

**MEETING OF  
THE FLORIDA BOARD OF AUCTIONEERS**  
Department of Business and Professional Regulation  
The Crown Plaza Hotel  
5555 Hazeltine National Drive, Orlando FL 32812  
**Wednesday, December 14, 2005, 10:00 a.m.**

**Minutes**

**Call to Order**

Mr. Dietrich, Chair called the meeting to order at 10:22 a.m. There was a roll call and a quorum was established. Mr. Dietrich requested that Mr. Shearer give an invocation and Mr. Accardo give the pledge of allegiance. Mr. Spivey introduced Ms. Estes and advised that she was filling in for the vacant Government Analyst position.

**Board Members Present:**

H. Fred Dietrich, III, Chair  
Michael Moecker, Vice-Chair  
Donald Shearer  
Jo Ann C. Hill  
Craig Accardo

**Staff Present:**

Anthony Spivey, Executive Director  
Jessica Leigh, Prosecuting Attorney  
Daniel Biggins, Asst. Attorney General  
Terri Estes, Government Analyst

**Others Present:**

Geoffrey Becker, Senior Policy Advisor  
Metz, Husband & Daughton, P.A.

**Court Reporter:**

Cindy Green, American Court Reporting, 2939 Peel Avenue, Orlando, FL 32806, 407.896.1813.

**Approval of Minutes from September 14, 2005**

There were no corrections offered.

Motion: Mr. Moecker moved to approve the minutes as presented.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

**Applications**

Mr. Spivey presented the application list.

#### Auctioneer by Examination

Brian L. Whitesell, Thomas J. Williams, Elizabeth C. Barron, Robert Dubsky, William J. Summs, Thoams A. Sbrocco, and Joseph L. Fontana.

#### Auctioneer by Endorsement

Stuart P. Whitehurst, Nick A. Cummings, Bradley R. Horral, Richard D. Cox, Herbert B. Caspert, Christ A. Hardenbrook, Adam M. Thoma, James L. Owen, and Gavin H. Abadi.

#### Auction Business

Vacation Auction, Inc., Ewald Enterprises, Inc., Tech Surplus Depot/Daves Bargain Outlet, LLC, and E.A. Auctions Antiques Surplus.

#### Auctioneer Apprentice

Edward W. Wisdom, Denzel D. Rolph, and Marcus H. Moye.

Motion: Ms. Hill moved to approve the application list as presented.

Second: Mr. Moecker seconded the motion and it passed unanimously.

### **Prosecuting Attorney Report**

#### **Case Load Status**

Ms. Leigh presented the prosecuting attorney's report dated November 15, 2005 and provided a supplemental handout dated December 7, 2005. The November 15, 2005 report reflected two (2) confidential cases in the legal department, one (1) case was set for the probable cause panel, nineteen (19) administrative complaints had been filed, probable cause had been found for one (1) case, two (2) cases were ready for default, eleven (11) cases requested formal hearings, and three (3) cases were set for board presentation. There were thirty-nine (39) open auctioneer cases.

Ms. Leigh reviewed the December 7, 2005 supplement which reflected five (5) confidential cases, five (5) administrative complaints had been filed, one (1) case was ready for default, fourteen (14) cases requested formal hearing, two (2) cases were in settlement negotiations, and fourteen (14) cases were set for board presentation.

Ms. Leigh informed the board that she had eighteen (18) cases set for the next board meeting which included four (4) settlement stipulations and fourteen (14) defaults.

Ms. Leigh advised the board that the upcoming default cases were for Auction Warehouse of Boca Raton, Inc.

Mr. Dietrich commented that it appeared they would be catching up on the cases. Ms. Hill asked if the board would review all cases for the same company. Ms. Leigh replied in the positive and offered to consolidate the cases but wanted

to have a final order for each case because she felt the cases would be referred for recovery.

Mr. Moecker asked Ms. Leigh to explain why some of the cases for Auction Warehouse of Boca Raton, Inc. were ready for default and the rest were formal hearings and why they wouldn't all be the same status. Ms. Leigh replied that the cases set for default meant the response time had expired and she did not have an opportunity to prepare the cases for board review. She advised the formal hearing cases were where the respondent replied timely and requested a case before the Division of Administrative Hearings.

Ms. Leigh explained that Auction Warehouse of Boca Raton, Inc. requested formal hearings for half of the cases. She advised that cases which reflected set for board presentation were cases that they defaulted and they would be presented at the next board meeting. She advised that formal hearings were heard before the Division of Administrative Hearings and default cases were heard before the board which allowed Auction Warehouse of Boca Raton, Inc. to dispute the facts of the cases since they failed to respond.

