

Meeting Minutes

MEETING OF THE FLORIDA BOARD OF AUCTIONEERS Department of Business and Professional Regulation Imperial Swan Hotel 4141 S. Florida Ave. Lakeland, Florida 33813 Friday, June 15, 2012 @ 9:00 a.m.

I. Call to Order

Mr. Michael Moecker, Chair called the meeting to order at 9:10 a.m. Chair gave a special welcome to the Florida Auctioneer Association for attending.

Executive Director Anthony Spivey made opening comments. Relayed materials for the meeting and education items from the Department are located in the back of the room.

Mr. Fred Dietrich gave an invocation and led the Pledge of Allegiance.

II. Roll Call

BOARD MEMBER

Michael Moecker, Chair

H. Fred Dietrich, III

STAFF PRESENT

Dr. Anthony Spivey, Executive Director, DBPR

Mary Alford, Government Analyst, DBPR

LeChea Parson, Esq., Prosecuting Attorney, DBPR

David Flynn, Esq., Assistant Attorney General

COURT REPORTER

Prizm Group, LLC dba Berryhill Court Reporting

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III. Review and Approval

A. Minutes from March 23, 2012

Motion: Fred Dietrich made a motion to approve the minutes with minor edits.

Second: Chairman Moecker seconds the motion. Motion passes unanimously.

B. Ratification List

Dr. Anthony Spivey presented ratification list.

Auctioneer by Apprentice

4801	438	DAVIS, RORY	WEST PALM BEACH	FL
4801	436	FISHER, CHRISTOPHER ALAN JR	NEW SMYRNA BEACH	FL
4801	435	HORNE, NAPOLIAN RICHARD	FOUNTAIN	FL
4801	437	SPURLOCK, CHARLES A	LARGO	FL
4801	434	WESTMORELAND, COLBY LYNN	HIGH SPRINGS	FL

Auctioneer by Exam

4802	4366	ARNOLD, PATRICIA DIANE	LAKELAND	FL
4802	4361	BUTIRRO, JEFFREY THOMAS	TALLAHASSEE	FL
4802	4362	DESMARAIS, ANTHONY DEVON	DAYTONA BEACH	FL
4802	4360	HALL, FRANK SCOTT	VALRICO	FL
4802	4365	JACOBSON, ISAAC MARK	FORT PIERCE	FL
4802	4373	JONES, GERALD BERNARD SR	JACKSONVILLE	FL
4802	4381	KWALWASSER, JACOB CALEB	INGLIS	FL
4802	4382	KWALWASSER, THEODORE H	INGLIS	FL
4802	4383	LINDHOLM, KARL ARTHUR	DELRAY BEACH	FL
4802	4376	LO, STANLEY C	MIAMI	FL
4802	4369	PETTEWAY, ERIC D	WILLISTON	FL
4802	4380	PRZEMELEWSKI, LARRAINE WEINER	LAKELAND	FL
4802	4367	RAINEY, JARROD DALE	JACKSONVILLE	FL
4802	4377	ROVELLA, MICHAEL D	VERO BEACH	FL
4802	4359	THAXTON, CAROL ANN	BRADENTON	FL
4802	4372	THUT, FREDERIC	MIAMI	FL
4802	4371	WILSON, GERALD W	CLEARWATER	FL

Auction Business

4803	3192	AGAPE AUCTIONS & GALLERY LLC	JACKSONVILLE	FL
4803	3188	ALL N ONE AUCTIONEER	ORMOND BEACH	FL
4803	3191	APROPOS ART, ANTIQUES, & AUCTION	CASSELBERRY	FL
4803	3170	AUCTION KINGS, LLC	TAMPA	FL
4803	3189	AUCTIONEER DELORES ANN RILEY	SPRING HILL	FL
4803	3182	BIG MIKES AUCTION HOUSE LLC	LAKELAND	FL
4803	3185	BRICOL ENTERPRISES	PALM HARBOR	FL
4803	3175	CHESTERFIELD AUCTIONEERS, INC.	ATLANTA	GA
4803	3179	COAST TO COAST AUCTIONS INC	BRADENTON	FL
4803	3184	DOWN SOUTH AUCTION HOUSE INC	POMPANO BEACH	FL
4803	3178	INDOOR FLEA MARKET/ AUCTIONS	PORT RICHEY	FL
4803	3183	JOHN MCINNIS AUCTIONEERS	AMESBURY	MA
4803	3186	KEVIN C SCULLY	LEAGUE CITY	TX
4803	3177	MAGNUM AUCTION LLC.	FT. PIERCE	FL
4803	3173	MICANOPY TRADING & AUCTION CO	WILLISTON	FL
4803	3190	MICHAEL P RICHERT	SAFETY HARBOR	FL

4803	3180	P AND G AUCTIONS AND ESTATE LIQUIDATORS	PALM BAY	FL
4803	3181	RAINEY AUCTIONS LLC	JACKSONVILLE	FL
4803	3172	RED BARN AUCTIONS LLC	INVERNESS	FL
4803	3174	REGAL AUCTION & LIQUIDATIONS LLC	LONGWOOD	FL
4803	3171	REPOSELL.COM, LLC	FORT MYERS	FL
4803	3176	SOLD FAST AUCTIONS INC.	MIAMI	FL
4803	3187	WHITE GLOVE AUCTION COMPANY	DELRAY BEACH	FL

Motion: Fred Dietrich moved that the list be approved as submitted.

Second: Chairman Moecker seconds the motion. Motion carries.

C. Applications

George Garten – application number 14864

George Garten was present for the meeting and sworn in by the court reporter.

David Flynn: You have this application for endorsement before you and the Department placed it on the agenda due to previous discipline taken against the Virginia license. Anytime there is disciplinary act taken out of state it will be taken before the board. You have the options to grant the license, grant the license with conditions or denying the license. My understanding is that the Virginia discipline was based on a contract for some items, some of them were to be reserved, but the actual advertisement said absolute, but he did announce there would be some reserved items when the auction took place. That is what I can tell from the readings.

Chairman Moecker: Would you like to give us your version of this report from Virginia?

George Garten: Yes I would please. The charges brought forth by the Donovan family that I listed an auction with. There were four or five items originally that they would like to put a reserve on, I made note of that on the contract. I advertised the sale as absolute. Basically thinking I could fall back in my terms and conditions in the announcements on sale day that it would take precedent from the printed material. Or the fact they could release the reserve on sale day. I have had it happen where you advertise as not absolute and the day of the sale they want to sale as absolute. So, I was kinda on the fence there. I did admit to advertising it as absolute and making the announcement that there were some reserved items on the day of the sale.

Chairman Moecker: How did the discipline go down in Virginia?

George Garten: The discipline is my fault. I did not go to the DPOR meeting. I was busy with another sale. To my detriment, I thought it was easier to pay the fine and do the auction I was out of town doing then go to defend myself with the DPOR. I could have rectified the situation, I didn't then.

Chairman Moecker: In retrospect, what would you do differently?

George Garten: I would have gone to defend myself. My father was a former Board member on the Virginia State Auctioneers Board for the DPOR appointed by the Governor. It was totally my fault. I should have gone to defend myself rather than just write the check.

Chairman Moecker: What was the year of the violation?

George Garten: I think it was 2008. The actual discipline was done in 2010.

Fred Dietrich: I was scanning through this. You were given three year probation plus you paid the fines. Had you had any other situations like this previous?

George Garten: Never had. I have been a licensed auctioneer since 2000. I am licensed in Virginia, West Virginia, North Carolina, South Carolina, Georgia, Tennessee and I have never had any kind of issue. I am also a licensed real estate broker in Virginia, Georgia and Tennessee

Fred Dietrich: Is your probation period over?

George Garten: No, Sir. The final date is October.

Chairman Moecker: With these licenses you have in other states. Do we check those states as well? Is that disclosed to us?

Mary Alford: Yes, at least for the auctioneer license. They do send license verification from the other states showing there is no disciplinary action and everything is in good standing with that license and how they obtain that license.

Chairman Moecker: So we comfortable that there is nothing else out there in any of the other states.

Mary Alford: Yes, both states were checked.

George Garten: I was granted licensure by the State of Tennessee with the charge with the disciplinary action.

Chairman Moecker: And you are looking for endorsement here?

George Garten: Yes, Sir.

Fred Dietrich: You understand the situation with advertising absolute auctions that are an absolute.

George Garten: Yes, Sir. I fully understand it now. I have learned the hard way.

Fred Dietrich: So you have learned your lesson?

George Garten: Absolutely.

