#### **Meeting Minutes**

# MEETING OF THE FLORIDA BOARD OF AUCTIONEERS

Department of Business and Professional Regulation Embassy Suites of Tampa. Tampa, Florida Friday, September 28, 2012 @ 9:00 a.m.

#### I. Call to Order

Chairman Michael Moecker called the meeting to order at 9:12 a.m.

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 LeChea Parson, Esq., Prosecuting Attorney David Flynn, Esq., Assistant Attorney General

#### **COURT REPORTER**

Prizm Group, LLC dba Berryhill Court Reporting 1875 N. Belcher Road Clearwater, Florida 33765 727.725.9157

Chairman Michael Moecker introduced the newly appointed Donald "Don" Shearer to the Florida Board of Auctioneers.

# III. Review and Approval

# A. Minutes from June 15, 2012

Motion: Fred Dietrich made a motion to approve minutes.

Second: Chairman Michael Moecker seconds the motion. Motion carries

unanimously.

# **B.** Ratification List

Dr. Anthony Spivey presented ratification list.

# Licenses Issued from March 2nd to September 6th 2012

Auctioneer Ann	rentice Licenses		
441	CLIENTO, JOHN JOSEPH	LEHIGH ACRES	FL
438	DAVIS, RORY	WEST PALM BEACH	FL
	•		
436	FISHER, CHRISTOPHER ALAN JR	NEW SMYRNA BEACH	FL
435	HORNE, NAPOLIAN RICHARD	FOUNTAIN	FL
440	MARRAN, RUSSELL	DUNEDIN	FL
439	PIAZZA, SALVATORE P	MELBOURNE	FL
437 434	SPURLOCK, CHARLES A WESTMORELAND, COLBY LYNN	LARGO HIGH SPRINGS	FL FL
Auctioneer	WESTWORELAND, COEBT ETNIN	TIIGH SEKINGS	ΓL
Licenses			
4363	ABDO, LUAI TAHA	CASSELBERRY	FL
4414	ANTAR, MAHMOUD	AVENTURA	FL
4366	ARNOLD, PATRICIA DIANE	LAKELAND	FL
4358	ASHER, JASON	ATLANTA	GA
4403	BERGMANN, JOHN O	CLERMONT	FL
4397	BREITFELDER, GREGORY ALAN	CINCINNATI	ОН
4361	BUTIRRO, JEFFREY THOMAS	TALLAHASSEE	FL
4411	CAMARRA, ANTHONY PETER	CANTON	MA
4386	CIPRIANI-MAJOR, BERNADETTE	ORLANDO	FL
4399	DEMOTT, JOHN HUNTER	MOULTRIE	GA
4392	DENNETT, DONALD M	DELTONA	FL
4362	DESMARAIS, ANTHONY DEVON	DAYTONA BEACH	FL
4388	ECHOLS, MATTHEW PHILLIP	MC DONOUGH	GA
4409	ELMS, BRIAN	JACKSONVILLE	FL
4415	FINKEL, AARON H	INVERNESS	FL
4416	FINKEL, AARON HENRY	INVERNESS	FL
4390	FISHER, JAMES M	ARCADIA	FL
4406	FLANAGAN, TAYLOR E	DE LEON SPRINGS	FL
4391	GARTEN, GEORGE MATTHEW	COVINGTON	VA
4384	GARTEN, ROBERT CHRISTOPHER	COVINGTON	VA
4405	GILL, JAMES MICHAEL	NAPLES	FL
4379	GODLEY, FRANKIE H	CHARLOTTE	NC
4387	GREEN, DANNY E	OKLAHOMA CITY	OK
4360	HALL, FRANK SCOTT	VALRICO	FL
4398	HORVATH, GREGORY M	BRANDON	FL
4365	JACOBSON, ISAAC MARK	FORT PIERCE	FL
4373	JONES, GERALD BERNARD SR	JACKSONVILLE	FL
4381 4382	KWALWASSER, JACOB CALEB KWALWASSER, THEODORE H	INGLIS INGLIS	FL FL
4417	LEVITT, JOSHUA	TAMARAC	FL
4401	LINDER, STEVEN LEE	WESLEY CHAPEL	FL
4383	LINDHOLM, KARL ARTHUR	DELRAY BEACH	FL
4376	LO, STANLEY C	MIAMI	FL
4374	LUKE, THOMAS J	DELAWARE	OH
4413	MARCHBANK, REID	SARASOTA	FL
4410	MARTIN, EUGENE P	ORLANDO	FL
4402	MC ALISTER, MURRAY MICHAEL	FAYETTEVILLE	TN
4408	MIDDLE, JASON JAY	ORANGE PARK	FL
4400	MOLLICA, BRANDON LEE	ATLANTA	GA
4394	MYERS, WILLIAM RUSSELL	CLERMONT	FL
4370	NIETO, ROBERT GEORGE	HINCKLEY	ОН
4375	NORVILLE, JAY KEITH	FOREST CITY	NC

