

**MEETING OF  
THE FLORIDA BOARD OF AUCTIONEERS**  
Department of Business and Professional Regulation  
The Homewood Suites Tallahassee  
2987 Apalachee Parkway  
Tallahassee, Florida 32301  
**Wednesday, December 13, 2006 @ 10:00 am est.**

**CALL TO ORDER**

Mr. Deitrich, Chair, called the meeting to order at 10:05 a.m. Mr. Deitrich asked everyone to stand and recite the pledge of allegiance and asked Mr. Shearer to give the board some words of inspiration. Mr. Shearer asked everyone to bow their heads or do whatever is custom to them while he gave the invocation. There was a roll call and a quorum was established.

**BOARD MEMBERS PRESENT**

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

**STAFF PRESENT**

Tim Vaccaro, Director  
Anthony Spivey, Executive Director  
Renese Jones, Government Analyst  
Jessica Leigh, Prosecuting Attorney  
Barbara Edwards, Assistant Attorney General

**OTHERS PRESENT**

Boyce D. Burgess, Auctioneer  
Garvin B. Bowden, Attorney  
Josh Dayle, Attorney for E-bay  
Roy J. Brewer, Jr, Auctioneer and President of FAA  
Gayle Dietrich

**APPROVAL OF MINUTES FROM SEPTEMBER 20, 2006**

The minutes were approved with no noted corrections.

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

Mr. Shearer praised Ms Jones for an outstanding job on the minutes. He stated *"I don't think we have ever had minutes that didn't have a mistake in them. I looked hard trying to find one."* Mr. Dietrich indicated that they have a super staff in Tallahassee. Mr. Vaccaro stated that he has no intention of removing anyone.

## APPLICATIONS

Mr. Spivey presented the application list for ratification as follows:

### AUCTIONEER BY EXAMINATION

DIAZ, MANUEL	AU 3532	MINCK, DANIEL E	AU 3549
SINGER, RANDY S	AU 3533	DIADONE, BEN M	AU 3550
BISCOTTO, JOSEPH A	AU 3534	KALEKY, ROBERT N	AU 3551
ARENA-GIL, ALEXANDRA M	AU 3535	LANTZ, FREDERICK E	AU 3553
DISMUKE, RICHARD A	AU 3537	NICKLAS, JOHN G	AU 3556
KREINER, CHARLES J	AU 3538	MAINE, STEVEN M	AU 3557
DIAZ, EUGENE E	AU 3539	GRALEY, STEPHEN M	AU 3558
DIAMONDS, PERRY	AU 3540	ZOLL, REID M	AU 3559
BRITTO, LIDIO A	AU 3541	PACETTI, TERRY W	AU 3560
MARKMAN, SALLY C	AU 3542	LESLIE, JEANNINE M	AU 3561
UTPADEL, TODD W	AU 3543	HARRIS, SHANE P	AU 3562
LAMIA, ERICA L	AU 3544	THOMPSON, ROBERT W	AU 3563
O'KEEFE, LYNN M	AU 3545	MERBACK, ERIC S	AU 3564
ROGERS, PAUL L	AU 3546	WEST, DENNIS B	AU 3566
BLOCK, JARED T	AU 3548	KELLY, THERESA S	AU 3567

### AUCTIONEER BY ENDORSEMENT

KREIS, RONNIE L	AU 3536	OH IN KY
VAUGHN, HERBERT F	AU 3537	VA
BREESE, CHARLES R	AU 3552	IN
WATSON, DENNIS L	AU 3354	IN
BENIGNO, JOSEPH	AU 3555	NY
WILKEY, TERRY G	AU 3565	IL

