

Minutes of
Florida Board of Auctioneers Meeting
2900 Bayport Drive
The Grand Hyatt Tampa Bay
Tampa FL 33607
Wednesday, September 14, 2005, 10:00 A.M.

Board Members Present

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

Staff Present

Anthony Spivey, Executive Director
Donna Salters, Government Analyst
Renese Jones, Administrative Assistant
Jessica Leigh, Prosecuting Attorney
Daniel Biggins, Asst. Attorney General

Others Present

R. W. Elting, Auctioneer

Mr. Dietrich, Board Chair, called the meeting to order at 10:00 a.m. There was a roll call and a quorum was established. Mr. Dietrich requested an invocation given by Mr. Shearer and the pledge of allegiance.

Mr. Spivey introduced prosecuting attorney, Jessica Leigh, and staff administrative assistant Renese Jones.

Approval of Minutes

The minutes were approved with grammatical corrections on page 2. The first corrections are on page two (2) in the first paragraph the word "or" should be "of". In the third paragraph the word "times" should be "items". The correction on page four (4) under applications, the business name Yosities.con should be corrected to reflect Yosities.com.

Mr. Shearer offered the motion to accept the minutes with the noted changes. The motion was seconded by Mr. Moecker. The motion passed unanimously.

The application for Yosities.com was placed on the agenda per the request of Mr. Moecker for review. He mentioned that he believed disciplinary action was brought against the company, and the information on the application indicates no issues. It was explained that this application was for a name change only which was ratified at the last meeting. Mr. Biggins advised the Board that if there are questionable issues regarding the applicant, it should not be discussed at an open meeting.

Applications

There were eleven (11) applications submitted for license by examination. The motion to approve the licenses was offered by Ms. Hill. It was seconded by Mr. Moecker. The motion passed unanimously.

There were seventeen (17) applications submitted for license by endorsement. The motion to approve the licenses was offered by Mr. Moecker and seconded by Mr. Shearer. The motion passed unanimously.

There were twelve (12) applications submitted for an auction business license. The motion to approve the licenses was offered by Mr. Shearer and seconded by Mr. Accardo. The motion passed unanimously.

There were seven (7) applications presented for license for auctioneer apprentice. The motion to approve the license was offered by Mr. Shearer and seconded by Mr. Moecker. The motion passed unanimously.

Prosecuting Attorney Report

Ms. Jessica Leigh presented the prosecuting attorney report. She provided a handout on the cases that are in the Office of the General Counsel. The report is dated September 12, 2005 and shows that there are 22 confidential cases in the legal section; two cases open on Wanted Dead or Alive Antiques one of which status is set at Stipulation or Request for Informal Hearing; the other is set for a Formal Hearing. The cases for Auction Warehouse of Boca Raton, and Ronny Griffith status is set at Ready for Default. Additionally, there are eleven (11) cases set for Informal Hearings for Auction Warehouse of Boca Raton. The two cases set for Board Presentation are Seymore H. Jacobson and D'Orsay & Company Auctioneers, Inc.

Ms. Hill questioned issues concerning Wanted Dead or Alive auction business. It was noted that Wanted Dead or Alive Auctions was responsible for \$5,670 payout from the auctioneer recovery fund to David Harris on September 29, 2005. Ms. Hill noted that the minutes of June 9, 2005 did not reflect the motion to revoke Wanted Dead or Alive license. It was explained that the minutes should not have reflected that motion as it did not occur in that meeting. The order to revoke Wanted Dead or Alive Auction is recorded in the minutes of September 29, 2004. It is only documented in the June 9, 2005 meeting minutes that Wanted Dead or Alive Auctions license is revoked, but they still may be operating without a license. It was noted that it is International Auction Group whose license was ordered suspended in the May 6, 2005 meeting for the claim of Mercato D'Ecopa in the amount of \$37,900. The discipline was for only suspension because that was what the statute allowed.

Mr. Moecker requested an outcome report of the hearing. Ms. Leigh indicated that the discipline cases will be coming before the board anyway.

There was a discussion regarding Auction Warehouse of Boca Raton and the business still operating on a revoked license. Ms. Leigh indicated that this would be considered unlicensed activity and a cease and desist would be issued. She will provide a report of this matter at the next meeting.

Ms. Hill stated that there are still cases open on Auction Warehouse of Boca Raton, and asked if the Board can still hear cases on issues such as this. It was explained by Mr. Biggins that the department can still pursue cases like this. Ms. Leigh added that these cases may become an issue for the auctioneer recovery fund. The cases are continually heard because many complainants have not been "made right" and they are trying to seek restitution.