436	9 PETTEWAY, ERIC D	WILLISTON	FL
440	•	BELLEVIEW	FL
440	,		FL
	•	TALLAHASSEE	FL
438	0 PRZEMELEWSKI, LARRAINE WEINER	LAKELAND	FL
436	7 RAINEY, JARROD DALE	JACKSONVILLE	FL
438	9 RICHERT, MICHAEL PAUL	SAFETY HARBOR	FL
439	6 RIGBY, BRIAN ARTHUR	ROGERSVILLE	MO
437	7 ROVELLA, MICHAEL D	VERO BEACH	FL
436	4 SHUMAN, SCOTT HARTLEY	EATON	CO
439	5 TAYLOR, MARK ALLEN	DOUGLAS	GA
435	9 THAXTON, CAROL ANN	BRADENTON	FL
437	2 THUT, FREDERIC	MIAMI	FL
439	3 WILLIAMS, THOMAS ANTHONY	FLEMING ISLAND	FL
437	1 WILSON, GERALD W	CLEARWATER	FL
438	5 WITVOET, ZACKERY J	ROSSVILLE	IL
440	7 WOZUNK, KENNETH	VALRICO	FL
435	6 WYATT, CARY DALE	ROCKY FACE	GA
Auction Busines	s Licenses		
319	5 A.B. LEVY AUCTIONEERS, INC.	WEST PALM BEACH	FL
319	2 AGAPE AUCTIONS & GALLERY LLC	JACKSONVILLE	FL
318		ORMOND BEACH	FL
319		CASSELBERRY	FL
	AUCTION		. –
322	0 ARTIFACTS LLC	WINTER PARK	FL
323	1 ARTREV.COM, INC.	HOLLYWOOD	FL
317	•	TAMPA	FL
318	9 AUCTIONEER DELORES ANN RILEY	SPRING HILL	FL
323		FERNANDINA BEACH	FL
322		ORLANDO	FL
318	-	LAKELAND	FL
321		VERO BEACH	FL
321		JACKSONVILLE	FL
318	•	PALM HARBOR	FL
320	5 BUILDING MATERIALS OUTLET	EAGAN	MN
	MIDWEST INC		
321	O CARDINAL AUCTIONS & ESTATE SALES, LLC	ORANGE PARK	FL
317	5 CHESTERFIELD AUCTIONEERS,	ATLANTA	GA
317	INC. 9 COAST TO COAST AUCTIONS INC	BRADENTON	FL
322		PALM HARBOR	FL
318		POMPANO BEACH	FL
	INC		
319	6 DR PHILLIPS AUCTION HOUSE AND GALLERY, L	ORLANDO	FL
321	9 DREW PITTMAN REALTY INC	STUART	FL
322	1 EMERALD AUCTION & ESTATE SALES, INC.	JACKSONVILLE	FL
322	•	DUNEDIN	FL
321	7 ERIC D. PETTEWAY	MICANOPY	FL
321	5 ESTATE AUCTION COMPANY	DANIA BEACH	FL
320		INGLIS	FL
321	AUCTIONS LLC  8 FULL HOUSE AUCTION LLC	PANAMA CITY BEACH	FL
320		BOCA RATON	FL
319		SEBRING	FL
317		PORT RICHEY	FL
317	AUCTIONS	. OIN MOHET	1 -
318		AMESBURY	MA
318	6 KEVIN C SCULLY	LEAGUE CITY	TX
320	7 KING AUCTION HOUSE LLC	WEST PALM BEACH	FL

