

**Minutes of
Florida Board of Auctioneers Meeting
Tallahassee, Florida
Tuesday, December 7, 2004
9:00 a.m.**

Board Members Present

Fred Dietrich, Chair
Michael Moecker, Vice Chair
Craig Accardo
JoAnn Hill

Board Members w/ Excused Absences

Annette Elms

Staff Present

Julie Malone Garofalo, Executive Director
Donna Salters, Government Analyst
Daniel Biggins, Asst Attny General
Brian Higgins, Asst General Counsel
Jerry Wilson, Division Director DBPR

Mr. Dietrich, Board Chair called the meeting to order at 9:00 a.m.

Ms. Malone Garofalo informed the Board that this would be her last meeting.

Mr. Dietrich expressed appreciation for Ms. Malone Garofalo's performance and wishes that Secretary Carr be notified of the Board's gratitude and appreciation. Mr. Moecker offered the motion and it was seconded by Ms. Hill. The motion passed unanimously.

Mr. Accardo offered a motion that the minutes from the September 29th, 2004 be accepted. The motion was seconded by Mr. Moecker and passed unanimously.

Ms. Hill moved that the minutes from the November 12, 2004 meeting be accepted. It was seconded by Mr. Moecker and the motion passed unanimously.

Mr. Dietrich stated that the Board wishes to continue to work with NALLOA, the auctioneer brochure, and any other ongoing activities with the new executive director.

Ms. Malone Garofalo provided a review of the Financial Report of September 30, 2004 and 2003 as enclosed in the agenda. Ms. Hill asked for a clarification on the administrative trust fund. Ms. Malone Garofalo explained that there are two funds, the administrative trust fund and the professional regulation trust fund. She explained that a portion of the professional regulation trust funds goes to the administrative trust fund to pay for the office of the secretary technology, legislative affairs and the general counsel's office.

Ms. Malone Garofalo presented the draft of the auctioneer newsletter. She stated that a list of discipline would be published with the newsletter. The newsletter would be distributed by posting on internet and mailed to all of the license holders under the board of auctioneers.

Mr. Moecker asked why is the auctioneer letter not included in the Florida Auctioneer Association newsletter? Mr. Dieterich explained that their newsletter is only distributed to the auctioneer association membership, and therefore does not reach every auctioneer.

Ms. Malone Garofalo presented a draft of the auctioneer brochure. Ms. Hill offered changes to the brochure which included making the font smaller, **highlight "be prepared"**, and make

bullets under “choosing the right auctioneer”, additionally she suggested that under “search the department” remove the “or”.

Mr. Dietrich suggested that under MYFLORIDA.COM, place FLORIDAAUCTIONEERS.ORG. Ms. Malone Garofalo stated that the communication office must take this suggestion under consideration, as the state must be careful in promoting an outside organization. It was agreed to add the words “professional associations” rather than name just one.

Ms. Hill offered a motion to make noted changes to the format. It was seconded by Mr. Moecker and passed unanimously.

Mr. Biggins presented a report on the changes to Sections 468.385, F.S. License required; qualifications; examinations; bond.—This language is the final draft which was approved at the September 29, 2004 meeting. Mr. Dietrich explained that it is too late in the year to get anything through the 2005 legislative session. He noted that he has some commitments from some legislators to sponsor the changes to the statute, but it will be in the 2006 session. Mr. Dietrich requested the legislative strategies be placed on the agenda for the next meeting.

Mr. Higgins, department attorney provided a hand out and a status report on cases in the Office of the General Counsel. He explained that there is a total of 12 cases out of 9 which are public cases. There are three (3) cases in legal; four (4) administrative complaints filed. There is one (1) case for stipulation or request for informal hearing; three (3) cases for formal hearings and one (1) case set for board presentation.

The complaints and investigative report for July 2004 – October 2004 shows the following statistics: 23 complaints added; 13 licensed complaints found legally sufficient; 4 unlicensed complaints found legally sufficient; 9 investigations were assigned; 12 investigations were completed; 3 mediations assigned; 4 mediations completed; 1 notice of non-compliance.