Mr. Biggins indicated that another reason to keep these cases going is that if the complainants need to take these cases to circuit court, it would strengthen their cases.

Board Counsel Report

Mr. Biggins provided a report on Senate Bill 1012. The bill was enacted to provide reinstatement of certain null and void licenses if all fees, continuing education, and eligibility is met.

He explained that the board has the discretion to make the rules under the statute. He indicated that his opinion is that the discretion comes once the rule is made. He advised the board that they should make a rule that gives an avenue for null and void license to be reinstated. The reason to consider this form of reinstatement is due to illness or unusual hardship. Mr. Spivey explained that in this profession a license status is not null and void until after the current renewal cycle. The license first goes to the delinquent /active status for two years which results in the licensee paying delinquent fees. If the licensee does not renew during this period then the license goes null and void at the end of the second renewal cycle. Ms. Salters reminded the board that this profession already has the ability to issue a license from a null and void status, however LicenseEase will issue a new number. There was continued discussion on the re-assigning of license numbers. Mr. Spivey stated that he will research the issue of numbers being recycled.

Ms. Hill offered the motion to give Mr. Biggins the authority to develop a rule to allow a license to be re-issued from null and void that can substantiate hardship cases. The motion was seconded by Mr. Moecker. The motion passed unanimously.

Board Chair Report

Mr. Dietrich provided a report on the National Auctioneers Licensing Law Officials Association (NALLOA) that he attended in Pittsburg, PA , on July 18-23, 2005. He indicated the event was one-half seminar and one-half meeting. He further stated that there was a forum provided on "one stop licensing" and that he provided the auctioneer brochure and sample licenses at the event. The next NALLOA meeting will be July 11-15, 2006, and the NALLOA annual meeting will be July 13, 2006 in Orlando. Mr. Dietrich asked that Mr. Spivey contact the National Auctioneers Association (NAA) regarding scheduling a board meeting during this event.

Executive Director Report

Mr. Spivey reminded the board to make sure that they receive a zero balance invoice from the hotel and be sure to submit their travel within five business days after the meeting. Ms. Hill asked what does having travel submitted within five (5) business days have to do with anything. Mr. Spivey explained that in managing other boards he established a policy that will help ensure the alleviation of the problems of unpaid travel at the end of the fiscal year. He explained that unclaimed travel at the end of a fiscal year will automatically come out the board's next fiscal year's budget, if the member decides to claim the funds.

Mr. Dietrich complimented Mr. Spivey's effort in keeping the board organized. Ms. Hill explained that she was being sympathetic about Mr. Moecker's ability to get these invoices in within five days with his travel schedule.

The Board of Auctioneers Regulation Report showed fourth quarter report (April 1, 2005 through June 30, 2005). The report showed that 41 complaints have been added to the division, 78 complaints were found legally sufficient, 23 investigations were assigned, 32 investigations were completed, 2 mediations assigned, 4 mediations completed, and 2 notices of non-compliance issued.

Mr. Spivey provided the Financial Reports for June 30, 2005 which includes data of the last quarter of the fiscal year on the Operating Account, Unlicensed Activity Account and the Auctioneer Recovery Fund. He indicated that the Operating Account balance shows \$54,912; the Unlicensed Activity balance is \$16,249 and the Auctioneer Recovery fund balance is \$760,950. He also stated that the board should take into consideration that the cases that Ms. Leigh presented which goes before the Division of Administrative Hearing are charged to the operating account.

Ms. Hill asked for the 10 Year Projection Plan. Mr. Spivey stated that it was provided at the June 9, 2005 meeting. Ms. Hill asked does the board send a notice to Governor Bush to explain that the board is expecting expenses and the account should not be swept. Mr. Spivey explained "it doesn't work that way." He further explained that the department has not been apprised of any knowledge of another cash sweep. In addition, if there were to be one, there is nothing the boards can do in that regard as the authority is given by the legislature. A letter from former Deputy Secretary Julie Baker was included in the agenda of June 16, 2004 explaining that under Section 215.32(4)(a) the Legislature has the authority to transfer un-appropriated cash balances from trust funds to the Budget Stabilization Fund or Working Capital Fund.

Ms. Hill added that the auctioneer funds are vulnerable to this cash sweep and she still feels that this process is double taxation of the auctioneers. She further stated that the board should study lowering the cost of licensing or having fee holidays.