Mr. Moecker asked Ms. Leigh if the cases were public record. Ms. Leigh replied in the positive.

Mr. Dietrich asked if a cease and desist order could be issued. Ms. Leigh replied that cease and desist orders were issued to the business. She advised that she was not sure if they were practicing auctioneering but she understood they had changed locations. She advised that she had received no additional complaints against the business since the cease and desist orders were issued.

Ms. Leigh advised that there were a large number of cases opened against the business in a short time frame and it may have appeared that they were operating. Mr. Dietrich requested that an investigator look into whether they were practicing or not. Ms. Leigh replied that their attorney advised that they were not practicing. She advised that the telephone numbers were not in operation.

Mr. Moecker asked Ms. Leigh if there was a way to determine if the principle officers of the firm had reapplied to open another firm under a different name. Ms. Leigh referred the question to Mr. Spivey but advised that the complainants filed complaints with the Better Business Bureau and through as many avenues as possible. Ms. Hill asked if the owners of the business could be tracked or disciplined. Ms. Leigh replied in the negative because the business is the license holder and the owners were not licensed as auctioneers. Mr. Moecker commented that the business would hire a licensed auctioneer on an at need basis to perform auctions.

Mr. Spivey advised that the application for individuals had questions regarding previous complaint history. He commented that if the applicant did not answer honestly and the board found disciplinary history that would be basis to deny the application.

Mr. Moecker asked if there was a way to cross reference in the database the company's principle officers to verify previous complaints or disciplinary history. Mr. Spivey replied there was no method to cross reference within the computer system but they were required to answer that type of question on the application. He commented by the fact that an applicant did not answer honestly on the application that would be grounds for denial of the application or a basis to open a disciplinary case to revoke the license if they were already licensed. Mr. Moecker commented that due to the length of time to process a disciplinary case there was potential for public harm. He commented that he was not sure fingerprinting would remedy the issue but it was a start.

Mr. Biggins advised that if the individual lied on the application then they could be charged with fraud. He commented that the legislative proposal the board submitted was helpful.

Ms. Hill commented that over the years they have had more disciplinary cases then what they have seen within the past year. Ms. Leigh commented that she was pursuing all disciplinary cases that she received.

Mr. Accardo asked if Auction Warehouse of Boca Raton, Inc. had any civil suits. Ms. Leigh replied that she encouraged all of the individual complainants to file a civil suit but they were elderly and may not have the funds to pursue an additional case or attorney fees. She advised that the reason the individuals auctioned items was to obtain funds for everyday needs. Mr. Accardo commented that he thought if the complainants filed a civil suit against the business that would be a flag or warning for potential consumers.

Mr. Moecker asked if the complainants had inquired about the recovery fund. Ms. Leigh replied that she advised them that until a final order was entered they would not be able to access the recovery fund and it was not limitless. She commented that some of the individuals that had lost up to \$100,000 and they would not be able to recuperate that amount from the recovery fund.

Ms. Hill commented that she understood if the individual pursued a civil case then they could not receive funds from the recovery fund. Mr. Accardo commented that there were two avenues to pursue; sue civilly or the board could impose restitution in the final order. Ms. Leigh commented that if the individual had a civil or criminal judgement that was a quicker track to the recovery fund.

Mr. Biggins commented that if the board imposed restitution and they determined that the amount was not recoverable then the complainant could show they have taken all reasonable measure to recovery the funds. He commented that it was not required that they sue. He advised that the complainant could sue civilly or the board order the restitution.

Ms. Hill commented that the board had a responsibility to the public and to the auctioneers that pay into the recovery fund to perform due diligence regarding the claims. Mr. Biggins advised that the cap was \$50,000 per one claimant or \$100,000 per claimant including more than one person. He commented that the funds would be reimbursed on a first come first serve basis.

**Motion for Final Waiver – Ronny Lewis Griffith Case 2004-000437**

Ms. Leigh pulled the case because it was a duplicate complaint of case number 2003-081438 where the license was suspended and administrative fines and costs were levied. She advised that there were two (2) complaints filed and investigated separately but were factually the same case and therefore this case should be dismissed as a duplicate. Mr. Dietrich asked if the fines or costs were paid. Ms. Leigh replied in the negative and Mr. Spivey confirmed that the fines and costs were not paid.

Mr. Dietrich asked if the board could revoke the license since the respondent had not paid. Mr. Biggins advised that a new case would have to be opened to pursue revocation of the license.

Ms. Leigh requested that the board dismiss the case as a duplicate and she offered to follow-up on opening a case for failure to pay the fines and costs for the previous case.

