

Minutes of
Florida Board of Auctioneers Meeting
9300 Airport Road, Orlando, FL 32827
Tuesday, March 22, 2005
10:00 a.m.

Board Members Present

Fred Dietrich, Chair
Michael Moecker, Vice Chair
Craig Accardo
JoAnn Hill

Staff Present

Anthony Spivey, Executive Director
Donna Salters, Government Analyst
Daniel Biggins, Asst General Counsel
Brian Higgins, Prosecuting Attorney

Others Present

Doug White, Auctioneer
Eric Ruttier, Attorney for Mercato D'Ecopa
Dennis Betard, Attorney for Mercato D'Ecopa
Robert Elting, Auctioneer
Jim Ferrell, Auctioneer

Mr. Dietrich, Board Chair called the meeting to order at 10:22 with a roll call and a quorum was established.

Ms. Hill offered the motion to accept the minutes from the January 25, 2005 meeting. The motion was seconded by Mr. Moecker and passed unanimously.

Reports

To convenience travel arrangements for Mr. Betard and Mr. Ruttier, the board moved to item VI. Reports (A)(1) Auctioneer Recovery Fund Application. Mr. Betard, attorney for Mr. D'Ecopa addressed the board regarding the recovery fund claim and application for Mercato D'Ecopa in the amount of \$37,900. He stated that he submitted a packet to the Board in 2003 but never received a response. He explained that in November 2001 his client had a substantial amount of antique furniture imported from Italy and by oral agreement the furniture was given to International Auction Group, Inc. (#AB 1995) to auction. He stated that International Auction Group mis-appropriated the furniture. An emergency motion for injunctive action in the Miami-Dade Courts was filed. Additionally, both an action for unjust enrichment and an action for conversion were filed. In August of 2002 a final judgment against International Auction Group was issued. Mr. Betard indicated that he had submitted a claim to the Board of Auctioneers in September 2002, but there was no response. He stated that International Auction Group, Inc. was dissolved and had no remaining assets.

Mr. Moecker offered the motion that the claim of \$37,900 be paid from the auctioneer recovery trust fund. Ms. Hill seconded the motion. In discussion Ms Hill asked was the claim for the judgment or for the appraised value. Mr. Betard explained that the claim was for the judgment amount. It was noted that the statute contemplate that the amount to be paid would come from the judgment. The motion passed unanimously.

Applications

Donna Salters read the ratification list of licenses:

- There were seventeen (17) applications submitted for license by endorsement. Mr. Moecker offered the motion to approve the licenses. The motion was seconded by Mr. Accardo. The motion passed unanimously.
- There were eighteen (18) applications submitted for licenses by examination. Ms. Hill offered the motion to approve the license. The motion passed unanimously.
- There were six (6) applications submitted for apprentice licenses. The motion to approve licenses was made by Mr. Accardo, and seconded by Mr. Moecker. The motion passed unanimously.
- There was one (1) application submitted for auctioneer license from null and void. The motion to approve the license was made by Ms. Hill. It was seconded by Mr. Accardo. The motion passed unanimously.
- There were twenty-six (26) applications submitted for auction business licenses. The motion to approve the licenses was made by Mr. Accardo. It was seconded by Ms. Hill and passed unanimously.

Discipline

Case #2004-002440, Auction Warehouse of Boca Raton requested an extension and was therefore pulled from the agenda. Mr. Moecker asked that if someone requests an extension after a long period of not responding to the department or the attorney, is the extension automatic granted? Mr. Higgins response was "no." He explained that having a disposition in these cases helps everyone and that the nature of this case and possible rights involved, it is best to re-submit it in a different form.

Case #2003-081438, Ronny Lewis Griffith was presented by Mr. Higgins. The case was set for a motion for waiver and set material matter for hearing not involving disputed issues of material facts. On January 27, 2004, the department filed an administrative complaint against Mr. Griffith. Mr. Griffith was served via publication during the weeks of January 10th 17th 24th and 31st, 2005. Mr. Griffith's 21 day period to respond expired on January 21, 2005. Mr. Higgins requested that the board accept the motion for waiver and set material matter for hearing not involving disputed issues of material facts and asked that the Board proceed to discipline regarding this case. The motion was offered by Mr. Accardo and seconded by Ms. Hill. The motion passed unanimously.

Ms. Hill offered the motion to adopt the findings of fact and conclusion of law. The motion was seconded by Mr. Accardo and passed unanimously.

Mr. Higgins recommended an administrative fine of \$1000, investigative cost of \$504.18 and two (2) years probation with the conditions of four (4) satisfactory appearances at the board meetings which will be determined by the board and board staff.

There was a discussion regarding probation conditions, after which Mr. Higgins recommended an administrative fine of \$1500; investigative cost will remain at \$504.18 and the license be suspended for two (2) years followed by (2) years probation with the conditions of four (4) satisfactory appearances at the board meetings in which the time, manner, and place will be determined by the board.

