

**MEETING OF
THE FLORIDA BOARD OF AUCTIONEERS**
Department of Business and Professional Regulation
The Embassy Suites – Ft. Lauderdale
1100 Southeast 17th Street
Ft. Lauderdale, Florida 33316
Wednesday, September 20, 2006 @ 10:00 am est.

CALL TO ORDER

Mr. Deitrich, Chair, called the meeting to order at 10:06 a.m. There was a roll call and a quorum was established. Mr. Deitrich asked everyone to stand and give the pledge of allegiance and asked Mr. Shearer to give the board some words of inspiration.

Mr. Shearer encouraged the board and staff to pray for the shuttle and our military troops. He gave the highest praise to Mr. Denzel Washington for his financial support toward building a housing hospital for our injured troops. He also, stated that it's very rare that you hear of good things on the news.

Mr. Deitrich asked that the entire group reflect on the spoken words.

BOARD MEMBERS PRESENT

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

STAFF PRESENT

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

OTHERS PRESENT

Matthew Welch, Rice and Rose
Robert Kaleky
Salvatore Valenziano, Certified Auction Company
Galey Dietrich
Drew Winters, DBPR

BOARD AUTHORITY

Ms. Edwards provided a letter of guidance to the board members reminding them of their duties to the state of Florida as board members.

APPROVAL OF MINUTES FROM JUNE 5, 2006

The minutes were approved with one noted change on page 7, paragraph 7, first sentence *national meeting changed to Florida meeting.*

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

APPLICATIONS

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

AUCTIONEER BY EXAMINATION

POSEY, TERRY	AU 3487	WARNOCK, MICHAEL J	AU 3508
SIMS, PATRICIA A	AU 3488	BROWN, ERNEST L III	AU 3509
DONAHUE, MICHELLE R	AU 3489	MASRI, TOUFIC	AU 3510
GEPP, VINCENT H	AU 3490	MELLOAN, JAMES M	AU 3511
DONAHUE, JON P	AU 3491	BROWNING, CHARLES R	AU 3512
DAVIS, JAMES R	AU 3492	FOUNTAIN, JOHN H	AU 3514
MC DONALD, LOFTON G	AU 3493	ZOLL, MARIANNE	AU 3517
MOONEY, RICHARD E	AU 3494	PERKINS, RAYMOND J	AU 3518
SAGLIBENE, REBECCA	AU 3495	DOZIER, WALTER H	AU 3519
NICKLEN, GERALD D	AU 3496	KAISHER, EDWARD W	AU 3520
NICKLEN, VIOLET M	AU 3497	MORTENSEN, MARGARET	AU 3521
COOPER, JOSEPH A	AU 3500	MORTENSEN, PHILLIP	AU 3522
DOBSON, JEFF J	AU 3501	HOLLANDER, NICOLE A	AU 3523
LOCKWOOD, TAMMIE L	AU 3502	WATANABE, SCOTT M	AU 3524
LONER, WILLIAM	AU 3503	SCOTTO, DIANE	AU 3525
BERNSTEIN, ELLIOT S	AU 3504	GRAY, JOHN D	AU 3527
SATZ, RYANN L	AU 3505	DESPEIGNES, ERDWINE	AU 3528
MADDEN, CAROL M	AU 3507	HIGGINS, JAMES	AU 3530
		LOPEZ, PATRICIA F	AU 3531

AUCTIONEER BY ENDORSEMENT

WILD, JAMES F	AU 3498	VA
HOWLE, ANDREW M	AU 3499	AL LA
BLAIR, BRUCE B	AU 3506	KY
LAVI, URI H	AU 3513	TX OK
WALDREN, ROBERT K III	AU 3515	IN
WOLTZ, JAMES L	AU 3516	VA
KAPUDJIJA, DANIEL P	AU 3526	OH
CASALE, VINCENT J	AU 3529	PA NY