Fred Dietrich: Florida has similar definitions and if you advertise an auction to be absolute it means everything sells to the highest bidder. A lot of people seem like they don't understand that. I personally sell a lot of my personal assets at an auction and there are people in here that have sold items for me. They know when Fred Dietrich puts something in an auction somebody else is going to own it. I don't play games. I know you deal with sellers that want to play games. There are all kind of games out there. It is probable one of the most misrepresented words out there, is absolute. Some even put absolute with an asterisk. Mr. Chairman I am convinced he has learned is lesson on the definition of terms.

Motion: Fred Dietrich made a motion to approve the application for endorsement.

Second: Chairman Moecker seconds the motion. Motion carries unanimously.

Donald Dennett – application number 14919

Donald Dennett was present and sworn in by the court reporter.

Donald Dennett: I have been licensed with the state of Florida since its inception as far as being licensed to perform auctions duties in Florida. My wife and I built a home and changed residents in December 2006. Everything else I have, I have all of my other license that is required by the State and county that have been renewed on a continuous basis. For some reason the AU license slipped through the cracks. The letter was not forward. You get busy doing things and things just get overlooked.

Michael Moecker: There were no other issued raised that caused a problem for you, otherwise advertisement issues. No one has brought any charges or anything like that. Have there been any disciplinary actions?

Mary Alford: There are no disciplinary actions.

Fred Dietrich: I would like to clarify from a professional stand point strictly not a social stand point. I have known Mr. Dennett for a number of years. He is from a long standing auction family in Central Florida. He has a very good reputation. I have had relatives that have consigned to his auction and they have always spoken highly of his ethics and everything. I can understand in this situation now with the postal service how things can get messed up.

Motion: Fred Dietrich made a motion to approve reinstatement of license.

Second: Chairman Moecker seconds motion. Motion passes unanimously.

IV. Disciplinary Cases

Bargain Warehouse, Inc. (AB 3040)
Case # 2011-055948

The Department filed an administration complaint in this case on April 26, 2012. The respondent, Bargain Warehouse, was served by mail on April 30, 2012. Proof of service is in your materials. The complaint charged the respondent violating Section 468.3891(c), Florida Statute, failure to account, pay or return in a reasonable time. Complainant, Mr. Kimball contracted with Bargain Warehouse to auction various items between May and August of 2011. An auction was held in November 2011. The auction sales totaled \$5,041.50. Mr. Kimball was owed \$4,033.22 in proceeds. To date Mr. Kimball has only received \$1,000 towards the proceeds. And a balance of \$3,033.22 remains.

The respondent has failed to file an Election of Rights form or otherwise establish any dispute of material facts in response to the complaint and pursuant to Rule 28-106.111, Florida Administrative Code, respondent has waived the right to request a hearing. Therefore, the Department believes it is appropriate at this time for the Chair to entertain a motion finding that the respondent was properly served and has waived his right to a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his rights to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Chairman Moecker: This letter that Mary put in our packet this morning or rather a copy of an email from Clay Lavoie. What bearing does this email have on this case?

LeChea Parson: This would be mitigating it would not go to the facts you just voted on. When you get to the penalty to be imposed this would be considered as mitigation.

The Department believes it is appropriate at this time for the Chair to entertain a motion adopting the allegations of fact and conclusion of law in the complaint as those of the Board.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

LeChea Parson: You can see the letter where he addresses his role in this business; it does not specifically address this particular instance with Mr. Kimball. This is the only response we have received since the Administrative Complaint was filed. Mr. Lavoie is one of the owners, as you can see in the letter a 10% owner of the business.

Chairman Moecker: Is this material to the case?

David Flynn: Who is the owner? By statute there is an owner that must be placed on the auction business when they file for it. Who ever that owner is, for us, is who I believe the responsibility falls upon. Which is Mr. Hayes, is that correct?

LeChea Parson: Well there are three owners. I don't know if percentages come into play with our process. There are three owners associated with this business.

David Flynn: There is an application filed with an auction business. The statute mandates one person just for DBPR who is the owner. Then if they set it up on the outside with the Department of State and incorporate, now they are going under different state laws.

LeChea Parson: There are three owners with DBPR. It is listed in the investigative report

Chairman Moecker: I guess the question is who signed the application? All three owners didn't sign the application.

LeChea Parson: No, Mr. Hays signed the application. There are three OR licenses associated with Bargain Warehouse, OR1217, 1216, 1218. Mr. Lavoie is one of those, 1218. Mr. Hays is the one who signed the application and submitted it to the Department.

Chairman Moecker: Okay. Lets get back to the facts of the case. What is outstanding, what is still owed here?

Recommendation as to penalty; fine in the amount of \$1,000, cost in the amount of \$372.18 and restitution in the amount of \$3,033.22 and revocation of the license.

Chairman Moecker: Revocation of license?

LeChea Parson: Yes, from what I understand from the correspondence that is in the file, the business is no longer in operation. So, I believe it would be in the Department's best interest to go ahead and revoked the license so it is still not showing as an active license with DBPR.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and licensure revocation. Aggravators for revoking the license would be failure to take any corrective action, short length of time in business, deterrence and financial damage.

Second: Fred Dietrich seconds the motion. Motion passes unanimously.

Fred Dietrich: I am glad the prosecutor is making that recommendation because I do think we have aggravating circumstances in this situation. The thing that scares me the most is that this may not be the last case we hear from these people. When someone does an auction, the first person that should be paid is the consigner. When we have a situation like this where someone does an auction, they take someone's merchandise and sell it and

doesn't pay the consigner. For me that is more than reason enough to revoke the license in that situation.

Chairman Moecker: For the record, AB 3040 will be officially revoked.

LeChea parson: Yes, once the file order has been signed and filed.

Dion Abadi
Case # 2009-057688
AU 2762

Court Reporter sworn in Mr. Dion Abadi.

The Department filed an Administrative Complaint in this case on August 13, 2010. The complaint charged the respondent with violating Section 468.389(1)(j), Florida Statutes through a violation of Section 468.388(4), Florida Statutes; each auction must be conducted under the auspice of an actively licensed auction business. And Section 468.389 through 468.388(5) failure to display license at auction. In October 26, 2009, an auction was conducted under the auspice of Southern Star Auctioneers, which was not a licensed auction business at the time of the auction, licenses were not prominently displayed at the auction at the time of the auction. There is a settlement stipulation in your material. My intent was to bring a new copy for me and Mr. Abadi to sign. The copy that is included in your material has some hand written adjustments on them. I neglected to bring the clean copy. I will get it to Mr. Flynn with a clean copy of what is reflected in here will be attached to the final order. The settlement stipulation provides that Mr. Abadi will pay a fine of \$1,000 and cost of \$621.20.

Chairman Moecker: It seems to me we have about 6 – 7 of these cases that involve advertising and posting of licenses. Forgive me if I am misstating the facts. The priors that we have in this are they not all related to the same issue?

LeChea Parson: I don't know exactly. I know there have been some similar complaints. I can't tell you if they are all the same. I know there have been some previous similar cases.

Chairman Moecker: Mr. Abadi do you know?

Dion Abadi: That is incorrect.

Chairman Moecker: What would be the nature of discipline that we had in the two cases from '09, the two cases from '07 and not to forget '08?

Dion Abadi: One of them was for not paying a fine. Which, Amanda proved that I did pay the fine and then dropped the charge.

LeChea Parson: If the charges were dropped they would not be included on that memo.

Dion Abadi: It was not about conducting without a license, I can assure you.

Chairman Moecker: Were they advertising issues?

Dion Abadi: To my knowledge, No.

Chairman Moecker: I don't remember. I know there are a couple of Abadi's and I don't want confuse one with another. You are recommending the settlement?

LeChea Parson: Yes. What happened in this case was that Mr. Abadi originally elected to go to a formal hearing at DOAH. To avoid the cost and time associated with litigation at DOAH, as you can see we report the expense of DOAH to the Board. I offered Mr. Abadi the settlement stipulation. The Board has the authority and ability to accept or reject the terms of the settlement stipulation.

Chairman Moecker: What is the status of the license at the present time? AU 2762

LeChea Parson: The auctioneer license was always current. The issue was with the business license. The AU license was current at the time of the auction, the AB license was not current at the time of the auction.

Dion Abadi: That is incorrect.

David Flynn: I don't think it's necessarily not wanting to spend the money to go to DOAH. I think here there was a couple auction businesses that were licensed so there are some disputed issues of fact that kind of mitigate this, may be able to prove it or may not be able to prove it because there were two auction business. Therefore, it was probably best to come here and to attempt both parties got together to settle it with a fine and cost. They are just trying to settle their differences.

