

MINUTES
BOARD OF AUCTIONEERS
Conference Call
June 26, 2003
10:00 A.M.

CALL TO ORDER

Mr. Fred Dietrich, Chairman called the meeting to order at 10:20

ROLL CALL

The following members were present
Fred Dietrich, Board Chair
Joann Hill, Board Member
Annette Elms, Board Member
Craig Accardo, Board Member
Michael Moecker, Auction Company Principal

Staff Present

Julie Malone, Executive Director
Donna-Salters-Thomas, Government Analyst
Andrea Beacroft, Investigation & Regulation
Mark Whitten, Deputy Director Regulations
Krista Woodard, Government Analyst
Erica Glover, Board Counsel
Charlie Pelligreni, Prosecuting Attorney

Others Present

Douglas Brackett, Applicant
John Madeline, Applicant
Gary Caufield, Applicant
Richard Phillips, Applicant
Richard Guild, Applicant
Johnny Garrett Isitt, Applicant
Darlene Isitt, Witness for Mr. Isitt
Linda Gaustad, Attorney
Jerry Feldman, Applicant
Jim Skeen, Auctioneer, Florida Auctioneer Academy
Mark Supnick, Auctioneer
Salvatore Valaenziano, Auctioneer
Robert Orren South, Auctioneer/ Auction Business

The meeting was opened with a roll call and a quorum was established.

APPROVAL OF MINUTES

The minutes of the March 26, 2003 were approved with no changes. The motion was offered by Michael Moecker and second by Jody Hill. The motion passed unanimously.

Division of Regulation Report provided by Executive Director, Julie Malone. Ms. Malone gave a review of the Quarterly Report, which provided data from June 30, 2002 with totals going through March 3, 2003. She also provided a review of the Unlicensed Activity data.

Mr. Dietrich added that he was pleased to see in our files that one of the cases came from an Investigator looking for Unlicensed Activity. He also asked if there is a current spot check at some of the auctions on licenses. Mark Whitten, Deputy Director of Regulations commented that he has directed Unlicensed Activity Coordinator, John Knapp to have an Unlicensed Activity Month related to Auctioneers where investigators will be attending.

Mr. Dietrich commented about auctioneers attending auto auctions. He suggested that they not be targeted, but maybe once a year go through and make sure that all auctioneers hold a current and active.

DISCIPLINE

It was recommended that Informal Hearings (Stipulation and Settlement for Discipline) be taken out of order, as some were not yet present on the line.

Erica Glover, Assistant Attorney General, served as counsel to the Board of Auctioneers. Ms. Glover provided the Board with instructions of directing questions regarding facts or investigations of cases to Charlie Pellegrini, Assistant General Counsel, Office of the Attorney General Counsel, Department of Business & professional Regulations

She also instructed the participants to direct questions regarding laws governing the Board of Auctioneers; the Rules adopted by the Board or any other laws, which may be relevant to the proceedings to her, (Ms. Glover), as Board Counsel.

Mr. Pellegrini stated that the materials furnished to the Board are for the cases indicated on the agenda under discipline the Investigative Files and all pertinent materials.

Ms. Glover proceeded to ask all Board Members the following series of questions.

1. Have you each received all materials regarding today's proceedings in advance of today's meeting? All responded Yes.
2. Have you had enough time to thoroughly review and familiarize yourself with these materials? All responded Yes.
3. Did you feel there are problems with this material you received such as missing pages, illegible copies or any other problems which we should be take up at this time? All responded no.
4. Are any of the Board Members aware of any facts, situations or reason which they feel may disqualify or otherwise make it improper for them to hear and deliberate on any of the cases which are scheduled to be considered today? All responded No.

Informal Hearings:

Mark Elliott Supnick; Case # 2002-00265

Mr. Pellegrini presented the case. Mr. Supnick was present, but not represented by Counsel. The Board had for consideration a Settlement Stipulation where the respondent entered with the Department of May 28, 2003. In an Administrative Complaint filed March 4, 2003, the respondent was charge with nine (9) violations of Section 468.389. Respondent conducted Auctions over the Internet and did not fully pay proceeds. Mr. Supnick had no prior discipline.

