

**TENNESSEE  
AUCTIONEER COMMISSION  
MINUTES**

**DATE:** December 3, 2012

**PLACE:** Andrew Johnson Tower – 2<sup>nd</sup> Floor Conference Room  
710 James Robertson Parkway  
Nashville, Tennessee

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

**PRESENT:** Staff Members:  
Donna Hancock, Executive Director  
Julie Cropp, Assistant General Counsel  
Mark Green, Assistant General Counsel  
Susan Lockhart, Admin Services Asst. 4

**GUESTS:** Donald B. Smith, Luellen Alexander, and Rhessa Hanson

**CALL TO ORDER:** Chairman Colson called the meeting to order at 9:03 a.m. and the following business was transacted:

**ROLL CALL:** Ms. Hancock called the roll. Four (4) of the five (5) Commissioners were present.

**AGENDA:** Mr. Morris made a motion to adopt the agenda as amended, seconded by Mr. Alexander.  
**MOTION CARRIED.**

**MINUTES:** Mr. Phillips made a motion to approve the minutes of the October 1, 2012 meeting, seconded by Mr. Morris. **MOTION CARRIED.**

*Mr. Cunningham joined the meeting at 9:07 a.m.*

**AUCTIONEER – REQUEST FOR APPRENTICE LOG – APPEARANCE BY DON B. SMITH, II**

Ms. Hancock presented previous apprentice license information for Mr. Smith along with his written request for a waiver of apprentice logs during his term as a licensed apprentice from 1988-1989. Mr. Smith appeared before the Commission to present additional information regarding his experience. After some

discussion, Mr. Phillips made a motion to deny Mr. Smith's request for a waiver of the apprenticeship logs requirement. The motion was seconded by Mr. Alexander. **MOTION CARRIED.**

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

Ms. Hanson presented an oral report on the progress of the seminar schedule and current newsletter. She advised the newsletter is being drafted and she requested a letter from the chairman to be included. She also advised the next seminar is tentatively scheduled for February 28, 2013 at Natchez Trace State Park and she will notify the office as soon the plans are finalized.

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

**Presentation of Legal Report –**

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

1. **2012011211**  
License #: Unlic.  
First License Obtained: N/A  
License Expiration: N/A  
Type of License: N/A  
History: None
2. **2012012401**  
License #:  
First License Obtained: 11/23/76  
License Expiration: 7/16/14  
Type of License: Auctioneer  
History: None
3. **2012012402**  
License #:  
First License Obtained: 7/16/10  
License Expiration: 7/15/14  
Type of License: Firm  
History: None

***August 2012 Meeting:***

*TAC opened complaint based on copy of newspaper advertisement received which advertises an auction of antiques, furniture, home décor, etc., which lists the name of an unlicensed entity (Respondent 1). Based on information in newspaper advertisement referencing an auctionzip ad, which contained the license number of Respondent 2 (auctioneer) and the name of Respondent 3 (auction firm), complaints were opened against these Respondents.*

*Response was received stating that Respondent 3 was unaware that Respondent 1 (a separate business) needed a separate license since Respondent 1 mostly auctioning its own property. Respondent 3 states that Respondent 1 has ceased any consignment auctions until the complaint is resolved and they are instructed on how to comply. Regarding the newspaper advertisement's lack of including the firm name and license number of Respondent 3, Respondent 3 states that this was an inadvertent error on the part of the newspaper which has been addressed (and a letter from the newspaper was included confirming this). A telephone call with the owner of Respondent 3 firm confirmed that Respondent 1 is a separate business owned by one of Respondent 3's apprentice auctioneers. The apprentice has closed Respondent 1 business, and plans to obtain a gallery license before engaging in activity of this kind in the future.*

***Recommendation:*** *As to Respondent 1, letter of warning regarding T.C.A. § 62-19-125's gallery license requirement. As to Respondents 2 and 3, letter of warning regarding Rule 0160-01-.20(1)'s requirement that auction advertisements must contain the name and license number of the auction firm or gallery responsible for holding the sale.*

***DECISION:*** *The Commission voted to defer this matter in order to send it out for investigation to determine how many auctions Respondent 1 did and whether Respondent 3 properly sponsored all auctions.*

An investigator was sent to obtain additional information regarding this matter. The investigator's report indicates that the investigator spoke with and obtained an affidavit from the owner of Respondent 3 firm, who stated that an apprentice auctioneer with the firm owned Respondent 1. The owner stated that Respondent 1 held approximately eight (8) auctions consisting of household goods, furniture and antiques. Respondent 2 (the principal auctioneer for Respondent 1 firm) was present and supervised at all auctions. Further, the owner of Respondent 3 states that Respondent 1 has held no additional auctions after being notified of this complaint. The investigator also interviewed the apprentice owner of Respondent 1 and requested copies of listings of items sold, bid sheets, and invoices from the eight (8) auctions held by Respondent 1. According to the investigator, the apprentice owner of Respondent 1 promised to provide copies of the documents, which were in storage. The investigator made multiple unsuccessful attempts to obtain the documentation.