Chairman Moecker: In your professional analysis of the case, you think it is in the best interest of the State and the Board to settle this case with a settlement.

LeChea Parson: Yes.

David Flynn: I just legally advise. I just want to make sure on the record that it was clear it wasn't because we don't have the money to go to DOAH.

LeChea Parson: You do a cost benefit analysis weighing whether the case is winnable case that you can recover all the cost you put out. At the administrative law level we have a clear and convincing standard at DOAH which is higher than civil court and lower than criminal, which is beyond a reasonable doubt. Clear and convincing is the highest burden to meet and you have to prove every allegation in the complaint.

Chairman Moecker: Do you have anything else to add to this?

Dion Abadi: No, it wasn't that I wasn't license.

LeChea Parson: The business was licensed, the license was delinquent.

Fred Dietrich: The biggest concern I have is that each time you appear before the Board we hope it will be the last time you appear. So far this is the sixth time, actually the seventh time you have appeared before the board on fringe things. It seems like you have a habit of circumventing the law. I have some concerns that this Board is empowered not to protect auctioneers, but to protect the public of the State of Florida. It appears all the things you have done in your history that you are a threat to the citizens of the State of Florida. I assume these situations have been worked out. Somewhere we would like to get to the point where we never see you again.

Dion Abadi: I would like to get to that point too, Sir. Unfortunately, this incident occurred in 2009.

Chairman Moecker: Do we have any other issues that are outstanding, Ms. Parsons?

LeChea Parson: None that I am aware of.

Chairman Moecker: With the AB or AU?

LeChea Parson: None that I am aware of.

Motion: Chairman Moecker made a motion to accept the settlement stipulation as presented.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

David Flynn: Do you have your business cards and your contracts straightened out now so this won't happen?

LeChea parson: That seems to be where the problem comes in.

Dion Abadi: Yes we do. The problem was that we do a lot of auctions. The auction was advertised on one license and one of my Secretaries's put out a business card. We ran out of business cards and we had business cards from another company I have in Georgia. That is where the confusion was.

Chairman Moecker: Thank you for getting the matter resolved. We appreciate you being here to get it resolved.

V. Reports

A. Prosecuting Attorney – LeChea Parson

Case Load Status (handout)

7 (seven) cases received in legal, 1 (one) case for supplemental report that I requested, 6 (six) waiting outside action. (When other outside activities that might have an impact on the Department's case, the Department will hold the case until the outside action is completed and then proceeds accordingly.) 14 (fourteen) cases are in private status in legal, 2 (two) pending formal hearing at DOAH, 2 (two) cases with Administrative Complaint filed, 2 (two) with Probable Cause has been found and the Administrative Complaint will be going out for service, 2 (two) cases requested formal hearing at DOAH, 2 (two) referred to DOAH for formal hearing, 8 (eight) cases for settlement negotiation, and 3 (three) cases set for Board presentation.

Chairman Moecker: I am just looking at a name, Bruce Scott. Did we not deal with Mr. Scott a while back? These are two new issues.

LeChea Parson: Yes, these are different issue. One different issue with two cases that are different from the ones you saw previously.

Chairman Moecker: I see both of those were referred to DOAH.

LeChea Parson: Yes, that means he requested a formal hearing and it has been referred over to DOAH. I am not sure if a hearing date has been set or not. It will still come back to you, even cases that go to DOAH. The final order authority rest with the Board. Going to DOAH does not circumvent you; it just gets an extra step before it gets here.

Chairman Moecker: There is a higher standard the State has to meet.

LeChea Parson: That is with all of our cases. All the allegations and facts of law that are put in our Administrative Complaints they are held to the clear and convincing standard. So when you go to DOAH before the Administrative Law Judge that is the standard you are held to in proving the case.

Fred Dietrich: I want to congratulate Ms. Parson on the outstanding job she does in prosecuting fraud and these cases. For this meeting we have a lot of people in the audience and wonder why we only have basically two discipline cases. That has improved a great deal over the few years. I can remember Board agendas when we have 10 cases at the same time. Hopefully that means everyone is being good and following the law. I appreciate the job Ms. Parson's does for us.

Chairman Moekcer: I second that.

B. Board Counsel – David Flynn

1. Rules Report

David Flynn: If you remember these outstanding rules, we did a comprehensive analysis of all of our rules pursuant to the Executive Order. There are ten or twelve that we decided to take various types of actions on. There were two remaining; examination for licensure and requirements for conducting an auction. And both of those are now adopted and both effective June 19, 2012. When I made this report it was tentative, but they are actually going to be effective June 19th. For the examination for licensure all we did was take out some of the forms. We put in the language that you apply for a license on a form prescribed by the Department. Because the Department is the one who is going to make the form. We really shouldn't be putting the forms in our rules. So all we are doing is just cleaning up. The forms should be prescribed by the Department so they can handle that.

Chairman Moecker: Are there any changes that members of the audience may be interested in? Or is it more housekeeping.

David Flynn: I believe it is more housekeeping. Anytime they are going to change the actual application it will go before the Board. Then those applications are always available online. At this time we did not change anything as Board requirements. The same for requirements for conducting an auction, they are just house keeping. We cut out some things that were in statute instead of having it duplicative and re-transcribed it into rule. If it was already in statute we just cut it out and cleaned it out, so they would not be in two places. That was all part of the initiative of getting rid of unnecessary rules, or condensing them down, making them smaller. Doing the housekeeping and cleaning it up is the Governor's initiative.

Anthony Spivey: The overall purpose of this process was to make it smoother for the customer to apply for a license. And get rid of some red tape or burdensome bureaucracy that may have been in place that slowed or stalled the licensing process. That was the overall process of this attempt. In some cases as Mr. Flynn noted some of the rules were actually verbatim from what the statute already had in place. So it was unnecessary to have them in rule when it was stated in statute.

Chairman Moecker: I remember we talked about at previous meetings, some of these specifics. Now we are done.

David Flynn: What ever you voted on in the past we are now complete with that and we have cleaned up what we noted previously that needed to be done. We are finished with that.

2. Annual Regulatory Plan

David Flynn: As part of the Executive Order we agree to comply with creating an annual regulatory plan. Each year we attempt to look through all the rules and past legislation and decide what type of amendments, or repeals, or additions in the rules we need to make. I have been through all the rules, looked at the legislation and here on the spreadsheet and I checked with the Executive Director Mr. Spivey and this is what we

came up with as far as the rules that we may need to look at in this upcoming year. That will help keep us on track. I think this is what we should look at completing for the next year.

Chairman Moecker: Who decided the economic impact? Is that something you or something the Mr. Spivey does?

David Flynn: Ultimately when we make that decision, this is an initial determination, but the Board will sit down when we take the votes and look at it further to see if there is any type of economic impact that meets various thresholds. And if they do, then we will amend that and file a statement of estimated regulatory cost as needed. There is no anticipated economic impact to a degree that would require us to file a statement of estimated regulatory cost. That's what I believe, there in the economic impact. I am not saying it will be zero. I don't believe it will adversely impact small business nor will it have any regulatory impact of \$200,000 in the aggregate.

Anthony Spivey: As an example, an economic impact would be a situation were the Board instituted a rule that would require a licensee to pay more money for whatever purpose to continue in the process of obtaining or keeping the license. That is an example of where an economic impact would have to be looked at.

Chairman Moecker: So getting back to the fingerprinting issue. We wanted to get the individuals who are applying for the AB license to be fingerprinted and the background check done. That economic impact would have been passed along to the applicant. So if you had three owners of an auction company, those three individuals would have to be fingerprinted and going through the expense of getting them done. That would add an economic impact. If we were implementing that rule that would be a consideration or hurdle would have to go over, leap that we did not have to jump over before.

David Flynn: In essence, yes. The idea is balancing the safety and welfare with the economic cost and ensuring we are promoting business and balancing that protection. We are taking a look a closer look at each of our economic impacts.

Motion: Chairman Moecker made a motion to approve the annual regulatory plan as presented.

Second: Fred Dietrich seconded the motion. Motion passes unanimously.

David Flynn: We will be sending this over to the Governors office and Legislative office. File it to comply with all of our statutory requirements.

3. HB 887 – Chapter 2012-72

David Flynn: Merely it is for your edification. There was a Bill, 887 that made it pass the House, made it past the Senate, went through and signed by the Governor and has become law. It will impact a couple of things; Null and Void licenses now will become a

function of the Department of Business and Professional Regulation. That has been changed to where it is not a function of the Board it is a function of the Department. In your regulatory plan I put delete all or most of the Null & Void rule. Now it is going to the Department that is why I recommended deleting the rule for Null & Void.

