I. CALL TO ORDER
Chairman Michael Moecker called the meeting to order at 9:03 a.m.
Fred Dietrich gave an invocation. Don Shearer led the Pledge of Allegiance.

II. ROLL CALL
Michael Moecker, Chair
H. Fred Dietrich, III
Don Shearer

STAFF PRESENT
GW Harrell, Division Director of Professions
Mary Alford, Government Analyst
C. Erica White, Prosecuting Attorney
Michael Flury, Assistant Attorney General

COURT REPORTER
Volusia Court Reporting
432 South Beach Street
Daytona Beach, Florida 32114
386.255.2150

III. Review and Approval
A. Minutes from December 11, 2012
Motion: Don Shearer made a motion to approve minutes from December 11, 2012 meeting.
Second: Fred Dietrich seconds the motion. Motion passes unanimously.

B. Ratification List
Mary Alford presented ratification list for November 28, 2012 – February 12, 2013.

Licensed by Auctioneer Apprentice
4801 448 DICKINSON, SALVATORE FORT MYERS FL
4801 447 GODWIN, DONNIE PITTMAN DAVENPORT FL

Auctioneer Licensed by Exam
- -
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Motion: Fred Dietrich made a motion to approve ratification list as submitted.
Second: Don Shearer seconds the motion. Motion passes unanimously.

IV. Disciplinary Cases

A. Motion for Waiver and Final Order
Patty Jo Ferraro, Case # 2012-025793

The Department filed an Administrative Complaint against Patty Jo Ferraro (respondent) on December 28, 2012. The respondent was served with the Administrative Complaint on December 31, 2012. Proof of service is in your materials. The Administrative Complaint charge respondent with violating Section 468.389(1)(j), Florida Statutes by violating a Final Order for case number 2009-040958 for failure to pay five hundred ($500) fine and cost of six hundred thirty dollars and fifty-nine cents ($630.59). To date the respondent has not filed an Election of Rights form or otherwise dispute of material facts in response for the Administrative Complaint served. Pursuant to Rule 28-106.111, F.A.C, by failing to request a hearing within 21 days of receipt of an agency pleading the respondent has waived her right to request a hearing in which there is disputed issue of material fact.

At this time the Department believes it is appropriate for the Chair to entertain a motion finding that the respondent has waived her right to a hearing.

Motion: Chairman Moecker made a motion that the responded has waived her right to a hearing.
Second: Fred Dietrich seconds the motion. Motion carries unanimously.

The Department believes it is appropriate at this time to adopt the allegations of fact and conclusion of law contained in the Administrative Complaint as those of the Board.

Motion: Chairman Moecker made a motion to adopt the allegations of fact and conclusion of law as contained in the Administrative Complaint.
Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Pursuant to the disciplinary guidelines the Department recommends revocation of the license for Ms. Ferraro, AU 3905.

Chairman Moecker: Any other licensed affiliated?
C. Erica White: Yes, she does have an auctioneer business license, AB 2791. However, looking at the Administrative Complaint I do not see where there was anything filed against that license.
Mary Alford: She sent a letter to request the business be closed, our system has not been updated to reflect a closed status. The business is no longer operating.

Chairman Moecker: That will die because it has not been renewed.

Mary Alford: It has been renewed so it is in a current, active status at this time. She indicated to the Department a couple months ago that the business is no longer operating.

Chairman Moecker: Is there anything we can do? Even though the business isn’t operating she still has a license.

Michael Flury: She has requested it, giving you the authority to relinquish it.

GW Harrell: If they approve the recommendation we are revoking her individual license. Does the business license require the individual license to keep it valid?

Mary Alford: No, she is listed as the owner of the license.

Don Shearer: I think at the time this was addressed the business license was already inactive so it was not considered as part of the stipulation because of that.

GW Harrell: Is there grounds to open an additional disciplinary case against the business?

Michel Flury: Has she renewed it since she let you know she doesn’t want it anymore?

Mary Alford: Her mother renewed her license. She did not want to renew her licenses. This case is strictly failure to comply on her individual disciplinary license. The previous case did include her individual and business license.

Motion: Fred Dietrich made a motion for revocation of auctioneer license, AU 3905.

Second: Don Shearer seconds the motion. Motion carries unanimously.

C. Erica White: Mr. Chairman, on license number AB 2791 do you want any further action on that license?

Chairman Moecker: We need to make sure that is not part of disciplinary action from a few years ago. If it was part of the disciplinary action we need to make sure we do something about that license that is not being used. And she hires someone as an auctioneer.

C. Erica White: It is not part of the Administrative Complaint, so there is no action involving the business license.

Michael Flurry: The violation is her own personal violation for not complying to the previous final order.

Chairman Moecker: I understand.
GW Harrell: Are there provisions to exclude people from being corporate officers or principle officers in the business that previously have discipline?

C. Erica White: I am not sure if the Auctioneer statute has that provision.

Chairman Moecker: One of the problems that we have had since I have been on the Board and we have been talking about it long before I came on the Board, The issues is the separation of the AU and AB and the non-linking of the two. We had a bill in the past, but it was vetoed that would have fixed that problem. That would have allowed us to hook things up a little better.

GW Harrell: All I can do is recommend to the Board they request the prosecuting attorney research the issue to see if it is appropriate to open a case against the business because of previous activity. There may be some provisions in the practice act or 455 that allows OGC to open up a disciplinary case. Also, contact the person responsible for the business license and get it in writing that they want to renew the business license.

C. Erica White: I can take that direction and bring it back.

Don Shearer: They are going to bring back the business license as a separate case.

Chairman Moecker: They are going to look at the possibilities of what we can do.

