

**Minutes of  
Florida Board of Auctioneers Meeting  
Telephone Conference Call  
Thursday, September 29, 2004  
10:00 a.m.**

**Board Members Present**

Fred Dietrich, Chair  
Michael Moecker, Vice Chair  
Craig Accardo

**Board Members w/ Excused Absences**

Annette Elms  
JoAnn Hill

**Staff Present**

Julie Malone Garofalo, Executive Director  
Donna Salters, Government Analyst  
Mary Ellen Clark, Asst Attny General

Daniel Biggins, Asst Attny General  
Brian Higgins, Asst General Counsel

**Others Present**

Eric Gifford, Attorney for  
Mr. & Mrs. Martinez  
Mark & Sue Hill, Attorney for Thomas Heller  
James Giannuzzi, Applicant  
Matthew Lorentz, Applicant  
Jeffrey Howard, Applicant

Mr. Dietrich, Board Chair called the meeting to order at 10:00 a.m. Mr. Dietrich requested a moment of silence to acknowledge Florida families affected by the hurricanes.

Mr. Moecker moved that the minutes from the June 16, 2004 meeting be approved. It was seconded by Mr. Accardo and the motion passed unanimously.

**Applications with Disclosed Criminal History**

Mrs. Malone Garofalo presented application #3116, James Giannuzzi. This application was for an auctioneer license from null and void status. It was noted that Mr. Giannuzzi's application was presented at the April 5<sup>th</sup> meeting. He was not on the conference call to respond to questions concerning criminal history and his application was postponed to this meeting. He addressed the board explaining the occurrences on his criminal history and also explained that he had not been convicted of any crimes as documented on the application. He properly disclosed an incident in a bar fight. Mr. Moecker moved to accept the application, it was seconded by Mr. Accardo and the motion passed unanimously.

Mrs. Malone Garofalo presented application #3178, Jeffrey Carlos Howard. Staff confirmed that Mr. Howard had provided all documents requested by the Board as well as provided proper documents for the central intake unit. However, Ms. Clark stated that the application could not be deemed complete without information concerning the revocation of real estate license in Georgia. Ms. Salters explained that the application does require a license certification for auctioneer's license held in other states.

It was noted that Mr. Howard's application was received on August 11, 2004. The application was deemed complete on September 9, 2004. Ms. Clark stated that there must be a meeting scheduled inside of 90 days of September 9, 2004 to properly consider additional information concerning revocation of the Georgia real estate license. Mr. Howard waived his 90 days right. Mr. Howard expressed concerns of why this information was not asked of him initially and that he believed that he had supplied all that was required. He stated that he had called the

department on numerous occasions to be sure his application was complete with no return calls. Ms. Malone Garofalo suggested that the board schedule a special conference call in light of the new request for more information concerning the revoke Georgia real estate license. The motion was offered to postpone this application pending receipt of additional information by Mr. Moecker. The motion was seconded by Mr. Accardo and passed unanimously. Mrs. Malone Garofalo stated that it would be helpful if Ms. Clark informs the department of how she is interpreting additional requirements on applications before the meetings. Ms. Clark duly noted the request.

Mrs. Malone Garofalo presented application #158 submitted by Matthew J. Lorentz. Mr. Lorentz addressed the Board concerning the disclosed criminal history on the application. He explained that he was wrongfully accused of attempted murder and provided all documents clearing him in this accusation. Mr. Moecker offered a motion to accept the application. The motion was seconded by Mr. Accardo and passed unanimously.

### **Discipline**

Mr. Higgins presented case # 2003-072263, Wanted Dead or Alive Antiques which is charged with violations of section of 468.389(1) (c), F.S. This case was set for a motion of waiver in an administrative complaint filed February 16, 2004. The respondent was served on June 17, 2004 and there has not been a response to that complaint in the form of an election. The deadline for the elections of rights to be filed was September 8, 2004. Mr. Higgins requested that the Board find that the respondent waived his right to a hearing involving disputed issues and material facts and that the board moves to a discussion of discipline. It was moved to accept the facts alleged in the administrative complaint. The motion passed unanimously.

Mr. Higgins stated that based on the aggravating facts of restitution due to bankruptcy, revocation of license AB # 2116 is recommended. He commented that this business has filed bankruptcy and his position is that once a respondent has filed bankruptcy, then the state should only punish by the burden of taking away a license. There was a discussion concerning the collection of fines and costs if ordered. Mr. Higgins stated that bankruptcy is a federal order which will trump states order. Mr. Dietrich asked if owners David or Roy Brooks hold an auctioneer license. It was found that neither holds an auctioneer license. A motion was offered by Mr. Moecker that the board revokes AB 2116 because they already had a significant fine and that it has never been paid. It was seconded by Mr. Accardo and the motion passed unanimously.

