Meeting of
The Florida Board of Auctioneers
The Department of Business and Professional Regulation
Northwood Centre
1940 North Monroe Street
Tallahassee, Florida  32399
Friday, January 27, 2012 @ 9:00 a.m.

MINUTES

I. CALL TO ORDER

Mr. Moecker, Chair, called the meeting to order. Mr. Dietrich gave an invocation and asked everyone to stand to recite the Pledge of Allegiance.

II. BOARD MEMBER PRESENT
Michael Moecker, Chair
H. Fred Dietrich, III

STAFF PRESENT
Anthony Spivey, Executive Director
Mary Alford, Government Analyst
LeChea Parson, Prosecuting Attorney
David Flynn, Assistance Attorney General
Tim Vaccaro, Deputy Secretary

COURT REPORTER
Habershaw Reporting Service
3910 Shiloh Way East
Tallahassee, Florida  32308-9405
850.385.9426

III. APPROVAL OF MEETING MINUTES AND RATIFICATION LIST

A. Minutes from September 30, 2011

Spelling correction needed.

Motion:  Fred Dietrich motioned to approve the minutes with the edit mentioned.

LeChea Parson: I have some corrections on a sentence that had a phrase omitted from it (ex. Line 234) It should read “it is appropriate at this time for the chair to entertain a motion that the allegation of fact and…….”

Chairman Moecker: Where there any materials of fact that changed in anything?
LeChea Parson: No

Fred Dietrich: Mr. Chairman, if no objections, I accept that as part of my motion of approval and that it is approved as corrected.

Second: Chairman Moecker seconded the motion and it carries unanimously

**B. Ratification List**

**November 18, 2011 - January 9, 2012**

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<tr>
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**Licensed by Auctioneer Apprentice**

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**Licensed by Auctioneer Exam/Endorsement**

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<td>ASSOCIATED WATCH AND JEWELRY BUYERS, INC</td>
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Anthony Spivey presented the application list for ratification.

Motion: Fred Dietrich moved that the applications be approved.

Second: Chairman Moecker seconded the motion. Motion carries unanimously

IV. DISCIPLINARY CASES

Informal Hearing
Jay Keilstock, AU 3249
2011-002096

The Department filed an administrative complaint May 23, 2011. The administrative compliant charged the respondent with violating Section 468.389(1)(c) failure to pay, account or return within a reasonable time and Section 468.388(4) failure to conduct an auction under a licensed auction business. Respondent contracted to auction items belonging to the complainant in August 2010, respondent sold some of the items at an auction under the business name, Jay Keilstock Auction. Mr. Keilstock failed to pay any proceeds from the auction in 2010 and Jay Keilstock Auction is not a licensed auction business in the State of Florida. In your materials you can see documents indicating the name Jay Keilstock Auction and materials from the website. Mr. Keilstock originally returned the Election of Rights (EOR) form signing it and having it notarized, but did not make a selection. We sent out a letter asking him to make a selection, he returned it and selected the formal hearing, but he did not indicate any material facts that were in dispute. He was sent another letter after that and he never responded to clarify which items in the Administrative Complaint he disputed for him to receive a formal hearing. Therefore, I have brought his case as an informal hearing since no disputed issues of fact are specified.
David Flynn: Are you requesting that the Board find he failed to properly complete his petition after being properly notified and asking them to deny his petition for a formal hearing?

LeChea Parson: Yes

Chairman Moecker: Did anyone ever talk to this guy on the phone?

LeChea Parson: I remember speaking to him prior to him sending in any of the forms. He called after receiving the complaint and had questions of what to do. I told him he needed to pick an option and confirmed contact information. We never heard back from that.

Chairman Moecker: What is the economic damage here, if any?

LeChea Parson: The complainant was not paid for the items he sent for auction.

Chairman Moecker: The funds raised at the auction went to offset the storage

LeChea Parson: I think that is what is in dispute if the storage fees he agreed to. The auction proceeds for the complainant would have been a little over $400.