Ms. Malone read the minutes from November 12, 2003 meeting concerning Joseph Shaia (case # 2002-01431 & 2002-01549). It was noted that quarterly reports were due from Jim Skeen concerning the monitoring of Joseph Shaia.

Mr. Wilson addressed the board stating that he was the investigator for a case back in the 90's concerning a sting where Mr. Shaia was charged with some felonies. The department became aware of possible new violations concerning Mr. Shaia and reviewed the final orders that resulted from November 2003. It was found that no quarterly reports had been submitted. A letter was received from Mr. Skeen on December 1, 2004 regarding auctions he monitored on August 8, 2004; September 19, 2004; October 24, 2004 & November 8, 2004. It was noted that Mr. Shaia's probation will be completed in January 2005 and all fees have been paid.

Mr. Biggins stated the Board could take it into account for future prosecution that a violation occurred while a person was on probation. He stated that this could be considered an aggravated circumstance to the already existing probation.

Ms. Salters asked then if Mr. Skeen did not comply with the submission of the quarterly reports, would Mr. Shaia be considered out of compliance for the discipline order? Mr. Higgins stated that he did not see a reason that Mr. Skeen should not be prosecuted for violation of a board order. Ms. Hill asked could the probation be extended since he was out of compliance due to the non-submission of the reports. Mr. Higgins stated no, as there were no stipulations for this indicated in the final order.

Mr. Dietrich stated that Mr. Wilson should be contacted if a board member becomes aware of possible violations.

Ms. Malone Garofalo stated that the board should consider in the future who they want to have monitor a licensee. The quarterly report concerning Mr. Shaia was tabled until a later date.

There was a review of fees as requested by Ms. Hill in a previous meeting. The concern was that if the state can sweep funds, then maybe too much is being collected from applicants and licensees for other fees. Ms. Hill asked, "what is the department collecting fees for?" She feels as there maybe double taxation or special taxation occurring against licensees. Ms. Malone Garofalo explained transfer fees and expenses on the operating account statement to help understand license fees. Ms. Hill requested to have the previous 10 years of actual fees as reflected on the operating account at the next meeting. She also requested that the board holds a brief discussion on fee thresholds and what legal rights does the board have regarding fees and transfers from the unlicensed activity account to the operating account.

Ms. Hill stated that she has observed many auctioneers have expressing concerns about online auctions being done by consignment shops that are charging a commission and do not have an auctioneer or auction business license. The board has expressed much concerned about the public's ignorance in regards to the need to have an auction business license of such business actions.

Mr. Wilson explained that unlicensed activity complaints are public information. He further stated that the online auction problem is a new entity, and it seems that the board may be asking investigators to issue cease and desist orders to mom and pop businesses that may not know that they are breaking the law. In turn this may cause an influx of calls to legislators. He suggested the board work proactively in dealing with this problem by first involving Secretary Carr and the General Counsel's Office before making any decisions about how this new entity should be handled.

Mr. Moecker suggested that the professionals within the department get together and come up some ideas for handling the potential problems of online auctions. Mr. Dietrich thought the department should be more diplomatic in notifying small businesses if they are doing online auctions without knowing they need a license. The board requested that Mr. Wilson provide a report by January 20, 2005 to them individually regarding the Secretary's special counsel review of Rule 61G2-8.010, F.A.C. concerning the definition of an auctioneer and auction business.

Mr. Moecker asked questions regarding the destruction of agendas. Ms. Malone Garofalo reminded the board that they should shred any documents due to the personal information that may be on applications.

Mr. Moecker also requested that the minutes be sent out in draft form to the board members earlier than those which are included in the agenda.

The next meeting is scheduled for January 25, 2004 at 10:00 a.m., by conference call. The following meeting is scheduled for Tuesday, March 22, 2005 in Tallahassee at 9:00 a.m.

Ms. Hill moved that the meeting be adjourned. It was seconded by Mr. Accardo. The meeting was adjourned at 12:03 p.m.