Chairman Moecker: Does the Department have a different standard?

Anthony Spivey: No, it will be the same standard. We will not lower the standards to have a license reinstated for a situation that's presented to the Department. The standards are economic hardship or illness that an individual has suffered. We will use the same standards; it will just be done through the Department.

Chairman Moecker: What is the appellate right if the Department denies the reinstatement, like in Mr. Dennett's case for example, under the new procedure and the Department says I am sorry the fact you didn't get your mail is not our problem. You're not getting your license.

David Flynn: I can speak in general comments. Whether the Board or the Department made that decision they will have a right, because it impacts their substantial interest, to one type of hearing: informal or formal. That is going to be up to the Department on how they handle that. Then they will have a hearing. Once the hearing is over, and the order is final then they can appeal it to the appellate court. It will not take away any of the rights of Auctioneers.

Chairman Moecker: If we said in Mr. Dennett's case, for example, that he can't have his license. For whatever reason the Board felt the excuse was not good enough.

David Flynn: I would draft an order called a Notice of Intent to Deny. I am required to do that under the provisions of Chapter 120. Then I would have laid out for Mr. Dennett in the order what his rights were. That would have been you can come back to the Board and plead your case again or go to the Division of Administrative Hearing (DOAH) and plead your case on the facts to the Administrative Law Judge. Then we ultimately finish and issue a final order. If it is adverse then he could appeal to the appropriate district court, whatever district they live in or the First DCA. All those rights will still remain, they will still be there.

Chairman Moecker: The rights are preserved, but it could be a much longer process.

David Flynn: It could be a much shorter process. I think that's the idea because the Board's, from a practical aspect, we only meet "x" amount of times a year they would be held up until the Board meets. Where the Department they may be able to issue it immediately, within a certain period of time.

Anthony Spivey: This process was to advance the businesses, so people can go into their business a lot quicker. This Board meets only every three months so in the situation with Mr. Dennett he is here with his application now, but if his application came in three

weeks from now that application would have sat until the next Board meeting which is scheduled for September. But now with going through the Department the application comes in we can review it, move it along and get the license reinstated. That gets his business in operation a lot quicker. That is the overall idea, keep everyone in business and get this economy moving again.

David Flynn: Out of that same Bill, to promote businesses, there was to waive the initial licensure fee, application fee and unlicensed activity fee for any veteran who is discharged honorably from the military try to encourage them to come to the State of Florida within 24 months from being discharged honorable. If you apply we are going to waive these fees to get you licensed and going. That was another aspect of that House Bill that went through. Also, there is going to be a requirement, Email address will also be requested and required to a degree. The licensee will also have to have their address of record and their email address submitted to the Department. Additionally, the statute has been amended to allow the Department to send it by mail or email official communication. It will be important when we start collecting email addresses to; 1, send it in, but 2, check your email. Because that was the other two statutory changes; they added the address of record and communication with the licensee. They can now use your email address beginning October 1st.

Chairman Moecker: Does that meet the service requirement.

David Flynn: It will, for official communication it will not meet the service requirement when other statutes themselves mandate more. I need to be careful when I don't have a factual concrete issue in front of me. But, the discipline, for example, it's not going to be served by email. The amendment preserves that the Administrative Complaint still has to be served in accordance with its special statute. All others, you need to be diligent in checking your email, when the Department is able to collect them all.

Chairman Moecker: What other things in here that might affect the auction business?

David Flynn: That is it. I felt like the email aspect, which we will work with the Board to determine how we want to implement the process. I need to work on that this year.

Chairman Moecker: In the explanation of what this bill does, providing an additional ground for discipline of appraisal management companies to which additional penalties apply amending Florida Statute....Most auctioneers perform an appraisal service of one type or another. I am curious to know, when I looked at that and when I looked at that part of the law I am not sure if that creates additional problems for people in the auction business that do appraisal work.

David Flynn: If you are a licensed Appraisal Management Company that's what it is impacting. Now if you want to know specifically all I have to do is go to what section it is in and look at it. I am not sure if the Department determined if this was something to impact.

Anthony Spivey: It is under Statute 475 which is not.

LeChea parson: That is under the real estate statute. This is focused toward people who hold real estate licenses. Now, it affects any members who also hold real estate licenses.

Chairman Moecker: As long as someone who goes out and appraisers, FF&E for example, furniture, fixtures and equipment, inventory of a business, accounts receivable, they analyze the value of that. They perform appraisal services for a bank or a divorce settlement, what ever they are doing it for that this law does not impact that part of the business. That's what I want to make sure.

LeChea Parson: I am not sure what the requirements of 475 are, but generally real estate deals with real property. Unless you are going into the real property aspect or real estate aspect of the business, I don't think that would be an impact.

Chairman Moecker. Where can we get a definitive reading on that? I think it is important to have a clarification.

Mary Alford: The work scope for what an Appraisal Management Company (AMC) is. That would determine if that would be a separate license needed for that aspect of the business.

David Flynn: I can get you a definitive answer, but I can tell you it's not going to impact the current auctioneer licensees. Now, if you hold another license which is applicable to this chapter. All I have to do is just pull the full chapter. What we are looking at is not the entirety of it; this is just the amendments that are made. I would need to review all of Chapter 475. At this particular point, my cursory answer is it shouldn't have an impact on an auction business or auctioneers. I can take a look at this chapter and I can get back to you and we can decide if it needs to put it on the next agenda. We will put the information out to auctioneers.

Chairman Moecker: This is a law that takes affect when? Immediately?

Anthony Spivey: October 1.

Chairman Moecker: Not till October, we have time at least in our September meeting to get an answer for sure. I think we need an answer, if the auction business is going to be impacted by this in the normal course of business.

LeChea Parson: If the intent was to apply to auction businesses it would be put in your practice act as well as the Real Estate Practice Act. It might be an unintended affect to auction business, but I don't think that was the intent behind these amendments.

Chairman Moecker: When a lawyer gets a hold of something.

LeChea Parson: It could be an unintended consequence, but I don't think that was the intent of the changes.

Chairman Moecker: Okay. So, we will look into that and determine.

LeChea Parson: Mr. Flynn will look into that and let us all know.

Chairman Moecker: You have time for that, between now and the next meeting.

David Flynn: Yes.

Fred Dietrich: It was my impression it was related to real estate. There is a long history, there have been a lot of problems with appraisals of real estate that led to a lot of the economic problems in Florida. That is the reason why that industry was looked at so closely

Chairman Moecker: We will deal with that in September if not before.

David Flynn: That is the end of my report as far as the rules report and regulatory plan.

LeChea Parson: It is in the newsletter, but I would like to point it out to bring it to everyone's attention. HB 517 becomes effective July 1. It changes the violations of your practice act that are also criminal violations. Previously, everything under 468.389, your disciplinary portion, any violation of that was also a third degree felony and would be referred to the State Attorney's Office for them to handle as a criminal violation. This bill changes that so only certain sections are third degree felonies. Those are the most egregious of the violations; 1(c) failure to account pay or return, 1(e) conduct that demonstrates bad faith or dishonesty, 1(h) commingling money or property, 1(i) dealing with public money to the State Treasury. Those violations are still third degree felonies, but the others are no longer third degree felonies. Previously, any disciplinary case I had with any of those violations I would send to the appropriate State Attorney's Office for them to handle as they feel appropriate. Now I will only refer those that fall under these specified sections.

Chairman Moecker: So even if we deal with one where funds were comingled and we deal with the case hand out the fine, penalties, revocation or what ever we do with the license at that time, there is a additional jeopardy that goes with that if there is a comingling.

LeChea Parson: Even before it comes here, if I filed an Administrative Complaint on any of those charges, I would send a copy of our report to the State Attorney. So the State Attorney would have it by the time you get it. Sometimes they will wait to see what we do. Sometimes they won't do anything at all. Sometimes they'll ask questions, it just depends. Our Department has to refer them to the State Attorney's Office. After that it is up to the State Attorney on what they do with it.

C. Board Chair – Chairman Michael Moecker

Chairman Moecker made comments to members of the Florida Association of Auctioneers that were in our audience.

