

**MEETING OF  
THE FLORIDA BOARD OF AUCTIONEERS**  
Department of Business and Professional Regulation  
1940 North Monroe Street  
Tallahassee, Florida 32399  
**Wednesday, March 14, 2007 @ 9:00 am est.**

**CALL TO ORDER**

Mr. Deitrich, Chair, called the meeting to order at 9:03 a.m. Mr. Deitrich asked everyone to stand and recite the pledge of allegiance and asked Ms. Hill to give the board some words of inspiration. Ms. Hill 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  
David Spingler, Administrative Assistant  
Barbara Edwards, Assistant Attorney General  
Jerry Wilson, Regulation

**APPROVAL OF MINUTES FROM DECEMBER 13, 2006**

The minutes were approved with no noted corrections.

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

Mr. Dietrich would like staff to check on the status of Stampler Auction, Inc, AB 2548. He noticed that his name appeared on the December 13, 2006 agenda and again on the March 13, 2007 agenda.

**APPLICATIONS**

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

**AUCTIONEER BY EXAMINATION**

ESTEBAN, JULIO F	AU 3568	CUNNINGHAM, R CASH	AU 3571
LUIZ, JACK D	AU 3569	WILKES, DARRELL E	AU 3572
BERMAN, COREY A	AU 3570	STEPHENS, LESTIE H	AU 3576

RICHARDS, EDWARD R	AU 3577	DANIEL, KARLIN	AU 3602
MERRIFIELD, KATHRYN A	AU 3580	CONDON, NICHOLAS	AU 3605
MERRIFIELD, PETER H	AU 3581	HENNING, JOHN D	AU 3606
TAYLOR, JENELLE L	AU 3582	CRUISE, ROBIN	AU 3607
STALTER, DEBORAH A	AU 3583	ROSS, JUSTIN W	AU 3608
COSPER, RICHARD D	AU 3584	ROSENTHAL, PHILIP H	AU 3612
COSPER, BARBARA H	AU 3585	CARUSO, MONICA	AU 3613
WEBER, TERESA L	AU 3586	CRAWFORD, JOHN W	AU 3614
WILLIAMS, JOHN K	AU 3587	ROTHSTEIN, JEFFREY L	AU 3616
MERBACK, ERIC S	AU 3591	JARVIS, RICHARD PETER	AU 3617
ANDERSON, SUZANNE M	AU 3593	BRANIFF, DONNA L	AU 3618
OLDFIELD, RICHARD	AU 3594	SHERWIN, LOUIS L	AU 3619
FOWLER, TROY	AU 3595	ATKINSON, CHRISTOPHER A	AU 3620
MC COY, MARSHA	AU 3596	ROCK, MARTHA	AU 3622
BREADING, KEITH J	AU 3597	HARPER, WILLIAM E	AU 3623
DORAN, MARY E	AU 3598	WILLIAMS, RODNEY	AU 3624
WOLAK, MARCHA A	AU 3600	HURCHALLA, BARRY D	AU 3626
POLOVINA, TIMOTHY J	AU 3601		

### AUCTIONEER BY ENDORSEMENT

DUKES, MARCUS D	AU 3573	GA
NORD, ROBERT T	AU 3574	IL
HALL, VERNON V	AU 3575	NC
DUTTON, JOEL D	AU 3578	OH PA WV
WATSON, TONY A	AU 3579	GA AL NC
ALEXANDER, DON M	AU 3588	SC
THOMAS, LANNY G	AU 3589	AL
POOLE, WAYNE	AU 3590	GA
BRIGHTWELL, WILLIAM	AU 3592	TX
MEZZO, PAUL	AU 3599	SC
KIESEWETTER, MERLIN A	AU 3603	IL
BURKE, BRIAN E	AU 3604	PA
HALL, TROY L	AU 3609	NC VA GA
TEEL, ROBERT C	AU 3610	PA
HOSTETTER, SHERMAN M	AU 3611	PA OH
FREY, KEVIN	AU 3615	OH IN WI IL WV
MITCHELL, JOHN P	AU 3621	GA
KEENAN, RICHARD J	AU 3625	MA ME NH