3203	LIQUIDATION N MORE LLC	WINTER PARK	FL
3223	LORD OF GUNS LLC	TAMARAC	FL
3177	MAGNUM AUCTION LLC.	FT. PIERCE	FL
3200	MANATEE GALLERIES INC.	PALMETTO	FL
3208	MANHEIM REMARKETING INC	DAYTONA BEACH	FL
3173	MICANOPY TRADING & AUCTION CO	WILLISTON	FL
3190	MICHAEL P RICHERT	SAFETY HARBOR	FL
3209	NU2YOU INC	CLERMONT	FL
3211	ON BLOCK AUCTIONS CORP	CORAL GABLES	FL
3180	P AND G AUCTIONS AND ESTATE LIQUIDATORS	PALM BAY	FL
3229	PREIMERE ESTATE LIQUIDATORS	CAPE CORAL	FL
3193	PRICE IS NICE LLC	CELEBRATION	FL
3212	PROPERTY MANAGEMENT & CONSULTING SERVICE	LAKE CITY	FL
3181	RAINEY AUCTIONS LLC	JACKSONVILLE	FL
3197	RANSOM R. HARTMAN LLC	JENSEN BEACH	FL
3172	RED BARN AUCTIONS LLC	INVERNESS	FL
3174	REGAL AUCTION & LIQUIDATIONS LLC	LONGWOOD	FL
3171	REPOSELL.COM, LLC	FORT MYERS	FL
3226	RIGHTOFTHEDOT LLC	LAUDERDALE-BY-THE-SE	FL
3198	ROCKING H AUCTION	POLK CITY	FL
3225	ROSS SECURITIES CORP.	BOCA RATON	FL
3176	SOLD FAST AUCTIONS INC.	MIAMI	FL
3201	SUPER AUCTIONS INC	SURFSIDE	CA
3194	WENSLY AUCTIONS	MIAMI	FL
3227	WHERE DID THEY FIND THAT, INC.	PORT ST LUCIE	FL
3187	WHITE GLOVE AUCTION COMPANY	DELRAY BEACH	FL
3206	WILLIAMS AUCTION SERVICES	FLEMING ISLAND	FL
3216	WOODSTOCK ENTERPRISE GROUP INC	NEW PORT RICHEY	FL

Motion: Fred Dietrich made a motion to approve ratification list.

Second: Chairman Michael Moecker seconds the motion. Motion carries

unanimously.

# C. Applications

# 1. Edward Goldsmith – Application for auctioneer apprentice license, App# 758

Edward Goldsmith was present for the meeting and sworn in by the court reporter. Mr. Goldsmith's application is going before the Board due to background information from 2005. Adrienne Falconer, his sister and owner of Manatee Galleries, was present and sworn in by the court reporter. Ms.Falconer testified on Mr. Goldsmith's behalf. Mr. Goldsmith explained all charges related to the main charge indicated on the application; he admitted to burglary and stolen property from past charges.

Motion: Chairman Moecker made a motion to approve application for apprentice

licensure.

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

#### 2. Scott Phillips – Application for auctioneer license, App# 15010

Mr. Scott Phillips was present for the meeting and sworn in by the court reporter. Mr. Phillips application is going before the Board of Auctioneers due to background indicated on his application from 2006. Mr. Phillips already has a licensed auction business, Indoor Flea Market, AB 3178.

Motion: Chairman Michael Moecker made a motion to approve application for

auctioneer license.

Second: Fred Dietrich seconds motion. Motion carries unanimously.