Chairman Moecker: How nice it is to have you'll here and participating. I would encourage all of you, when you have time, if we happen to be in your town come over and say hello have a cup of coffee and leave if you want. It is always nice to know you are interested in what is going on. We appreciate the opportunity to be here with you guys. I know Debbie invites us from time to time. We have a schedule and the reason sometimes it is hard to meet with you is because we try and stay on a 90 day schedule. As Mr. Spivey was referring to earlier, as things come in, since we only meet four times a year, you don't want a lot of time to wait between considerations of issues that need to come before the Board. We are not trying to be difficult in meeting with you when you have your meeting, it's coincidental it works out and we are able to squeeze this one together. Thanks again for inviting us to participate with you. We appreciate the opportunity to be here and anxious to hear your comments at the end of the meeting.

D. Executive Director – Dr. Anthony Spivey

1. Monthly Board Report – Quarterly complaint report from Division of Regulation
2. Quarterly Financial Statement (ending March 31, 2012)

Operating Account balance = (\$34,371)

Unlicensed Activity Account balance = \$32, 578

Recovery Fund Account balance = (\$364, 690)

Anthony Spivey: We are at the point now where the Department is collecting legislative ideas and request from the Board's. At this time I want to ask for your input on any legislative concerns or request that you would like for me to take back to the Department. We are in the process of putting a package together for the upcoming session.

Fred Dietrich: The package that we had legislative support that passed both houses unanimously then the Governor vetoed. That required a fingerprint card and background check on owners of auction businesses. I thought that was a legislative package that made a lot of sense. I think it would be a good idea to both through the Department and through the Auctioneers Association request their assistances. Unfortunately, the House sponsored that legislation was defeated in the last election and she worked real hard on that. To me, we have had people appear before this Board and have checked they have never been arrested then we find out they have a long history of arrest records. Or people that have auction businesses that don't have a background check. To me those are two things that made a lot of sense in protecting the public in the State of Florida. They would be situations, to me, a high priority to get to through a legislative package. You have to

have fingerprint card to get a real estate license. Real Estate somebody can't steal, somebody does a house full of antiques and they can all disappear. Supposedly, the Governor said it was a hardship to get a fingerprint card.

Chairman Moecker: He didn't say that. As I recall, the Veto letter basically said we hadn't demonstrated enough need in terms of economic loss in the auction business to warrant going to that expense or to put that burden on owners of auction companies. We know better, there is a lot of economic loss stuff that doesn't get to be part of the public record. Based on, I guess, activities related to the Board and the public record. The previous Governor looked at the records and said there is not enough going on to warrant the expense and effort, so I am going to veto the bill. The reality was that he did not have enough information on how much was paid out of the recovery fund over the course of years. All legitimate auctioneers put money in to build up that fund like a big bonding company that people make claims again. The Governor did not have knowledge of that before it became a veto. I think the proper education of the Governor's staff, and I think there was some willingness after listening to our concern about the fingerprinting and bringing that bill back.

Anthony Spivey: I can bring it back to the Department and see where we go with it.

Chairman Moecker: We had support from the Department before, did we not?

Anthony Spivey: I believe so.

Chairman Moecker: Now, what we need is some support from the Auctioneer Association as well. Calling your individual members to get them to the house members to make them aware that we have this issue, it's like a house cleaning matter. If you get fingerprinted as Mr. Dietrich stated for real estate and your handling value, and you get fingerprinted for that you certainly ought to for the auction business. Your recommendation is that we put that back in the lap of DBPR.

Fred Dietrich: And request support from the Florida's Auctioneer Association.

LeChea Parson: I have added this before to our legislative packet, I got the Board support from this before, to raise our statutory fine limit from its current \$1,000 up to \$5,000 which is more in line with other professions regulated by the Department. Currently, the cap is \$1,000 per count. I would like to see it raised to \$5,000 per count. Last year you voted that you agreed with that, but to do it again with the new legislative packet.

Motion: Fred Dietrich made a motion to allow caps of fines to increase to \$5,000 per count.

Seconds: Chairman Moecker seconds the motion. Motion passes unanimously.

Fred Dietrich: Looking at my screen that has the situation with people paying fines. It looks like a high percentage of people we fine, aren't paying their fines. It says sent to

collections. You don't want to scare people at the stand point, the \$5,000 would be a maximum of \$5,000, correct.

LeChea Parson: Yes, it would still be a penalty range. The higher end of the range would just be pushed up to \$5,000.

Fred Dietrich: I'm real disappointed and wondering what the situation was where we didn't revoke licenses and the people still have not paid. Where we revoked the license I can understand they probably weren't interested in paying their fines. But if they still have a license and we just put them on probation and they still haven't paid a fine that is a concern.

Chairman Moecker: Maybe we can have, if they haven't paid the fines and they have not been revoked and they are on probation. Maybe we can bring them up at the next meeting, put them on the agenda to then revoke the license.

David Flynn: That is part of the process. I'm going to call it compliance management. Someone is tracking that and it actually is a violation of the Final Order. They can go back through discipline. There is a process in place already checking on them.

Chairman Moecker: Do we have to physically revoke the license at the meeting?

David Flynn: If they fail to pay a fine, then it has to go back through the entire process of being charged with violating the Final Order. Sometimes they failed to pay the fine, it is up to the prosecutor not me, they can work it out, send in the money and we drop the allegation. But, the Board does have authority over it; it has to go through the allegation that they failed to obey the final order for not paying their fines timely. It will go through probable cause, which is Ms. Parson and make its way to the Board. Hopefully, if anybody still has a license and they are delinquent on money and the Department contacts me, I am going to pay it.

Chairman Moecker: I meant to bring this up earlier and since we are talking about it now. Patty Jo Ferraro, AU 3905, she was before the Board pleading her case. We gave her 7 month probation, requirement to come back before the board. She agreed to pay a fine of \$500, cost of \$630.59. She was told to submit all of her all contracts executed from Sept. 2010 to May 2011 and during the probation period as well. We have it here in our notes "failure to comply." So, what is the status AU 3905 now?

Anthony Spivey: Mary has done a great job at going back and tracking this. She has it under control so I think you will see a lot more action now from this area to get these individuals into compliance or either bring them back before the Board for additional charges of not complying with the order.

LeChea Parson: The license will remain active until another case is brought here for additional action to be taken. Nothing can happen to the license without proper notice and a chance to address the charges against. What you would do it bring a case to failure to

comply, go through the process as Mr. Flynn stated then end up in front of you to decide what to do with it.

Chairman Moecker: Here you have, Patty Jo with a final order May 16, 2011. We are now in June one year later.

LeChea Parson: You also did 7 month probation. It is not until the money is actually due that you can even start. You don't do the violation until it has been violated. So, if you give her the sixty or ninety days to pay or how ever long she had to pay. Then after that, she has failed to comply then you can start the process.

Chairman Moecker: So, we should have started the process after that already? Correct.

LeChea Parson: Should have. I can't comment on a case that is not public.

Mary Alford: On the report that you are looking at, when you see failure to comply that means that action has been taken. Same thing with sent to collections, that process has started.

Chairman Moecker: There will be a method, thanks to you for putting this together, for keeping us informed with what has occurred. In the past, once we metered out discipline, a fine or what ever we have no idea what happens. This is great, I appreciate that.

Fred Dietrich: I would like to congratulate Mrs. Alford on the job she did with putting this information together. Previously, people would be fined or assessed cost and we would have no idea on what happened. This gives us an update on their status of things. I know it took a lot of work to put together and we appreciate it very much.

VI. Old Business

A. Discipline Report was reviewed.

VII. New Business

Public Input: Floor was opened to Florida Association of Auctioneers.

Debbie Shuler: Thank you for sharing your meeting with us. We love having you here and love learning the process. We learn something every time you are here. We appreciate it. We know there have been some issues; I will briefly address the de-regulation. Majority of membership is totally against de-regulation and we want you to know that. We are working on ways to get alerted about different legislative issues that would affect us. Thank you for clarifying the financial stuff that was a little scary not knowing what was going on there. We use the licensing list that we get from your website if we mail something out to license auctioneers and auction businesses. We take that list and download it. At this point because email addresses are not there, we do mail.

I noticed we get a lot back with bad addresses. I was wondering how you all handle that. What happens if you send out a renewal and it comes back that either the address is changed and you were not notified or if they are no longer at the address.

Anthony Spivey: I can say it is a violation if a licensee has not notified the Department of an address change. They are required to keep the Department updated with their address of record.

Mary Alford: The renewal notices, we don't do anything when we get those back. However, if we get a license returned or different documentation that is more important that we send out, there is a team in our licensing unit that will try and go through and reach out with all the contact information we have in our system to see what needs to be updated. In our system you can submit three different addresses, so one address may no longer be correct, but we have a different address on file that is correct like the location versus the mailing address we use for mass mailings like the renewals. Unfortunately, our staff is limited to actually go through everything that is returned to the Department. We do set aside staff for licenses that get returned so we can reach out and figure out why they are returned.