### AUCTION BUSINESS

EZ AUCTION ACTION INC	AB 2570
MAGNUM AUCTION LLC	AB 2571
AUCTION BY MENU LLC	AB 2572
FLORIDA AUTO AUCTION OF ORLANDO, INC	AB 2573
FLORIDA AUTO AUCTION OF ORLANDO, INC	AB 2574
AUCTION BIZ, LLC	AB 2575
EXECUTIVE AUCTION GROUP	AB 2576
SCOTT G OGLESBY, LLC	AB 2577
MARSHA WOLAK AUCTIONS	AB 2578
COSPER AUCTION	AB 2579
PREMIER REAL ESTATE AUCTIONS, INC	AB 2580
GARTH MILLETT AUCTIONS	AB 2581
AUCTIONS BY MINCK	AB 2582
PRESTIGE AUCTION HOUSE	AB 2583
ATLANTIS PROPERTY AUCTION LLC	AB 2584
AUCTION CENTRE	AB 2585

REALLY AUCTION INC	AB 2586
W.H. BREADING & SON INC	AB 2587
FLORABAMA AUCTION SERVICES	AB 2588
SPACE COAST AUCTION ACTION	AB 2589
UNIVERSICO	AB 2590
GUYER BROKERAGE GROUP, INC	AB 2591
DANIEL FRANK SEDWICK	AB 2592
SUN REALTY OF ST. LUCIE, LLC	AB 2593

### **AUCTIONEER APPRENTICE**

SLOCUM, JOHN C	AE 365
THOMAS, CEDRICK D	AE 366
KASTNER, DANIEL W	AE 367
GHERING, SHEA	AE 368
TRUBACH, CHRISTOPHER	AE 369

Motion: Mr. Moecker moved to approve the application list as presented.

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

### **REGULATION REPORT**

Mr. Wilson provided the board members with the statistics from July 2006 through March 2007 as follows: there were 71 complaints added, 50 licensed complaints found legally sufficient, 6 unlicensed complaints found legally sufficient, 41 investigations assigned, 37 investigations completed, 7 mediations, and 6 mediations completed. He also gave a briefing on how a complaint is handled in the department. He stated that due to the hurricane last year the complaint section has seen the number of complaints triple. He provided the board members with his direct telephone number and asked them to report any suspicious activity directly to him.

Mr. Dietrich stated that Mr. Wilson and Ms. Leigh are both doing a great job and he appreciates what they are doing for the Board.

### **PROSECUTING ATTORNEY REPORT**

#### **CASE LOAD STATUS**

Ms. Leigh introduced Mr. David Spingler as being her new assistant. Mr. Spingler is the replacement for Ms. Maria Mathew who's no longer with Ms. Leigh. She stated that this was Mr. Spingler's first board meeting and it's a learning experience for him.

Ms. Leigh stated *"Mr. Jerry H. Feldman, 2006-002277 has been referred to the division of administrative hearing and that is set for formal hearing in April. Hopefully by the next meeting I will have a recommended order from the administrative law judge for adopting a discussion at that board meeting."*

Ms. Leigh presented the prosecuting attorney's report dated February 26, 2007. The report reflected eight (8) confidential cases in the legal department, five (5) confidential cases set for supplemental investigation, four (4) confidential cases probable cause, eight (8) cases administrative complaints filed, one (1) case formal hearing, two (2) cases sent out for expert review, two (2) cases set for board presentation, and three (3) cases waiting final orders. There were a total of sixteen (16) cases in legal.

The March 13, 2007 report reflected eight (8) confidential cases in the legal department; four (4) confidential cases set for supplemental investigation; five (5) cases set for the probable cause panel; two (2) cases administrative complaints; one (1) case for formal hearing; and seven (7) cases set for board presentation. There are a total of twenty-seven (27) cases in legal.

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

## 2005 - MOTION FOR WAIVER

### #2005-044150, Gene Sarcinello d/b/a Port Richey Auction & Sales Company

Ms. Leigh presented case # 2005-044150, AU 2139. This case was missing page 18 exhibit 6; a letter dated October 5, 2005, to Ms. Brandy from the respondent. This letter was given to the board members so that they may have a complete package.