AUCTION BUSINESS

PREMIER AUCTIONS, LLC	AB 2527
T. R. LONG AUCTIONS	AB 2528
COTTON & ASSOCIATES, INC	AB 2529
WALT DOZIER AUCTIONS, INC	AB 2530
CAROL MADDEN INC	AB 2531
MIDCOAST AUCTION	AB 2532
EGM ENTERPRISES, LLC	AB 2533
SOUTHEAST AUCTIONS LLC	AB 2534
MICHAEL J WARNOCK SR	AB 2535
FLORIDA AUTO AUCTION OF ORLANDO INC	AB 2536
RONCO MACHINE AND RIGGING INC	AB 2537
AXIS AUCTIONS INC	AB 2538
JOHN H FOUNTAIN	AB 2539
CENTER STAGE AUCTIONS LLC	AB 2540
LONG'S AUCTION SERVICE	AB 2541
EDY'S AUCTION SERVICES	AB 2542
ACCELERATED MARKETING GROUP	AB 2543
AUCTION USA LLC	AB 2544

AUCTIONEER APPRENTICE

CARROLL, JAMES D	AE 349	SHULER, DEBRA A	AE 353
FIGUEROA, CARLOS G	AE 350	BEAULIEU, EDYE D	AE 354
COOKSEY, CALVIN F	AE 351	WILSON, DEBORAH B	AE 355
SCALISE, SAM	AE 352		

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

PROSECUTING ATTORNEY REPORT

2004 - MOTION FOR WAIVER

#2004-0032854, Ronald Ashley Courson

Ms. Leigh presented case # 2004-032854, Ronald Ashley Courson, AU 1875; the department filed an administrative complaint against respondent on November 1, 2005. The respondent was served with an administrative complaint on January 5, 2006 via hand service. 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; and one count of Section 468.389 (1)(e) F.S. any conduct in connection with a sales transaction, which demonstrates bad faith or dishonesty. 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 rights to a hearing.

Motion: Ms. Hill moved to approve that the respondent waived his rights to a hearing.
Second: Mr. Accardo 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.

Ms. Leigh stated that *“the department’s recommendation in this case is that Ronald Ashley Courson pay a fine in the amount of \$1,500.00, cost of \$411.52, issue suspension for 2 years and a letter of remind.”*

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

2005 - SETTLEMENT STIPULATION

#2005-03654, Certified Auction Company

Ms. Leigh presented case #2005-03654, Certified Auction Company, AB 1939. Mr. Salvatore Valenziano was present and sworn in via the court report and was not represented by legal council. The department entered into a settlement stipulation agreement with Mr. Valenziano for a fine in the amount of \$750.00, and cost \$389.74, probation for 1-year and the respondent shall complete the licensing examination again.

Ms. Edwards added to the record that Ms. Leigh's recommendation was in order with the guidelines of the law. Ms. Edwards advised the board that the auctions took place in 2002 and it was too late to make a civil claim against the recovery funds.

Mr. Valenziano stated that he made numerous attempts to contact the individual to pay the cost of the consignment. He was advised via board to set up an escrow account and try to contact the attorney that handled this case.

Motion: Mr. Moecker moved to accept settlement agreement.
Second: Mr. Accardo seconded the motion and it passed unanimously.

2005 - INFORMAL HEARING

#2005-038888, Abid M. Butt

Ms. Leigh presented case # 2005-038888, Abid M. Butt, AU 1219 to be continued at the next meeting. Due to Mr. Butt letting his attorney Mr. Paul Watson Lambert, go and retaining new council; the new attorney faxed a statement of continuance and assured Ms. Leigh that he will be up and ready to go at the next meeting.

Motion: Mr. Accardo moved to approve this case to be presented at the next meeting only.
Second: Mr. Moecker seconded the motion and it passed unanimously.

2005 - MOTION FOR WAIVER OF RIGHTS

#2004-039832, Myron C. Bowling

Ms. Leigh presented case # 2005-039832, Myron C. Bowling, AU 2081; the department filed an administrative complaint against respondent on January 10, 2006. The respondent elected to waive his rights to a hearing and will accept the board's decision. The administrative complaint charged Mr. Bowling with one count of violating Section

468.389 (1)(k), F.S. having a license to practice a comparable profession revoked, suspended, or otherwise acted against.

The board's recommendation in this case is that Myron C. Bowling pay cost in the amount of \$60.44, 2 years probation and a letter of reprimand.

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

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

6-minute recess.

Mr. Deitrich called the meeting back into order.

RECOVERY FUND

Joseph M. Bowden

Joseph M. Bowden's attorney, Matthew S. Welch, was present on his behalf.

