I. CALL TO ORDER

Chairman Michael Moecker called the meeting to order at 9:20 a.m.

Fred Dietrich gave an invocation. Don Shearer led the Pledge of Allegiance.

II. ROLL CALL

Michael Moecker, Chair
H. Fred Dietrich, III
Don Shearer

STAFF PRESENT

Dr. Anthony Spivey, Executive Director
Mary Alford, Government Analyst
LeChea Parson, Esq., Prosecuting Attorney
Belicha Desgraves, Assistance General Counsel
Michael Flury, Assistant Attorney General

COURT REPORTER

For the Record
1500 Mahan Drive, Suite 140
Tallahassee, Florida 32308
850.222.5491

III. Review and Approval

A. Minutes from September 28, 2012

Motion: Fred Dietrich made a motion to approve minutes from September 28, 2012 meeting.

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

B. Ratification List

Dr. Anthony Spivey presented ratification list.

LICENSED AUCTIONEER APPRENTICE

4801 AE 444 DELGADO, DARYL JASON GULF BREEZE FL
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**AUCTIONEER LICENSED BY EXAM**

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**Auctioneer Licensed by Endorsement**

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**LICENSED AUCTIONEER BUSINESS**

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

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

C. Recovery Fund Claim – Sherriff Larry Campbell, Leon County Sheriff’s Office

Dr. Anthony Spivey presented the recovery fund claim.

Attorney Terrell Madigan is present and representing the Leon County Sheriff’s Office.

Terrell Madigan, Esq.: For clarification, we do not know if the check was issued or not. The Garner’s have advised the check was issued, but if we got it we would have cashed it. No payment was received by the Sheriff’s Office. Unfortunately, it was not discovered for a period of time. When it was discovered we were unable to obtain payment from the auction company and Mr. Garner. That caused us to file a lawsuit, we do now have a judgment for it and lodged a claim with the recovery fund at the same time. Our efforts to resolve the matter and get payment from the auction company were unsuccessful.

Chairman Moecker: You state the check was never cashed or never presented to your client.

Terrell Madigan: There was never a check received and deposited by my client. Whether or not a check was ever mailed I couldn’t tell you. The fact is the funds in no manner were ever tendered to the Sheriff or deposited to the Sheriff, I don’t believe that is contested by anybody. We never got the money.

Chairman Moecker: You went through the process of filing a suit, serving the defendants and the defendants didn’t respond.

Terrell Madigan: Yes Sir, they did not file an answer objecting to any of the allegations. We did before and after filing the suit, try to see if there was a way to resolve it short of that. We were unsuccessful with that. We had to proceed with the lawsuit. The lawsuit was not contested. We did obtain a judgment for the amount and filing fees, approximately 70 thousand dollars in total.

Chairman Moecker: The normal procedure on these recovery fund claims is to make sure the claimant has made every attempt to collect. Rarely, if ever, have we had a contested claim under the recovery fund. We will allow them time to state their case on the side. There is a judgment through the legal process and you gave service there is no contest of those facts, I believe. Counsel, do you have any guidance for us on this?
Michael Flurry: We do have a final judgment, the amount is in the final judgment and it was not appealed. So the amount can not be contested.

Chairman Moecker: Have you reviewed the correspondence with the claim. Has the defendant been given all the rights?

Michael Flury: Right. In short of them not paying it. I believe what has been said in the correspondence is that they do not have the money to pay it.

Fred Dietrich: What is the period of time are we talking about from the auction till you all noticed you had not been paid?

Terrell Madigan: It was approximately a year and half. During that time, Mr. Garner’s company and the Sheriff’s Office did business previously and subsequently so there were transactions going back and forth. For what ever reason, I can’t explain, obviously it is something the Sheriff’s Office should have caught earlier. It was approximately a year and half later they realized they were never paid for this particular auction that occurred in 2010. Then there were discussions after that before my involvement. Obviously, they were not successful in recovering the money Mr. Garner received, the Sheriff’s money.