Don Shearer: Did she say the AU licensee’s mother renewed her business license?

Mary Alford: Ms. Ferraro did. In speaking with Ms. Ferraro on the notification letter for this case she indicated that she did not renew the license and her mother renewed her license. She had no intentions to renew the license. She was surprised that her license was renewed.

Don Shearer: She renewed it in her daughter’s name?

Mary Alford: That is what the daughter is claiming.

Chairman Moecker: To sum up we can see what we can do about AB 2791 and if need be we can always have a conference call to deal with it in between meetings. I think you have the sense of the Board and what we want to accomplish.

Fred Dietrich: Our frustration is there is no background check on an auction business. We had a bill that took five years for us to get passed through the legislature. Then the Governor vetoed it, which would have required a background check on auction businesses. A frustrating thing as a Board member is that we have had people in front of us turned down for an auction license and they say that’s okay, I will just get an auction business license and I will hire auctioneers. It has been our frustration and after five years to get the right situation to have someone sponsor it and has the passion to get it passed after five years, then it was vetoed.

GW Harrell: Your comments are received, I understand completely. Each Governor’s Office takes into account the financial burden on the applicant versus regulatory benefit that is gained. On this particular case for the business, would we be doing background checks on all the corporate officers or shareholders? Who would we do the background checks on? In
construction, we get credit reports on the business. We get criminal history reports on the
licensee, but we don’t get criminal history reports for the corporate officers. Sometimes that can
get pretty extensive.

Chairman Moecker: The intent was to get it on the corporate officers. You have a problem with a
public company, then what do you do, who do you do a background check on. There you would
do the background check on the actual owner or licensee. You are more concerned with
individuals getting their hands on public money and misusing it. As Mr. Dietrich accurately
points out, we have had people in the past that come before us and have said if you don’t approve
my AU I will get an AB and hire someone to run my auctions. We have no ability to stop that
from happening.

GW Harrell: I know in construction when we discipline a licensee they enter the corporate
officers of the business in our data system. Then if the corporate officer shows up on an
application at a later date it cross references for another license it shows up in the system and the
application goes for Board review. Maybe we can do something for that with auctioneers.

Mary Alford: For the business license we have now implemented there is one particular owner
listed with the company so we have a responsible person for that business, on top of the
additional requirement for all corporate officers that own 10% or more of the company.

GW Harrell: Unless the Division of Regulation enters the data into the system an application will
not screen those corporate officers for a later day.

Mary Alford: The proposal was to have the owner of the business to have the background check
right now.

GW Harrell: Yes, but that has to be statutory authorized. That isn’t happening. This could be
something we could do in the meantime.

B. Settlement Stipulation

1. Thomas Garner, Case # 2012-003125
2. First Coast Auction & Realty, Inc., Case # 2012-003183

Robert Garner was present for the meeting on behalf of his father, Thomas Garner

C. Erica White: Mr. Chairman it is my understanding there is a letter provided from counsel with
the Leon County Sherriff’s Office. From procedural standpoint, upon further review of agenda
materials, I noticed there is an amended administrative complaint that was not included in your
materials, that was filed on January 22, 2013. I see there is a settlement stipulation, but it is my
belief the settlement stipulation actually goes with the administrative complaint not the amended
administrative complaint. Based on that, I would like to pull this from the agenda for
consideration today and make sure we have the right procedure and that the respondent
understands the stipulation is going to the amended administrative complaint.

Since we do have this before you, I would like to get some direction from the Board as to the
terms of the settlement stipulation to see if that is something you would consider.
Chairman Moecker: So you want to withdraw the settlement stipulation that has been executed?

Michael Flury: The settlement stipulation was signed on January 9th, apparently there was an amended administrative complaint that went out January 22nd. That is not in here and the settlement stipulation does not apply to the amended administrative complaint. They need to make sure procedurally everything is straight and the respondent knows what they are agreeing too, what the correct charges are. That is why they are requesting it be pulled.

Chairman Moecker: If you are suggesting it is incomplete then there is no need to go forward with it.

C. Erica White: Yes, Sir. The letter from the Leon County Sherriff’s Office, since that was provided to the Board, takes issue with the current settlement stipulation before you. I would like to get some direction from the Board on the terms on the current settlement stipulation would have been something you would have considered. I believe it was a $250 fine and administrative cost.

Chairman Moecker: I looked at the letter briefly. It offends me he writes a letter like this. We award out of the recovery fund at the maximum we were allowed to do. I don’t think it is our responsibility, the recovery fund is all we administer, and we do not administer the deficiency claim. The deficiency claim is between him and the defendant isn’t that right?

C. Erica White: Yes, Sir.

Chairman Moecker: Were does he come up with the idea we are being lenient? We gave him all we are statutorily allowed to give him. So I don’t understand the point of the letter.

Fred Dietrich: Mr. Chairman, I was also offended by this letter. He sat in the hearing and everything was brought out. There were a lot of deficiencies on the part of the Leon County Sherriff’s Office. The auction company showed after the auction within the 30 day period they gave them a check. Then two years later they found the check and tried to cash it and with some mitigating circumstances with the auction company all of this was brought out in the hearing. I think there is a representative here from the Garner family who may have more factual information. All of this material was thoroughly discussed at the last board meeting. He was there. There is a lot of things he could not answer for like why they waited two years to deposit the check. The auction company showed us proof the check was mailed to them. He was at the last meeting and this was pointed out. As Mr. Moecker pointed out he was awarded the maximum of what we could from the recovery fund. I think they turned down a proposal from Mr. Garner. When they went the recovery fund route, our hands were tied on how much they could receive from us.