# 3. Verlie Simmons – Application for Reinstatement from Null and Void Application # 14988

Verlie Simmons was present at the meeting and sworn in by the court reporter. His application is going before the Board for approval of reinstatement of Null & Void license. Mr. Simmons application went Null and Void in 2007 due to non-renewal of license. Mr. Simmons also has background indicated on application.

Motion: Chairman Michael Moecker made a motion to approve application for

licensure.

Second: Fred Dietrich seconds motion. Motion carries unanimously.

# 4. Charles Roland Register – Application for Reinstatement from Null and Void Application # 15017

Charles Roland was present for the meeting and sworn in by the court reporter. His application is going before the Board for reinstatement of Null and Void license due to medical hardship. Mr. Roland's license went null and void in 2011 due to non-renewal.

Motion: Fred Dietrich made a motion to approve application.

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

# **D. Recovery Fund Claim**

Dr. Anthony Spivey explained the Florida Board of Auctioneer Recovery Fund only pays out monies owed twice a year; June and December.

#### 1. Jeff Kimball

Mr. Jeff Kimball was present for the meeting and sworn in by the court reporter. Mr. Kimball made claim against the Florida Auctioneer Recovery Fund against Bargain Warehouse, AB 3040. The Board ordered restitution in the Final Order for Case number 2011-055948 in the amount of \$3,033.21. At this time Mr. Kimball has not received any

payment from Bargain Warehouse despite collection efforts. The AB license for Bargain Warehouse has been revoked.

Motion: Fred Dietrich made a motion to approve recovery fund payment in the

amount of \$3,033.21.

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

#### 2. Abigail Rauhofer

Abigail Rauhofer was present and sworn in by the court reporter. Ms. Rauhofer and her sister, Dorothy Hardie, has made a Florida Auctioneer Recovery Fund Claim against San Marco Auctions Co, LLC, AB 2944. The Board ordered restitution in the Final Order for Case number 2011-003091 for the amount of \$941.85. Ms. Rauhofer indicated a state criminal case that is currently ongoing on one of the owners of San Marco Auctions, Wayne Flemister.

Motion: Chairman Moecker made a motion to continue the recovery fund claim to

future meeting once additional information is researched resulting from

ongoing criminal case.

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

# IV. Disciplinary Cases

# A. Informal Hearing / Jay Kielstock Case# 2011-002096

This case was previously before you at the September meeting in 2011. Mr. Kielstock requested a formal hearing, but it was the Department's position that he did not request it properly. The Department would like to make a motion to deny Mr. Kielstock's request for a formal hearing for not complying with the previsions of Rule 28-106.2015. Mr. Kielstock did not dispute any issues of material facts nor did he properly complete the election of rights form. He was provided an opportunity to amend his election of rights within a reasonable time and failed to dispute any material facts.

Motion: Fred Dietrich made a motion to deny formal hearing request and find that

Mr. Kielstock was properly served.

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

The Department filed an administrative complaint in this case on May 23, 2011, charging Mr. Kielstock violating Section 468.389(1)(c), failure to account or return and Section 468.389(1)(j) through a violation of 468.388(4), conducting an auction of the auspice of a licensed auction business. In August 2010 the respondent contracted to consign several items with the complainant, Mr. Falk. The auction was conducted by Jay Kielstock Auctions,

which is not a licensed auction business. Mr. Falk did not receive any auction proceeds as of the time of filing of the complaint. Jay Kielstock is not a licensed auction business.

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

Motion: Fred Dietrich made a motion to adopt established facts as violations.

Second: Chairman Moecker seconds motion. Motion carries unanimously.

Mr. Kielstock was not present at the meeting and documentation that Mr. Kielstock provided during his complaint process was reviewed by the Board.

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.

Recommendation as to penalty; fine in the amount of \$1,000, cost in the amount of \$270.97, restitution in the amount of \$420 paid to Martin Falk and license immediately suspended until all payments have been paid.

Motion: Chairman Moecker made a motion to accept fine, cost, restitution and

immediate suspension of the license until all payments have been made.