Mr. Higgins presented case # 2002-014015, Lake Worth Antique Mall license # AB 2154. This case was set for a motion for waiver to set matter for hearing. On June 4, 2003 an administrative complaint was filed for three violations of sections 468.389, F.S. There was no response to a hand delivery of elections of rights. The election of rights forms were published during the weeks of April 8, 15<sup>th</sup> 22<sup>nd</sup> and 29<sup>th</sup>, 2004. The twenty-one day deadline expired on May 20, 2004. Mr. Higgins moved the board to find that Lake Worth Antique Mall had been properly served and did waive its right to a hearing involving disputed issue of material facts and move to the disciplinary phase. It was properly moved by Mr. Accardo and second by Mr. Moecker. The motion passed unanimously.

Mr. Higgins responded that license #AB 2154 be revoked, issued an administrative fine of \$3000, and \$416.70 in investigative costs. Mr. Higgins reminded the board that the license AB 2154 had been previously revoked January 16, 2004. It was noted that the owner Anthony Lapreta does not hold an auctioneer's license.

Mr. Moecker offered a motion to levy costs in the amount of \$416.70, an administrative fine of \$3000 and revocation of license AB 2154. It was seconded by Mr. Accardo and the motion passed unanimously.

Mr. Higgins presented case # 2004-009799, Thomas B. Heller AU 1131 for settlement stipulation for a violation against Chapter 468 F.S. In lieu of going to the Division of Administrative Hearing, Mr. Heller signed a stipulation which required him to pay an administrative fine of \$1000; cost of \$76.06 and auctioneer license be placed on probation for two years and the conditions of probation be determined by the board. He further moved that the board accepts the stipulation and if they want any particular conditions of probation they may include it in the motion.

Mr. Dietrich asked if there was an auction business related to the auctioneer license. It was found that Absolute Auction Services license number # 791 was a related license to Mr. Heller. Mr. Dietrich asked why are there no violations filed against the auctioneer license? Mr. Higgins responded that it might have been due to the way the original investigative complaint was written. Mr. Dietrich asked that it be relayed to the department's complaints and investigations division that licensing under the auctioneer board can be a two licensing process and both licenses should be investigated if there is a complaint against one.

Mr. Mark Hill, Counsel for Mr. Heller addressed the board requesting the approval of the settlement stipulation. It was noted that Mr. Heller was reprimanded in 1993. Mr. Moecker offered the motion to accept the stipulation as negotiated. Mr. Accardo seconded the motion and it passed unanimously.

Mr. Moecker asked about the Department of State business registrations. Mrs. Malone Garofalo verified that this function occurs in the central intake unit at the time of application. It was noted that this verification is not done upon renewal.

### **Ratifications of Applications**

Ms. Salters read the list for ratifying applications. There were 20 licenses issued for auctioneers by examination. Mr. Moecker offered the motion to accept the applications; it was seconded by Mr. Accardo and passed unanimously.

There were twelve (12) applications by endorsement presented. Mr. Moecker offered a motion to accept the applications. It was seconded by Mr. Accardo and the motion passed unanimously.

There were twenty-four (24) applications for auction business presented. Mr. Moecker offered a motion to accept the applications. It was seconded by Mr. Accardo and the motion passed unanimously.

There was one (1) application presented from null & void status. Mr. Moecker offered a motion to accept the application. It was seconded by Mr. Accardo and the motion passed unanimously.

There were two (2) applications presented for auctioneer apprentice. Mr. Moecker offered a motion to accept the applications. It was seconded by Mr. Accardo and the motion passed unanimously.

### **Auctioneer Recovery Fund Applications**

Mrs. Malone Garofalo presented additional information that was submitted by Gilligan, King and Gooding Law Offices on behalf of Mr. & Mrs. Martinez concerning an auctioneer recovery fund claim. This application has been discussed at previous board meetings. Mrs. Malone Garofalo explained that some new information had come over shortly before the close of business September 28<sup>th</sup> and thereby not having an opportunity to forward it to board members.