The respondent was not present and was not sworn in via the court reporter. The department filed an administrative complaint against respondent on February 7, 2006. The department made its first attempt to mail the documents by certified mail to the respondent on February 8, 2006 and it was returned unclaimed. Then the department tried to serve the respondent via personal service and the department was unable to make personal service. The investigators filed an affidavit of service of diligent search and was unsuccessful. Then they filed a notice of action and published it in the Pasco Times on November 1, 8, 15 and 22, 2006. A copy of this auction is included in the board materials on page 23, Exhibit C. 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 facts. 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: Ms. Hill moved to approve that the respondent waived his rights to a hearing.

Second: Mr. Moecker 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 and conclusions of the law.

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

The respondent has been 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. First time offense guidelines are a fine in the amount of \$500-\$1000, probation or license suspension; and department is asked that costs be included.

Ms. Edwards advised the board of her findings when she reviewed the administrative complaint a lot of aggravating circumstances which would permit the board to go beyond the rules and the disciplinary guidelines. Ms. Leigh assisted her by reading them out loud as she sighted them as following:

61G2-7.030 (2)

- (d) - length of time since the violation;
- (g) - the actual damage, physical or otherwise, caused by the violation;
- (h) - the deterrent effect of the penalty imposed;
- (i) - the effect of the penalty upon the licensee's livelihood;
- (j) - any effort of rehabilitation by the licensee; and,
- (k) - the actual knowledge of the licensee pertaining to the violation;

On page 16, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> line of the agenda, Mr. Moecker had concerns of Mr. Duane Burgess' name appearing in Mr. Sarcinello's motion for waiver. Ms. Leigh stated that was an attorney scriveners' error and she will take care of it. She assured the board that his rights are not violated due to an attorney scriveners' error.

Ms. Edwards found the aggravating factors of 61G2-7.030 (2) (d-k) and called for a motion.

Motion: Mr. Accardo made a motion to accept Ms. Edwards' finding of the aggravating factors.

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

Motion: Ms. Hill made a motion for Mr. Sarcinello to pay a \$5000 fine, \$506.30 costs and revoke his license.

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

## 2005 - INFORMAL HEARING

### #2005-058854, Douglas Carl Tanuis, Sr., and #2006-001354, American Auctioneers and Associates

Ms. Leigh presented combined cases # 2005-058854, Douglas Carl Tanuis, Sr., AU 3135 and # 2006-001354, American Auctioneers and Associates. Ms. Leigh and Ms. Edwards reviewed both cases and recommend that these cases be dismissed.

Ms. Edwards based dismissing this case on the Alexander Paul Romano real estate case that was handled in the 5<sup>th</sup> district court. Mr. Romano entered a plea of guilty on November 4, 1999. The trial court accepted the pleas, entered a written finding of guilt and the court relied on that, then it withheld adjudication. The court's finding of guilt,

alone, could not serve as the sole evidentiary basis for disciplinary action against a real estate agent who pled nolo contendere to charges while maintaining his innocence when adjudication was withheld. Mr. Romano was not convicted nor found guilty, therefore, he has not violated the Florida Statutes.

Ms. Edwards informed the board that Florida Statute needed to be revised to reflect the language after found guilty, add “ *pleaded nolo contendere or even pled guilty.*” She suggested that the board send a written request to whomever handling legislation for the department.

Ms. Leigh voiced her concerns that “ *he purchased stolen property and then auctioned it. This could not have been more related to your profession than that. And now I can’t do anything to him because of the way your statutes read and I am not happy about this.*”

Motion: Mr. Moecker made a motion to dismiss cases 2005-058854, Douglas Carl Tanuis, Sr. and 2006-001354, American Auctioneers and Associates.

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

### **BOARD ATTORNEY**

Ms. Edwards tabled the reinstatement of null and void licenses to the next meeting to be held in June 2007. She asked the board to give her feed-back on fees, what are that requirements to reinstate a license, will continuing education be required or retaking the exam. She stated there are no rules in the hopper at this time.

Mr. Moecker asked that a status report be given at the next meeting on the number of null and void licensee we have in the State of Florida.

Ms. Edwards suggested that the board combine the fee rules 61G2-3.002, 3.003, 3.004, 3.005, 3.006, 3.007, 3.008, 3.010, 3.011, and 3.012 as one instead of ten single rules.