Second: Fred Dietrich seconds the motion. Motion carries unanimously

#### **B. Settlement Stipulation**

# 1. John David Whitworth and Affiliated Auctions & Realty LLC Case # 2011-026716 Case# 2011-031953

John David Whitworth and Steven Henry Pike were both in attendance and sworn in by the court reporter.

The Department filed an administration complaint on this case in December 8, 2011. The complaint charged the respondent for violating of Section 468.389(1)(c), failure to account, pay or return and violation of Section 468.389(1)(j) through Section 468.388(11)(b) for failure to include the auctioneer or auction business license numbers. This case was referred to DOAH for a formal hearing and our litigation team had additional discovery and a settlement was reached with the respondents. The settlement includes the dismissal of Count 1, 468.389(1)(c), and proceeding of Count 2 the advertisement charge and a fine of \$250.

John David Whitworth explained the situation and their contact with the complainant Mr. R. Silas Pierce. The advertisement was an oversight when the information came back for review it was overlooked and the license numbers were not added. Mr. Whitworth explained he attempted to return the items to Mr. Pierce and money was paid prior to the company receiving the money on items sold. One of the items that did receive a bid was not purchased and Mr. Pierce expected to be paid on that item. Mr. Pierce went to pick up his remaining items, but Mr. Pierce left a couple of paintings. They sent multiple certified letters to Mr. Pierce requesting he pick the remaining items up.

LeChea Parson: The settlement did not include the cost of the investigation and the Department is required to cover cost. If the respondents accept the cost amount for both cases into the settlement stipulation then it can be approved.

John David Whitworth: If I agree to take the cost or expenses of the cases can the other counts be dismissed based on everything relayed during this meeting.

Recommendation as to penalty; accept the settlement stipulation or if the respondent pays full cost of investigations then the case will be dismissed. The full cost amount is \$687.36 to be paid in 30 days.

Motion: Chairman Moecker made a motion to accept settlement stipulation unless

cost is paid within 30 days then this case is dismissed.

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

### 3. Bruce C. Scott d/b/a Bruce C. Scott Auctions & Real Estate Sales

Case # 2010-056705 Case # 2010-059495

The Department filed an administration complaint on these cases on August 22, 2011. Charging the violation of Section 468.389(1)(c) and 468.389(1)(j) through a violation of Section 468.388(10)(a) depositing funds in an escrow account that are held for other persons. In March of 2010 the respondents contracted with the Estate of Stanslaus Calise to auction a home, the items in the home, contents of a storage unit and some vehicles. The respondent failed to pay all of the auction proceeds within 30 days of the auction dates and failure to keep the funds in an escrow account as required by 468.388(10)(a). This case was referred to the DOAH and proposed settlement stipulation was entered by our litigation team.

The settlement stipulation request a fine in the amount of \$1,250, cost in the amount of \$935.40, probation for one year and restitution to the estate in the amount of \$6,492.77. In your material there is an email from the attorney of the estate indicating they have received payment in August 2012.

Motion: Chairman Moecker made a motion to accept the settlement agreement.

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

Discussion of Bruce Scott past complaint history. Board requested the Department to ensure Mr. Scott has complied with all past discipline outlined in his Final Orders.

#### V. Reports

### **A. Prosecuting Attorney** – LeChea Parson

#### 1. Case Load Status

6 (six) cases received in legal, 6 (six) awaiting 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.) 12 (twelve) cases are in private status in legal, 1 (one) with Probable Cause has been found and the Administrative Complaint will be going out for service, 4 (four) cases requested formal hearing at DOAH, 10 (ten) cases for settlement negotiation, and 5 (five) cases set for Board presentation that were on the agenda today.

Chairman Moecker: Ms. Paron's, the Board appreciates all of the work and wonderful job she does.

#### **B.** Board Counsel – David Flynn

I have made the recommendations to the rules to reflect the changes in House Bill 887 that passed last session making changes to the statute.