Ms. Clark explained that this matter had been previously heard a March 9, 2004 telephone conference call. At that time, the board determined that there was no evidence that a claim had been timely made to the recovery fund. She referenced Sections 468.392, F.S. conditions for recovery from the fund. What previously was determined was that in Section 468.395, F.S. (3) *a claim for recovery must be made within in two years from the time of the acts giving rise to the claim or within two years of the time the acts were discovered.* She stated that what was lacking in March was the evidence of the claim being timely made. The board granted additional time to the Martinez's allowing them an opportunity to submit evidence of having timely filed a claim. Previously, Mr. Gifford submitted correspondence stating that no previous evidence can be found and requested that the board place the claim back on the agenda.

Ms. Clark stated that the fax she did receive seems to be a recovery fund claim information form from Mr. Jones, the previous attorney, with a handwritten letter stating that court papers were enclosed. The letter stated that a claim was submitted in September 2002 and that he never received a response from the board, neither does the board have evidence of submission. Ms. Clark stated that even if the board had a copy it would be a fax of a fax. There was no one available swearing to the authenticity of the letter and if the board was in a fact-finding mode, that would make that piece of evidence non-admissible. Ms. Clark recommended that the board consider a finding that there was no timely submission and those person seeking the recovery would then be entitled to dispute the determination and request a formal fact finding mission. This would be an opportunity for Mr. & Mrs. Martinez to legally submit evidence required to conform to the rules of evidence and an administrative law judge would have the ability to judge the documents and have the writer of the letter be present to testify as its authenticity.

Mr. Gifford responded and agreed with the summary provided by Ms. Clark. He apologized for the late submission of the fax and questioned the authenticity of the document received from Mr. Jones as well. He asked the board to specify in any findings why the claim is being denied. He further explained that with the exceptions of the two-year limitation, there is evidence that would entitle his client to some recovery. A judgment was submitted and proof of the efforts made to collect should be the focus rather than whether the previous attorney did what he was suppose to do under the statues in regards to filing the claim.

Ms. Clark commented that once the board finds that a claim had been made within two years, then the claimant must take proper and reasonable actions to collect the claim. It was agreed that it is not appropriate to address this issue at this stage. Mr. Gifford agreed and further requested that the board either in the minutes or in their findings address the fact that a claim was not made given the evidence of the two year limitation of the time that his client knew or should have known that a violation had occurred. Ms. Clark disagreed stating that if the board is going to deny, they are going to deny on all possible grounds. Mr. Gifford asked, "how can the board move to deny to say whether or not other submissions are valid or not?" Ms. Clark disagreed stating that they are not dependent on each other. She stated that they must first (a)

show that a claim was timely made, (b) show a judgment that the applicant took reasonable steps to collect on the judgement. Mr. Gifford responded stating that he has submitted a judgment, an affidavit, a writ or execution, and a point of evidence establishing what they intended to do to collect against Ms. Gray. Mr. Gifford further stated that if the board is going to address both issues then the previously mentioned information has been submitted. And there has not yet been a discussion yet of the board on whether sufficient evidence has been provided only a discussion regarding whether a notice of claim had been filed in a timely manner and he is aware that this piece of information is lacking in this case.

Ms. Clark stated that given that the board is going to issue an order, she agreed that Mr. Gifford probably had submitted all materials and given that the board did not address that issue in prior discussion she had a duty to discuss it now. Ms. Clark stated that the final judgment must be examined to be sure that it states the violation committed by Ms. Gray. The claim is a violation Section 468.389(1)(e), F.S. Mr. Gifford stated that the complaint identified by Mr. Jones was a breach of contract. The breach of contract lead to the final judgment in the amount of \$123,558. He explained that his client did not sue for violation of the statute, but for breach of the contract. Mr. Gifford explained that the violation is not clearly spelled out and if there was not a written contract they would not have a breach alleged in the complaint. Mr. Gifford referenced *Construction Recovery Fund vs Chappell (835 South 2<sup>nd</sup> 339 Third District Court)* that the board and or courts should liberally construe the statues in favor of granting a remedy. He stated that it is clear that Ms. Gray violated statue, she took money or caused his clients to loose substantial money and he felt that the board would probably reach a conclusion that a notice of claim was not properly filed.

Ms. Clark explained to Mr. Gifford that the board had not made any decisions regarding the complaint. She explained that because she received information very late she did not have an opportunity to write a more thorough order that addresses all of the requirements of the statues.

Mr. Dietrich commented that the only thing she violated was not having a written contract. Also in the material, there is a reference to Janet S. Hobson who is a manger of the auction who is not licensed.

