

**Minutes of**  
**Florida Board of Auctioneers Meeting**  
**4951 South Washington Avenue (US-1)**  
**Titusville, FL 32780**  
**Thursday, June 9, 2005**  
**1:00 p.m.**

**Board Members Present**

Fred Dietrich, Chair  
Michael Moecker, Vice Chair  
Craig Accardo  
Donald Shearer

**Excused Absence**

JoAnn Hill

**Others Present**

Steve Guardiano, Attorney for David Harris  
Mark Fitzgerald, Auctioneer  
George Johnson, Auctioneer  
Cliff Schuler  
Debbie Schuler  
Terry D. Thomas

**Staff Present**

Anthony Spivey, Executive Director  
Donna Salters, Government Analyst  
Charles Tunnicliff, Prosecuting Attorney  
Daniel Biggins, Asst Attorney General

Mr. Dietrich, Board Chair, called the meeting to order at 1:00 p.m. There was a roll call and a quorum was established. Mr. Dietrich introduced the new board member, Mr. Donald Shearer and requested that he open the meeting with an invocation and the pledge of allegiance.

**Approval of Minutes**

The minutes were approved with the following corrections:

Jerry Wilson, Division Director, DBPR should be removed from staff present list. The second correction is under the **"Public Comments"** the sentence reads, "He suggested that one way the board can stop this kind of unlicensed activity **board** is to send a letter to all licensed auctioneers and explain to them the affects unlicensed Internet auction businesses have on their profession. The word **board** should be deleted.

Mr. Shearer had a question regarding page four, third paragraph of the minutes which refers to \$600,000 being swept from the operating account. Mr. Spivey explained that there were transfers from the Board's operating account to the working capital trust fund. This transfer was due the cash sweep from the Legislature to the general revenue account per Legislature.

Mr. Moecker offered the motion to accept the minutes from the June 9, 2005 meeting with the noted corrections. The motion was seconded by Mr. Accardo and passed unanimously.

## **Discipline**

Case #2004-011616

George Johnson Auctioneers

AB license 1337

The case was presented by Mr. Tunnichliff. In January 2005, Marge Caccamisi's filed a complaint stating that she was not given a contract nor was she given a list of items which is a violation of Chapter 468.388(1), Florida Statutes (F.S.), which is under the disciplinary section Chapter 468.389 (1)(j), F.S.

Mr. Johnson addressed the Board stating that items came in late on a Saturday morning during the sale of an auction. He was not aware of a consignment sheet, but the items had already been sold.

Mr. Fitzgerald explained that he did not want to take the items, and explained to Ms. Caccamisi that he could not take reserves on \$10 items. He explained that reluctantly he took the items and placed them on his truck without a consignment sheet. He indicated that it is his fault as he had forgotten that he did not have the sheet and had no intention of taking advantage of her. He stated that he completed some repairs on her house and he was just trying to help her out with repairs and moving things for her. When she was given the second consignment sheet she was unhappy that some items sold did not bring the money she hoped for.

Mr. Johnson stated that he would have done anything to please Ms. Caccamisi, but there was no satisfying her. Mr. Shearer asked a question regarding the previous practice with Ms. Caccamisi. It was explained that this procedure with her was the same as the first auction with no consignment.

Mr. Dietrich acknowledged a letter from Allen Frenkel, Chair of the Grievance Committee for the Florida Auctioneers Association concerning this matter. He stated that frequently they work to get issues resolved before a case comes to the Board.

Mr. Tunnichliff recommended the board impose an administrative fine of \$1000; and costs of \$408.98.

Mr. Moecker offered the motion that since this is the first disciplinary action, secondly, the respondent has been licensed for over ten years with no discipline, and considering the circumstances surrounding the case, the Board should impose probation for one year and cost of \$408.98.

Mr. Moecker called the question with the motion to recover cost and one year probation. The motion was seconded by Mr. Accardo, and passed unanimously.

In case #2004-011613, license #AU1840 for George Johnson. The recommended penalty administrative cost is \$408.98 and fine of \$311.12.

Mr. Accardo offered the motioned to impose the fine of \$311.12 and one year probation. The motion passed unanimously.

Case # 2002-010193  
Harold Myers Jackson  
License # AU2726

Mr. Jackson was to auction equipment from a wood working shop to attempt to recover monies from a tax warrant issued by Leon County. After the materials were auctioned, the respondent failed to pay. At the time the wife and the owner of the equipment were going through a divorce. The money owed to the tax collectors office was paid by the wife and the auctioneer felt that he no longer had an obligation to pay.