*The Commission recessed at 10:02 a.m. and reconvened at 10:14 a.m.*

**New Recommendation:** Discuss.

**DECISION:** Mr. Alexander made a motion to open complaints against the apprentice auctioneer who owned/operated unlicensed Respondent 1 and the apprentice auctioneer who is the owner of Respondent 3 and handle all of these complaints together at an upcoming meeting. The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

**4. 2012018301**

License #: Unlicensed

First License Obtained: N/A

License Expiration: N/A  
Type of License: N/A  
History: None

**October 2012 Meeting:**

*This is a complaint which was opened based on an anonymous complaint which stated that Respondent (unlicensed) frequently holds tack and horse sales and uses unlicensed individuals to hold the auctions.*

*Respondent submitted a reply denying Complainant's allegations of utilizing unlicensed auctioneers and stating that Respondent does use a licensed auctioneer for its sales. Respondent included a copy of the individual's (a licensed auctioneer) license. Based on a check of the United States Department of Agriculture Packers and Stockyards Administration's website, Respondent is listed as a regulated entity.*

**Recommendation: Dismiss.**

**DECISION:** *The Commission voted to defer the matter until next month and instructed counsel to request additional information.*

Pursuant to the Commission's request, counsel requested additional information from Respondent regarding when/how often Respondent conducts auction sales and what types of items are typically auctioned at Respondent's auction sales. Respondent replied stating that Respondent holds livestock auctions weekly and holds monthly horse auctions. On the days that Respondent auctions horses, Respondent also auctions tack. Respondent states that it is "...regulated, inspected, and audited by the USDA and State on a regular basis..." and has never had any complaints.

**New Recommendation: Discuss.**

**DECISION:** Mr. Alexander made a motion to dismiss this complaint, seconded by Mr. Phillips. **MOTION CARRIED.**

**5. 2012015021**

License #:  
First License Obtained: 9/15/08  
License Expiration: 9/14/14  
Type of License: Firm  
History: None

Complainant was the successful bidder on a property through online auction conducted by Respondent (licensed firm located out of state). Complainant alleges that Respondent required that an out-of-state company serve as the closing agent, which Complainant believes is due to a common ownership or fee splitting arrangement based on the fact that the companies are across the country from one another. Complainant also states that Respondent represented that the

property title would be free of all past encumbrances (and Complainant says the title indicates that fact), but the property had several hundreds of dollars' worth of unpaid property taxes for 2011. Complainant also says that Respondent's materials state that an individual holds an auctioneer license (and includes a license number), but Complainant states that the individual does not hold such license.

Respondent submitted a response stating that it primarily provides an online auction platform conducted by computers which allows for the sale of bank owned real estate online wherein the sale goes to the highest bid registered online within a specified time period. Respondent states that it also performs some live sales of foreclosure properties in Tennessee as an agent of trustees under deeds of trust. Respondent states that it is not affiliated with the escrow/closing agent despite Complainant's allegation. Respondent states that the purchase agreement instructs the escrow/closing agent to prorate the taxes at closing, and Respondent states that the settlement statement indicates tax prorations. Respondent states that any failure on the part of the escrow/closing agent to prorate or pay for taxes at closing is between Complainant and the escrow/closing agent and not Respondent. A copy of the settlement statement indicates tax prorations for the year 2012, and the settlement statement also appears to indicate a settlement charge paid from the seller's funds at closing for "2011 delinquent taxes." Finally, Respondent states that Complainant is incorrect and the individual does hold an auctioneer license, and the license number is as listed. There does not appear to be a violation of TAC's statutes and/or rules by Respondent.

**Recommendation: Dismiss.**

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

**6. 2012019751**

License #:

First License Obtained: 3/19/86

License Expiration: 1/31/13

Type of License: Firm

History: None

This complaint was forwarded from consumer affairs. Complainants purchased a home in 2007, stating that they believed the home was located in one city and later found that it was located in another city. Complainants allege that Respondent (firm) auctioned the property, and Respondent received part of the commission on the HUD statement. Complainants state that Respondent may have advertised the property as being located in a different city than it is actually located. Complainants were from outside of the state, came into the state and looked at homes (including the subject property) with a real estate licensee (who was not affiliated with Respondent), then later found out that the subject house had gone to auction, but the only bid was not accepted. Complainants then decided to purchase the home. Complainants state that "all advertisements, papers, contracts, documents, etc." state that the property was located in the mistaken city. Complainants attached a copy of the HUD statement for the sale, which includes

the property address and states the property is in the mistaken city. It appears that Respondent received one third of the real estate commission along with two other real estate firms.