Mr. Dietrich asked a question regarding circumstances for revocation. Mr. Biggins explained that there are guidelines that allow the Board to consider aggravating and mitigating factors that can be considered. The guidelines are provided by the department. He informed the board that the following can be used as aggravating and mitigating factors; the severity of the defense, the danger to the public, the number of repetitions of the offenses, the length of time since the violation, the number of times the licensee has been disciplined by the board, the length to time the licensee has practiced, the damaged caused by the violation, the effect of the penalty, the effect of the penalty on licensee livelihood, any effort of rehabilitation by the licensee and the actual knowledge of the licensee pertaining to the violation.

Mr. Moecker offered the motion to accept Mr. Higgins recommendations. Mr. Accardo seconded the motion. Mr. Griffith is required to attend meetings in the time, manner and place established by the Board every six months. At these meeting, Mr. Griffith will provide a report on his business practices during the time of probation. The motion passed unanimously.

Board Counsel Report

Mr. Biggins provided a report on a letter from Ms. Cheri Melchione concerning a complaint against Mr. Higgins, Mr. Dietrich and the Florida Board of Auctioneers. Ms. Melchione's complaint was regarding a previous case #2004-000601 against A & E Auctions whose current license status is revoked. Mr. Dietrich expressed concerns regarding fines that can be levied against assets. Mr. Higgins explained that the department does have a collection attorney, Mr. Marc Drexler who pursues payments on final orders and judgments.

Mr. Moecker recommended that Mr. Drexler attend the next meeting to provide knowledge on how delinquent payments and judgments are handled within the department.

Chairman Report

Mr. Dietrich introduced and acknowledged Mr. Anthony (Tony) Spivey as the new Executive Director for the Board of Auctioneers. He also reported that he spent three days in Tallahassee and was successful in acquiring sponsorship for the language changes of Section 468.385, F.S. Licenses required; qualifications; examination; bond. He stated that Representative Credle and Senator Bill Posey both have agreed to sponsor legislation regarding the inclusion of finger print cards to do background checks as part of the application requirements and more regulation for those with auction business licenses.

Mr. Dietrich reported that the National Auctioneers License Law Officials Association (NALLOA) meeting will be held in Pennsylvania in the summer of 2005. They will host a workshop called "One Stop" where auctioneers from all over the country can find out about licensing procedures in all other states. The second part of the workshop would be for the business meeting of NALLOA.

Executive Director Report

Mr. Spivey reported that the net balance of the operating account is \$148,301; unlicensed activity account has an unrestricted balance of \$16,428.

Mr. Spivey also reported that he had spoken to Mr. Mark Reddinger, Division of Regulation, regarding the unlicensed activity brochure. He explained that this effort was being accomplished with two other boards to reduce the cost. Mr. Dietrich will be providing a picture to the Ms. Salters for the completion of the brochure.

Mr. Spivey concluded by reporting that there is \$786,676 in the recovery fund budget. Ms. Hill asked is the recovery fund subject to being swept. Mr. Spivey stated that statutes prohibit such actions against the recovery fund. In addition, Ms. Hill asked do the majority of the licensing fees come in at the same time. It was explained that although auctioneer renewals are November 30th of odd numbered years and usually the largest fees collected at one time, there are fees for application that comes in year round. She indicated that she made a request for the income vs. the expenses from the last 10 years to determine if there should be a fee suspension. Ms. Hill continued to express concerns about too much money remaining in the operating account to be available to be swept by the legislature. She stated that she feels that the Board had not been good stewards of collected fees if the account balance is just available to be swept.

Mr. Spivey stated that several boards have taken a position of maintaining the operating account at a zero (-0-) balance to prevent the money from being swept by the legislature.

Mr. Spivey will request the 10 year overview from accounting and present it at the next board meeting.

Mr. Dietrich suggested that the board may want to consider reducing license fees, especially after over \$600,000 was swept from the operating account. Mr. Spivey suggested the board weigh this issue against the purpose of the recovery fund in the event that there are claims, and if fee waivers are granted there is no money paid into the recovery fund. Ms. Hill stated that in her recollection, all fees can be waived except the recovery fund. Mr. Spivey explained that if there is no money coming into the regular operating account and there is a possible increase in claims against the recovery fund, then this causes a reduction in the balance of the recovery fund.

Ms. Hill asked about notification of board meetings. Mr. Spivey explained that the boards are required by law to notice all meetings in the Florida Administrative Weekly. Mr. Spivey explained that it is very unlikely that the department would authorize mailings to auctioneers individually. He further explained that there is a Board of Auctioneer website that is accessible by the public as well.

Mr. Spivey reminded the board members to submit their travel vouchers within five (5) business days after a meeting. This would eliminate the problem of having to certify forward payments into the next fiscal year. He also reminded them to obtain a zero (-0-) balance receipt from hotels and that it is time to elect officers at the next meeting.