Chairman Moecker: I think there is more that you can add in a moment. I want to give the Garner’s an opportunity to come forth and give their side.

Thomas L. Garner and Robert James Garner present at the meeting. Both sworn in by the Court Reporter.

Chairman Moecker: I would like to understand what issues, since this has gone on for sometime now, exactly from your perspective, other than what we have seen in print why this happened. Where is the missing 69 thousand dollars?

Thomas Garner: Where is it, we don’t know. When this happened we lost, through retirement our office manager and bookkeeper who had been with us for almost 25 years. When she left we had a real hard time gathering all the information and type it the way we wanted it. So, we came up short on that. It was more than a year and half, it was nearly two years. It went from January 2010 to December 2011 before this came up. This was not discovered by them or us until late November or December of this past year. When it was discovered we found out that they had not cashed it and no evidence that we sent it. We had a series of check stubs in our check book showing it was written, all in sequence. Along with it went a read out of funds, amount of money for the items sold and the expenses of the sale. They had all of that information when they finally contacted us, so they must have received the check because they were sent it all together. So to say that they did not know if it was sent or not is not true because we sent them copies of the check stubs and again they were in sequence.

Chairman Moecker: It would seem to me very simple a cancelled check would prove the matter.

Thomas Garner: The check was lost. When we sent it we assumed they got it. We did not check it. And again we lost the office manager and book keeper at that time. We weren’t exactly
pressed with what happened to that particular check. That was at a peak of our busy time, we were just extremely busy. We didn’t pick up on it and nor did the Sheriff’s Office.

Chairman Moecker: With all due respect, if you have a check outstanding for 70 thousand dollars that money is not out of your account until the check is cashed.

Thomas Garner: That is correct. That is why we were mislead that the money kept being used. We just didn’t catch it.

Chairman Moecker: You are saying the money disappeared somewhere.

Thomas Garner: It was used out of that to pay other sales that were taking place.

Chairman Moecker: In other words, if you sent the check out, I want to make it clear in my own mind. You mail a check out after a month goes by the check shows outstanding and you leave it in unexpended funds because the money has not gone out. You don’t divert it to something else.

Thomas Garner: In 25 years we have never done it that way. It never came into thought. In retrospect that was wrong. That was the way we had always done it and we had no clue there was no problem.

Chairman Moecker: If the check is not cashed it does not mean you put it back to your account.

Thomas Garner: It was in the escrow account. It was just used for other sales.

Robert Garner: We lost our office manager and we have hired two or three since then. When we get a bill that comes up, we need to pay this bill, do we have money in there and we would transfer it over to pay the bill. We didn’t know. In that two year period we didn’t know the check was not cashed, the Sheriff’s Office didn’t know. Our bookkeeper from before did all of that stuff and wasn’t with us. The new people didn’t know it was either. When we got a bill if we had the money then we pay for it.

Chairman Moecker: Why didn’t you defend the action in court? If you were convinced you were right. Why did you allow a judgment to get entered against you?

Thomas Garner: We knew the check had never been cashed. We don’t deny that.

Robert Garner: We don’t deny we owe them the money. And we will pay them back.

Thomas Garner: This insinuation from their Counsel that we did this on purpose. That we were trying to get our way out of the money. We didn’t do that. The minute we found out about it we made a trip over here to the Sheriff’s Department accounting division. We both agreed it was a tragic mistake. Then I started getting letters from their Counsel office that we were doing this purposely, that we were avoiding paying it and that we refused to pay it. That wasn’t it at all, we just couldn’t pay it. The money had already been used paying other bills, we just didn’t realize it at the time.
Michael Flury: It is not the amount that is disputed. How the mix-up occurred shouldn’t be the issue if the claim is valid. They haven’t received the money, that hasn’t been disputed. There is a pending complaint so we don’t want to get too much into that side of it. Just the fact that there is amount owing, a judgment entered, and judgment was not appealed. Any attempts of executing any liens or anything?