Motion: Ms. Hill moved to dismiss case 2004-000437 as a duplicate and requested that Ms. Leigh follow-up on opening a case for failure to pay the fines and costs for case 2003-081438.  
Second: Mr. Moecker seconded the motion and it passed unanimously.

Ms. Leigh confirmed for the board that if fines and costs had not been paid on a case then a separate case must be opened to pursue revocation of the license. Ms. Hill commented that there appeared to be some miscommunication from when the case was originally heard until now since the fines and costs had not been paid. She commented that the duplicate case may have been due to the numerous attorneys the board has had from that time and some cases may have fallen through the cracks because the new attorney had to start all over again. Ms. Hill assured Ms. Leigh that she was not criticizing her efforts. Ms. Leigh advised that if she had handled the case originally then this would not have happened.

Ms. Hill requested that all old cases be reviewed for any outstanding fines or costs and pursue additional cases as needed.

Mr. Spivey advised the board that suspensions, fines, and costs were flagged in the computer system to prevent an individual or business from renewing their license. Mr. Biggins advised that when an investigator was out in the field they would check the status of the individual or business license and could initiate a complaint.

Ms. Hill commented that she would like to clean up the cases and system. Mr. Spivey commented that Ms. Leigh was taking on the open cases and cleaning and catching the cases up. Ms. Leigh advised that her priority and focus was to remedy any cases that were a year old and overall cleaning up any pending cases. She advised that after the first of the year she should have all cases over a year old caught up.

Ms. Leigh advised that she would contact the collections department for a status report.

Mr. Moecker requested that a representative from the collections department attend the March meeting in Tallahassee. Mr. Spivey advised that he spoke with Mr. Drexler with the collections department regarding the upcoming meeting.

Mr. Dietrich commented that some of the auctioneer businesses were real estate owners and there may be some assets the department could make claims against.

Mr. Dietrich commented that the board was pleased with Ms. Leigh's efforts and looked forward to working with her in the future.

Mr. Biggins confirmed for the board that they were not in the right administrative process to take action at today's meeting for revocation of licensure for any outstanding cases.

Mr. Shearer asked if collections recovered the fines and costs if they were deposited into the recovery fund. Mr. Spivey replied that the fines and costs were deposited in the general auctioneer fund. Mr. Biggins advised that the recovery fund could inherit some of the funds collected.

### **Board Counsel Report**

Mr. Biggins advised the board that he had noticed licensure and reactivation fees for rule development because of the legislative language allowing a process to reinstate a null and void license. He advised that the department was creating a standard form for applicants to reapply for licensure from a null and void status and requested that the board postpone the discussion until the next meeting.

### **Board Chair Report**

#### **Status of Finger Print/Background Legislative Bill**

Mr. Dietrich confirmed that the legislative bill and language was filed and he would provide a copy of the language and the house and senate bill numbers as soon as possible.

Mr. Shearer commented that their language was being attached to another bill. Mr. Spivey requested that Mr. Shearer provide the language to him so he could provide it to the board members to avoid Sunshine Law issues.

Mr. Dietrich commented that their profession had a lot of different specializations such as automobile, art, horse, real estate, etc. He commented that prices were established at auctions and their profession was a part of a large industry. He commented that the public did not realize that they tie their life savings up in an auction and they were not always paid because they used a dishonest auctioneer. He commented that this was an important industry and the board had a responsibility to protect the public so their life savings were not abused.

Mr. Shearer commented that if they had a public pamphlet providing proven statistics it would be beneficial because it would advise the public how large the profession was. He commented that if the board could publish locally the businesses or individuals that had been disciplined it would provide a warning or helpful information to protect the public from being taken advantage of. Mr. Spivey advised that the web provided case information. Mr. Shearer commented that there should be a method of notifying individuals that do not have web access.

Mr. Dietrich requested that the department prepare a news release in the local areas for public disciplinary cases. Mr. Spivey advised that he would check with the communications department regarding the matter. Mr. Shearer commented that as a licensee receiving notification with the disciplinary actions listed was quite helpful and informative. Mr. Spivey commented that once final action was taken on current cases that information would be published in the board's newsletter that was mailed to all licensees.

Ms. Hill requested that the application require an e-mail address. Mr. Spivey advised that was item on the current application.

### **Executive Director's Report**

#### **Finance Reports (Operating, Recovery, Unlicensed)**

Mr. Spivey reviewed the financial report ending September 30, 2005. He indicated that the Operating Account had an ending balance in excess of \$106,000 and the Auctioneer Recovery Fund had a balance in excess of \$738,000. Mr. Spivey reminded the board that there was a process for making a claim against the Recovery Fund and it could be depleted quickly depending on the number of claims. Mr. Moecker commented that the Auction Warehouse could be a risk to the Fund because of the number of cases. Mr. Spivey reminded the board that when a payment is made from the recovery fund the business license was suspended until that business reimbursed the Recovery Fund.