Chairman Moecker: The check has gone out to them for the $50,000, right?

Mary Alford: Yes, Sir.

Chairman Moecker: We are now dealing with the deficiency and that is not our business. Our business should now be to make some arrangements with the Garner family and auction company to repay the recovery fund. That is our business.
Michael Flury: You are correct, you are not responsible for acting like a collection agency. Just for clarification the way I recalled it the dispute was they said they sent the check to the Leon County Sheriff’s Department said they did not get the check, that is were the dispute lies. It did take a period of time for them to make a claim. Right now with the discussion we have had, I think you have what you need to go forward. We just need to clarify what the amended change in the complaint was so they are clear before they come back to know what they are agreeing to before they come back to us.

Don Shearer: Didn’t they already receive a court judgment? Then that should take care of the deficiency. They should work through that system, not through us.

Chairman Moecker: Will you respond to the letter?

Michael Flury: I don’t think the letter requires a response that is just him expressing the concern.

Chairman Moecker: We don’t have to respond. It will come back before us at the appropriate time.

Fred Dietrich: It was my understanding from the last meeting that the recovery fund payout was on Mr. Garner’s individual license and not First Coast Auction company. The penalties were against Mr. Garner’s auctioneer license individually and not the business. Right now she is indicating there is a case against First Coast Auction company.

Michael Flurry: The disciplinary case process is separate from the claim. To allow first Coast Auction operating they had to make it a separate claim. They are still part of the discipline case.

Fred Dietrich: The situation in that case was when we pay out from the recovery fund the license is suspended automatically. The Recovery Fund payout was from Mr. Garner’s individual license number and not First Coast Auction Company. The complaint was against Mr. Garner individual AU license and not the business.

Michael Flury: No, the complaint was against both in the disciplinary process. Probable Cause has been found in both cases. The claim was only against Mr. Garner’s license so the business could operate.

Chairman Moecker: The theory was at the time how are they going to pay this back if they were forced out of business all together. Since there were extenuating circumstances to the issue and a long standing reputation of no complaints at all, that there were extenuating circumstances that allowed us not to pull in First Coast Auction to be part of the claim.

Michael Flury: that would allow First Coast to continue operating.

Chairman Moecker: Are you concerned that the case with First Coast will come back?

Fred Dietrich: Yes, Sir.
Michael Flury: The case will come back. How you discipline the company will be your decision. They will still be able to operate unless the Board takes action to suspend or revoke the license. They were apart of the original complaint.

Don Shearer: We can’t address that until the case comes back.

Chairman Moecker: The theory was if we are going to get the fifty thousand back ($50,000) they have to stay in business to pay it back. They stated under testimony that is what they would do. I don’t know how those terms have been worked out on how it will be paid back.

Fred Dietrich: I know Mary had the information, but my recollection was that the judgment was against an individual auctioneer and not the business.

Mary Alford: The civil judgment was listed as the individual. We could not discuss the complaints at that time, which is what we have on the agenda now. We did have complaints open. The recovery fund action with the civil judgment was separate.

Chairman Moecker: What we need to do is wait until this comes back.

3. Anthony James Grogan, Case # 2012-012016
4. Auctions by B. Langston, LLC, Case # 2012-009173

Attorney Antoinette Burgess representing Anthony Grogan and Auctions by B. Langston, LLC were present for the meeting. Mr. Grogan was sworn in by the Court Reporter.

The Department filed an administrative complaint on November 16, 2012. It was a three count administrative complaint; Count one (1) dealt with the violation of Section 468.389(1)(c), Florida Statutes for failure to account or pay in a reasonable time, Count two (2) violation Section 468.389(1)(j), Florida Statutes and 468.3388(1) and (2), Florida Statutes for failure to execute a written agreement prior to conducting an auction and failure to provide the owner a copy of the agreement prior to conducting the auction, and Count three (3) dealt with a violation of Section 468.389(1)(j), Florida Statutes and 468.388(1)(b) for failure to maintain a ledger for funds held by another person. In your material you will see a settlement agreement. The terms of the disposition in the agreement are that the respondents, Auction by B. Langston LLC, and Anthony Grogan who are represented by Counsel, would pay an administrative fine of $1,000 to be paid within 90 days of the Final Order and they would also pay administrative cost of $1,958.30 to be paid within 60 days of the Final Order. Both licenses (AB 3056 and AU 4327) will be placed on probation for one (1) year as ordered by the Board if you approve the stipulation and it is adopted.

At this time the Department believes it is appropriate for the Chair to entertain a motion adopting the terms of the stipulation as a Final Order of this case.

Chairman Moecker: This case has a lot of violations in it. There are so many things that are wrong with this case I don’t know how we arrived at the settlement stipulation to begin with. When I looked at it, I know there are no priors, but there are just so many violations. I would like to hear from Mr. Grogan.
Fred Dietrich: You mention no priors, but these are fairly new license numbers. They really haven’t been in existence for very long. It concerns me we have this many violations with a fairly new license.

Chairman Moecker: It concerns me as well. When I look at the investigative report, by the way the Investigator did a wonderful job, he gave us plenty of information and very thorough. I don’t understand you are fairly new in the game, how is it all of the stuff you learned in the auction business just disappeared when you got your license. You go to school and apply for a license to operate, learning how to do things like; taking inventory when you pick things up for sale, not done. Not having an escrow account with money going into and not responding to the people in 30 days, I don’t know how that is possible. Not having a written agreement, I understand it was verbal by what’s in the information here. Those things bother me and then to say a $1,000 fine and pay the cost and we will go on our way and by the way you are on probation for a year doesn’t sit well with me. Am I the only one?