As discipline the Settlement Stipulation, will impose Administrative Fines of \$1000, tax investigative costs of \$494.46, place respondent on probation subject to conditions of probation's as determined by Board, and pay restitution to complainant in the amount of \$1800.00. The respondent has paid restitution. It was added the probation period is 12 months. The Department requests that Board enter a Final Order adopting the Settlement Stipulation and the disposition of this matter. Ms. Malone informed Board that staff is responsible for tracking probation time. Mr. Dietrich asked that if someone is on probation and other complaints arise, what happens. Mr. Pellegrini indicated that it would be treated as a violation of probation.

In regards to the fines, a motion was made by Mr. Moecker of imposing administrative fines of \$1000, investigative costs of \$494.46, and placed respondent on probation for 12 months; seconded by Jodi Hill.

The motion passed unanimously.

Mr. Supnick wanted to make a statement with the understanding that the Board had already voted and whatever he said would not affect the vote. Mr. Supnick indicated that the situation was unfortunate and he should have paid her and he has suffered the consequences. He also needed clarity on the probation issue if there is "complaint" filed against a license. Mr. Pellegrini explained that a "complaint" alone will not affect probationary status of the license.

Ritchie Brothers Case # 2002-001176

Case presented by Mr. Pellegrini. Respondent charged with violation of Section 468.389 (1)(a), having been adjudged in breach of contract in a civil action and Section 468.389 (1) (c). Respondent has no

prior discipline, and has filed a statement to the Board. The Respondent represented Gary Caufield, who was on the call to address the board and respond to questions. The departments recommendation is that the Board issue a Final Order including an administrative fine of \$600, investigation and costs of \$199.28 and reprimanding license for a period to adhere to the requirements of Section 468.689 1(a), (c).

Gary Caufield, of Ritchie Brothers explained that they had forwarded a letter to the Board. He indicated that the complaint issued against them was an abuse of the process. He provided history on the case as follows concerning the transaction to purchase equipment in 1996 from Western Plant and Equipment, LTD, and it's principle Gordon Brown and John Ogden Properties. Ritchie Brothers contended that all funds have remained in a trust account.

Ms. Hill asked if John Ogden had been paid. He reported that he was paid immediately after the trial. Mr. Pellegrini explained that the complaint is proper and was not brought for the purpose of harassing Ritchie Brothers. He also added that the evidence presented by Mr. Caufield does have merit, however it was not previously available to the Board. The question was asked that if Mr. Pelligrini, Prosecuting Attorney had known the facts of the history of the above case would a different recommendation have been made to the board?

Erica Glover reminded the Board that the purpose of an Informal Hearing is to resolve any disputed issues of law not fact and to determine what penalties are available. She noted that on page 76 in the agenda Ritchie Brothers returned their election of rights and stated that they do not deny the allocations of fact in the administrative complaint in which to be afforded a hearing before the Board in which there are no disputed materials facts. The Board needs to consider the letter as mitigating evidence as to whether or not they want to increase or decrease the recommended penalty. The Facts are not in dispute.

Mr. Pellegrini stated that based on the record, the recommendation of a fine of \$600 and cost of \$199.28 be taxed and reprimand against the respondent license. At this point. Mr. Caufield's points cannot be considered in mitigation or aggravation at this point.

A motion was offered by Ms. Hill to accept the findings of facts and conclusion of law by Mr. Moecker. The motion was passed unanimously

In regards to the cost of \$199.28 and the administrative fine of \$600 and reprimand board member Mr. Accardo offered a motion to assess the costs and no reprimand and no fine. It was seconded by Jodi Hill. Ms. Glover asked the Board to state the reason for deviating from guidelines. Mr. Accardo replied that based on the evidence presented and mitigating circumstances the Board should assess cost of \$199.28 only. The motion was passed unanimously.

Certified Auction Company, Case # 2002-005399

Mr. Pellegrini presented the Settlement Stipulations to which the respondent entered into with the department June 5, 2003. Respondent was charge with violation of Section 468.389 1 (c). The complainant alleged that the respondent failed to account for four of the items she consigned to the auction. The respondent indicated that he returned all unsold items. In an effort to resolve the issue the Auctioneer offered four times the appraisal value of the items. The complainant refused. The respondent has no prior discipline. As discipline the Settlement Stipulation would impose an administrative fine of \$300, investigative costs of \$ 723.68 and reprimand respondent license for failure to adhere to 468.389 (1) (c)

Mr. Salavatore Valenziano addressed the Board by saying the items reported missing were with the unsold items. He further indicated that he offered four times the appraisal value of those items, but the client refused.

