



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

**Commission Meeting Minutes for August 21, 2023
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Auctioneer Commission met on August 21, 2023, in the first-floor conference room of the Davy Crockett Tower in Nashville, Tennessee. The following business was transacted:

COMMISSION MEMBERS PRESENT: Ed Knight, Jeff Morris, and Dwayne Rogers.
Kimball Sterling participated via Teams.

COMMISSION MEMBERS ABSENT: Larry Sims.

STAFF MEMBERS PRESENT: Roxana Gumucio, Anna Matlock, Robert Hunter

ROLL CALL

Director Gumucio called the meeting to order at 9:00 a.m. Director Gumucio took roll and established that a quorum was present. She explained that a member of the public may provide comments as they relate to the agenda. This opportunity is added at the end under new business.

NOTICE OF MEETING

Director Gumucio read the notice of the meeting into the record as follows: "Notice of the August 21, 2023, meeting of the Auctioneer Commission including date, time and location has been noticed on the website since May 17, 2022; additionally, this month's agenda has been posted on the website since August 16, 2023".

AGENDA

Mr. Morris made a motion to adopt the agenda as written. This was seconded by Mr. Knight. The motion passed unanimously.

FEBRUARY MINUTES

Mr. Sterling made a motion to adopt the minutes from the February meeting as written. This was seconded by Mr. Knight. The motion passed unanimously.

EDUCATION REVIEW

Director Gumucio presented three (3) separate educational requests:

The Tennessee Auctioneers Association's (TAA) request for sponsorship per Tenn. Code Ann. § 62-19-116 of the 2023 Annual Conference for a total of \$7,200. The Annual Conference will be held at the Opryland Gaylord Hotel in Nashville on November 5 – 6 2023.

Mr. Morris made a motion for the Commission to accept the proposal and sponsor the professional conference for the amount requested. This was seconded by Mr. Sterling. The motion passed unanimously.

The Tennessee Auctioneers Association's (TAA) request approval of the continued education six (6) hour course offered at the TAA 2023 Winter session.

Mr. Morris made a motion for the Commission to accept the CE request. This was seconded by Mr. Rogers. The motion passed unanimously.

Nashville Auction School (NAS) submitted a continued education three (3) hour course titled Mastering Auction Management: A Deep Dive into Personal Property Auctions.

Mr. Knight made a motion for the Commission to accept the CE request. This was seconded by Mr. Morris. The motion passed unanimously.

Nashville Auction School (NAS) submitted a continued education three (3) hour course titled Building a Successful Auction Facility: Strategies and Considerations.

Mr. Morris made a motion for the Commission to accept the CE request. This was seconded by Mr. Knight. The motion passed unanimously.

DIRECTOR'S REPORT

Budget Report

Director Gumucio presented the financial information as of June 2023. The Auctioneer Commission added an additional \$25,981 making the reserve balance at \$519,992. The current Educational Fund balance is \$221,769.

2024 Meeting Dates

Director Gumucio presented the 2024 proposed meeting dates. Mr. Rogers made a motion for the Commission to accept the dates as presented. This was seconded by Mr. Sterling. The motion passed unanimously.

Sunset Update:

Director Gumucio updated the commission on the sunset hearing held July 19th. The Commission was represented by Mr. Dwayne Rogers. The Committee members asked some questions and they motioned for the auctioneer commission to be extended six years.

LEGAL REPORT (Anna Matlock presented Kim Cooper. Ms. Cooper is the commissions new litigating attorney)

KIM COOPER:

1. **2023003911**
Opened: 2/13/2023
First Licensed: 2/10/2021
Expires: 4/20/2024
Type of License: Principal Auctioneer
History: None

Complainant alleges that Respondent owns their own auction house while also auctioneering at another auction house one night a week. Complainant alleges that Respondent is “bidding stuff up” and then putting any items Respondent decides they do not want back into the lot. Complainant alleges that Respondent and the ticket writer are communicating and that the ticket writer is told what items Respondent should be charged for and what items should be put back into the inventory. Complainant alleges unprofessional conduct, and fraud by Respondent. Respondent denied the allegations. Respondent states that they had to ban Complainant and their spouse from selling at Respondent’s auction house due to Complainant’s rudeness driving away other sellers and as a result Complainant has harassed Respondent. Respondent provided a screenshot of a message sent to Respondent from Complainant that is harassing in nature. Respondent confirmed that they do occasionally buy items from the two auction houses that they work at but denies fraud or shill bidding. Based on the information provided, there is insufficient proof of fraud or unprofessional conduct by Respondent.

Recommendation: Close.

Commission Decision: Mr. Sterling made a motion for the commission to accept legal recommendations. Mr. Morris seconded the motion. The Commission accepted counsel’s recommendation. The motion passed unanimously.

Motion made by Mr. Sterling and seconded by Mr. Morris to accept the recommendation. The motion carried unanimously.