The board and Mr. Gifford agreed that Ms. Gray violated Sections 468.389 (1)(e), F.S. *any conduct in connection that demonstrates bad faith or dishonesty*. It was stated that the Martinez had requested the items be sold at minimum price as indicated on the e-mail list. However it was noted that the advertisement stated "Total Herd Dispersal" and items were sold to the highest bidder. Based on the complaint submitted there was no actual loss alleged as it was an absolute sell and the complainants should have know this. It was noted that Janet Hobson does not hold a license and therefore not covered under the recovery fund and the board should not assume the full responsibility for the full amount of \$123,558. Mr. Accardo offered a motion that the claim from the auctioneer recovery fund be denied having found that in the final judgment there was a violation of Sections of 468.389 (1)(e), but there was no actual lost demonstrated, and that the claim was not made within two years. Mr. Moecker seconded it and the motion passed unanimously.

### **Department Attorney Report**

Ms. Clark reported on the draft legislation that would provide the same type of connection for business licenses in Florida as is done in North Carolina. She stated that in reviewing the North Carolina law, a person seeking a business license is required to sit for the same exam, which she does not believe the board is seeking. Ms. Clark included Sections of 489.522, F.S. for

electrical contractors licensing board where businesses must be qualified as example legislation. Mr. Moecker asked a question regarding how this would affect reciprocal license. Ms. Clark explained that reciprocity does not apply to auction businesses. Mr. Moecker stated that in regards to the draft under (d) add the word insolvency with bankruptcy.

Mr. Dietrich asked if there is some way to have the fingerprint legislation included on an auction business application. Ms. Clark stated the board would need to expand Section 468.385 F.S to include auction business and all other auction licenses. Ms. Clark explained that she thinks it would be very difficult to collect fingerprints on all persons that may apply to be an officer, or director on an auction business application. She feels that the board is well protected by language included in the draft. Ms. Clark explained that once the language is approved, it could be taken to associations and other individuals to lobby legislators. Mr. Accardo made a motion to approve the language with the recommended changes. It was seconded by Mr. Accardo and passed unanimously.

Ms. Clark introduced the new board attorney, Mr. Daniel Biggins.

### **Regulations Report**

Mrs. Malone Garofalo presented the unlicensed activity brochure and requested the board's input. Mr. Moecker stated that the board should have Florida Auctioneers Association (FAA) provide some recommended language for the brochure and have it available before the next meeting. Mr. Reddinger stated that he has a layout prepared and printing can be done in house. He explained that once a brochure is built, modifications could be easily done when rule changes are required. Mr. Accardo offered a motion to appoint Mr. Moecker to work with FAA to draft language for the auctioneer board brochure. It was seconded by Mr. Dietrich and the motion passed unanimously.

### **Board Chair Report**

Mr. Dietrich reported on the letter from Stan Crook (FAA) endorsing the proposed legislation in regards to fingerprint requirements for auctioneers. Mr. Dietrich also reported that to be successful, the board needs to get sponsors for all legislative issues, as they will not be part of the department's legislative package.

### **Executive Director's Report**

Mrs. Malone Garofalo reported that Mr. Marc Drexler, DBPR Collections Attorney provided a memo indicating that the debt for A & E Auctions be submitted as a write-off as the respondent's corporation had been administratively dissolved.

Mrs. Malone Garofalo reviewed financial statements for closeout end of year June 30, 2004. Mr. Dietrich commented that Ms. Hill had mentioned in a previous meeting that the board needs to look at the actual cost of operating and maybe adjust fees down as she had concerns about the board collecting excess revenue to then have the state sweep for the general revenue. Mrs. Malone Garofalo stated that she would then provide a report on areas where fees might be decreased. Mr. Moecker reminded the board that in looking at changes for AB licenses the board should be careful in making any fee adjustments.

Mrs. Malone Garofalo provided an update on the auctioneer newsletter. It was decided that all licensees should receive the newsletter.

Mrs. Malone Garofalo provided the complaints and investigation report for July 2004. There were seven (7) complaints added; three (3) licensed complaints found legally sufficient; one (1) unlicensed complaint found legally sufficient; one (1) investigation assigned; and six (6) investigations completed; and two (2) informal recoveries. She also presented the report for FY 2003 – FY 2004

**Next Meeting**

The next scheduled board meeting will be held Tuesday, December 7, 2004 at 9:00 a.m. in Tallahassee.

The meeting was adjourned at 1:15 p.m.