Don Shearer: I feel the same way. I don’t think they responded to the administrative complainants. That bothered me as well to just ignore it.

Chairman Moecker: Are there some other portions of the complaint you want to bring up?

Don Shearer: You mention the contract that is the number one thing we teach. Where did you go to school?

Anthony Grogan: I went to the Florida Auction Academy in Orlando.

Don Shearer: I did see an inventory list somewhere in here, I don’t know who did that. It doesn’t have any letterhead or anything from the company identifying the company did an inventory. There is no authorization on it showing someone approved the inventory. I think that came in long after the sale. I don’t know how you went from auction to estate sale. The information I read the consigner was looking for auction and then the next thing I know is some of the stuff was sold at estate sales.

Anthony Grogan: That is correct, Sir. I met with Mr. Puckett in St. Augustine once. We did not do a contract, he asked for time to think about everything. He call backed and said send your guys down and we will go through and pick what they want to pick, per his approval. I did not go back down. An employee went down. They said he did a contract, they said he did a list obviously you do not have and I did not get it. I had an assumption I had it. They went through everything as they picked it up with Mr. Puckett. Does that make sense?

Don Shearer: No, it doesn’t. Because with no inventory, I don’t know how in the world you can take someone’s stuff without an inventory list. How do they know what you took and how do you know what you got. And the appraiser thing I don’t know how that got in there, they requested from, the information I got, the consigners requested that they get some verification of prices. They wanted to have knowledge of that before the stuff was sold.

Antoinette Burgess: That was not part of their original agreement.
Anthony Grogan: We would not pick up anything if you wanted an appraisal. That is completely separate. If you want an appraisal you are hiring someone, we wouldn’t do that.

Don Shearer: Anytime I go and pick up a consignment from anybody they always ask me, what you think I will get for my stuff. I have never had a consignment where the consigner didn’t ask me some of idea of what they would get.

Anthony Grogan: That is correct.

Don Shearer: And you didn’t do that.

Anthony Grogan: When I went for the first time we spoke about different items and he said I don’t know what I am going to do, I will let you know. He called back a couple days later. We sent a crew down to pick up what he was going to provide us. The gentleman in charge who went down said he listed it and did an agreement. That is what we are taught to do. Their recollection in the investigators’ report, the statement from the person who went down there, Jason Stone was there and did the list with them. He never got the list to me or the company for our records. When they came in it was listed, you obviously see the list which was requested by Investigator Brown.

Chairman Moecker: I would like to go back a little bit. I would like to understand the connection between Langston and Grogan. There is a lady by the name of Mrs. Langston is she your partner?

Anthony Grogan: My wife.

Chairman Moecker: Is she an appraiser? Or was an appraiser?

Anthony Grogan: She’s an appraiser.

Chairman Moecker: Was her appraisal license revoked? Or an association membership turned down?

Anthony Grogan: She was a member of the American Society of Appraisers.

Chairman Moecker: So she owns the company and you are the auctioneer. Is that correct?

Anthony Grogan: I am the auctioneer and we both own the company. She is a separate entity as an appraiser with B. Langston. She does estate sales.

Chairman Moecker: Counsel is here representing both you and her.

Antoinette Burgess: Yes.

Chairman Moecker: How long have you been practicing auctioning?

Anthony Grogan: Two years. That was very early on when we first started. It was one of our first clients.
Don Shearer: The pictures we received in the information. Are those pictures of the consigners property?

Anthony Grogan: No, that was a problem we went through with Mr. Brown.

Don Shearer: What are those pictures of?

Anthony Grogan: Some of those pictures were provided to Mr. Brown are from property that is in a store somewhere. Some of that was sold, but those pictures are not indicative of.....

Don Shearer: Who owns the property in the pictures we have?

Anthony Grogan: Mr. Puckett does. They took pictures from a storage, not the house we picked the items from. I have never been in that store nor has Mr. Stone.

Don Shearer: You are saying those are pictures of things you never had?

Anthony Grogan: They don’t make any sense; the house I went to and Mr. Stone went to, those pictures were not the items in the house. They were taken twenty years ago or ten years ago I have no idea. When the investigator contacted us we looked at the pictures. Mr. Stone asked where is that and I told him I did not know. There are some things that were sold. I did not go to that property where the items were photographed. They had a bunch of photographs, some we went to and others we don’t know.

Don Shearer: I am asking did you take the property in these pictures. Did you take all of that property?

Anthony Grogan: Not all of that. They took it off their website they were marketing in their store or warehouse. I did not take everything.

Chairman Moecker: Erica, if we do not approve the stipulation agreement, what then?

C. Erica White: I believe they have requested a formal hearing. This is settlement negotiations prior to a formal hearing going before the Division of Administrative Hearings. If the settlement stipulation is not agreed on here then they would go to formal hearing.

Michael Flury: Generally what happens when stipulations are brought before the Board you can accept it or reject it. If you reject the settlement stipulation you can offer them something different. They can choose to accept or reject it, if they reject it the case would go to formal hearing.

Chairman Moecker: If we reject the settlement stipulation here we can offer a compromise or another settlement stipulation. Otherwise it goes to DOAH for the formal hearing.

Don Shearer: Who does that hearing?

C. Erica White: I would be the prosecutor for it.
Fred Dietrich: The pictures are something you put out in a brochure?

Antoinette Burgess: Those pictures were provided by the Puckett’s when they made the complaint. Those pictures are the Puckett’s pictures not Mr. Grogan’s. They took those after the fact of things that were around the house. Some of those they asked Mr. Grogan to auction and some of them they didn’t, but they submitted everything. The Puckett’s sold a lot of their stuff privately. So some of those pictures that stuff has been sold, it’s no longer in the Puckett’s possessions. It was not sold by Auctions by B. Langston or Mr. Grogan.