Chair Moecker: How long has Mr. Kielstock been around?

LeChea Parson: His license was issued in 2001.

Fred Dietrich: I guess we look at license numbers from a different perspective. I have a real low license number and to me his license number is real high. It takes people several years, it is a hard business to work into, before they hold an auction if they are not doing business.

David Flynn: Before we discuss any facts in this case or anything you see in this investigation, we must answer the questions. The individual filed an EOR form initially and responded timely; however, it was deficient in that he did not make a selection of formal or informal hearing. Then it was sent back so he could correct it. He responded and marked he wanted a formal hearing to contest these facts; however, it is the position of the Department that he needs to explain which facts are in dispute and that is required by the uniform rules. There is a letter in there he sent that explains his dispute. You need to decide if he should continue with an informal or find that he has selected a right to a formal hearing and terminate this proceeding. I am leaning to advising that it is appropriate at this time to give him his rights to a formal hearing and terminate this proceeding.

Chairman Moecker: I agree, I was wondering if it is possible to send it back to him and say we have referred this matter.
LeChea Parson: If you terminate this hearing, I will have to refer it to the Division for a formal hearing.

Motion: Chairman Moecker motioned to refer to DOAH for a formal hearing.

Second: None.

Motion dies for lack of second.

Fred Dietrich: The respondent was informed, he had the opportunity, and he didn’t follow through with it. The burden of proof was on him. It is a real serious charge as an Auctioneer that sells things that belong to the public and don’t pay them. I am asking what is the proper terminology or motion to proceed with this case.

David Flynn: You would have to find that first the respondent did not appropriately file a petition for a formal hearing or a 120.571 hearing. You would need to find that the documents he sent were not appropriately submitted and complied with uniform rules disputing materials of fact. Ms. Parson is the one who submitted the motion. Ms. Parson is the one who has to deal with this if there is or is not an appeal, it is really up to the Department to push the issue of denying the petition for an informal hearing.

LeChea Parson: The motion would be to deny the respondent’s request for a formal hearing because he did not dispute any material facts. If you find there are material facts to dispute then it would be to terminate the hearing and refer to DOAH.

Chairman Moecker: If we did nothing at this moment?

David Flynn: If Mr. Dietrich makes that motion and that motion fails, because there are only two of you, it will fail and we can not move forward.

Motion: Fred Dietrich made a motion that there is no dispute to any material facts. Properly served with the administrative complaint and failed to timely or properly request a formal hearing.

Second: None.

Motion fails

LeChea: It will be referred to DOAH.

Mr. Dietrich: In the meantime this gentleman is still operating without any discipline to his license. To me that is a danger to the public.

Chairman Moecker: Had there been other circumstances or the facts a little different, monetary damage more significant I might have had a different opinion.
Cathy Jane Walker, AU 4802
d/b/a Triple Diamond Auction Co.
Case Number 2010-061602

The Department filed an Administrative Complaint on August 22, 2011; served by publication after certified mail, mail and phone attempts failed. The administrative complaint charged the respondent with violating Section 468.389(1)(c), Florida Statutes, failure to account, pay and return within a reasonable time. And Section 468.388(4), Florida Statutes, failure to conduct an auction under the auspices of a licensed auction business. On November 3, 2009, respondent contracted with Carol Sarames for the sale of furniture items at auction and took possession of the items. Respondent contracted under the auspices of an auction business called Triple Diamond Auction Company, which is not a licensed auction business in the State of Florida. Respondent failed to pay Ms. Sarames any of the proceeds from the sale within 30 days of the sale date. Respondent failed to provide a full accounting from the sale within 30 days of the sale date. Respondent has not returned any items consigned by the complainant. Failed to provide an EOR form and not requesting; she has waived her right to request a hearing.