Mr. Welch stated "Mr. Bowden's entered into a consignment agreement June of 2002. Mr. Bowden did not receive any proceeds from that consignment that he was supposed to receive. I filed suit on his behalf and got a judgment against Wanted Dead or Alive on January 2003 in Volusia county. Mr. Bowden submitted without legal council a complaint form to DBPR in April 2003 and in that complaint form he asked for payment under the recovery fund. Wanted Dead or alive filed for bankruptcy and I am not sure if he submitted affidavit or not. The question is whether this falls under the statutory limitation of 4 years. If we run the dates back to September 23, 2006 just a couple of days from now would be the end of that the 4 years period. I ask that Mr. Bowden be paid out of the recovery funds \$8049 and some change that is the amount of the judgment in Volusia county."

Ms. Edwards stated "that the statutes stated that you shall file a claim within two years of the act given rise of the claim or within two years from the time the act is discovered or should have been discovered. So there are two two-year periods. He should have filed a claim back when the gentleman told him to file suit back in 2002. The only reason it can be beyond two years is that you did not discover it until some later date and time. So if you read this statute of limitation it reads you make your claim within two years of the act given rise to the claim. But, if you don't discover there's a claim you can go from the time you discover it. Let's say instead of discovering it in 2002 he did not discover it until 2003 then he had two more years. He had two years more to make a claim and he would have been within the total of four years. The bottom line is his time ran out to file this petition. Judges have gone back and opened cases and found those findings. (sic) The petitions in the circuit court case never mention a violation of the statutes. If you would look at 468.395 (1)(b) it says an aggrieved person who obtains a final judgment in any court against any licensee to recover damages for any actual loss that results from the violation, within this state, by a licensee of any provision of 468.389 or any rule adopted by the board. There is no such finding in this underlying order from the court. Don't think he meet the provisions of 468.395 (1) (b). There was not a verified petition filed under oath by the gentleman within the two years. We got a verified petition that I guess meets the

requirements because it's a DBPR form. Once again that's too late. This gentleman had a lawyer and this lawyer is from the same law firm. She represented him in the court case and failed to help him file a claim with DBPR. She didn't do anything to assist him and that's not the board fault and that's not DBPR fault and I don't know who fault it is. I don't know whether Mr. Bowden said I don't want legal representation or not or she said we have done all we can for you. But he had an attorney and as far as I am concerned this gentleman it is too late. There was an appraisal and if you look at the appraisal on the first page 400 at the top it states this is a replacement value appraisal. Well, that's not what things are sold for at an auction. Things are sold at an auction for the highest bidder for used material. This man doesn't qualify for a recovery from the recovery fund."

Motion: Mr. Moecker moved to deny Mr. Bowden's request to recovery from the recovery funds.

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

2006 – MOTION OF WAIVER

#2006-003371, Thomas Vinc Pittman

Ms. Leigh presented case # 2006-003371, Thomas Vinc Pittman, AU 1972; the department filed an administrative complaint against respondent on June 7, 2006. The respondent was served with an administrative complaint on June 16, 2006. The administrative complaint charged respondent with violating one count of Section 468.389 (1) (e), F.S.; any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty. 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 rights to a hearing.

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

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

Ms. Leigh handed out a petitioner's notice of scriveners error that states in the original administrative complaint that item number 2 was listed as auction business 1972 it should in fact been an auctioneer license.

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 law.

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

Ms. Leigh stated that *“the department’s recommendation in this case is Thomas Vinc Pittman pay a fine in the amount of \$1000.00, cost of \$160.50 and 1-year probation.”*

Motion: Ms. Accardo moved to approve Mr. Pittman to pay a fine of \$250.00, cost \$160.50 and 1-year probation.

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

#2006-003429, Right Now Auction Svc

Ms. Leigh presented case # 2006-003429, Right Now Auction Svc, AB 2156; the department filed an administrative complaint against respondent on June 13, 2006. The respondent was served with an administrative complaint on June 17, 2006. The administrative complaint charged respondent with violating one count of Section 468.389 (1) (e), F.S. any conduct in connection with a sales transaction which demonstrates bad faith or dishonesty. The respondent failed to file an election of rights form or other wise 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 rights to a hearing.