Ms. Hill asked if there was a cap on the Recovery Fund and when licensees were no longer required to pay into the fund. Mr. Spivey replied in the positive and that there was a cap on the Recovery Fund. Mr. Dietrich commented that he had a concern with new licensees that had never paid towards the Recovery Fund but the board was dispersing funds for that licensees disciplinary actions.

Mr. Biggins confirmed that the cap was \$500,000. Ms. Spivey advised that initial licensees pay toward the Recovery Fund. Mr. Biggins commented that if the Recovery Fund fell below \$200,000 a surcharge could be applied.

Mr. Spivey advised that the Unlicensed Activity balance was in excess of \$20,000 and there were no pending cash sweeps for next year. He advised that the cases referred to the Division of Administrative Hearings would be paid from the board's account.

Mr. Dietrich asked for an update on the unlicensed activity public announcements. Mr. Spivey advised that the announcements and costs of the unlicensed activity public announcements would be shared with other boards.

### **Status of Online Auctioneering October Complaint Status**

Mr. Spivey provided the board a handout regarding cases against online auctioneers. The report dated May 10, 2005 through October 13, 2005 reflected thirteen (13) cases were opened as a result of information found on the internet, twelve (12) cases were closed with no violation found, one (1) case was in the field for preliminary review, and no cases sent to legal. He commented that Mark Reddinger requested that the board provide any information regarding unlicensed individuals or businesses that were offering services.

Mr. Moecker commented that he was aware of individuals that were taking items on consignment for online auctions and they were not licensed. Mr. Dietrich commented that the issue was if a facility was taking items for online auction. Mr. Spivey commented that he would have the investigators look into the issue.

Mr. Dietrich commented that the issue was whether they were using the word "auction". He commented that he was aware of licensed auctioneers selling items on E-Bay.

Ms. Hill commented that "pickers" were putting items on E-Bay instead of using a licensed auctioneer. Mr. Shearer commented that an issue was whether selling online required the need for both a business license and individual license. Mr. Spivey commented that the investigators would look into the issue and work with the legal department.

Ms. Hill commented that the board and department needed to do more outreach and publications regarding the matter because it was illegal. Mr. Moecker commented that the question would be if it was illegal or the fact that the public is not protected as a consumer because the business or individual was not licensed and therefore the public consumer would have no recourse. Ms. Hill commented that some individuals were not aware that they may be breaking the law by placing items on E-Bay.

Mr. Moecker commented that he would like to have a case for the March meeting to look at and view both sides of the issue.



Mr. Dietrich commented that he understood the department was looking through the yellow pages to identify businesses or individuals that take consignments for auction. He commented that the department was trying to inform those individuals that they must be licensed.

Mr. Moecker commented that the confusion was whether a licensed auctioneer that worked for an auctioneer business could help a friend with consignments and offer items on the side by selling on E-Bay. He commented that the individual was now in violation because the individual did not have an auctioneer business license. He commented that he would like to see some of those types of cases for the board to review. Mr. Dietrich commented that the issue was similar to ads that do not have auctioneer business license numbers. He commented that those ads were in violation and could be sent to the department for investigation.

Mr. Spivey advised the board that he tried to set up a meeting in conjunction with the National Auctioneer License Law Official Association (NALLOA) and the hotel was sold out. He advised that he spoke to Chris Fisher with the Florida Auctioneers Association and they requested that the board meet with them June 5-6, 2006 in Orlando.

Motion: Mr. Moecker moved to set a meeting June 5-6, 2006 in Orlando.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

Mr. Dietrich thanked Mr. Spivey for his outstanding assistance, professionalism and willingness to help the board. He requested that a motion be entered for the record and staff forward to Mr. Spivey's superiors.

Motion: Mr. Moecker moved to thank Mr. Spivey for an outstanding job as the Executive Director of the Board of Auctioneers.  
Second: Ms. Hill seconded the motion and it passed unanimously.

### **New Business**

Date & Location of Next Meeting

March 16, 2006 – Tallahassee, Florida

### **Old Business**

Mr. Shearer asked Mr. Spivey what the application status was for Yoder and Frey since the president of the company had passed and the officers had changed. He understood that they had made application and they wanted to make sure they were in proper compliance for licensure for an auction in February. Mr. Spivey offered to look into the application to make sure they were properly licensed.

### **Adjournment**

Motion: Ms. Hill moved to adjourn.  
Second: Mr. Moecker seconded the motion and it passed unanimously.

The meeting was adjourned at 11:40 a.m.