A motion to accept findings of facts and conclusion of law was made by Mr. Moecker; second by Mr. Accardo. The motion passed unanimously.

A motion was made to impose an administrative fine of \$300, an investigative cost of \$723.68 and reprimand was moved by Ms. Hill and second by Mr. Accardo. The motion passed unanimously.

James W. Umsted, Jr. Case # 2002-0262

Case presented by Mr. Pellegrini. The Board has for consideration the Settlement Stipulation to which respondent entered with the department on June 20, 2003. An administrative complaint filed charging violation Sections 468.389 1-(c) (e). Respondent failed to pay proceeds and failed to return phone calls. Respondent made full accounting to complainant. Respondent has no prior discipline. As discipline, Settlement Stipulation will impose an administrative fine of \$750; and investigative costs \$336.30 and place respondent on probation for six months subject to such conditions of probation as Board may require or determine to be appropriate. The department requests that the Board enter a Final Order adopting the Settlement Stipulation as the disposition.

Mr. Umsted addressed the board indicating that he already paid the complainant before she filed the complaint and reduced the commission that was agreed upon. Mr. Dietrich asked for AB license number and for the total proceeds of the sales.

It was moved to accept the findings of fact and conclusion of law by Ms. Hill; seconded by Mr. Moecker. Motion passed unanimously. The stipulation was agreed to of \$750 with an administrative fine of \$366.30 and six-months probation. A motion to accept was made Mr. Moecker and seconded by Mr. Arrcardo. The motion was moved and passed unanimously.

Robert Orren South, Case # 2002-010877

Case presented by Mr. Pellegrini. The Board has for consideration for Settlement Stipulation in to which the respondent entered with the department June 5, 2003. In an administrative complaint filed March 4, 2003, the department charged the respondent with violation of Sections 468.388 (4), (5), F.S. The respondent conducted an auction in the name of an unlicensed business, and failed to display a license. There is no prior discipline. As discipline is this matter the Settlement Stipulation will impose an Administrative Fine of \$500; tax and investigative costs of \$322.11. The department requests the Board to enter a Final Order adopting the settlement stipulation as the disposition of this matter

Mr. South did not wish to address the board Ms. Hill moved to accept the findings of fact and the Conclusion of law; they were seconded by Mr. Moecker. The motion passed unanimously.

The Department's recommendation Stipulation Disposition was Fine of \$500, and costs of \$322.11. A motion was offered by Mr. Moecker to accept stipulation and properly second by Ms. Elms. The motion passed unanimously.

Mr. Dietrich acknowledge Cheryl McDonum, investigator. Board Chair moved that the Department send a letter of appreciation. The motion was second and passed unanimously.

Motion of Default

John H. Geers/Rainbow Auction Services; Cases # 2002-012613; and Case # 2003-001367

Cases presented by Mr. Pellegrini. In both cases the Board has for consideration motions for default and final order. In administrative complaints, the department charged respondents with violations of Section 468.389 1 (c), F.S. failure to pay proceeds from Auction. The respondent failed to file election of rights or to otherwise establish a dispute of the material within a 21-day period. The respondent eventually made full accounting to the complainant. It was reported that Mr. Geers has one prior complaint of the same nature; and there is no prior discipline for Rainbow Auctions.

In the Geers Case #2002-012613, The Board issued a final order, imposing no administrative fine, assessing investigative and prosecuting costs of \$198.63. The respondent accepted the disciplinary terms.

In the Case # 2003-001367, Rainbow Auction Services, the department recommended that the Board issue a final order against –and placed forth a motion for default and final order. An administrative fine of \$100 was imposed; for investigative and prosecuting costs \$116.26; and reprimand respondent's AB license for failure to adhere to the requirements of Section 468.389 1(c) and (e), F.S.