#### 1. Rule 61G2-2.005, Florida Administrative Code, Notice of Address Change

Auctioneers will now have to provide the Department an electronic (email) address and be required to keep it updated.

Motion: Chairman Moecker made a motion to approve rule language.

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

Determine if a Statement of Estimated Regulatory Cost will have to be completed, if this change will adversely affect small businesses. This change will be at no cost to the Department, this is a statute required change.

Motion: Chairman Moecker made a motion no additional cost therefore; we do not

have to file a Statement of Estimated Regulatory Cost.

Seconds: Fred Dietrich seconds motion. Motion carries unanimously.

# 2. Rule 61G2-2.006, Florida Administrative Code, Reinstatement of Null & Void license.

Per Statutory change the Department now has the authority to approve reinstatement of Null & Void license, the applications will no longer be required to go before the Board. This rule is no longer needed.

Motion: Chairman Moecker made a motion to approve the repeal of Rule 61G2-

2.006. Florida Administrative Code.

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

Determine if a Statement of Estimated Regulatory Cost will have to be completed, if this change will adversely affect small businesses. No cost associated with the repeal of the rule.

Motion: Chairman Moecker a made motion that the Statement of Estimated

Regulatory Cost will not have to be filed.

Seconds: Fred Dietrich seconds motion. Motion carries unanimously.

# 3. Rule 61G-3.001, Florida Administrative Code, Fees

The fee is not changing, the language referencing the rule that was repealed has been removed.

Motion: Chairman Moecker made a motion to approve rule language.

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

Determine if a Statement of Estimated Regulatory Cost will have to be completed, if this change will adversely affect small businesses. No cost for removal of language.

Motion: Chairman Moecker made motion that we do not have to file a Statement of

Regulatory Estimated Cost.

Seconds: Fred Dietrich seconds motion. Motion carries unanimously.

#### 4. Rule 61G2-7.030, Florida Administrative Code, Disciplinary Guidelines

The Board should have a disciplinary range for each violation. We have added a disciplinary guideline for failure to report to the rules.

Motion: Chairman Moecker made a motion to approve rule language with edit to

remove a letter of concern for a misdemeanor.

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

Determine if a Statement of Estimated Regulatory Cost will have to be completed, if this change will adversely affect small businesses. This change will be at no cost to the Department, this is a statute required change.

Motion: Chairman Moecker made a motion that we do not have to file a Statement

of Regulatory Estimated Cost.

Seconds: Fred Dietrich seconds motion. Motion carries unanimously.

#### C. Board Chair – Chairman Michael Moecker

No chair report at this time.

#### **D.** Executive Director's Report – Dr. Anthony Spivey

- 1. Monthly Board Report Quarterly complaint reports reviewed.
- 2. Quarterly Financial Statement (Full Fiscal Year 2011 2012)

Recovery Fund Account balance = \$371,975

Operating Account balance = (98,961)

Executive Director explained the trend reflects the negative balance will continue to grow. Finance and Accounting Office has recommended either a one time fee assessment or a fee increase. The Board will discuss in December.

Unlicensed Activity Account balance = \$30,957

3. Pass Rates for Auctioneer Exam

Overall Pass rate of 90.20%.

#### VI. Old Business

#### A. Discipline Report was reviewed.

# **B.** Auctioneer Survey

Mary Alford relayed response to the Auctioneer Survey from June. We had a return of 11 surveys out of approximately 30 left. All in favor of recovery fund over bond requirements.

#### VII. New Business

#### A. Next Meeting

December 11, 2012 – Tallahassee

March 8, 2013 – St. Augustine / Jacksonville area

June meeting will coincide with Florida Auctioneer Association.

Fred Dietrich: I would like to officially thank and congratulate the staff for this location. It has been a pleasant experience staying here.

Chairman Moecker: I would also like to commend as always the wonderful job you all do. I would like to commend Dr. Spivey on the great team he has put together.

# VIII. Adjournment

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

Second: Chairman Moecker seconds the motion. Meeting adjourned.

Meeting was adjourned at 12:10 p.m.