

MINUTES OF
THE FLORIDA BOARD OF AUCTIONEERS
The Department of Business and Professional Regulation
Casa Monica Hotel
95 Cordova Street
Saint Augustine, FL 32084
Friday, September 30, 2011
9 A.M.

Call to Order

Mr. Moecker, Chair, called the meeting to order at 9:09 a.m. Mr. Moecker asked Mr. Dietrich to give an invocation and asked everyone to stand and recite the pledge of allegiance.

BOARD MEMBERS PRESENT

Michael Moecker, Chair
H. Fred Dietrich, III
Billy Wayne Collins

STAFF PRESENT

Anthony Spivey, Executive Director
Terri McEwen, Government Analyst
Lisa Kirkland Osteen, Government Analyst
LeChea Parson, Prosecuting Attorney
C. Khai Patterson, Assistant Attorney General
David Flynn, Assistant Attorney General

OTHERS PRESENT

Gayle Dietrich
Jim Melone
Tom Paranzino
Tim Paranzino
Gavin Abadi
Velma Morgan
Elnora Parson
Josephine Smith

COURT REPORTER

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APPROVAL OF MINUTES FROM JUNE 10, 2011

The minutes were approved with the following corrections. On page 3, line 16 change Fed to Fred; line 33, change Delma to Velma; page 23, line 931 change bases to basis.

Motion: Mr. Dietrich moved to approve the minutes with the noted corrections.

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

APPROVAL OF MINUTES FROM JULY 22, 2011

Motion: Mr. Dietrich moved to approve the minutes as presented.

Motion: Mr. Collins seconded the motion and it passed unanimously.

APPLICATIONS

Mr. Spivey presented the application list for ratification. Please refer to pages 27 and 28 of the September 30, 2011 agenda.

Motion: Mr. Collins moved to approve the auctioneer ratification application list as presented.

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

BOARD COUNSEL REPORT

Khai Patterson, Assistant Attorney General and Board Counsel, reported that she would be leaving her position as Board Counsel for the Auctioneers and the Assistant Attorney General, David Flynn would be the new Board Counsel.

Motion: Mr. Dietrich moved that the Auctioneer Board send a letter of commendation to the Attorney General's Office for Khai Patterson's outstanding service to the Florida Board of Auctioneers

Second: Chairman Moecker seconded the motion and Mr. Collins concurred.

PROSECUTING ATTORNEY REPORT

Gavin Abadi, AU3400
Case Number 2009-059624

LeChea Parson, Prosecuting Attorney explained that the fines of this stipulation agreement were \$1,000.00, two year's probation and that the costs were \$533.85.

Mr. Dietrich requested that as a condition of probation, Mr. Abadi send copies of his Florida advertisements to the board, quarterly. Mr. Abadi agreed.

Motion: Mr. Dietrich moved to amend the stipulation agreement.

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

San Marco Auction Company AB2944
Case Number 2010-058613

The Department filed an administrative complaint May 23, 2011. Respondent was served with the complaint by publication. After mail, email and telephone attempts failed, respondent has failed to file and election of rights form or otherwise establish issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

It is appropriate at this time for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction and Chapter 468.389 (1)(j), violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department which shall be grounds for disciplinary actions, and Chapter 468.388(10)(b), each auction business shall maintain, for not less than two years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and available for inspection by the department or at the request of the board. The respondent failed to pay for or return six Persian rugs shipped to it by Mr. Shlomo Besharim, respondent failed to provide Mr. Besharim a full accounting from the auctions of the rugs, and failed to keep auction funds in a separate account as required.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the above case are those of the board.

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

Motion: Chairman Moecker made a motion for San Marco Auction to pay costs of \$1033.28, (\$1,000.00 for each violation) \$2,000.00 fine and

revocation of AB 2944 because of aggravating factors including danger to the public, no attempts to correct the violation and the length of time since the violations occurred.

Second: Mr. Dietrich seconded the motion, the vote was called by Chairman Moecker and the motion passed unanimously.

San Marco Auction Company AB 2944
Case Number 2011-003827

The Department filed an administrative complaint April 22, 2011. Respondent was served with the complaint by publications after certified mail, email and telephone attempts failed. The respondent has failed to file an election of rights form or otherwise establish issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction and Chapter 468.389 (1)(j), violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department which shall be grounds for disciplinary actions, and Chapter 468.388(10)(b), each auction business shall maintain, for not less than two years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and available for inspection by the department or at the request of the board. The respondent failed to pay for or return a rug that was auctioned on behalf of Mrs. Draper. Respondent failed to provide Mrs. Draper a full accounting from the auctions of the rugs and failed to keep auction funds in a separate account as required.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the above case are those of the board.