Mr. Geers addresses the board by accepting the terms. He indicated that he did not understand why there is discipline against is AB License, as he was not present. Mr. Pellegrini explained that a license holder of the AB business he is responsible whether he is present or not.

Case # 2002-012613. Mr. Dietrich offered a motion in regards to Mr. Geers. Ms. Hill moved to accept the findings of fact and conclusion of law; Mr. Accardo seconded the motion. The motion passed unanimously.

The department recommended no fine, investigative costs of \$198.63 and a reprimand on the license was moved by Mr. Moecker and seconded by Annette Elms. The motion was passed unanimously.

Case # 2003-001367, Rainbow Auction Service. The motion in regards to Finding of Facts and Conclusion of Law as mentioned in the Administrative Complaint was moved by Ms. Hill and second by Annette Helms. The motion passed unanimously. The Department recommended a \$100 fine, cost of \$116.26 and a reprimand on the license. A motion moved by Ms. Hill and second by Mr. Moecker. The motion passed unanimously.

CONSIDERATION OF APPLICATIONS

Donna Salters Thomas presented the License by Ratification Lists. License by Examination. Ms. Hill offered the motion to accept the Ratification Lists as provided in the Agenda. The motion was second by Ms. Elms. Motion was passed unanimously.

Mrs. Salters Thomas presented the list for License by Reciprocity as provided in the agenda. The motion was moved by Ms. Hill, and seconded by Ms. Elms.

Mrs. Salters Thomas presented the list for License by Null & Void as provided in the agenda. A motion was moved by Mr. Moecker; and seconded by Ms. Hill. The motion passed unanimously.

Reconsideration

Johnny Garrett Isitt was denied due to criminal history. He submitted signed affidavit regarding his character.

Ms. Glover stated why it is back on the Agenda for reconsideration. Upon receiving his notice of intent to deny, Mr. Isitt filed a petition for Formal Hearing she would have had to bring it back before the Board to get the approval to send to DOA. Attached to the petition were several affidavits that she thought the Board should see and take into consideration and decide whether or not they wanted to rescind the denial.

Mr. Dietrich offered a motion to reconsider this application. It was second by Mr. Arrcardo. The reconsideration was passed unanimously.

Ms. Malone read from the March 26, 2003 meeting minutes concerning Mr. Isitt. Erica Glover swore in Mr. & Mrs. Isitt. Linda Goustad informed the Board that Mr. Isitt's civil rights were not taken away. Ms. Goustad, Attorney for the Isitt's, reviewed petitions which included reckless driving and domestic violence. A board member asked whether or not there is a temporary license for auctioneers. Ms. Malone explained that there is no temporary license. Mr. Dietrich moved to approve the application and it was seconded by Mr. Accardo. The motion passed four to one.

John Maddeline's application was presented by Ms. Malone. The Board had requested disposition of the case and three to five letters of reference. Ms. Malone read notes from page four of the minutes from the last meeting regarding Mr. Maddeline's application. In page 398 of the agenda the letters of reference were received. Ms. Glover swore in Mr. Maddeline.

Mr. Dietrich moved that the motion to accept Mr. Maddeline's application, Jodi Hill seconded. It was later explained that the disposition was needed for domestic violence not traffic violation. It was explained that there was no charge or record for domestic violence, the vote resumed and the motion was carried unanimously.

Jerry Feldman, exam application was present by Ms. Malone. This application was brought before the board for reconsideration due to disclosed criminal history. Ms. Glover swore in Mr. Feldman.

Mr. Feldman addressed the board. He explained his drinking problem and requested information on possibly becoming an apprentice. Mr. Feldman has an AB License # 2247. It was found that his AB License is in good standing with no complaints. The motion was moved by Ms. Hill and second by Ms. Elms. The motion passed unanimously.

Richard Lloyd Phillips, exam application was brought before the Board for reconsideration due to disclosed criminal history of DUI. Ms. Malone presented case from page 430 of Agenda. Ms. Glover swore in Mr. Phillips.

Mr. Phillips addressed the Board explaining that his DUI happened in 1986 with no subsequent problems. It was moved by Mr. Moecker and seconded by Jodi Hill. The motion passed unanimously to approve his application.