Chairman Moecker: But the Puckett’s are stating you sold all of this stuff.

Antoinette Burgess: I don’t think Puckett is alleging Auctions by B. Langston sold all of that stuff, they submitted a lot of pictures. It is my understanding from the investigator they were showing the condition of the items and that it should have sold for more money. Not that all of that stuff was sold. The Puckett’s were very disappointed in the amount of money everything sold for, that is what stemmed everything. Some of Mr. Grogan’s defense is that the quality of the pieces of furniture and other knick-knacks were not a high quality and they said it was. Although the agreement has not been presented to you, Mr. Grogan thought there was an agreement. He met Mr. Puckett with an agreement to be signed and the inventory filled out. Mr. Puckett did not want to sign it that day. One of Mr. Grogan’s employees went back two days later he thought there was an agreement, but we have never seen it. We don’t have one, but he thought there was one. Mr. Grogan understands the requirement. In all his other auctions he does have a written agreement. It is not something he is doing regularly. As far as the escrow account and the ledgers, it was his understanding from school that if he provided the funds from the auction immediately after the auction to the client within a reasonable time that he didn’t need the escrow account. What he did after the auction was give that money to us, his attorneys, to put into our escrow account that is what he thought he had to do was deliver that to an escrow account. He has now established his own escrow account. We did have that money in our account a trust account specifically for the Puckett’s. As soon as we found out the Puckett’s were not accepting the funds from the auction. We did give Mr. Brown all of that information, but when the formal administrative complaint was filed and why it doesn’t look like there is an explanation is because everything was done in the original complaint. When the formal complaint was filed we just filled out the Election or Rights form and got the settlement in the mail. I just want you to know the basics of what is going on here. The Puckett’s have been disappointed.

Don Shearer: My problem with the escrow account was it was set up by the attorney’s office well after the auction, much too long. He held the funds a lot longer than he should have and the law requires an escrow account. It should have been done a lot sooner. I believe you still owe them somewhere around $4,000 and you have not sent it to them.

Anthony Grogan: What ever the amount is around there.

Don Shearer: You agree, but you have not sent it to them?

Antoinette Burgess: We have sent it to them.
Don Shearer: When, after they got an attorney involved?

Antoinette Burgess: Mr. Grogan tried to meet with the Puckett’s on several occasions to give them the money, just Mr. Puckett. They either didn’t show up or said it wasn’t enough so they wouldn’t take it. They refused to sign the receipt for receiving the funds and the release that the auction was over. After that came, that is when he came to us and said they refused to take this money so we put it in the trust account. We put it into our trust account and wrote them a trust account check to the Puckett’s certified mail. They have received it just haven’t cashed it. We still have the money in our trust account.

Don Shearer: Did you use any pictures of their property in your advertising?

Anthony Grogan: A few, yes Sir. The investigator did not ask for any clarification. We didn’t use all of theirs, just a few.

Don Shearer: Evidently if you used some of their pictures in your advertisement.

Anthony Grogan: I didn’t use their pictures.

Don Shearer: Pictures of their property. You must have thought their property had some value otherwise you would not put those in your advertisement.

Anthony Grogan: A few of the pieces did. The conditions of the place was part of the outside open forum, it is behind a house here in St. Augustine. Later on I found out they disposed of everything, the landlord threw it out. Mr. Puckett when over with the guy and the conditions were too poor, you know the deal when it is like that.

Chairman Moecker: When I look at this lengthy report it appears Mr. Stone was part of the pickup team early on. Later on in the correspondence when the investigation went on, Mr. Stone had an Esquire behind his name. Did he become a lawyer during that period of time he was working for you?

Anthony Grogan: He had passed the Bar and was waiting for approval. I don’t know the formal process for a lawyer. He was working with us while waiting.

Chairman Moecker: He wasn’t an Esquire when he was picking up furniture. It was later on.

Anthony Grogan: He may have been waiting for employment.

Chairman Moecker: Does he still work for you?

Anthony Grogan: He was part time, he has a regular job now in his field.

Fred Dietrich: I have never seen a situation that had so many violations. Personally I feel if we reject it we are kicking the can down the road. This is something we need to settle. Can we change the penalties?
Michael Flury: This is only a settlement negation, this is not an actual hearing. If you don’t like what is presented to you, you can reject the settlement offer. Then you can offer something different and they have seven (7) days or today to accept your counter offer.

Fred Dietrich: I am really concerned; our position is to protect the general public. There are so many violations in this complaint and very well documented by the investigators. I feel like we are endangering the public by continuing to allow them to operate with these licenses.

Motion: Chairman Moecker made a motion to reject settlement stipulation.

Second: Don Shearer seconds the motion. Motion carries unanimously.

Fred Dietrich: I remember several years ago we had a similar situation like this, what the prosecutor was offering and what we wanted to do due to the severity of those charges we had aggravating circumstance and the danger of the public we needed to revoke the licenses.

Chairman Moecker: How many counts do we have in these cases?

C. Erica White: There are three. There are disciplinary guidelines for violations.

Motion: Chairman Michael Moecker made a motion for counter offer to include a fine of $1,000 per count, plus cost total of $1958.30, plus probation of two (2) years, plus bond established for the AU license in the amount of $100,000 and AB license in the amount of $300,000 to run consistent with the probation period.

Second: Don Shearer seconds the motion for counter offer to the settlement stipulation. Motion passes unanimously.