Anthony Spivey: Also, Debbie, what will happen eventually the renewal notices that are returned, the individuals license is not updated. That will get their attention and realize they need to update their address.

Debbie Shuler: Is it staff that would go in and put someone inactive. They would just be active until a period expired and then it just expires.

Mary Alford: That is correct. We don't have the authority to go in and change a status.

Chairman Moecker: Just to make it clear, you use the information from the Department to promote the Florida Auctioneer Association. Sometimes the addresses are not right so you are getting returned mail. Is that true with emails as well?

Debbie Shuler: The State, there is no emails. We don't have an accurate email list. Back when it probably wasn't necessary on the State application. If you go on the State website and download the database, there are no email addresses.

Chairman Moecker: You go online and download the database.

Debbie Shuler: It's awesome form once you know how to get there. You have it all, auctioneers and your auction business licenses. You can download that and put it in Excel or any kind of spreadsheet you want. There are no email addresses, just mailing and it is just the one address. That is what we use for membership applications and to send other things out.

Fred Dietrich: For six years I had the same job you have. I can appreciate what you go through. Some auctioneers every newsletter changed the address. I have never seen a

group so mobile. I have always worked with agriculture organizations. You don't move farms all over the place. Particularly, auto auctioneers are extremely mobile. They may work from Miami to Pensacola. Where ever they are getting the most jobs they get an apartment. They are an extremely mobile group. Then they show up here because they didn't renew their license because they didn't get a renewal, maybe they have changed their address five times. Some of them it seemed like every newsletter they had a new address. I can relate, officially according to the law they are suppose to update the Department anytime they change their address, but they don't unfortunately.

David Flynn: That built in mechanism that takes care of it is the license goes null & void. Unfortunately, for an auctioneer, as we saw today, if you don't update your address.

Debbie Shuler: That would take them right off any future mailing once they go null & void.

David Flynn: I was looking last night, and I am not an employee of DBPR, from what I was able to find they are on the cutting edge of technology. They even have an app now for your smart phone to verify a license. What they are doing is they are really starting to update their databases. You will probably find more user friendly ways to get that information. Now, by October we are going to work on getting those email addresses. I believe it will probably change and be updated modifying to where more would be accurate. I was surprise to find they built their own application for licensure verification, it is nice.

Debbie Shuler: The last time we were here at one of the meetings, which had been several years ago, the complaint process was discussed. You all have done a better job of keeping track of complaints. For some reason our last Governor did not think there were complaints against our industry. We had stacks of them. We talked about the ability for the Florida Auctioneers Association if we got a written complaint to be able to forward it to your Department. Of course, we encourage everyone to file a formal complaint, we even have a link on our website that directs them to you all. We started that procedure. If we get a written complaint with all of their information, I would take that and send it to the State and then I would get a form back to say you need to file a complaint on this formal form. Well, we were just forwarding it. I don't know what happened to the stuff we were sending, eventually I stopped sending it.

Chairman Moecker: You bring up a good point. When you get a complaint about an auctioneer, it comes generally from a person who has been grieved at an auction. Why do they come to you? Do they come to you because you are a member of FAA, or because you are the Florida Auctioneer Association? They figure that's the place to start instead of going to the Department of Business and Professional Regulation.

Fred Dietrich: Florida Auctioneer Association has a grievance committee, and the National Auctioneer Association also has a grievance committee. Prior to the auction law in Florida, the Florida Auctioneer Association would actually revoke membership of people. If you are a member it means you have a pristine record, supposedly, and you are

a professional and you adhere to their code of ethics. The National Auctioneers Association does the same. Somebody can have their membership revoked and they have a grievance committee that looks at it from a standpoint. If somebody isn't a member, there is nothing they can do. The general public probably has no idea what goes on. The general public probably doesn't know about the Board of Auctioneers. They look it up and see there is a professional Florida Association of Auctioneers. So they send the complaint to them. If they are a member, they can discipline the member. That's all they can do. What Debbie is saying is that she forwards it to the Department of Business and Professional Regulation to the investigators. Apparently, a lot of times it stops there. When you look at the form the investigator sends out, it is a general form that applies to contractors and all other people. The general public probably doesn't understand how to fill out the forms. I know before I got on this Board, I would fill out things when I came across them. It is a general form that is so watered down. You have to adapt to make it about auctioneers to know what the problem is.

Chairman Moecker: I want to get back to a couple points you raised that I think are important. Now the complaint comes to the board, you are dealing with a member, you discipline within the FAA and that stops there. You don't, we did the discipline here and now we send it to the state for further discipline. That is where it stops?

Debbie Shuler: Let me clarify. Let me go back to something you said earlier. People call us the Florida Auctioneer Association, Fred's right, a lot of people don't know there is a licensing law. So they don't know the Department of Business and Professional Regulation they can go to. Most people, regardless of what profession they are dealing with, is there a professional organization that can help me. Our website is very active. We get a lot of calls from consumers asking what to do. The first thing we do is say file a complaint with the State. Number one you got to do it, direct them to the State website. I do try to explain that some things on the form may not apply to you, just put NA and move on to the next question. Give them your supporting documentation. We are the professionals so they look to us for guidance. The next thing is file a complaint with the association, we are limited, and we can't throw them in jail, but you can file a complaint with us and we have procedures in line. Several years ago, if Florida Auctioneers Association received a complaint, it also went right to you all. Whether we resolve it or you resolve it and why we resolved it the way we did may be two different ways. If a complaint came in it was forward to the State. Again, that stopped after a period of time when we got that form letter back.

LeChea Parson: I want to understand this. I want to make sure our Department is doing things correctly. If a complaint is in writing then it is legally sufficient and they should, unless it doesn't have the supporting documents to back it up. If it is on paper and it has a contract behind it, it should be okay to move forward. If it just has paper and no supporting documents I can see why the Department wouldn't go any further.

Chairman Moecker: Would that be true if Widow Jones files her complaint and doesn't attach the consignment report. It goes to your office and someone say it doesn't have any attachments so we are putting it in the circular file. Or do you call Widow Jones?

LeChea Parson: What happens is you send a letter back to Widow Jones asking for the consignment contract. If they don't get it they close it. If they get it, even if they don't get the uniform complaint form it should still continue or something should happen to it.

Mary Alford: It depends on how long ago that was.

Debbie Shuler: Procedures might have changed. I just stopped after I kept getting that form letter back. I just stopped doing it because it is not my complaint.

Mary Alford: The Department has tried very hard in the last couple of years to make sure individuals know when they file a complaint their name that is on the complaint is going to be provided to the individual the complaint is against. Some people didn't realize that was the case they thought they could just stay anonymous when they wrote us and they can't. That is why we direct them to the complaint form because on our website it has instructions before you get to that complaint form with that information. I can I can tell you now, even if they just write a letter to us, we are now accepting those as complaints because the signature is there. I am not sure with the third party there may have been some confusion, it sounds like they were sending a letter to fill out the form instead of the individual who wrote to you.

Debbie Shuler: They would send the form letter back to me saying if you are going to file the complaint fill out this form. Well, I am not the one filing the complaint. I am just letting you know to be aware of what transpired. We don't take anonymous complaints either, if they can't put it in writing.

Anthony Spivey: The Department will take an anonymous complaint, but they need to understand if they don't provide any information then they won't receive any updates on it.

Mary Alford: If they did not provide enough supporting documentation on the front end then we can't precede either.

LeChea Parson: The Department is going to correspond with whoever corresponds with them. So if you put your name on the form, it might just be easier to forward it with out adding anything. Just send it on. So the right person gets corresponded to. Make a note, I am sending this complaint, but I am filing on behalf of Widow Jones.

Mary Alford: If you file on behalf of someone then they will contact you. I will be happy to work with you. Our Regulation office should take those letters now.

LeChea Parson: And we will be doing training soon. Our Regulation Office contacted me they will be doing training on auctioneer investigations. So Mary and I can present something to them. So they know these might not look like all the other complaints that come in and our analyst can handle it.

Anthony Spivey: I would recommend, Debbie, and you have already alluded to it, that you at all cost or possible, have them go directly to the Department to file a complaint. That will keep you out of it and the Department can contact them directly one on one with their issue.

Fred Dietrich: I know with previous cases that have come before the Board. I have seen complaints filed by Cliff, so they aren't just going in the circular file someplace. I have seen Cliff's name attached to complaints that wind up in our file.