Mark Cleatious Thomas, reciprocity application with disciplinary history. Mr. Thomas was not present. It was moved that his application be denied and second by Mr. Moecker. Ms. Glover asked that the Board state the reason for the denial. It was indicated that denial was due to the seven (7) violations in the state of Texas as listed on page 449 of the agenda and that he was not present. Ms. Glover expressed concerns that the Board does not know what those violations are and that an applicant can not be denied just because they did not attend the meetings. Ms. Malone indicated that the Board Office had received a fax earlier this morning. Ms. Malone reviewed the fax with the board.

The question was called again, however Ms. Glover intervened to explain board guidelines from statutes. She explained that although the applicant had discipline and complaint history the board could only deny someone for specific violations. She explained that there was not enough information to deny. She explained that a person could not be denied because he did not appear before the board. It is best to find out what the complaints were for further review rather than just deny and the applicant takes it before an administrative law judge. The motion was withdrawn.

It was moved by Ms. Hill that the Board request more information from applicant and seconded by Ms. Elms regarding complaints filed in Texas and a disposition of any administrative complaints filed against him. The motion was passed unanimously. It was later incorporated that the application would be considered incomplete, with the request for additional information.

Ms. Malone presented Douglas Brackett application for reinstatement. He paid a fine of \$1090.62. Ms. Glover swore in Mr. Brackett. Mr. Brackett addressed the board indicating that someone used his license without permission in 1998 and was late paying the consignment. Mr. Brackett learned of this problem after calling the Board office to report his address change for an AU license. Mr. Brackett did not receive any communication as all mail was forwarded to his wife's home. Mr. Moecker asked applicant for his AB License number, which was verified by the Board Staff as AB #1400, current and active with no complaints. A motion was moved to approve by Mr. Moecker and seconded by Jodi Hill. The motion passed unanimously.

Ms. Glover Board Counsel Reports

Ms. Glover provided for the Board a statute regarding licensure as it pertains to denying and approving license. She explained that just because there is criminal history, that is not enough to deny a license. She reviewed Florida Statute 268.385 (3). She also referenced 468.389 (L), F.S. to further explain how on the record the crime they were charged with directly relates to the practice or the ability to practice auctioneer.

Ms. Glover also reviewed notes from the last meeting regarding the Auctioneer Recovery Fund, whereas the Board wanted her to intervene in civil suits. She explained that the board does not have the authority to do that. She indicated that she had spoken to Barbara Edwards and other attorneys in her office. She reviewed the Construction Recovery Fund. In their language it specifically states that they can intervene and appear in different suits; the Auctioneers Board does not have that authority. The auctioneer's authority comes through statute and even though the Construction Board has that authority it will still be up to the courts to decide if they have standings. The Recovery Fund's claims come before the Board, the language says that they can recover actual costs and the Board has discretion as to what can be awarded.

Mr. Moecker asked, does that mean that the Board would have to go back to the Legislature to get an amendment to the Statute to get the authority to intervene in civil suites?

Ms. Malone introduced the idea of mediation as an option to potential recovery funds issues. She proposed that Ron Stafford make a presentation at the next conference call in September.

Ms. Glover asked, "what would they be mediating." Ms. Malone stated that under Rule 61G2-8.030, the Board currently has two areas that address mediation. Subsection 1 and Subsection 2. They would be mediating collecting for cost avoidance. Ms. Glover responded the mediation occurs during investigation and has nothing to do with Recovery Fund. Ms. Elms made a recommendation that this all be sorted out and if it does make sense to consider this then allow Mr. Stafford to present at the next meeting. The Chairman further stated that this would be mainly for information. Ms. Glover stated that Ms. Malone did read out the only two things the Board has the authority to mediate and they are very clear; and they have nothing to do with the Recovery Fund. Ms. Malone stated the Board would be looking at potentially expanding the mediation area from a Legislative or Rule standpoint.

Mr. Pellegrini indicated that mediation authority derive from Section 455.2235 F.S.; specifically 455.2235 F.S. and 468.388 F.S. (6). Ms. Glover indicated that the Board does not have the authority to mediate, only to approve and deny claims.

NALLOA Meeting in San Antonio, Texas. Mr. Dietrich expressed concerns regarding the Board's participation. Mr. Moecker suggested the chairman and a person from staff attend. Ms. Hill asked, was open for others to attend? Ms. Malone explained that there is no budget yet for paying the costs to attending NOLLOA.