Mr. Accardo asked about the status of replacing resigned board member Ms. Annette Elms. Mr. Spivey indicated that there is no official acceptance of the resignation as of this date from the Governor's Office.

Old Business

Mr. Spivey reported that he had spoken to Mr. Wilson, Division Director regarding concerns of unlicensed Internet auction businesses. He explained that Mr. Reddinger from the Division of Regulations unlicensed activity office is in the process of going through the yellow pages statewide to identify and target individuals and business that are marketing themselves as auctioneers and auction businesses. He also reported that there is a public service announcement being done to mitigate concerns of unlicensed activity.

Ms. Hill requested clarification regarding those being targeted for unlicensed activity who are taking consignments for Internet auction sites. Mr. Spivey confirmed that those persons are being targeted as well. Mr. Moecker reminded the board that in the last meeting, the department's regulation office stated that they will monitor complaints that are regarding Internet auctions and consignments.

Public Comment

Mr. Robert Elting, President of Action Auctioneers stated that his business has been severely affected by the Internet auction sales. He indicated that the problem with most Internet auction sales is that they don't advertise in the yellow pages and can rarely be found. He stated that there may be from 2,000 to 10,000 individuals and businesses soliciting and taking consignments without a license. He suggested that one way the board can stop this kind of unlicensed activity is to have the board send a letter to all license auctioneers and explain to them the affects unlicensed Internet auction business have on their profession. He stated that the letter should request them to submit names of individuals and businesses that are practicing unlicensed and encourage them to file a complaint. In turn the department should select some of the prominent names from the list and enforce the license law.

Mr. Doug White addressed the board with his concerns regarding bid slip at estate sales. He feels that if people are holding silent auctions, they are circumventing the requirement of having an auction license. He also had concerns regarding the integrity of auctioneers and auction companies to cheat and run "crooked" auctions. He recommended that the board should have a board certified position which would serve as a monitor. He recommended that this person should be retired, inactive, educated and familiar with statutes and who can travel statewide and monitor auctions unannounced and make reports to the board.

Mr. Dietrich reminded the board they can either call the executive director or call in a complaint. Ms. Hill expressed concerns about not seeing as many cases before the board as were in the past few years.

Mr. Higgins responded by stating that there are fewer complaints in the system. He explained that since probable cause is determined by the department a case is actually processed faster. Mr. Moecker stated that there is generally a report on the cases that are in the system. Mr. Higgins stated that the prosecutorial report does outline all cases and he will make sure the report is included in the next agenda.

Mr. Biggins stated that to get new cases started the public makes complaints. If the board member files a complaint, they may have to be recused regarding discipline on a licensee.

It was explained that according to statute, anonymous complaints can be filed. Additionally, it was noted that if a complainant discloses their identify, by statute it is public information. Mr. Spivey added, that if an investigator informs a person that a complaint has been filed, and there is a personal vendetta, please report it to the department.

Mr. Etling shared his concern about auctioneers being notified about upcoming meetings. Mr. Spivey responded again stating that it is highly unlikely that the department will approve an individual mailing to notify licensees of meetings, dates, times and locations. He explained that the dates are on the auctioneer website and the associations generally distribute the information to their members.

A discussion regarding the status of International Auction Group's license ensued and the process by which Mr. D'Ecopa obtained a final order by Mr. Dietrich. He also asked was there discipline on the license. Ms. Hill asked once a licensee discipline results in a payment out of the recovery fund, was the license automatically revoked? Mr. Higgins indicated that if the complaint does not come through the department's complaints system, then there is no discipline on the license. He further stated that because the judgment was obtained through civil court and not from the department there would be no complaint history or discipline by the department.

Ms. Hill expressed her dismay with the inconvenience of the hotel location at the Orlando Airport and stated that the meetings should be more convenient for the public. Ms. Salters explained that frequently meetings are scheduled during high vacation seasons and often conflicts with any number of statewide events and therefore there maybe limited options when trying to accommodate the meeting time and location. In addition, Mr. Biggins explained that there have been several in-person meetings and public participation was no more than two or three participants except in Titusville when held in conjunction with the Florida Auctioneers Association.

Ms. Hill suggested the board set the calendar for the full year. Mr. Spivey will provide a list of tentative dates.

Mr. Moecker offered a motion that Mr. Dietrich and a staff person attend the NALLOA meeting in Pittsburg. The motion was seconded by Mr. Accardo. The motion passed unanimously.

It was requested that Mr. Wilson attend the next board meeting to assist in the discussion concerning unlicensed activity and monitoring of online auctions and consignments shops.

The next board meetings are tentatively scheduled as follows:

Wednesday, June 8, 2005 at 10:00 a.m. in person with the FL Auctioneer Association

Wednesday, September 14, 2005 telephone conference

Ms. Hill offered a motion to adjourn the meeting. It was seconded by Mr. Accardo. The motion carried unanimously. The meeting was adjourned at 12:57 p.m.