### AUCTION BUSINESS

ELLIOT BERSTEIN AUCTIONS	AB 2545
DARRELL BAILEY AUCTIONEERS, INC	AB 2546
A.M.L. AUCTION COMPANY	AB 2547
STAMPLER AUCTIONS, INC	AB 2548
LIL J BEAN, LLC	AB 2549
DIXIE-LAN BARGIN HOUSE	AB 2550
JODI'S AUCTION SERVICES, INC	AB 2551
PERFORMANCE AUCTION CO	AB 2552
LIDIO BRITTO PA	AB 2553
J&T AUCTION HOUSE INC	AB 2554
DEALERS AUTO AUCTION INC	AB 2555
LYNN O'KEEFE AUCTION CO	AB 2556
LIQUIDATION STATION INC	AB 2557
LIQUIDATION STATION INC	AB 2558
GOODTIME AUCTIONS	AB 2559
RERUNS AUCTION	AB 2560
ALACHUA HABITAT FOR HUMANITY	AB 2561
AUCTIONEER 4 YOU	AB 2562
FLORIDA AUCTIONEERS, INC	AB 2563
SELECTIVE AUCTIONS INC	AB 2564
JIM MOREHEAD'S AUCTION SERVICE	AB 2565
FLORIDA AUTO AUCTION OF ORLANDO, INC	
DBA ST.PETE AUTO AUCTION	AB 2566
AUCTION CONCEPTS, USA	AB 2567

ZOLL REAL ESTATE & AUCTION TEAM AB 2568  
SELLERS DIRECT CORP AB 2569

#### **AUCTIONEER APPRENTICE**

WHITWORTH, LISA A	AE 356
KILPATRICK, JONATHAN M	AE 357
CLARK, DAVID H	AE 358
MASON, MALCOLM J	AE 359
WILLIAMSON, NATALIE S	AE 360
PENSICHILLI, ANTHONY	AE 361
SHEA, JOHN M	AE 362
GUTTRIDGE, DARYL B	AE 363
GATLEY, GLENN R	AE 364

Motion: Ms. Hill moved to approve the application list as presented.  
Second: Mr. Accardo seconded the motion and it passed unanimously.

#### **PROSECUTING ATTORNEY REPORT**

##### **2005 - INFORMAL HEARING**

##### **#2005-038888, Abid M. Butt**

Ms. Leigh presented case # 2005-038888, Abid M. Butt, AU 1219. Mr. Butt was not present but was represented by legal counsel Mr. Garvin Bowden, Esq. The department filed an administrative complaint against respondent on January 10, 2006. The respondent was served with an administrative complaint on January 21, 2006. The administrative complaint charged respondent with violating Section 468.389 (1)(K), F.S. for having a license to practice a comparable profession revoked, suspended or otherwise acted against by another state, territory, or country; and violation of Section 468.889 (1) (g) F.S. making any material false statement on a license application. The respondent responded to the election of rights form and has requested a waiver. The respondent and the department entered into a settlement stipulation that states the respondent's license AU 1219 will be placed on probation for two years, pay a fine in the amount of \$1000 and costs of \$100.51.

Ms. Leigh stated that *"the department believed that it is appropriate for the Chair to entertain a motion adopting the allegations and facts and conclusion of law contained in the administrative complaint of those of the board after which the department will request that the board impose penalties within their guidelines."*

Motion: Mr. Moecker moved to approve the findings of facts and conclusions of the law.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

The board's recommendation in this case is that Mr. Butt pay costs in the amount of \$100.51, fine \$1000 and 2 years probation.

Motion: Mr. Moecker moved to approve the board recommendation.  
Second: Mr. Accardo seconded the motion and it passed unanimously.

## **2005 - SETTLEMENT STIPULATION - INFORMAL HEARING**

### **#2005-065988, Canterbury House Antiques**

#### **#2005-065870, Brian J. Tebo**

Ms. Leigh presented case #2005-065988, Canterbury House Antiques, AB 1666 and case #2005-065870, Brian J. Tebo, AE 292. The respondent was neither present nor represented by counsel. In case 2005-065988, Canterbury House Antiques, the department filed an administrative complaint against respondent on August 7, 2006. The administrative complaint charged respondent with violating Section 468.389 (1)(c), F.S. for failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another. In case 2005-065870 Mr. Brian Tebo, was charged with violating Section 468.389 (1)(c), F.S. for failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another. The respondent responded through his election of rights form to have an informal hearing not involving the issues of material facts.