Terrell Madigan: I would prefer to not go into any other efforts to enforce. We would rather have them just pay it. I don’t think there is any dispute here that they owe the money. The Sheriff interest is just in recovering the money that is due to the Sheriff’s Office and the tax payers. Having been unable to get the people that owe the money to pay it, we have the judgment and it remains unsatisfied.

Chairman Moecker: In all due respect to Board Counsel and you representing the Sheriff’s Office. We want to understand how this happened. We all run our own businesses. I want to understand what happened and how they operate. It goes to the ethics of the business. Forgive me for going back over areas that perhaps are not important to whether or not the claim should be paid. I want to understand what happened. In order to do that I am glad they are here to explain it.

Don Shearer: What is the total of the claim?

Michael Flury: The final order judgment is $70,320.

Don Shearer: Are we responsible for all of that?

LeChea Parson: The fund can’t give more than 50 to one person. The most the fund can pay out is 50 thousand despite the amount in the judgment.

Chairman Moecker: At any one time. There is a maximum of 100 thousand per licensee.

Thomas Garner: Mr. Chairman, if the recovery fund is used to pay the Sheriff. How does it affect our business license? Does it affect our license?

Dr. Anthony Spivey: Yes, if this claim is approved your license will be suspended when the final order is issued. Your license will be suspended until you reimburse the Department the Auctioneer Recovery Fund that amount of money.

Robert Garner: I want to object that we were not responsive. We responded to them every single time they called, we talked. We want to work out a payment plan, but some of the terms of the payment plan, we can go two or three months without having a sale. The way Mr. Madigan has put it to us, you will have to pay $5,000 a month till you pay it off. Some months we don’t make $5,000. That was our problem with not being able to do the promissory note. We want to pay them. We owe it to them. I want to pay it. This is embarrassing to sit here and go through this. It is something that should not have happened. We wished it never happened, but in the same breath we know we sent the check. How did the Sheriff’s Office find out about it all the sudden, did they find it in a file?
Chairman Moecker: I appreciate that. Now we have to deal with the issue at hand, the claim. Anything new you want to add to the conversation?

Thomas Garner: One of the things we tried to do in the very beginning was when we were selling their cars we would give them the commission back on it. They were lead in such a way to believe we cheated them out of this, that they did not want any part of doing business with us. Yet they went ahead and did business with a gentleman who left our firm and took about 5 customers we had done business with. I would like to ask them why they quit doing business with us prior to finding out this money was missing. As a result we lost about 50% of our business. Instead of doing business with us and let us pay back out of the money we would make from that, they said no. You cheated us out of this money. Now I see that they recommended the settlement it is with no penalty with us. I have called and spoke with someone at the Department, before the deadline I called and asked for who is assigned as assistant counsel.

LeChea Parson: That is me. My assistant and I left a couple of messages and never received any return calls.

Thomas Garner: I talked to her. I had a few questions. I asked her if she could answer just a few questions I had. When I asked her she gave me an absolute no on all three of the questions.

Chairman Moecker: That is another issue. I wanted your testimony only to the 70 thousand dollars.

LeChea Parson: We can’t discuss this with them. If you want to stay after the meeting Mr. Garner we can go over all the terms.

Don Shearer: Would the Auctioneers Recovery Fund be responsible for filing fees?

Michael Flury: Yes, you are allowed to request filing fees and court cost, but not attorney’s fee. That is all in excess of the amount anyways.

Fred Dietrich: Assuming we approve this request from the Sheriff’s Department. Is there a system were the Garner’s can set up a repayment plan back to the recovery fund and be operating on probation instead?

Dr. Anthony Spivey: That would depend on how the final order is written based on what the Board comes to. The license will still be under suspension because it is statutory.

Chairman Moecker: We have no authority to do anything other than suspend the license once the claim is paid.

Dr. Anthony Spivey: Once we disburse money from that fund the license will be suspend until they repay it.

Chairman Moecker: If we approve it today, can it be paid in December?
Dr. Anthony Spivey: At the end of December. Any claims that are authorized in the last six months of the year, because we only pay twice a year, have to be paid no later than the 15th of January.