Motion: Chairman Moecker motioned that the respondent has waived her right to hearing and was properly served.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Motion: Chairman Moecker made a motion adopting allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Motion: Chairman Moecker made a motion to impose fines of $2,000 ($1,000 each count) cost of $514.48, restitution $400 and decision to permanent revocation of the license. Revocation due to length of time passed with no efforts to correct the violation, no attempt of restitution and economic danger to the public.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

San Marco Auction Company, LLC, AB 2944
Case Number 2011-003833

The Department filed an Administrative Complaint on April 22, 2011. The respondent was served by publication after certified mail, mail, phone and email attempts failed. The complaint charged the respondents with violating Section 468.389(1)(c), failure to account, pay or return money or property within a reasonable time, violating Section 468.388(10)(b), failure to make records available to the Department upon request,
violating Rule 61G2-2.005 failure to update the Department on any change of address within 30 days, and violating Section 468.389(1)(h) commingling of fun. In May 2010 respondent contracted with Mr. Schwarz for the consignment of new furniture and miscellaneous merchandise. The items were auctions in June 2010 totaling $5,957.50 in sales. Complainant was owed $4,766.01 in proceeds, respondent partially paid in the amount of $1,235.40; the bank account where the partial payment was made from also included various personal expenses and was not a separate escrow account. In July 2010 the complainant consigned additional merchandise which he was not paid and no accounting was received. The respondent changed business locations without notifying the Department of the new address and in January 2011 the Department issued a subpoena for the respondent for the auctioneer’s records as required by statute and they were never received. In September the Board reviewed previous complaints on the business license and as of December 2011 the license was revoked. As with the other cases they failed to file an Election of Rights form or otherwise establish any dispute of material facts in the complaint and pursuant to Rule 28-106.111, FA, respondent waives the right to request a hearing.

Motion: Chairman Moecker made a motion the respondent was properly served and waived his right to a hearing.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Motion: Chairman Moecker made a motion to accept the allegations of fact and conclusion of law as in the complaint.

Second: Fred Dietrich seconds the motion. Motion carries unanimously.

Motion: Chairman Moecker made a motion to accept 4 (four) counts with a fine of $1000 each, cost $486.57, restitution $3530.51, revocation has already occurred.

Second: Fred Dietrich seconds the motion. Motion carries unanimously

V. REPORTS

A. Prosecuting Attorney – LeChea Parson

11 (eleven) cases received in legal, 1 (one) case out for supplemental investigation, 9 (nine) cases with Administrative Complaint filed, 8 (eight) cases ready for default (which means an Administrative Complaint filed with no response received), 4 (four) cases for formal hearing, 1 (one) case for settlement negotiations and 4 (four) cases for Board presentation and 3 (three) of those we have now handled.

Chairman Moecker: What about Scott Seinfeld?
LeChea Parson: That case was set for board, but it actually needs to be referred to DOAH for a formal hearing.

Chairman Moecker: One of the things that always concerns me is when we have an Auctioneer disciplined and part of the discipline is for them to return to the Board to see how they are doing we don’t have a way to follow up.

LeChea Parson: This Board may want to start looking at reports from discipline cases to see if the probation is being complied with as ordered. Other Boards do use quarterly reports as part of their agenda to check compliance as ordered.

Chairman Moecker: There must be some kind of register that we can keep so when it needs to be followed up by the Board.

LeChea Parson: Now we actually have conditions we can bring something before you to review and make sure they are complying.

B. Board Counsel – David Flynn

1. Rules Report

Rule 61G2-2.004
Rule 61G2-4.003
Rule 61G2-4.005 – repeal adopted January 31, 2012
Rule 61G2-5.003 – repeal adopted January 31, 2012
Rule 61G2-5.004 – repeal adopted January 31, 2012

David Flynn: We have been proceeding comprehensively in conjunction with the Department in reviewing the Auctioneer’s rules pursuant to the Executive Order. We have not had any problems working with the Department and complying with the OFARR Executive Order. The current status is per the voting at the last meeting.