Ms. Leigh stated that *“the department believed that it is appropriate for the Chair to entertain a motion adopting the allegations and facts and conclusion of law contained in the administrative complaint of those of the board after which the department will request that the board impose penalties within their guidelines.”*

Motion: Mr. Moecker moved to approve the findings of facts and conclusions of the law.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

Ms. Leigh stated that *“the department’s recommendation in these cases are that Canterbury House Antiques, AB 1666, and Mr. Brian Tebo, AE 292 agree to relinquish these licenses and never apply for licensure again in the state of Florida under section 468.6 F.S.”*

Mr. Tebo has already filed bankruptcy in these cases and he states that it will be hard for him to repay payments on these cases.

Ms. Edwards informed the board that the individuals involved in these cases whom receive compensation from the legal court system will not be eligible for compensation from the department’s recovery funds.

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

## **2005 - MOTION FOR WAIVER**

### **#2005-065986, Duane Burgess, Burgess Action House**

Ms. Leigh presented case # 2005-065986, Duane Burgess, AU 517. The respondent was present and was sworn in via the court reporter. The department filed an administrative complaint against respondent on August 14, 2006. The respondent was served with an administrative complaint on September 21, 2006. The administrative complaint charged respondent with violating Section 468.389 (1)(c), F.S. for failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another. The respondent failed to file an election of rights form or otherwise establish the disputing issues and material facts of the administrative complaint pursuant to Rule 28-106.111, F.A.C.; by failing to request a hearing within 21 days of receipt of agency pleading. The respondent has waived his right to request a hearing where there is a disputed issue of material fact. The department believed that it is appropriate at this time for the chair to entertain a motion finding that the respondent waived his right to a hearing.

Motion: Mr. Shearer moved to approve that the respondent waived his rights to a hearing.

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

Mr. Burgess gave praise and stated *"I thank the good Lord and the board for allowing me to speak before you today. My health is poor but I have attended every auction Mr. Tebo had and monitor his activities. I realized when the board looked at the packet Ms. Leigh has prepared it appears that he cheated his client out of money. Mr. Tebo used my software and he failed to change the letterhead on the invoices for his sales. This is the reason why I am here before you today. I have never had a complaint filed against me and I've been in business for thirty-years."* Mr. Tebo rented the building from Mr. Burgess based on an oral agreement. A written agreement was never made between the two of them. Mr. Burgess' feelings went out to Mr. Tebo because he was having problems with the board and he felt as if things happen in life. Mr. Burgess stated *"Mr. Tebo was a good man, fair man, and most of all a Christian hearted man"*. Again, he apologized to the board and felt ashamed of Mr. Tebo and his actions and agreed to repay any money that was owed.

Ms. Leigh stated that *"the department believed that it is appropriate for the Chair to entertain a motion adopting the allegations and facts and conclusion of law contained in the administrative complaint of those of the board after which the department will request that the board impose penalties within their guidelines."*

Motion: Ms. Hill moved to approve the findings of facts and conclusions of the law.

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

Motion: Mr. Moecker made a motion to place Mr. Burgess' license on probation for one year.

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

Ms. Edwards advised the board that if they are only going to charge Mr. Burgess with one year probation they need to establish mitigation facts in this case.

- a. Within the 30 years that Mr. Burgess has been licensed no complaint had been filed against his license.
- b. Mr. Burgess stated that he was responsible for Mr. Tebo's actions.

Again, Mr. Burgess apologized to the board and felt as if he brought shame to his wife who served on the Board of the Florida Auctioneers Association and their name. He asked the board not to hold this against her. He stated *"I would shake hands with Mr. Tebo if I would see him today because I know what we have done together over the years. I have helped him and he's helped me."* He thanked the board for listening to him.

15 minutes recess.

Ms. Leigh introduced her assistant Ms. Maria Matheu as being the person responsible for putting the material together for the meetings. Also, she prepares the prosecuting attorney report and the person that keeps her on her toes. Ms. Matheu is the reason why Ms. Leigh can do her job so effectively. The board stated that Ms. Matheu was doing a great job and they thanked her.

## **2004 - MOTION FOR WAIVER OF RIGHTS**

### **#2004-0029343, Auction Warehouse of Boca Raton**

Ms. Leigh presented case # 2004-0029343, Auction Warehouse of Boca Raton, AU 2239; the department filed an administrative complaint against respondent on February 8, 2006. The department made its' first attempt to mail the documents by certified mail to the respondent on March 3, 2006. The certified mail was rejected and returned to the department on March 14, 2006. An affidavit of service of diligent search was completed using all addresses that are shown in the department and all telephone companies.