In two cases 2002-010193, AU2726, the respondent failed to pay the amount owed violating Chapter 468.398(1)(c), F.S. and Chapter 468.389 (1)(e). He was also charged with a violation of Chapter 455.227(1)(q) bad faith, dishonesty, fraud (k) legal obligation of which the licensee is required to respond.

The complaint was settled by Charles Pellegrini. It was requested that the Board accept the Settlement Stipulation of a fine in the amount of \$800, paid in installments of \$133 per month; and the cost \$634.20 be paid in 30 days within 30 day rendition of the order. Also, issue an order of probation based on conditions set by the Board to include timely payment of the fine and stating that untimely payments could cause the license to be suspended. It was noted that Mr. Jackson did eventually pay the lien, and the tax collector refunded the wife's money.

Mr. Moecker offered a motion to accept the recommendation. Mr. Shearer seconded the motion. Mr. Accardo then asked that if the fine imposed can be greater than the recommendation. Mr. Biggins responded that he can be fined up to \$1000 per count, but the Board is restrained by the penalty guidelines unless there are aggravating circumstances. The motion passed unanimously.

Case #2002-032183, Auction Warehouse of Boca Raton was pulled from the agenda. Mr. Tunnicliff indicated that information was sent to the wrong address, and they have hired new counsel. Mr. Tunnicliff spoke with Ms. Shearer and she requested a continuance. The case was agendaed on a Motion for Waiver of Rights. He explained that even though the person did not respond within 21 days, he feels that everyone deserves their day in court. He indicated that there is another case that is a matter of public record and it has been scheduled to be filed at the Division of Administrative Hearing.

#### **Auctioneer Recovery Fund Claim**

Mr. Biggins indicated that Chapter 468.395, F.S. states that a person has to have a final order from the board directing a licensee to pay restitution from the board and a judgment from a civil court that went uncollected. The claim must be filed within two (2) years and the party has to reasonably establish to the board that they have taken proper and reasonable action to collect the amount of the claim. Mr. Biggins stated that there is no issue of timeless. There is no circuit court judgment, so therefore the board must order restitution. The order in the application did not order restitution and whether or not they have taken proper and reasonable action to collect is a matter for the board.

Mr. Guardiano addressed the Board explaining that in regards to collection attempts, Wanted Dead or Alive Antiques filed for bankruptcy in Jacksonville Middle District Court - Case # 003011693 on February 21, 2003. There were no assets of the auction business

which precluded Wanted Dead or Alive Antiques from any recovery attempts. A check for \$5,640 was presented to Antiques Unlimited, but was returned for insufficient funds (NSF). He further explained that the order of restitution was issued based on default and the amount was itemized in the complaint. He asked that the Board submit an order of payment in the amount of \$5,640. Mr. Moecker stated that in reviewing the returned check in the agenda he found it interesting that a corporate check has a driver license number shown as part of the current address. The business was dissolved October 1, 2004 for failing to file the report. It was noted that Wanted Dead or Alive Antiques license is revoked.

Mr. Dietrich offered the motion to pay the claim of \$5640. It was seconded by Mr. Moecker. The motion passed unanimously.

Mr. Moecker asked if the Department would pursue Mr. Brooks, owner of Wanted Dead or Alive Antiques because of the NSF personal check in an effort to recover the disbursement from the recovery fund.

Mr. Dietrich requested that Ms. Salters provide to Mr. Moecker contact information for the departments collection attorney office regarding assigning the collection of the NSF to the department. Mr. Biggins explained that that is accomplished by statute.

#### **Applications for Ratification**

Ms. Salters presented the ratification list for licenses:

- There were seventeen (17) applications submitted for licenses by examination. It was noted that Yosities.com, Inc. is listed in the auctioneer by examination category. Mr. Moecker requested additional information on the company Yosties.com, Inc. License # 2140. Mr. Moecker offered the motion to accept the applications, with the exception of ratifying license #AB2140 stating that if there is a problem with this license then there will be a telephone conference call to further discuss. The motion was offered to approve the applications by Mr. Moecker. It was seconded by Mr. Accardo, the motion passed unanimously.
- There were twenty (20) applications submitted for license by endorsement. The motion was offered to approve the application by Mr. Moecker. It was seconded by Mr. Accardo, the motion passed unanimously.
- There were twenty-two (22) applications submitted for auction business license. It was seconded by Mr. Accardo. The motion passed with Mr. Shearer abstaining from voting.
- There were five (5) applications presented for auctioneer apprentice license. Mr. Shearer offered the motion to approve the applications. It was seconded Mr. Accardo; and the motion passed unanimously.