Motion: Ms. Hill made a motion to combine the above fee rules as one rule.

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

### **BOARD CHAIR REPORT**

Mr. Deitrich informed the board that the fingerprint background House Bill 711, is being routed through this session.

Mr. Deitrich attended the NALLOA (National Auctioneer License Laws Officials Association) meeting and stated there were several speakers that spoke on standardized testing being used by nineteen other states. He stated that once a person passes this standardized test he or she becomes qualified to be licensed in nineteen other states. Mr. Deitrich asked Mr. Spivey to check with the nursing board and find out how this testing works and report his findings to the board at the next meeting.

### **EXECUTIVE DIRECTOR’S REPORT**

Mr. Spivey indicated that fingerprint House Bill 711 will also include the businesses with a person using a fictitious name to be fingerprinted. Also, if this fingerprint bill is approved the board will be required to draft rules determining the financial responsibility for an auction business license. The department legislative person indicated to Mr. Spivey that this bill was sent to the house business committee on March 7, 2007 and the department is tracking this bill and will notify staff and the board twenty-four hours before this bill will be heard.

Mr. Deitrich indicated that House Bill 711 is sponsored by Mr. Posey and Senate Bill 786 by Mr. Allen Boyd. He informed the board and staff that the language in House Bill 711 is the same language in Senate Bill 786.

*Five-minute recess.*

Mr. Vaccaro updated the board on the status of their fingerprint bill and to let them know that the department supports the fingerprint background check for their applications.

Mr. Accardo stated to Mr. Vaccaro that *“Renese and Tony are on top of things and please don’t let them go because Barbara, Jessica, Tony and Renese we got them all covered right here.”*

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

Mr. Spivey reviewed the financial reports ending December 30, 2006. He indicated that the *“operation account shows a balance of \$132,705. The operating account for the recovery fund shows a balance of \$798,862. In the unlicensed activity account there’s a balance of \$29,011.”* He indicated to the board that he has not heard of any sweeps. He assured them that their recovery fund is exempt and the only account that can be swept is the operating account.

## **NEW BUSINESS**

Mr. Deitrich presented a flyer from a charitable auction to be held via the Central Florida Fair and requested an interpretation of Florida Statute 468.388 (11). In the past the organization printed his personal letterhead on the flyers which consisted of his individual and business licenses along with his picture. The charitable organization printed the flyers without his personal information and he felt as if they violated this statute.

Ms. Edwards indicated that this statute does not apply to charitable auctions, therefore the Florida State Fair (sic) is a tax exempt event and it is exempt from Chapter 468.

Mr. Deitrich indicated that in the past he designed the flyer and his logo appeared at the bottom of the flyer.

Ms. Edwards stated that if you are going to get paid for an auction it is not considered as being a charitable auction. Ms. Edwards stated that she will research this and report back to the board at the next meeting.

Mr. Deitrich stated that his picture had nothing to do with the flyer. He wanted his license and business numbers to be added. He also indicated that this flyer was released via the organization without him being aware of it. He expressed to the committee again that he had a problem with the flyer because his logo did not appear on the flyer.

Ms. Edwards had to reassure Mr. Deitrich that she will research this and report back to the board.

### **NEXT MEETING**

Next meeting will be held as a combined meeting with the FAA (Florida Auctioneers Association) and the board office on Monday, June 4, 2007 at 9:00 am in Daytona Beach.

Motion: Mr. Moecker made a motion for the meeting to be held in Daytona.  
Second: Ms. Hill seconded the motion and it passed unanimously.

Proposed Meeting Dates for 2007 – 2008 approved as printed.

September 19, 2007

December 12, 2007

March 12, 2008

June 12, 2008

### **ELECTION OF OFFICERS**

Motion: Mr. Moecker made a motion for Mr. Deitrich to continue to serve as Chair.  
Second: Ms. Hill seconded the motion and it passed unanimously.

Motion: Ms. Hill made a motion for Mr. Moecker to continue to serve as Vice-chair.  
Second: Mr. Accardo seconded the motion and it passed unanimously.

### **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 11:35 am.