes for auctioneers. Mr. Allen was informed that in these particular situations, HB797 has changed the name from Apprentice Auctioneer to Affiliate Auctioneer and the period was reduced from two (2) years to six (6) months. Mr. Allen also asked about whether those licenses (firm and gallery) that have been abolished by these amendments would be permitted to retain the license under some form of grandfathering system, not otherwise stated. He was informed that the administrative details and implications would be addressed and worked out in the rulemaking process.

ADJOURNMENT

Mr. Morris made a motion to adjourn the meeting. This was seconded by Mr. Lowe. The motion carried by unanimous vote. The meeting adjourned at 10:05 a.m.