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

Motion: Mr. Dietrich moved that San Marco Auction shall pay \$2,000 (\$1,000.00 for each count), costs of \$426.93 and restitution of

\$345.00, revocation of the license because of aggravating factors including danger to the public, no attempts to correct the violation and the length of time since the violations occurred.

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

San Marco Auction Company AB 2944
Case Number 2010-098237

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction. Complainant, Mr. Wambold, contracted with the respondent to sell a Bronze statue which sold at auction for \$1,590.00 (May of 2010) and the respondent failed to pay Mr. Wambold the proceeds of approximately \$1,350.00 in auction proceeds.

The Department filed an administrative complaint May 23, 2011. The respondent was served with the complaint by publication after mail, email and telephone attempts failed. The respondent has failed to file and election of rights form or otherwise established issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the complaint are those of the board.

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

Motion: Mr. Dietrich moved that San Marco Auction Company shall pay \$1,000.00 in fines, \$1,455.76 in costs, revocation because of because of aggravating factors including danger to the public, no attempts to correct the violation and the length of time since the violations occurred, and ordered restitution in the amount of \$1,350.00.

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

San Marco Auction License AB2944
Case number 2010-048299

The Department filed an administrative complaint May 23, 2011. Respondent was served with the complaint by publication after mail, email and telephone attempts failed. The respondent has failed to file an election of rights form or otherwise established issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction and Chapter 468.389 (1)(j), violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department which shall be grounds for disciplinary actions, and Chapter 468.388(10)(b), each auction business shall maintain, for not less than two years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and available for inspection by the department or at the request of the board, and Chapter 468.388 (1) Florida Statutes, requires that prior to conducting an auction in this state, and auctioneer or auction business shall execute a written agreement with the owner, or the agent of the owner, of any property to be offered for sale. Respondent failed to execute a written contract with Mr. Chatel prior to the consignment and auction of the jewelry. Mr. Chatel is owed over \$2,305.00 and a partial payment that was made was in the form of a check drawn from a non-escrow account.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the complaint are those of the board.

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

Motion: Chairman Moecker made a motion requiring San Marco Auction Company to pay Fines of \$3,000.00 (three counts) costs of \$626.00, revocation because of because of aggravating factors including danger to the public, no attempts to correct the violation and the length of time since the violations occurred, and restitution in the amount of \$2,305.00.

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

The Department filed an administrative complaint May 2011. Respondent was served with the complaint by publication after mail, email and telephone attempts failed. The respondent has failed to file an election of rights form or otherwise established issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction and Chapter 468.389 (1)(j), violating a statute or administrative rule regulating practice under this part or a lawful disciplinary order of the board or the department which shall be grounds for disciplinary actions, and Chapter 468.388(10)(b), each auction business shall maintain, for not less than two years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and available for inspection by the department or at the request of the board, and Chapter 468.388 (10) (a), Florida Statutes, requires that when settlement is not made immediately after an auction, all sale proceeds received for another person must be deposited in an escrow account or trust account in an insured bank or savings and loan association located in this state within 2 working days after the auction. A maximum of \$100 may be kept in the escrow account for administrative purposes. Complainant Nir Shaham contracted with respondent to consign merchandise and was owed approximately \$23,000. Respondent submitted checks several times and both checks were returned for non-sufficient funds.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the complaint are those of the board.

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

Motion: Mr. Dietrich moved that San Marco Auction Company shall pay fines in the amount of \$2,000.00 (2 counts), costs in the amount of \$752.00, revocation of license because of aggravating factors including danger to the public, no attempts to correct the violation

and the length of time since the violations occurred, and restitution in the amount of \$12,871.00.

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

Motion: Chairman Moecker moved to add an additional aggravator because of the misuse of funds with no escrow account provided and the severity of the offense.

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

San Marco Auction Company AB2944
Case Number #2011003091

The Department filed an administrative complaint May 2011. Respondent was served with the complaint by publication after mail, email and telephone attempts failed. The respondent has failed to file and election of rights form or otherwise established issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its rights to a hearing.

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

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction, and Chapter 468.388(10)(b), each auction business shall maintain, for not less than two years, a separate ledger showing the funds held for another person deposited and disbursed by the auction business for each auction. The escrow or trust account must be reconciled monthly with the bank statement. A signed and dated record shall be maintained for a 2-year period and available for inspection by the department or at the request of the board. On August 25, 2010 two sisters, Mrs. Hardie and Mrs. RauHofer, contracted with San Marco Auction Company to auction items from their mother's estate. An auction was conducted September 26, 2010 where many of the items were sold. The sisters never received payment for the sold items or an accounting of what was sold and what was left to be sold.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the complaint are those of the board.