Chairman Moecker: So if we approved the claim today the license would be suspended the 15th of January?

Dr. Anthony Spivey: It would be suspended when the Final Order is issued.

Thomas Garner: When it is paid can they go after us for the balance? Or do they have to sign that this is a settlement?

Chairman Moecker: I am not a lawyer, but I would imagine they would have a right to go after you for the deficiency. I think we need to deal with the issue of the claim now. We have heard from the Garners, there is a judgment. Counsel what is your recommendation; have they met the requirements of the recovery fund?

Michael Flury: It is your call. Legally, yes.

Chairman Moecker: The claim is legally sufficient so we need to decide if the 50 thousand is issued to the Sheriff’s Office.

Motion: Fred Dietrich made a motion to approve recovery fund payment in the amount of $50,000.

Second: Don Shearer seconds the motion.

Discussion:

Don Shearer: It is unfortunate that we are taking away the opportunity for them to repay it back by suspending their license. That is their livelihood. I don’t know anyway they can earn that back without being able to operate their business.

Chairman Moecker: I understand. I feel strongly that there should be some way.

Dr. Anthony Spivey: Section, 468.392(4), Florida Statutes, the license shall be automatically suspended until the licensee has complied with Section 468.398, Florida Statute. We have no choice but to suspend the license.

Chairman Moecker: So you suspend their license and remove their ability to earn their way out of this issue.

LeChea Parson: Is the claim against both licensees?

Chairman Moecker: It shows here auctioneer license number AU 286.

Thomas Garner: That is mine.
Chairman Moecker: That is your personal license, not your business (AB) license. So it has no effect on the business license.

Michael Flury: Just to clarify, you can switch your license over to the business.

Mary Alford: You, Robert Garner, can be the auctioneer of record representing the business. That way you can operate the business and make payment toward the recovery fund.

Robert Garner: That is what we have wanted to do all along. That way we can pay them back.

Board voted. Motion passes unanimously.

IV. REPORTS

A. Prosecuting Attorney – LeChea Parson

LeChea Parsons introduced Attorney Belicha Desgraves who will temporarily be handling Auctioneer cases and representing the Department for the next couple of meetings.

1. Case Load Status

15 (fifteen) cases received in Legal, 2 (two) cases with administrative complaints filed and served, 1 (one) case were probable cause has been found and administrative complaint is being filed and served, 4 (four) cases with formal hearing requested, 10 (ten) cases in settlement negotiations.

B. Board Counsel – Michael Flury

Provided the rules report: 3 (three) rules in the process and one that is now effective 61G2-2.006. 61G2-2.005, 61G2-3.001 and 61G2-7.030 have been adopted and should be effective December 23rd.

C. Board Chair – Chairman Michael Moecker

No Chair report at this time.

D. Executive Director’s Report – Dr. Anthony Spivey


Operating Account Balance = ($124,734) Negative

Dr. Anthony Spivey: I did speak with you at the last meeting about the possibility of raising the licensing fees for this Board. This account is in a deficit and apparently will continue in that trend unless something happens. What that trend is contributed to is the cash sweeps that have hit the Department the last few years. The Finance and Accounting office has run some numbers for
projections out to 2017. If you look under the 2014 year there is a $50 figure for a one time assessment if you did apply would end the year in the positive. However, doing a permanent fee increase that will raise the funds to the Board. That will give you a positive balance in the even number and odd years. That balance will start going down. Just to bring this to your attention for discussion of any raised fees.

Chairman Moecker: That would be for the AU and AB licenses?

Dr. Anthony Spivey: Yes, it would affect all licenses.

LeChea Parson: Is this an either or? Either a one time assessment or one fee increase.

Dr. Anthony Spivey: Yes, either or. Doing a one time assessment will only be a temporary fix.

Don Shearer: Our expenses have gone up that much?