#### **Applications with Disclosed Criminal History**

Mr. Morris Taibel, application #3424 from null & void was presented by Mr. Spivey. Considering that Mr. Taibel maintains a Texas license, there is no record of previous discipline and given the nature of the offense Mr. Moecker recommended that his application is approved. The motion was seconded by Mr. Accardo and pass unanimously.

### **Board Chair Report**

Mr. Dietrich reported that from the last meeting, there still is the proposal to change auctioneer licensing law to require finger prints on applications for both auctioneer and auction business applicant. He indicated that he had identified two sponsors who are Senator Posey and Representative Cretul. He further indicated that the Florida Auctioneers Association approves the language for finger print card requirement.

### **Executives Director's Report**

Mr. Spivey reported on complaints and investigations. There were 150 complaints added; 95 complaints found legally sufficient; 8 unlicensed complaints found legally sufficient; 82 investigations assigned; 26 investigations completed; 8 mediations assigned; 14 mediations completed and 3 notices of non-compliance issued.

The financial reports show an unrestricted balance of \$101,136. The unlicensed activity account is a balance of \$16,315. The Auctioneer Recover Fund shows a balance of \$792, 277. Mr. Spivey reported that he has already turned in the proposed travel budget indicating that he has requested four (4) meetings at live sites to allow better opportunities for the public and other licensees to attend. He indicated that with advance schedule dates, there would be time for citizens to be aware of the meetings. Mr. Moecker stated that it is a good idea to have meetings in different locations allowing participation statewide.

The September 14, 2005 meeting is already on schedule. It was voted that the location be in Tampa, Florida.

Mr. Moecker asked questions regarding the administrative trust fund. Mr. Spivey explained that this fund pays for the services of the Secretary and staff. He explained that entity within the department does not generate income, a charge is assessed to all the boards to pay a certain percentage based on their accounts. At the end of the true-up period to balance the account, if too much has been collected then there is a refund to the boards; if there has not been enough collected then there would be an entered line item due to the administrative trust fund. Mr. Shearer asked what is "DOAH". Mr. Spivey explained that this is the Department of Administrative Hearing where an individual who does not want to come before the board for an informal hearing, their case goes to the judge.

Mr. Spivey asked the board members to be sure to have their travel voucher into the office within five days of the meetings. This way, all travel will be paid within the proper fiscal year.

### **Prosecuting Attorney Report**

Mr. Tunnicliff reported that as of June 8, 2005, there are a total of 39 cases. There are 29 cases assigned to attorneys; 2 administrative complaints, 3 formal hearings requested, 5 set for Board presentation and 46 cases that are confidential (4 initial review & 42 under investigations).

**Old Business**

The Auctioneer Brochure has been completed and distributed to the regional offices. Mr. Spivey provided the status of International Auction Group. In the last meeting, a Recovery Fund claim was awarded in the amount of \$37,900. A claim was made against International Auction Group, Inc. license #AB 1995. Mr. Dietrich offered the motion to suspend the license. The motion was seconded by Mr. Moecker. The motion passed unanimously.

Mr. Schuler indicated that Wanted Dead or Alive Antiques is still operating and the license is revoked. It was requested that staff file the complaint regarding possible unlicensed activity.

**Elections of Officers**

Mr. Dietrich was nominated for chairman by Mr. Moecker. It was seconded by Mr. Moecker. Mr. Shearer offered the motion that the nomination cease. It was seconded by Mr. Moecker. The motion passed unanimously.

Mr. Shearer nominated Mr. Moecker as vice chair. It was seconded by Mr. Accardo. Mr. Shearer offered the motion to cease nomination. It was seconded by Mr. Accardo. The motion passed unanimously.

Mr. Moecker reminded staff that a draft of the minutes be mailed to the Board members before the actual meeting.

Mr. Moecker offered the motion to adjourn. It was seconded by Mr. Shearer.

The meeting was adjourned at 2:56 p.m.