Fred Dietrich: Those guidelines were established under bonding and not when we went to the recovery fund. Did that language need to be changed or can we still require the bond?

Michael Flury: If they are still part of the disciplinary guidelines you can request them.

Chairman Moecker: We should be able to move forward with this now.

Michael Flury: I will do an order and then you all will have fourteen (14) days to accept or reject the counter offer.

Antoinette Burges: Okay. That is fine.

Chairman Moecker: normally we don’t reject the settlement stipulation, but this was, as Mr. Dietrich points out, a unique situation with several violations of the law we take very seriously; trying to protect the public, trying to protect the industry. We just want you to know we take this very seriously. Thank you for coming.

V. REPORTS

A. Prosecuting Attorney – C. Erica White
1. Case Load Status

4 (four) cases with administrative complaints filed, 1 (one) case pending settlement stipulations, 2 (two) cases that have requested formal hearing, 2 (two) cases in settlement negotiations.

C. Erica White: I would like to point out that the Mr. Flemister cases, even though it states settlement negotiations, they are not in settlement negotiations.

Chairman Moecker: Thank you for the great job today.

B. Board Counsel – Michael Flury

No rules currently, nothing else to report.

C. Board Chair – Chairman Michael Moecker

Chairman Moecker: Two things we talk about renewal fees under new business, and I spoke with Mary on the executive summary on these cases in the past. It would make it easier to understand these documents. Mary is going to look at doing a memo so when we look at it, it will be in chronological order and then the back up behind it. Especially in this format, the book was bulky, but this is hard to go back and forth.

Michael Flury: I also spoke with Ms. White, other boards tab out the cases to go straight to the documents. It may make it easier.

D. Executive Director’s Report – GW Harrell (Division of Professions, Director)

GW Harrell explained Tony Spivey is no longer with the Department, Juanita Chastain was acting interim but had a conflict with another Board had to attend.


Operating Account Balance = ($204,894) Negative

Unlicensed Activity Balance = $30,853

Recovery Fund Claim Balance = $374,891 (two recovery fund payments paid in January 2013)

GW Harrell: I need to tell you, Mary Alford is one of the most detailed focused persons I have ever seen. You can not ask for a better person watching over your trust accounts at the Department. We meet with the finical people, Mary goes through every detail and every item with them. With that being said, we do have an issue with the Board’s balance each year. Finance and Accounting Office is strongly suggesting we look at doing a fee increase of $100 for renewals to balance out the operating account. You get a big bump every year you have renewals then it goes in the whole the next year. Your bump is not compensating for the deficit. You can
do a one time assessment, but that will not cure the problem long range. Therefore the 
recommendation is to increase the renewal fee.

Chairman Moecker: If we vote to increase the renewal fee by $100 that is for a two year period?

Mary Alford: That would be the new renewal fee. We are looking at amending the rule which 
reflects the renewal fee now.

Fred Dietrich: If someone has two licenses, it is $200.

Mary Alford: Right now every licensee, auctioneer apprentice, auctioneer or auction business 
pays a total of $155 to renew. This would increase that amount by $100 so they would pay a total 
of $255 for their renewal per each license.

Chairman Moecker: Have you given any thought to how many may not renew when it goes to 
that level? Do you have any idea?

Mary Alford: Our estimated total of licensees is 3,155 active.

Mary Alford: And some of them are switching over from the apprentice to auctioneer as well.

Don Shearer: We are not loosing that number there though, it is just changing.

Fred Dietrich: I have some experience with that because I was the treasurer for the auctioneer 
association. When people did not pay their dues, I would call them and talk to them. If I talked to 
them their story was they went to auction school, licensed auctioneer for two years and have not 
done any auctions during that time, and then they decide to leave the profession. Unfortunately, 
this profession has a high turnover.

Chairman Moecker: There will be a drop out if the rate is increased; there is no doubt about that.

Don Shearer: I say between 5 -10%.

Chairman Moecker: If you factor in growth, hopefully you will break even in terms of your 
analysis. An individual has an AU and an AB license. Now they are going to be jacked up to 
$255 on the AU license and the same amount for the AB license. So, $500 for renewal every two 
years as opposed to $300 now. When was the last time we had an increase in the fees?

Michael Flury: 2008 was the last time the fee rule was amended. It may have been longer for the 
renewal fee.

Don Shearer: It has been longer than that. It has been at least ten (10) years.

Fred Dietrich: At one point in time we have had a fee holiday and multiple times we have had 
drastic amounts of money just swept out of our account.

GW Harrell: It looks like you have been in the red since 2008.
Don Shearer: It is a shame they sweep our money and then we have to pay more for the license.

Chairman Moecker: If this is what we need, it is hard to not do it.

Don Shearer: We don’t have a choice.

GW Harrell: I would suggest following the recommendation and then if adjustments need to be made over the next two or four year period then make the adjustments at that time.

Don Shearer: How about if we do a little bit at a time.

GW Harrell: Unfortunately, based on their calculations they think this is what you need to do to get you out of the whole. You don’t want to keep operating with a deficit for too long. I am not sure if there are other legal ramifications.

Don Shearer: This deficit is in the operating and not the recovery fund.

Chairman Moecker: Not the Recovery Fund. The Recovery Fund has a balance over three-hundred thousand. ($300,000) That number has to be addressed as well at some point. Last meeting we talked about that.

Mary Alford: We are required to address it once it goes below $200,000 or less per statute. We can address it once it goes below $500,000 if the Board chooses to do so, but you are not required to address it until it goes under the $200 thousand dollar threshold.

Chairman Moecker: How about we make a recommendation to increase the fee for $75 a year and then do a special assessment of $25 that goes into the recovery fund to get to the $100 total, it will just go into different accounts. Can we do that?