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

Second: Mr. Shearer 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 to adopt the same penalties in case #2006-00371, Thomas Vinc Pittman.”*

Motion: Mr. Accardo moved to approve counsel recommendation to adopt the same penalties in Thomas Vinc Pittman, case #2006-003371.

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

CASE LOAD STATUS

Ms. Leigh presented the prosecuting attorney’s report dated August 30, 2006. The report reflected three (3) confidential cases in the legal department, two (2) cases set

for the supplemental investigation, three (3) cases probable cause; three (3) cases public-probable cause found; two (2) cases administrative complaints filed; thirteen (13) cases formal hearing; and, six (6) cases set for board presentation. There are a total of thirty-two cases in legal.

BOARD ATTORNEY

Ms. Edwards indicated that the Board was still waiting on the department form on the null and void license.

Ms. Edwards indicated that there has been communication between her office and the World Automobile Auctioneers Championship whether or not what they are supposed to do about auctioning in the state of Florida. Ms. Edwards advised them to hire an attorney to interpret the status. They finally hired an attorney and their attorney held a meeting with Ms. Edwards, Mr. Spivey and Ms. Jones about a week ago. He basically agreed with Ms. Edwards that they could not do what they wanted to do. Ms. Edwards outlined a couple of things that would bring them in compliance with the statutes. She believes we are on the road to getting this under control.

BOARD CHAIR REPORT

Mr. Dietrich stated *“I am getting calls from people complaining about the information center in Tallahassee. The two biggest complaints are people complaining that it takes them forty-five minutes to get to a live person. Once they get a live person they are getting wrong information that relates to real estate auctions. Maybe the real estate people need to have a meeting with those people in Tallahassee. What I am hearing is that they are telling people they can come in and call auctions as long as they are working for a licensed Florida realty without having a license.”* He indicated that he has had a real estate license for 30 years and that’s not what he’s been told by the real estate board.

EXECUTIVE DIRECTOR’S REPORT

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

APPLICATION REVIEW

Theodore W. Fleisher had disciplinary action taken against his license in several states.

Ms. Edwards called the board’s attention to Section 468.385 (3) (b) F.S.; no person shall be licensed as an auctioneer or apprentice if he or she has committed any act or offense in this state or any other jurisdiction which would constitute a basis for disciplinary action under Section 468.389, F.S.

Motion: Mr. Dietrich moved to deny Mr. Fleisher’s application.
Second: Mr. Accardo seconded the motion and it passed unanimously.

Malcolm J. Mason went to a concert and got into an encounter with another guy. Supplement paperwork states that he got into an encounter with a police officer. He still failed to state the reason for the encounter.

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

Joseph P. Mitchell had bad check charges that he blamed on his deceased parents' death is the cause of his behavior.

Motion: Mr. Moecker moved to deny Mr. Mitchel's application.
Second: Mr. Accardo seconded the motion and it passed unanimously.

Liquidation Station, Inc. – George A. Eouse failed to place his business license in the advertisement in error.

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

Robert N. Kaleky was sworn in via court report and was not represented by legal counsel. He was sited for selling football tickets.

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

FINANCE REPORTS

(Operating, Recovery, Unlicensed)

Mr. Spivey reviewed the financial reports ending June 30, 2006. He indicated that *"your operation account shows a balance of \$199,759 and I haven't heard of any cash sweeps. The operating account for the recovery fund shows a balance of \$779,624. In the unlicensed activity account there's a balance of \$27,849 in there."*

NEXT MEETING

Next meeting will be held on December 13, 2006 in Tallahassee.

NEW BUSINESS

Mr. Shearer suggested to the board to find ways to educate the people. He made a suggestion to teach an ethics class that can be offered once a year.

Ms. Edwards suggested if the association would teach a course on ethics then maybe it can become a part of the penalty. Then you can suspend a person's license until they take the ethics course that is taught by an association not a board member.

Mr. Shearer praised Ms. Jones for her outstanding service on the information she provided to the board and her timing to notify them.

Ms. Hill stated that it has improved a lot.

Mr. Deitrich stated that the entire staff is doing a great job.

Ms. Leigh received high praise for her timing on getting the case to the board for review.

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 1:40 pm.