Concern was expressed by Ms. Hill that due to budget issues, there are no meetings in person yet the Board wants to pay for an out of state meeting. Auctioneers have expressed their concern regarding the issue of auctioneer dollars going to pay travel to NALLOA. Ms. Malone indicated that the fee would

be just for the meeting and that she would be unable to attend. Mr. Moecker expressed concerns about not having Board and staff represented at this meeting.

Ms. Hill indicated that the Board has two responsibilities one to the public, the other to auctioneers to do due diligence. Mr. Dietrich included that he has always been a proponent of a representative attending the national conference. Ms. Hill proposed paying for the meeting and one night travel. Ms. Malone added that travel would be just for the meeting. Ms. Hill made a motion to pay for the cost of the air flight and one night lodging. Chairman, offered one night lodging, registration, and no airfare/no travel no mileage. Ms. Hill gave a motion and seconded by Mr. Moecker. It passed unanimously.

NAA Members Website. Ms. Malone reported that the NAA website had incorrect information posted. The Boards communication office has been in contact with them to correct it.

Prosecuting Attorney Report. Mr. Pellegrini presented prosecuting attorney report from. There were no questions regarding this report.

Executive Director's Report. Ms. Malone presented an update on the CBT mass mailing and contract dispute. She reported that there are locations where people can go and take paper exams. It is taking about three weeks to score the exam and post the results. Applicants can apply on-line for an exam date, once they are eligible in the system (LicenseEase).

Mr. Dietrich reported complaints he receives regarding the telephone systems. People are saying that they are calling the general number and waiting about 15 minutes and never get anyone who can give answers. Also, the students are complaining about their inability to take their exams due to the testing situation.

Mr. Moecker asked C. Pellegrini regarding thoughts on regulating auction business license. He expressed concerns about the lack of coordination between the auctioneers and the auction business license. Mr. Pellegrini drafted a proposed statutory revision that would impose more stringent qualifications on auction business for licensure. It is with Mr. Moecker at this time. This will be placed on the agenda for next meeting.

Mr. Dietrich asked Ms. Glover if this could be done through Board Rule without Legislation?

Date & Location of Next Meeting

Ms. Hill moved that the next meeting be in person. The considerations to save time and money were an issue for the next meeting to be a conference call. Mr. Dietrich presented having more meetings because licenses may be in limbo. The next meeting will be some time in September. Ms. Malone discuss board member training provided by the Department to be held in possible Tallahassee, potentially August 8th. She doesn't know if it is for the full board or just chairman.

The next meeting is tentatively scheduled for Thursday, September 25, 2003, face-to-face per budget. Mr. Dietrich suggests a September 25th at 10:00 a.m. The Board plans a December face-to-face meeting which will be in conjunction with the Florida Auctioneers Convention December 5th.

Ms. Hill objected to a phone meeting on September 25th. Mr. Moecker asked if a board member can not physically be present, are they allowed participating by conference call.

A motion was moved by Ms. Elms for a telephone conference on September 25th 2003 at 10:00 a.m. and the December meeting will be scheduled at that time. The motion passed unanimously.

Election of Officers

Mr. Moecker nominated Mr. Dietrich for Chair. The motion for nominations ceased and was moved by Mr. Moecker and seconded by Ms. Hill

The floor was open for Vice Chair. Mr. Dietrich nominated Mr. Moecker. The motion was moved for nomination to cease and was passed unanimously.

Public Comments

Mr. Skeen expressed concerns about the receipt of evaluations that are a part of the application from the Auctioneer School. Julie Malone suggested that he give her a call when sending evaluations.

Mr. Dietrich requested that Ms. Glover see if Board Rule changes required going through the Legislative process regarding an auctioneer applicant who already has auction business license. He explained that the problem is that there is not a plan that affects both licenses. Ms. Glover explained that there is no statutory authority to review auctioneer business license and that it would require statutory change not a rule change. The statute is not a place to establish rule.

Motion was made to adjourn by Mr. Moecker and seconded by C. Accardo. The meeting was adjourned at 1:16 p.m.