2. Suggested Amendments to Rules

David Flynn: We had to do an enhanced economic biennial review and I reviewed all the work LeChea Parsons and Anthony Spivey did and I agree with their analysis. There are three more recommended amendments and I complied with the enhanced economic review, completed by December. The Board of Auctioneers is done.


David Flynn: The Department reviews the forms and there is no need to have a specific form listed so I have added “on a form prescribed by the Department.”

Motion: Fred Dietrich made a motion to accept changes to Rule 61G2-2.002
Second: Chairman Moecker seconds the motion.

Chairman Moecker: Will it have an adverse economic impact on small business?

David Flynn: When I look at it there is nothing changing to small businesses, it is an internal change.

Chairman Moecker: Mr. Flynn, will it have a $200,000 regulatory impact on any entity within one year after implementation?

David Flynn: Department, do we see any changes to economic impact from this change?

Anthony Spivey: We do not see any economic impact with these changes.

Vote: motion carries unanimously

Rule 61G2-5.001 – Requirements for Conducting an Auction

David: One small change as clean up to remove a rule that is being repealed.

Chairman Moecker: Will it have an adverse economic impact on small business?

Anthony Spivey: No

Chairman Moecker: Will it have a $200,000 regulatory impact on any entity within one year after implementation?

Anthony Spivey: No

Motion: Fred Dietrich made a motion to accept the deletion in Rule 61G2-5.001

Second: Chairman Moecker seconds the motion. Motion carries unanimously.

Rule 61G2-8.030 - Mediation

David Flynn: Recommended changes are complying with citing the correct provisions within the substance of the rule.

LeChea Parson: I have a recommendation about looking at additional violations that would be available for mediation.

Chairman Moecker: Can you give us a list of recommended violations to add for mediation for the next board meeting?

LeChea Parson: Yes, we can put a list together.
David Flynn: I can fix this with a tech change and I will draft a letter sending it over to the Bureau of Administrative Code to see if I can make the changes.

**C. Board Chair** – Chairman Moecker

Nothing to report at this time.

**D. Executive Director Report** – Dr. Anthony Spivey


2. Quarterly Financial Statements. (Period ending September 30, 2011)

   Operating account balance = ($140,105)

   Chairman Moecker: Was this a sweep?

   Anthony Spivey: No, not a recent sweep. Less money going into the account for that period, it was not a renewal time.

   Recovery Fund account balance = $441,974 All claims have been paid at this time.

   Unlicensed Activity account balance = $26,319

3. Apply Now! Project

   Applications pulled until next meeting due to new information and changes to the applications. Will review new applications at the March meeting.

**VI. OLD BUSINESS**

Follow up to confirm Mr. Bruce Scott has complied with his requirements per the Final Order by end of February.

**VII. NEW BUSINESS**

March 23, 2012 meeting will be held in St. Augustine

June 15, 2012 meeting will be held in Lakeland in conjunction with the Florida Auctioneer Association Convention.

September 28, 2012 meeting will be held in Tampa

December 11, 2012 meeting will be held in Tallahassee
Next meeting: applications, pending discipline for compliance, over the last several years to see success ratio of our collecting of the fines and cost. Are we actually recovering the money or is there anything else we can do to ensure the money is collected?

LeChea Parson: If they do not pay, it is sent to collections

Chairman Moecker: Who does that?

Mary Alford: I change the status in our system to have the case sent to collections. It is an independent third party that does the collections.

Chairman Moecker: I would like to have someone that is in charge of that to tell us what’s the process, what’s going on, problems or different ideas for collecting money for the next meeting.

Anthony Spivey: The Governor’s Office does have a list of individuals who have applied for the Board’s vacant positions.

**VIII. ADJOURNEMENT**

Meeting was adjourned at 11:15 a.m.