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

Motion: Chairman Moecker moved that San Marco Auction Company shall pay \$2,000.00 in fines (\$1,000.00 for each count), \$657.28 in costs and revocation of the license because of aggravating factors of the severity of the offense and failure to respond to the subpoena, and \$941.85 in restitution.

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

Patty Kay Garrett and Patty's Auction Company AU 3470 and AB 2449
Case # 2010-038931 and 2010-038922

The Department filed an administrative complaint in February 2011. Respondent was served with the complaint by publication after mail, email and telephone attempts failed. The respondent has failed to file an election of rights form or otherwise established issues of material fact in response to the complaint and failed to request a hearing to dispute the issues of material fact.

Motion: Mr. Dietrich moved that the respondent was properly served and has waived its right to a hearing.

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

It is appropriate for the Chair to entertain a motion that the allegations of fact and the conclusions of law are those of the Board. The administrative complaint charged the respondent with violating Chapter 468.389 (1)(c), failure to account for or to pay or return, within a reasonable time not to exceed 30 days, money or property belonging to another which has come into the control of an auctioneer or auction business through an auction. April 2010, Complainant, Mr. White contracted with Patty Kay Auction Company to auction household items. Some of the items were sold but no proceeds were received nor were any accounting made of the items sold or not sold.

Motion: Mr. Dietrich moved that the allegations of fact and conclusions of law in the complaint are those of the board.

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

Motion: Chairman Moecker moved that Patty Kay Garrett shall pay a fine of \$1,000.00, costs in the amount of \$808.98, and revocation of both the Auctioneer and Auctioneer Business licenses because of aggravating factors of length of time since the offense and potential danger to the public.

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

Application Review

Application by endorsement for Thomas Parinzino and Timothy Parinzino.
Misters Parinzino were present and were sworn in by the court reporter.

In 2004 the Parinzino's had a complaint filed against them regarding a light fixture because it had drywall dust on the fixture. The auction was advertised as all new items. The Investigator reviewed the auction in question and opened a case against them. There were issues over advertising public auctions verses private auctions. Newspapers were just changing the dates of the Auction, not the information. A Pennsylvania license number was listed for an ad from an Ohio Auction. They are currently licensed in Ohio, Pennsylvania and West Virginia.

Motion: Mr. Dietrich moved that Thomas Parinzino be approved through reciprocity as the state of Ohio reflects that he is a licensee in good standing.

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

Motion: Mr. Dietrich moved that Timothy Parinzino be approved through reciprocity as the state of Ohio reflects that he is a licensee in good standing.

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

Prosecuting Attorney's report: Case Load Status

As of September 16, 2011:

One private case out for supplemental investigation.

Three cases where the administrative complaint has been filed and is out for service

One case ready for default or ready for a motion for waiver.

One case in settlement negotiations.

11 cases sent to the board and all but two of which were presented today.

Board Counsel Khai Patterson

Rule 61G2-2.004 endorsement of reciprocity

Motion: Chairman Moecker moved to repeal rule 61G2-.004 only as it relates to subsection 4 and repeal of such will not have an adverse impact on small businesses nor would there be any increase in regulatory cost in excess of \$200,000 within one year after implementation.

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

Rule 61G2-4.003 Change of Sponsor amend subsection 2 by adding “as provided for by statute.”

Motion: Chairman Moecker moved to amend subsection 2 by adding “as provided for by statute.”

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

Rule 61G2-4.005 Funds received by apprentice

Motion: Chairman Moecker moved to repeal rule 61G2-4.005.

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

61G2-5.001 requirements for conducting an auction

Motion: Chairman Moecker moved to keep rule 61G2-5.001 as is.

Second: Mr. Dietrich seconded the motion and it carried unanimously.

61G2-5.003 Client funds and sale proceeds

Motion: Chairman Moecker moved that rule 61G2-5.003 be repealed.

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

Executive Director's report

Anthony B. Spivey presented the financials Operating account 6/30/11 (- \$200,935.)

Auction Recovery Fund 6/30/11 (\$464,413)

Payments that have been submitted for distribution from this account. DBPR has submitted a budget request to disperse the funds

Unlicensed activity \$24,378.

Florida Auctioneer's Association contacted Dr. Spivey regarding the Auctioneer's Board Meeting in November. The Auctioneer meetings are scheduled in 90 day cycles to meet noticing deadlines. The Auctioneer Board is meeting in June of 2012 and could tie into a summer meeting with the association.

Exam reviews July to June 30th of 2011.

Chairman Moecker adjourned the meeting at 12:22 p.m.