2. **2023008051**
Opened: 4/17/2023
First Licensed: 10/27/2006
Expires: 10/26/2024
Type of License: Principal Auctioneer
History: None

This matter was administratively opened. Respondent is a licensee. Respondent was chosen in a random continuing education audit by the Program for the previous quarter. On January 20, 2023, Respondent was mailed a letter and received an email regarding the continuing education deficiency. Respondent did not respond. Follow-up emails were sent to Respondent on February 2, February 15, and February 21, 2023. The licensee has not responded to any of the notifications. Respondent was issued an Agreed Citation on February 23, 2023, with a requirement of a response within thirty (30)

days. To date, Respondent has yet to respond. Therefore, Counsel recommends Respondent be assessed a Two Hundred Dollar (\$200.00) civil penalty.

Recommendation: Two Hundred Dollar (\$200.00) civil penalty.

Commission Decision: Mr. Morris made a motion for the commission to accept legal recommendations. Mr. Knight seconded the motion. The Commission accepted counsel's recommendation. The motion passed unanimously.

Motion made by Mr. Morris and seconded by Mr. King to accept the recommendation. The motion carried unanimously.

3. 2023012911

Opened: 4/17/2023

First Licensed: 9/8/2011

Expires: 1/20/2024

Type of License: Principal Auctioneer

History: None

Complainants allege that Respondent auctioneer advertised an auction with a particular breed of horse that Complainants were interested in, with the advertisement stating the animal was between three (3) and four (4) years old. Complainants inspected the horse prior to the auction and were the winning bidders. When they paid the bill, they were provided documentation of a medical test allegedly conducted on the horse from an auction that took place two weeks prior. That document, however, listed the horse as being a different breed and had a stated age of nine (9) years. When asked about the discrepancy between the advertisement, the medical document, and the information announced during the sale, Complainant alleges that Respondent became angry, told the Complainant that the veterinarian who completed the paperwork "was just guessing breed and age, didn't know anything and...good luck with it." Complainant alleges that the Respondent and his family yelled at Complainants, followed them out as they tried to leave, blocked the exit, threatened them, and attempted to assault them. Complainants called 911 and filed a police report, eventually leaving the auction with the horse. Complainant subsequently learned that the horse had been advertised at the prior auction as a seven (7) year old horse and provided a screenshot of that prior auction's advertisement with the horse in question that used the same photograph that Respondent used. DNA testing later confirmed the horse was not the breed advertised. Complainants allege that Respondent refused to provide the seller's information and that in addition to false and misleading advertising Respondent may have sold a horse that did not have the required Coggins test done since the papers didn't match what Respondent advertised or the actual horse that was purchased by the Complainants.

Respondent denied all allegations. Respondent stated that the auction house advertises the livestock on their Facebook page with the information that the consignor sends them. An announcement is made at each auction that the business operates as agents only and all announcements made at the time of auction take precedence over any previous announcement. Any claims made by the seller is not guaranteed by the auction and any discrepancy will be between the buyer and the seller. The Respondent stated that the animal in question was not owned by or represented by Respondent or any member of the auction staff, and that Respondent does not receive or review the medical forms before,

during or after the auction. Respondent confirmed they did tell Complainant that the horse that was penned in the back of the barn with the tag number listed on Complainant's receipt was the horse they bid on and bought regardless of what the medical document stated. Respondent alleged that it was Complainant who escalated the incident and was confrontational, and that while harsh words were exchanged, they did not attempt to assault the Complainant. Respondent agrees that the police were called by Complainant, and that Respondent asked the officers to instruct the Complainant to leave the premises and not come back. Respondent denies that the Complainant ever asked for the seller's information, and they have no connection with or knowledge of the prior auction or the advertisement that Complainant provided. Respondent opined that Complainants had "buyer's remorse" and were lashing out unreasonably at Respondent. Complainant provided a rebuttal to the Respondent's statement. Complainant stated that the Respondent was the aggressor, could have provided videos to prove their side of the story since Respondent recorded the events, but that when Complainant asked for copies of the videos was told that there was problem with the hardware, and they were unretrievable. Complainant noted that Respondent confirmed they had paperwork for the horse prior to the advertisement and sale of the animal that documented a different age and breed of the horse than Respondent advertised or announced at the auction. Complainant also stated that the Respondent's advertisement of auctions in general are in violation of the advertising rules in that they do not include the name and license number of the principal auctioneer. A review of past and current advertisements for upcoming auctions on Respondent's Facebook pages confirmed that the notices do not include the full name of the auctioneer (first names only); designate the principal auctioneer when multiple first names are listed; and do not contain license numbers of any of the individuals listed.

Recommendation: Discuss.

Commission Decision: Mr. Morris made a motion for the commission to accept legal recommendations. Mr. Rogers seconded the motion. The Commission voted to issue a Consent Order with a civil penalty of \$1,000.00 for misrepresentation and a \$1,000.00 civil penalty for the advertising violation for a total civil penalty of \$2,000.00. The motion passed unanimously.

Motion made by Mr. Morris to add a civil penalty of \$1,000 per violation for a total of \$2,000. This was seconded by Mr. Rogers. The motion carried unanimously.