Debbie Shuler: There were a couple of issues about a year ago or so we were getting correspondence from the Department giving us updated status on complaints that we didn't file. I don't know how we even got on there, there was contact information. I am not sure how that was taken care of, but it was handled. We had some very upset Auctioneers because they thought the FAA had filed a complaint against them. It wasn't even a complaint we forward. That was taken care of immediately, as soon as I got that letter. I guess we will leave it as it is right now. I will tell the people to contact the State.

Anthony Spivey: Direct them to our website and there is a phone number they can call also for unlicensed activity or complaint issues. I would just direct them straight to the Department and that keeps you out of it. The Division of Regulation, which is where the complaints are received and taken care of, they can work directly with that person.

Debbie Shuler: Is there a way, it seems like it was so important when we were trying to get that fingerprint passed and it didn't. I feel it is very important if and when the de-regulation issue comes up again, the amount of complaints that come in. Should the association still keep track to give you that information in case you need it.

Chairman Moecker: Anything you can track that will support the notion that the consumers are being grieved. Even if it is duplicative in some cases, it doesn't matter because it is your report and we have our own report. We have our own facts that come to us from various resources and you have yours. We can use all of that stuff to show the Governor. I can't imagine we can't make that case to get it approved next time around.

Fred Dietrich: Every meeting Ms. Parson gives us an update on the number of cases filed. Somebody said the need for us they didn't do any checking. The information was available to them. The biggest advantage you have is to revoke someone's membership, which has been done. One of our best customers, I went back and checked records for 10 years, he was not a member of the association or the national. On his website it said he was an active member of the Auctioneer Association and he was largely responsible for Florida to have an auctioneer licensing law.

Anthony Spivey: You were asking whether you should keep your information in case you need extra information to provide to the legislature. I would say, yes. Even though I take various items back to the Department to be presented for legislative issues, it isn't saying they take every issue we bring in and submit it to the Governor's Office for possible legislation. I always tell the Boards that if the proposals you give me to take back to the

Department is not accepted by the Department to put it in the package. The next alternative is to find an avenue to get that information in front of the legislature by getting a private sponsor or an association to do it. So keep your information in the event you have to use it to get in front of the legislature.

Debbie Shuler: My last thing, on your agenda, on applications what is an application for endorsement?

Anthony Spivey: In the statute there is a provision for endorsement and reciprocity. Reciprocity is when there is an agreement between Florida and another State we will honor each others licensing provisions. The Endorsement process is when a person applies to the State of Florida and we will look at the other licensing states provisions and if their licensing laws are equal to or greater then we will endorse that States the individuals license to license in Florida.

Chairman Moecker: Do we stay on top of that? So someone makes a determination that the Virginia law is good or better than ours.

Anthony Spivey: We have a list of all the States we have looked at, since I have been there. That is what we have been using thus far.

Fred Dietrich: I think there are 19.

Mary Alford: Really it is their requirements that are equal to ours.

Chairman Moecker: How do we know if they have gone through a deregulation in their own state? Do we stay on top of that?

Mary Alford: Yes.

Seth Sklarey: Something that has been bothering with me for a number of years and I would like to share them with you. The first one I have discussed a bit, if my license has been renewed by an auctioneer sometimes it does not get to them timely. It can take up to two weeks, especially at the end of the renewal period someone renews the last couple of days. I am sure the Department gets backed up and they don't send it out for a few weeks. Sometimes it never gets there because of the mail or whatever. You have a provision that says you have to display the license at the auction. I was wondering if you can provide that the auctioneer can at least take proof that he has renewed his auction license from the website and display that until the license comes in. Something that he won't be in violation, that he has complied; he has done what was suppose to do. The Department has not done what they are suppose to do and they put them in a position of jeopardy. That should be somewhere in the law or in the rules and regulation. Number two; there are certain minimal requirements as far as contracts, that are law and some states like Indiana that have a form that you fill in the blank and has all the provisions of that. It would be a good idea for Florida to produce something like that, a minimal form for contract so everyone is on the same page. You can add something to the contract or rules and

regulations in terms of the sale and things like that. At least if there was some kind of minimal standards that is in writing that could be provided or purchased. Maybe the FAA can do something like that.

Chairman Moecker: I think that is where you should go with that. It is a slippery slope when the State starts providing contract forms for an auction company to use and say this is the recommended form.

Seth Sklarey: The problem I run into is that most auctioneers and big auctioneer companies consider their contracts and forms as proprietary. They don't like to share them and they don't like to do it. There are very few attorneys who are knowledgeable enough on the subject to provide help.

Fred Dietrich: There are sources where you can get sample contracts, Keifer has publications, a blank auction contract. Otherwise they might accuse us of practicing law without a license.

Seth Sklarey: The next thing, part of the law requires an auctioneer in advertisement to provide his license number. For years since I have become an auctioneer, I have tried to get the people that make the rules, the Department and the Legislature, to require or put the honest on the newspaper. If I submit an add and the newspaper inadvertently leaves out my license number, I am the one that gets the fine, I am the one that gets a complaint, I am the one that is responsible. In part, it should be the newspaper that is responsible for putting that add in. You can't get a construction company in the newspaper without putting the license number in. It should be the same way with the auctioneers. The last thing is the sales tax problem; if you do a charity auction, of course you don't have to be licensed to do a charity auction, I go through the process as if they were a regular auction customer. One thing I always put in the contract is that sales tax is required to be collected and they are the seller and they are required to collecting and reporting the sales tax. I am wondering if there is some kind of thing to protect the auctioneer if the auctioneer is not the actual seller. You were hired as just a bid caller.

Chairman Moecker: Is the auctioneer in jeopardy in those circumstances?

Seth Sklarey: If I am doing my own auction, I am responsible. If I am not the seller and I am merely a bid caller. What can you do to protect me? Basically that is what I am saying.

Chairman Moecker: I don't know if you are in jeopardy.

David Flynn: I believe, when you look at the statute and the records that are required, it talks about the auction business itself mandated to keep all of that. Obviously, you start with the auction business where the auction took place based off the current statutes.

Chairman Moecker: So without specifically saying the bid caller is not obligated, but the law says it is the business responsibility, whether it is an auction business or a charitable case.

David Flynn: We have to stay within our regulatory capacity which is only what the legislature has delegated to the Board to preside over, which is the statute we have. When it falls outside with tax, we can't.

Seth Sklarey: Back to the newspaper again. I wish you would put that in your legislative packet that it is required with the auctioneer license number to be in the add that there is also the responsibility of the newspaper to put it in there. A lot of times what they will do it won't be a formal advertisement it will be a news article that they say so and so is the auctioneer, they should put the license number in there. That is one thing, specifically when it is in an add. Again, I put it in the contract and you can put it in the add here is the license number, they don't do it and are not responsible and I get the fine.

David Flynn: I can not speak for Ms. Parson; I can tell you that I have advised in previous boards elsewhere when the printing, the company you contracted with made a printing error. Certainly, I would find it hard to say you caused the dissemination. When it comes to advertisement, I keep what I told the newspaper or what ever the company I wanted, you keep a copy of that. If the number is missing you have what you contracted what should be there. I would advise as legal counsel, if it came to me, we should dismiss the case.

Seth Sklarey: Yeah, but it goes through the whole process. (Provided an example of a case from several years ago with a real estate auction.)

David Flynn: Obviously, we can't regulate the newspapers.

Seth Sklarey: Well, you can put it in your legislative packet, which is what I am asking you to do.

LeChea Parson: We can only put in what we are designated to do. They are not part of our designation. Our Department will not put forth any legislation that is not part of the law that is given to us.

David Flynn: Something we can do is look at the advertisement rule and put a note if you feel it is important. Errors by the publisher should not be held against the licensee. That would be in our control.

Seth Sklarey: What I am saying is, when you publish the contractor bid, the law says the license number has to be there. It is not written the same for the auctioneer, it should be the same.

Chairman Moecker: We will look into it.

Anthony Spivey: I did want to go back to your comment on displaying your license number at the site and you renew your license in the last couple of days. (468.388(5) read out loud.) So, you have an avenue there where you can make an announcement.

Seth Sklarey: Right you can make it available at the auction site, but if you don't have it mailed to you won't have it available.

Anthony Spivey: Right, but what I am getting to is that once you renew it, it is immediately available on the Internet. If you display it, that is a display or announcement at the site that it is available. You can display it and show individuals here is the license number from the website is immediately updated.

Seth Sklarey: You and I know that, but the law doesn't say that. The law states that the license must be displayed.