The department moved forward with this case. The administrative complaint charged respondent with violating Section 468.389 (1)(c), F.S. for failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another. The respondent failed to file an election of rights form or otherwise establish the disputing issues and material facts of the administrative complaint pursuant to Rule 28-106.111, F.A.C.; by failing to request a hearing within 21 days of receipt of agency pleading, the respondent waived his right to request a hearing where there is a disputed issue of material fact. The department believed that it is appropriate at this time for the chair to entertain a motion finding that the respondent waived his right to a hearing.

Motion: Mr. Moecker moved to approve the board recommendation.

Second: Ms. Hill seconded the motion and it passed unanimously.

Ms. Leigh stated that *"the department believed that it is appropriate for the Chair to entertain a motion adopting the allegations and facts and conclusion of law contained in the administrative complaint of those of the board after which the department will request that the board impose penalties within their guidelines."*

Motion: Mr. Moecker moved to approve the findings of facts in conclusion of the law.  
Second: Mr. Accardo seconded the motion and it passed unanimously.

Ms. Leigh stated that *“the department’s recommendation in this case is that Auction Warehouse of Boca Raton, case #2004-0029343, revoke respondent’s license AU 2239 as we have done previously in the other cases, pay a fine in the amount of \$1,000, and cost of \$719.08. Action Warehouse has failed to pay the fines in the previous cases and they are gone to collection.”*

Motion: Mr. Moecker moved to approve counsel recommendations.  
Second: Mr. Accardo seconded the motion and it passed unanimously.

15-minute recess for hotel check out.

### **CASE LOAD STATUS**

Ms. Leigh presented the prosecuting attorney’s report dated November 8, 2006. The report reflected ten (10) confidential cases in the legal department; six (6) confidential cases set for supplemental investigation; seven (7) confidential cases probable cause; three (3) cases administrative complaints filed; thirteen (13) cases formal hearing; and, four (4) cases set for board presentation. There were a total of forty-three (43) cases in legal.

The December 12, 2006 report reflected nine (9) confidential cases in the legal department; five (5) confidential cases set for supplemental investigation; two (2) cases set for the probable cause panel; six (6) cases administrative complaints; thirteen (13) cases for formal hearing; and, five (5) cases set for board presentation. There are a total of (40) cases in legal.

Mr. Dietrich and the board members praised Ms. Leigh for doing an excellent job for the board.

### **BOARD ATTORNEY**

Ms. Edwards indicated that the Board had two rules that developed approximately two years ago on reinstatement of null and void licenses (61G2-2 and 3.006) and suggested that the board withdraw these rules and wait on the department to develop the department’s form. If and when the department is ready the board can resubmit the rules.

Motion: Ms. Hill moved to approve counsel recommendation.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

Ms. Edwards advised the board on a letter she received from the Joint Administrative Procedures Committee on the 90-day period to file rules and it reads as follows: *Section 120.54(3)(e)6., Florida Statutes, permits an agency to postpone the adopting of proposed rule to accommodate review by the Joint Administrative Procedures Committee when the committee*

*notifies the agency that an objection to the rule is being considered. The 90-day period for filing the rule is tolled until the committee notifies the agency that it has completed its review of the rule. She also stated that this does not impact the board members or staff only her office. She submitted the memorandum for information purposes only.*

## **BOARD CHAIR REPORT**

Mr. Dietrich informed the board that he had received his reappointment letter from the Governor's appointment office.