Mary Alford: It is our operating account that is in the deficit.

Chairman Moecker: It won’t be long with the rate we are going until we have to address that for the recovery fund.

Mary Alford: Every licensee is supposed to pay into the recovery fund. We do have two claims paid in January, which is not reflected on these financial statements.

Chairman Moecker: If we get down to $300,000 we are close to that number. What I am trying to do is soften the blow to auctioneers.

Don Shearer: It is going to be easier to justify replenish the recovery fund to auctioneers than it is the operating fund. I agree with what you are saying. With our operating account keep being swept it is hard to justify an increase.

GW Harrell: The recovery fund fee is set by rule as well?

Michael Flury: Yes, it is a $100 fee.
Chairman Moecker: If we did $25 on three thousand members, we can’t carve it out for the recovery fund. It will be a separate action?

Michael Flury: It would be two separate rule changes.

GW Harrell: You can do that, but I don’t know the fiscal impact of that action as far as helping the operating fund. If our guys figured the $100 for a counter reduction for the renewal coming up because of the increase, I don’t know if any legal repercussions if you are in the red for five years or longer. What I would like to do is get you the projection to see what the $75 increase would do. It will reduce the new revenue stream by 25%.

Chairman Moecker: My suggestion would be that the first time you raise the renewal fee that is when the $25 comes out and goes to the recovery fund. The second time which would be in two years, which is when the full $100 goes in.

GW Harrell: Would that be two rule changes, Mike?

Michael Flury: Yes, what you would have to a rule change to increase the recovery fund surcharge fee by one amount and then increase the renewal fee by an amount. Then anything you would want to do subsequent to that in a rule change. We can do a later rule change when that time comes around.

GW Harrell: I would suggest you vote to move forward on this so we can go into rule making. We are working on a timeline to get all the rule making done before the next renewal. We would have to mail out renewal notices at least 6 months before the renewal. When is your next renewal?

Mary Alford: It is this year, November 2013.

Chairman Moecker: That is not a major renewal.

Mary Alford: That’s the licensee renewal for all auctioneer license types.

Chairman Moecker: When do you have to mail out the renewal?

Mary Alford: We have to mail it out by August 1st.

GW Harrell: We are required by statute to mail out to all the licensees the amount for their renewal fee so many months prior to the renewal. I think it is six (6) months.

Mary Alford: It is 90 days.

GW Harrell: Three months in advance then. If you want to do the $75 / $25 increase I would suggest you vote on that today so we can move forward on that rule increase. If there is some drastic calamity because we are taking this action, we will get Mary and get you guys on a quick conference call.
Chairman Moecker: That would be a $75 / $25 for this renewal period. The next renewal period would be $100 to just the operating.

Michael Flury: You would have to vote on that for that at the next renewal period too.

Chairman Moecker: You can’t make it happen all at once. Do you see what I am trying to do here? I’m trying to get a little bit more money into the recovery fund and trying to help the operating.

Don Shearer: With out doing it all at once.

GW Harrell: Rule making can be a very difficult, especially when you are raising fees. We are under strict scrutiny by the Governor’s OFARR Office. Then once it gets through them then JAPC of the Florida legislature will scrutinize the rule. If they can find any complications, two separate fee increases may be a lot easier. Then during the next renewal cycle if you want to change it that would be even a simpler rule change.

Chairman Moecker: We would do a $75 and $25 for each license. The $25 would go the recovery fund and only be on this renewal period coming up. Then for the next one two years down the road we would vote for it at that time.

Don Shearer: Do apprentices get assessed recovery fund fees?

Mary Alford: It should be in their initial licensure fee they pay.

Fred Dietrich: How close are we to the point were we are required to replenish the recovery fund.

Chairman Moecker: Rough numbers is that we are at about 325 thousand and at 200 thousand we have to deal with it then, by law. My idea was if we put this $25 into the recovery we are giving us some time.

Fred Dietrich: The problem I have is even the recovery fund they took a sweep out of. The more money we have sitting there the more money someone can take from us.

Don Shearer: That is what my problem would be too. They have done that before. Can they still sweep when you are operating in the red?

GW Harrell: No. The fee increase for the renewals is easily justified. This whole thing will come under scrutiny by the Governor’s Office and the Legislature. The recovery fund balance, while it may be a fiscal move, it may be judged as not being necessary.

Chairman Moecker: It may be easier to sell to the Legislature now.

Michael Flury: During the renewal you will be adding fees to it, the surcharge applies to every renewal doesn’t it?

Mary Alford: The renewal goes to the Operating fund.
Michael Flury: There is an auctioneer recovery fund surcharge and at every renewal a surcharge fee.

Mary Alford: That is part of the license fees.

Chairman Moecker: How much of the $155 goes to the recovery fund?

GW Harrell: None.

Fred Dietrich: It is my understanding; someone that gets a license doesn’t already pay into the recovery fund until the recovery fund went below a certain amount. These people now that we are paying out don’t even pay into the recovery fund. It’s not logical.

Chairman Moecker: That doesn’t make any sense, they don’t have to bond and they don’t have to put money in.

Fred Dietrich: Not unless it goes below a certain amount.

Don Shearer: Not a new licensee, they should pay into that with a new licensure fee.

Fred Dietrich: Can Mary confirm that. It was my understanding from the past they only paid into the recovery fund once it went below a certain amount.

Michael Flury: That’s when you are required to replenish it by statute.

Don Shearer: To just replenish it. On the initial licensure fee part of that fee goes into the recovery fund, is that correct.

Mary Alford: That is correct.