Mr. Shearer stated that instead of allowing the money to be swept, the board should make better use of the money by hosting education courses for auctioneers and auction businesses. The courses should be held in conjunction with the NAA conference in July. He further stated that the topics should be on business practices and ethics which may reduce the number of complaints and cases of discipline.

Mr. Moecker asked about anticipated revenue based on renewals whereas the board can develop an educational program. Additionally, he expressed the concerns regarding licensees that come to the meetings and workshops are generally the people who are less likely to have discipline issues.

Ms. Hill asked could the board review complaints that have been filed and issue a discipline order whereas the auctioneer would be required to attend a two or four hour class. Mr. Shearer explained that what he recommended would serve more as a deterrent rather than discipline.

Mr. Spivey added that the board should be careful about fee holidays when there are several cases going before the Division of Administrative Hearing (DOAH). He explained that the cost of these cases can have a great impact on the operating account and may cause it to fall into a negative balance. Ms. Leigh added that these fees will add up to be in the thousands of dollars.

Old Business

Ms. Hill wanted an update on preparing legislation for the finger print requirement for auctioneer and auction business applications. Mr. Dietrich explained that Senator Posey agreed to sponsor legislation regarding the finger print requirement. Mr. Dietrich received a call from Senator Posey's aid who explained that during the summer his wife passed away. Mr. Dietrich expressed his sympathy and indicated that he understood the inability to write the draft legislation at that time.

Initially, Representative Credle was to sponsor the bill. Mr. Dietrich indicated that Representative Credle had local bills to sponsor and could not follow through with his request. Therefore, it is Representative Frank Atkinson who has agreed to continue with sponsoring the legislation.

Ms. Hill then asked about the issues of on-line auctioneering. Mr. Spivey stated that the board may not hear anything regarding these issues, because the cease and desist orders are on unlicensed business and persons only. He stated that Mr. Reddinger from the Division of Regulation was to continue doing investigations on consignment shops and businesses having the word "auction" in their names and is not licensed. Mr. Moecker stated that Mr. Wilson was to provide a report on the frequency of complaints on on-line auctions.

Also Ms. Hill wanted to know the status of the public service announcements whereas bill boards and radio/television commercials would be completed. She expressed concerns that enough people would not see the brochure. Mr. Spivey explained that there was a combined public awareness campaign of several boards (construction, electrical cosmetology/barbers and auctioneers) to share the cost rather than do a single profession campaign which would be costly to that particular board.

Mr. Moecker responded that the board has discussed "how much can you protect the public." If the public does not consider on their own ability that they are asking someone to sell an item of value, should they first be concerned about the person or business ability and responsibility to them as a contractor to sell an item.

Ms. Hill stated that this is a case of protecting the people as well as protecting the licensed auctioneer. She explained that it costs a lot of money to be a legitimate business and it is not fair to those who paid out the required money and obtained the proper training for a license to lose business to those who have not.

Mr. Dietrich explained the official responsibility of this board is to protect the public. He explained that he does not know if there are enough funds to do public awareness campaigns for the auctioneer profession alone. Mr. Moecker added that when people are in crisis they become desperate and are likely to hire anyone they believe can complete work at a reasonable fee and may not check to see if they are licensed, and often may not know if a state license is required. As it is in the construction profession after natural disasters, they do not pay attention to Public Service Announcements (PSA's).

Ms. Hill recalled discussion on the department hiring more investigators to address issues of unlicensed activity. They were going to focus on consignment drop off sites and on-line auctions. Ms. Leigh indicated that she knows that investigators are doing sweeps on a regular basis, but she will report back to the board regarding orders issued on unlicensed Internet auctions, frauds and consignment drop off sites.

There was further discussion on mass mailing to licenses in an effort to have greater attendance at the board meetings. Mr. Spivey indicated that he will speak with Division director, Jerry Wilson regarding this request.

Mr. Elting, auctioneer, license # AU95 addressed the board regarding the problems of unlicensed Internet auction businesses. Mr. Elting initially expressed his concerns at the March 22, 2005 board meeting in Orlando, Florida. He stated that the amount of business auction businesses are losing to the unlicensed Internet auctions is injurious to the profession and is hopeful that the board takes proactive measures to circumvent problems in this area.

The next board meeting will be held December 14, 2005, in Orlando at 10:00 a.m.

The board meeting schedule following the above date is as follows:

March 16, 2006 in Tallahassee, Florida 10:00a.m.

June 14, 2006 in Tallahassee, Florida, 10:00a.m.

Mr. Moecker offered the motion that the meeting be adjourned, it was seconded by Mr. Accardo. The meeting was adjourned at 12:25p.m.