4. 2023020351

Opened: 5/15/2023

First Licensed: 12/3/2002

Expires: 12/31/2024

Type of License: Principal Auctioneer

History: None

Complainant is a Tennessee resident; Respondent is a licensee. On April 11, 2023, Respondent conducted an auction that was both online and in person of 5 parcels of land. Complainant alleges that Respondent advertised the auction "for weeks prior" as "absolute"; that Complainant was a registered bidder; bids reached over \$1 million in total; and once that amount was reached the Respondent closed the auction. Complainant alleges that they learned approximately two weeks later that the property had not sold. Complainant provided a copy of an ad for the auction that states on the bottom of the page:

“Real Estate Sells Absolute on Tuesday, April 11th at 6 PM!” Complainant also provided a screen shot of the online bidding showing the amount of the bids for each parcel along with the total amount bid. Complainant alleges that Respondent’s advertising was fraudulent and misleading.

Respondent provided a detailed response to the allegations and denied any wrongdoing. Respondent stated that the ad that Complainant provided was one of many and the only one that contained the word “Absolute” due to an error on the part of Respondent’s graphic artist. Respondent provided the dates of all publications of the advertisements of the auction, provided a copy of all other advertisements of the auction, and after review it was confirmed that the advertisement provided by Complainant was the only one with the error. Respondent stated that in the terms provided to all bidders including Complainant it was noted that all bids were subject to seller confirmation unless noted “absolute” and that multiple announcements were made prior to and during the auction that all bids were subject to confirmation of the seller. Respondent also provided a statement of the owners of the property at issue, and they stated that they were present during the auction and that the auction was always set to be reserve due to zoning and road issues involved in subdividing the land. The owners confirmed that it was “well addressed (before and during the auction) that all bids would be subject to confirmation.” The owners statement implied that due to the fact Complainant is an adjoining landowner, Complainant knew all along that the auction was not absolute. The Respondent also noted that the Complainant did not actually make any bids during the auction but was a registered bidder. Based on the information provided, there is insufficient proof of a violation of Rules or law by Respondent.

Recommendation: Close.

Commission Decision: Mr. Knight made a motion for the commission to accept legal recommendations. Mr. Morris seconded the motion. The Commission accepted counsel’s recommendation. The motion passed unanimously.

Motion made by Mr. Knight and seconded by Mr. Morris. The motion carried unanimously.

RE-PRESENTS

ANNA MATLOCK:

5. **2021076871**
Opened: 1/10/2022
Unlicensed
History: None

Complainant is anonymous. Respondent is an unlicensed individual. Complainant alleges that Respondent does not have an auctioneer license and provides an address of Respondent’s alleged auction house. The owner of Complainant’s alleged auction house answered the complaint. Respondent states their business is insured and has tax identification numbers through their county and city. Respondent further alleges Complainant is a patron that was angry following a request to be silent during a moment of silence for the passing of another patron. Counsel spoke to Respondent and informed Respondent that a license is necessary. After reviewing the complaint and response, it appears that Respondent is operating without a license. Presently, Respondent does not employ a principal auctioneer as described in Tenn. Code Ann. § 62-19-101(10), which is required by Tenn. Code Ann. §

62-13-102 for activities that are considered “auction(s)” by Tenn. Code Ann. § 62-19-101(2). Counsel consulted with the Assistant Director to aid Respondent in what is needed and required to meet licensure qualifications. Therefore, Counsel recommends Respondent be assessed a Five Hundred Dollar (\$500.00) civil penalty for unlicensed activity.

Recommendation: Five Hundred Dollar (\$500.00) Civil Penalty.

Commission Decision: The Commission accepted counsel’s recommendation and voted to add language to the Consent Order that the Respondent become licensed or become associated with a licensed Principal Auctioneer.

New Information: Counsel attempted to contact Respondent to settle this matter but has been unsuccessful. Based on Counsel’s research, Respondent’s former website no longer exists, and the unlicensed auction house does not appear to be in operation. Counsel recommends this matter be closed and flagged, so if the Respondent attempts to secure licensure in the future, they will be required to address this consent order first.

New Recommendation: Close and flag.

New Decision: Mr. Morris made a motion for the commission to accept legal recommendations. Mr. Sterling seconded the motion. The Commission accepted counsel’s recommendation. The motion passed unanimously.

Sunshine Presentation

Ms. Matlock provided the Sunshine Law presentation and answered the commission members questions.

Legislative Updates

Ms. Matlock updated the commission on pending litigation and the injunction regarding online auctions.

Ms. Matlock provided an update on the request from the Attorney General’s regarding Public Automobile Actions and Public Automobile Auctioneers. The members had several questions. They requested Ms. Matlock help draft language to fix the current situation. Shane McCarrell with Tennessee Auctioneer Association explained the impact of current and future licensees.

New Business

Director Gumucio asked if anyone in the public, participating in person or remotely using Teams, had comments as they relate to the agenda. There were no comments provided.

ADJOURNMENT

There being no new business, Mr. Knight made a motion to adjourn the meeting. This was seconded by Mr. Morris. The motion passed unanimously. The meeting adjourned at 10:30 am.