Anthony Spivey: Right, but it says if it is impractical.

Chairman Moecker: When you do an auction are you tied into the Internet. Do you have Internet access? We are always tied in for a variety of reasons. So, what you are saying is if someone challenges you, as Mr. Spivey was saying you can say here there is a delay, but on the internet you can see I am licensed.

Seth Sklarey: It's not what the law says. I am trying to comply with the letter of the law.

Chairman Moecker: Thank you for your comments.

Chris Dudley: I want to point out HB 885, which is an amendment to Statute 538.03 and how it effects an auction business. And whether or not the Department and the new law how it interrelates or have any effect on auction businesses. It has placed, it took away an exemption of auctioneers that were licensed under 468.382 and narrowed it down to only particular auction companies. Therefore anyone that is taking anything from consignment or buying inventory to sell now fall under the same category as second hand dealer, i.e. Pawn Shops. The law goes into effect July 1st. I am not really sure how it will effect and whether or not this is something that can be brought up in legislative issues.

Chairman Moecker: Does the Florida Auctioneer Association have legal counsel?

Chris Dudley: I don't know, I came to this meeting today to bring this up. I know there is a group of people getting together to try to make, find out how to go about the process to get this legislation changed.

LeChea Parson: What is the bill number?

Chris Dudley: HB 885, it is amending 538.03. It is mostly intended for precious metals and scrap metals. But in here it talks about the exemptions being if you sell coins, books

or organs. It gives you very specific things you can be exempted from, but it doesn't take care of everything else that they may walk in the door.

LeChea Parson: I know there have been a lot of issues with second hand dealers using their auctioneer license not to comply with second hand dealer license. It might be in response to that and might have some consequences that are not intended.

Chris Dudley: One of the unintended consequences that has happened is that every county, because of something written in the back, is going through and creating their own ordinances. So they can enforce this law, each county has increased what they require. In here it states to hold items for 15 days, but the county requires we hold it for 30 days. Then if we hold for 30 days then we break your law.

LeChea Parson: That doesn't affect it.

Chris Dudley: That wouldn't affect it, if I take some of these things for consignment.

Chairman Moecker: You don't remit in 30 days of having sold it.

Chris Dudley: I did a hundred and seven auctions last year and if I held all that stuff, I wouldn't be in business.

LeChea Parson: It has been a very big issue with secondhand dealers taking merchandise and melting it down and saying I'm an auctioneer I don't have to comply with the secondhand dealer statute. They are basically we buy gold businesses. They take your jewelry, sometimes it's stolen, sometimes it just people walking in to sell their jewelry. It is causing issues for the Auctioneer Board because these people are using your statute to not abide by that statute. Now we have to check to see how this change affects auctioneers that are actually practicing as auctioneers.

Chris Dudley: This bill throws a huge net across the board, and turns us into the policing authority. Not only us, flea market dealers and other people that are buying from us.

Chairman Moecker: What goods are affected by this? Does it specifically say certain goods have to be held for 30 days?

Chris Dudley: It has a definition in here for secondhand dealers and secondhand goods listing. It breaks it down in here. There are certain things that are exempted from that like the exemption for coins, guns, organs. I don't know why they have organs in here.

Chairman Moecker: Kidneys, hearts that sort of thing.

Chris Dudley: They tied it in with precious metals and scrap metal dealers. I understand why they made the law because there are a ton of scrap metal dealers out there. What has happened is the counties are taking this line and making it more difficult. If we inadvertently break a law or ordinance does it come back to you guys and you guys take our license. Because we sold something, we have to fingerprint them, store it, and record

it in 24-48 hours with the Sheriffs Department. Talk about wanting to make sure things doesn't have an economic impact and this would put us out of business.

Chairman Moecker: If you read that literally, you are saying it could put you out of business. In the auction business you are dealing with second hand, you rarely sell something new. Theoretically, you can take the definition of what we do and throw auctioneers under the bus on that. Logically, was that what was intended here. It doesn't sound to me that the legislature realized how you could flip it over to the auction business. Or someone could read it that way.

David Flynn: There should be a House analysis done that can be pulled up. This is something that has not been brought to my attention from the legislative office for my review.

LeChea Parson: We did not get this bill to review.

Chairman Moecker: That should be something for DBPR, I would think.

Chris Dudley: It would affect how you guys look at things if I break the law.

David Flynn: If you get arrested for committing the crime, certainly. We wouldn't have jurisdiction over this particular chapter at this current point. I understand your concern. We are checking.

LeChea Parson: Is this pending or did it pass?

Chris Dudley: It has already passed. No one argued against it. There were no nay votes. It passed and become law effective July 1st.

David Flynn: It is in the Law of Florida, 2012-179

Chairman Moecker: So, once it is there?

David Flynn: Once it is there, it's become law, but it may not necessarily become effective. When ever I put a Laws of Florida on there that means it went through all of the processes of becoming law from the House, Senate and Governor. Then they transfer that house bill to Laws of Florida number. Then the Department of State works on putting it in statute book. So it is passed.

Chairman Moecker: The important thing here is that it did pass and someone could enforce it. And it could have an adverse impact on some of our auctioneers across the state. Is that correct?

LeChea Parson: It possibility could. We can not prosecute someone for a complaint for not complying with that. That is not our practice Act.

Chairman Moecker: If she is charged with a felony.

LeChea Parson: If she is charged by the Department of Revenue for failure to comply. The Department of Revenue is a state agency like DBPR that regulates that. We would not prosecute for that violation, that is not our practice act, that is not our real to deal with that is what Department of Revenue does. If something happens at DOR, it could be something that impacts DBPR. This is something we are going to have to send to our legislative affairs office and look at it. This never came before me, I don't know if it came before the Department. Usually when bills are passed that would effect auctioneers under the practice act that come before Tony and I to review it. I have not reviewed this. Now we will need to contact our Legislative Affairs Director and see what we need to do and figure out what we need to do to proceed. Because the train has already left the station. We are going to see what we need to do now, we can't stop it at this point.

Chairman Moecker: Can we at least give some comfort to Ms. Dudley about this through doing some research and getting some information back to the Florida Auctioneer Association with this.

LeChea Parson: We can get back with you. We can't tell you what is going to happen. We are going to look at it to see what impact it has on our licensees.

Chris Dudley: My intent and I am working with some other people, is to follow the next step which is to get somebody in the Senate or legislature to amend this amendment to take the auctioneers or flea market dealers or others that are adversely affected by this to try and take that off. That means I have to go through the whole process, right?

LeChea Parson: You may want to consider both sides, you have to consider maybe getting the associations opinion. You have to figure out how you want to address this. If you just take it out you are right back to where you started where secondhand dealers are using auctioneers license to circumvent secondhand dealer laws. Which I don't think the auctioneer association would want.

Chris Dudley: Maybe if they had targeted directly to the problem which is the stolen gold and affected that and not us across the board.

LeChea Parson: We need to talk to Legislative Affairs to see what the next step will be. I am not sure if it is something that can be added to our bill or not because it is not in our statute as I was saying before.

David Flynn: This would be very simple you just need to look at this comprehensively because as an attorney, for me to make a statement right now and you to justly rely upon that. I do not want to have that happen. There are sections in here already I can skim this and see there are exemptions. There are other things LeChea and I can look at to make sure we are correct in our interpretations like analysis from house committees and subcommittees that it went through.

Chris Dudley: My intent was to make sure you guys know this is here and inadvertently doesn't help us, it makes it more difficult.

Chairman Moecker: We appreciate that and we will get an answer on whether or not it will have an impact. What you do in the meantime, what you do it entirely up to you. It will take the office and the staff a little bit of time.

Chris Dudley: I know what is happening, all the different counties have taken, this one exempts auction companies, but I know the county ordinance that they wrote from this takes that exemption away.

LeChea Parson: The county level we can't do much about at all.

Chris Dudley: I understand that. I just explaining that because that is an unforeseen consequence that is happening here, each county is taking this and increased it and taken more liberties to make it more difficult. There are several more counties around the State that have taken this legislation and tried to create new ordinances.

Chairman Moecker: We will do what we can from this end to get a straight answer. To see in fact that there may be in other ways to keep us out of harms way.

Chris Dudley: I just don't want to get in trouble. This says we are exempt, but anything that we take or walks in the door that we take into consignment is not exempt.

Chairman Moecker: Thank you.

VIII. Adjournment

Motion: Fred Dietrich made a motion to adjourn the meeting.

Second: Chairman Moecker seconds the motion.

Meeting was adjourned at 11:56 a.m.