Chairman Moecker: That is correct.

GW Harrell: Why don’t we hold off on that recovery fund surcharge for right now, let us look into something on that still. We need to clarify on what we are collecting for the recovery fund now.

Fred Dietrich: The major concern I have is that even the recovery fund has had money swept from it in the past. The more money we have sitting there the more apt someone is able to take it and use it for another professions state operating accounts.

Chairman Moecker: The Director just recommended we hold off on the recovery fund assessment. We will only do the $75 renewal fee increase.

Don Shearer: Then we can address the recovery fund at a later date.

Motion: Chairman Moecker made a motion to increase the renewal fee by $75 for the next renewal cycle.
Second: Don Shearer seconds the motion. Motion passes unanimously.

Michael Fury: We need to do the Statement of Estimated Regulatory Cost. (SERC) You need to make a determination if this rule change will affect small business and will have an adverse impact on small business or regulatory cost. You are increasing the fee.

Motion: Chairman Mocker made a motion that the rule change will have an adverse impact on small business or will increase regulatory cost in the amount excess of $200,000 over the next year.

Second: Don Shearer seconds the motion. Motion carries unanimously.

V. OLD BUSINESS

A. Discipline Report was reviewed

Chairman Moecker: It is nice to see that some people pay.

Don Shearer: Do we ever collect on any of these that are sent to collections?

Mary Alford: The Finance and Accounting Office will contact us if we have a repayment from a collection agency. I am not aware of any at this time.

Chairman Moecker: When we make payments out of the recovery fund. We are suppose to get consignment from that particular individual or company. Do we do that and are we getting that money back?

Mary Alford: The recovery fund claims are not on the disciplinary report. If it is part of the discipline or condition of restitution it will reflect on the report only. Ones that just go through Recovery Fund Claim process separate because of a civil judgment is not on this report. I track that separately.

Don Shearer: Like the Gardeners do we track if payments were received or that are trying to work out a payment plan?

Mary Alford: They are required to pay the money back. The license stays in a suspended status until they pay it back. They have made a payment today.

Don Shearer: Do those funds go back to the recovery fund?

Mary Alford: Absolutely.

Chairman Moecker: It would be nice to know if we are getting money back from this account.

Mary Alford: Their license would stay in a suspended status until they repay all the money.

Chairman Moecker: Would that be something you guys are interested in?
Fred Dietrich: I was on that call. The biggest thing other states seem to be having a problem with is online auctions, getting them under their regulation. Online auctions people conduct an auction and not paying consigners. It seems every state is having budget problems. They will have their annual meeting this summer in Indianapolis.

Chairman Moecker: What are they doing about the online auction stuff? Are they trying to regulate them?

Don Shearer: Some are and some aren’t.

Chairman Moecker: Is there any activity?

Fred Dietrich: At one time we thought we had it in our law “electronic means” and we thought that covered online auctions. Then I got a call from Tallahassee one time indicated it didn’t.

Chairman Moecker: Has there been an increase in complaints of online auctions with taking money in the State?

Mary Alford: I am not sure, we do not separate it from the case summaries we use now. I don’t know the broken down number of violations. We can pull a query to see how many though. We do receive inquiries regarding online businesses and if they need the license.

Chairman Moecker: Could you check with Director Wilson to see if he has any problem. I would think they would let you know if there was an increase or problem, right.

Mary Alford: Yes, they do track the trends and if they see something they would let us know.

Chairman Moecker: Would it be possible for Mr. Wilson to come to our meeting in June to answer various questions from the audience about investigations and what go on?

Mary Alford: I can certainly send the request and ask.
Fred Dietrich: I think that is a great idea. The biggest question we have from the industry is these guys are operating why aren’t you doing anything about this. They think we can just go in and shut them down. We can’t do that. When someone calls me about a complaint I tell them don’t tell me anything about it because it may come before the Board. I give them the complaint number to call.

Don Shearer: More and more auctioneers are going to online auctions. In fact all personal property I do is through online auctions now.

Chairman Moecker: Yes, even our business is moving towards that. The industry is evolving.

Motion: Fred Dietrich made a motion for a formal letter complementing investigator Brown on the work he did on his case work. It was very well documented.

Second: Chairman Michael Moecker seconds the motion. Motions pass unanimously.

VI. NEW BUSINESS

A. Next Meeting

June 11, 2013 – Will be in conjunction with the Florida Auctioneer Association annual conference in Boca Raton.

September 10, 2013 – Tampa

December 3, 2013 - Tallahassee

Fred Dietrich: At the last meeting Tony had indicated the State may approve someone to attend a National Conference. I know it was discussed, but I don’t know if it was approved.

Mary Alford: I am not familiar with a request circulating right now.

Fred Dietrich: Made a request that the Board of Auctioneers send someone to the NALLOA conference this year.

GW Harrell: Is this a national conference? Where is it at?

Fred Dietrich: Yes it is in Indianapolis this year.

GW Harrell: Let me discuss that with the Deputy Secretary. We can do the paperwork for the request and justification. When this happens with every profession a couple of things we ask; how much this cost, is this routinely done and then it goes through an approval process. The Governor’s Office requires all travel out of State must be approved by the Secretary.

Fred Dietrich: At one time we sent two, and then it went down to one then now none.
GW Harrell: Our staff will look at the details of the travel and if it is okay. I can see it may be an issue with licensees when we are raising their fees and sending someone out of State. We will look into it.

VII. ADJOURNMENT

Motion: Chairman Michael Moecker made a motion to adjourn the meeting.

Seconds: Don Shearer seconds the motion. Motion passes unanimously.

Meeting adjourned at 11:20 a.m.