Respondent submitted a reply denying wrongdoing and expressing confusion over why the complaint was filed against Respondent. Respondent states that the property was sold over four (4) years ago and all information had the same address on it. Respondent states that all information received by Respondent was given to Respondent by the listing broker for the property. Respondent states that the property did not sell to Complainants at auction, and the property was sold to Complainants after the auction by the real estate licensee who Complainants mentioned showed them a number of homes and who was affiliated with another real estate firm. Respondent states that, several years ago, Complainants filed a complaint with the real estate commission against the selling broker's firm who showed them the house, and the complaint was dismissed. Respondent states that the commission was split between the listing broker, the selling broker, and Respondent (the auction firm). Based on the information contained within the file, there does not appear to be a violation by Respondent.

**Recommendation: Dismiss.**

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

#### **Rule Discussion –**

Ms. Cropp presented a draft of the rules discussed during a previous meeting for the Commission's review. After some discussion, Mr. Morris requested that staff email a copy of the current rules and laws along with the draft of rules presented to the commissioners for their review. Ms. Lockhart advised she would forward the information as requested and the Commission advised they would review the information individually in preparation of further discussion at the next meeting.

*During the rule discussion, Ms. Lockhart left the meeting at 10:28 a.m. and returned at 10:31 a.m.; Mr. Morris left the meeting at 10:45 a.m. and returned at 10:46 a.m.; and Mr. Green left the meeting at 10:50 a.m. and did not return.*

*The Commission recessed at 11:00 a.m. and reconvened at 11:15 a.m.*

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

**Complaint Comparison Report** - Ms. Hancock presented a comparison of the complaints pending in November 2011 to those currently pending.

**Update on Audit and Sunset Hearing** – Ms. Hancock advised she and Chairman Colson recently attended the Sunset Hearing concerning the Auctioneer Commission during a legislative committee meeting. She advised the recent audit was discussed which identified one finding against the Commission

regarding the continued use of the education and recovery fund after its being depleted below the statutory requirement. She further advised she would include year-to-date revenues and expenditures as part of her budget reports at each meeting for the Commission's review so any current trends may be identified.

**Budget Report** – Ms. Hancock presented a comparison of the final budgets for the last four (4) fiscal years and advised the information listed for fiscal year 2011-2012 had been finalized. In addition, she presented a breakdown of the cost backs charged to the Commission by the Department for fiscal year 2011-2012. She also presented separate breakdowns and comparisons for the revenues and expenditures for the last three (3) fiscal years along with year-to-date information for the current fiscal year. The last report included an accounting of the expenditures and revenues for the education and recovery fund comparing the last two (2) fiscal years along with a year-to-date totals for the current fiscal year.

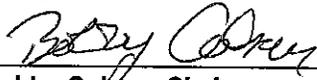
**Education Provider Application**- Ms. Hancock presented an application from Easy LR Online Training School, Inc. tabled at the previous meeting along with the additional information requested by the Commission. After some discussion, Mr. Morris made a motion to deny the application based on administrative rule #0160-03-.04(C). The motion was seconded by Mr. Phillips. **MOTION CARRIED.**

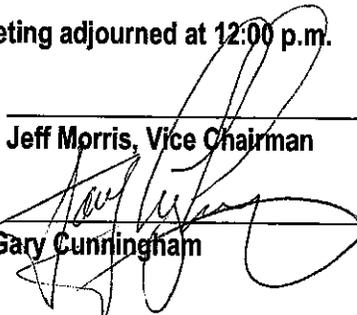
**Absolute Auction Discussion** – Ms. Hancock presented an anonymous letter requesting review of two (2) advertisements and whether or not they appear to be advertising violations as they advertise 'absolute' auctions "above mortgage and closing costs." Commissioners agreed that auctions advertised as 'absolute' should have no contingencies; and, if there are conditions to a sale the auction should be held as a 'reserve' auction. It was determined that the redacted advertisements that Ms. Hancock presented may be construed as misrepresentation, however, the auctions appear to meet the "online" auction exemption and therefore would not be required to abide by the Commission's advertising rules and laws. It was determined that further discussion regarding possible rule changes to clarify absolute auction advertising would be tabled until the next meeting as part of the rule discussion.

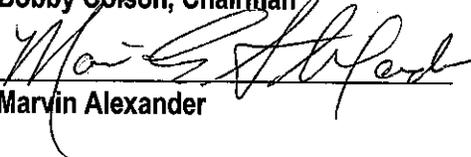
*Mr. Cunningham left the meeting at 11:45 a.m. during the absolute auction discussion and did not return.*

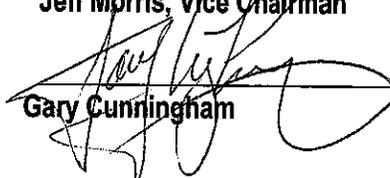
#### UNFINISHED / NEW BUSINESS – BOBBY COLSON, CHAIRMAN

Being no further business to discuss, the meeting adjourned at 12:00 p.m.

  
 Bobby Colson, Chairman

  
 Jeff Morris, Vice Chairman

  
 Marvin Alexander

  
 Gary Cunningham

  
 Howard Phillips