Mr. Dietrich stated that *"I asked Mr. Spivey to put two things on the agenda e-bay drop off sites and legislative issues. I spoke with a reporter and I told the reporter my interpretation of e-bay and it includes drop off sites. I will never speak with another reporter."* A reporter quoted him in the newspaper that drew attention and raised questions regarding drop off sites in Florida. Also he stated *"I know a lot of the problem comes from the people in the call center talking to the public. People in the call center will give all kinds of answers."*

Mr. Spivey explained *"if a person is selling their own items and it is not a live auction the department will not go after those individuals. The department does not have the authority to go after them. Mr. Mark Reddinger was going to be here today but he had a death in his family."*

Ms. Leigh stated *"I don't think you have to have a license to sell items on e-bay. The department's interpretation of the statute is more similar to consignment shops than it is to auctions. There is nothing specific prohibiting that in the statutes. The auctioneer profession does not have a protected term for using the word Auction as some of my other boards."*

Mr. Vaccaro stated that if someone is having *"a real time auction" the individual is required to become licensed in the state of Florida. The department has the authority to go after anyone who carries out a real time auction without first securing a license in the state of Florida."*

Ms. Leigh stated that there is a brand new part of Florida Statutes that deal with consignment shops and electronic transactions with consignment shops. Ms. Leigh agreed to provide copies of the statute to the board members. She also informed the board that she has only received one complaint in about six months on internet auctions.

Mr. Vaccaro stated that there is a part in the statute that indicates electronic actions are not subject to the auctioneer rules.

"Real Time Auctions" is a live auction.

Example: there is a live person sitting at his or her computer monitoring the action of a sale and will indicate when to close the auction, while others are sitting at their computers bidding on the item(s).

Mr. Accardo suggested to the board that there hasn't been but one complaint and he thinks the board and the department is doing their job. He felt as if the consumers are



not being hurt by Internet auctions and asked that the minutes reflect that the board discussed the issue on Internet auctions.

### **LEGISLATIVE ISSUES**

Mr. Dietrich stated that he had contacted Senator Posey and he agreed to sponsor the bill that would require an applicant at the time he or she submits an application to submit a finger print card for a complete background check.

Mr. Vaccaro suggested to Mr. Dietrich that he will put him in touch with John McBride, Director of Legislative Affairs. Mr. McBride can work with Mr. Dietrich on the bill he wants submitted to the legislator. He assured the board that he has no intention of making any staff changes and he appreciates the job that they are doing for the board.

### **EXECUTIVE DIRECTOR'S REPORT**

Mr. Spivey indicated that the following applications were sent to the board office from the central intake application unit because they had a criminal background or deficiencies:

Auctioneer Apprentice:

John C. Slocum – In March 1986 he was charged with selling freshwater fish without a current license in the state of Florida. Mr. Slocum's application was approved.

Motion: Ms. Hill moved to approve Mr. Slocum's application.  
Second: Mr. Shearer seconded the motion and it passed unanimously.

Auctioneers:

Leslie Hugh Stephens – On January 1, 1982 he was charged with disorderly conduct and in January 21, 1982 public intoxication in the state of Alabama. Mr. Stephens application was approved.

Motion: Mr. Moecker moved to approve Mr. Stephens' application.  
Second: Ms. Hill seconded the motion and it passed unanimously.

Richard P. Jarvis – application tabled for the next meeting.

Jeffrey Rothstein – April of 2002 he was charged with DUI and pleaded no contest. Mr. Rothstein's application was approved.

Motion: Mr. Moecker moved to approve Mr. Rothstein's application.  
Second: Ms. Hill seconded the motion and it passed unanimously.

Mr. Spivey indicated that the complaint status report was for information purposes only to show the board the number of complaints moving through the department on unlicensed activity investigations.

Mr. Dietrich asked Mr. Roy J. Brewer an auctioneer in the audience to sing the auctioneers song to the board.

Mr. Spivey presented a verbal and slide show to the board members on the department board members training, with the assistance of Ms. Edwards and Ms. Leigh. The board members found the information presented to be extremely helpful.

## **FINANCE REPORTS**

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

Mr. Spivey reviewed the financial reports ending September 30, 2006. He indicated that the *“operation account shows a balance of \$158,666. The operating account for the recovery fund shows a balance of \$788,457. In the unlicensed activity account there’s a balance of \$28,433.”*

5-minute recess.

## **NEXT MEETING**

Next meeting will be held on March 14, 2007 at 9:00 am in Tallahassee.

## **OLD AND NEW BUSINESS**

None

## **PUBLIC COMMENTS**

None

## **ADJOURNMENT**

Motion: Mr. Moecker moved to adjourn.

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

The meeting was adjourned at 2:00 pm.