Dr. Anthony Spivey: Well, your expenses really aren’t that high compared to some of the other Boards. It is really just a combination of not that many new licensees coming into the profession plus with the cash sweeps that have hit the account in the prior years.

Chairman Moecker: Do we have to decide on this today? Can we decide this in March?

Dr. Anthony Spivey: March is fine.

Chairman Moecker: Can we find out how much has been swept in the last five years?

Dr. Anthony Spivey: Sure, we can pull that.

Chairman Moecker: I don’t know if we have to decide this in March. When do you want us to decide on this?

Dr. Anthony Spivey: As soon as possible because if we do the fee increase it will need to go into effect for your next renewal cycle. Not today, March is okay.

Don Shearer: If we did the one time fee, on your projections how long would it be before we would have to do it again? Would we need to do it again in two years?

Dr. Anthony Spivey: You can only do this once every two years. More than likely you would need to do it again. Basically by doing this one time fee assessment it doesn’t fix the problem if there is a situation were they still having cash sweeps that would put the account further into debt. The key is not to have too much money in the account just enough to sustain it.

Don Shearer: If we did a large amount that would be more obvious to sweep.

Dr. Anthony Spivey: It would not actually put that much money in the account to gain attention.

Unlicensed Activity Balance = $31,190
Chairman Moecker: Are we doing anything in the unlicensed activity area that we need to know about?

Dr. Anthony Spivey: The Department always does general information on unlicensed activity to the public. Some boards are doing specific video presentations geared toward that profession, PSA contest ideas.

Chairman Moecker: Do we do anything special with this money? I know in the past we have done some materials.

Mary Alford: Investigators do outreach and in the unlicensed activity office they will go around to different events if they are invited. They go to association meetings, expos and tradeshows things like that.

Chairman Moecker: Has the unlicensed activity group presented anything to the auctioneer association?

Mary Alford: A couple of years ago they did. Then last year when we had our meeting with the association we provided the brochures, unlicensed activity items and we had an investigator at the meeting. They look at it based on the number of complaints among the professions on where they focus in the most of their outreach.

Chairman Moecker: Are we getting a lot of unlicensed activity complaints?

Mary Alford: The monthly complaint report lists the unlicensed activity complaints.

Dr. Anthony Spivey: Your first quarter you had one unlicensed activity complaint.

Chairman Moecker: So we don’t need to spend much time on this.

Recovery Fund Claim Balance = $373,417
Current Claims waiting for payout ($3,030 plus the $50,000 approved today)

Chairman Moecker: Do we need to look at replenishing that? If so, how do we go about doing that?

Dr. Anthony Spivey: I have proposed that to the Department. Once it is below the 500 thousand dollar mark it is a good trigger you may want to look at.

Don Shearer: Is that another dues increase?

Chairman Moecker: Yes, or another special assessment. It’s In lieu of a bond.

Dr. Anthony Spivey: I will bring that up to our Finance office and the Director. We are coming up to the legislative session. We don’t have any items so far, but I will keep the Board apprised of it.

V. OLD BUSINESS
A. **Discipline Report** was reviewed.

Chairman Moecker: How about Bruce Scott?

Mary Alford: In general I can tell you that if a licensee does not comply with a final order there are steps and a process in place for failure to comply with the order.

Fred Dietrich: We requested him to provide additional information. Is it my understanding he never provided us that information? His allegation was the Department of Revenue took money out of his escrow account and we asked him to provide proof of that. What you are saying is that he never provided proof.

Mary Alford: On the chart it says no.

Chairman Moecker: There is no agreed compliance from Mr. Scott per the Final Order.

**VI. NEW BUSINESS**

A. **NALLOA Conference CALL meeting** (January)

Fred Dietrich and Don Shearer offered to call in to the conference call.

B. **Next Meeting**

March 5, 2013 – St. Augustine
June 11, 2013 – Will be in conjunction with the Florida Auctioneer Association annual conference in Boca Raton.

**VII. ADJOURNMENT**

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

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

Meeting adjourned at 10:33 a.m.