

MINUTES
Board of Auctioneers
Conference Call Meeting
November 12, 2003
10:00 a.m.

CALL TO ORDER

Chairman Fred Dietrich called the meeting to order at 10:05 a.m. The meeting was opened with a roll call and a quorum was established.

The following members were present:

Fred Dietrich, Board Chair
JoAnn (Jody) Hill, Board Member
Craig Accardo, Board Member

Michael Moecker, Auction Company Principal

Excused Absence

Annette Elms – Excused Absence

Others Present

Julie Malone, Executive Director, DBPR
Donna Salters-Thomas, Government Analyst, DBPR
Mary Ellen Clark, Assistant Attorney General
Charles Pellegrini, Prosecuting Attorney
Tom Fiener, Bay Area Auctions
Bob Wellston, Witness
Gary Houston, Attorney
Richard Gibbs, Applicant
Jean Sosnowski, Applicant
Michael Joyce, Applicant
Rhonda Ledford, (City of Longwood) Applicant
Todd Buchard, Applicant
Bob Boyleston, Complainant
Anthony Nardella, Attorney for Mr. Shaia
Joseph Shaia, Auctioneer
Jim Skeen, Auctioneer, Florida Auctioneer Academy

Approval of Minutes

Jody Hill made the motion to approve the minutes of the September 25, 2003 meeting with the following correction: Joann (Jodi) Hill should be JoAnn (Jody) Hill. Michael Moecker seconded the motion and the minutes passed unanimously.

DISCIPLINE

Motions of Default

- **Case # 2002-007567**, Lake Worth Antique Mall was presented by Mr. Pellegrini. The Board considered a motion for default and final order an administrative complaint was filed on March 11, 2003, which was served on the respondent in the *Jupiter Courier* June 4, 18 & 25, 2003. The department charged the respondent license number AB 2154, in a violation of Sections 455.227 (1) (j), F.S., aiding and abetting unlicensed activity and 468.389 (1) (c), F.S. failure to account for money and property of another; 468.389(1)(e), F.S., conduct demonstrating bad faith or dishonesty. The respondent failed to file an election of rights to dispute issues of material facts within 21 days and has waived his rights to request an evidentiary hearing. The respondent and his attorney, Anthony

Lapreta, were served with notices by certified mail. The respondent conducted an auction on April 26, 2002, and failed to pay proceeds of \$148.00 to the sellers. The respondent has no prior discipline, however, case # 2002-006091 is on this agenda and a third case # 2002-014015 is awaiting the completion of service of process, which will be presented at a future meeting.

The department recommended that the Board issue a final order imposing an administrative fine of \$6500.00; costs of \$507.85; restitution of \$148.00 plus 18% interest dating from May 11, 2002, and revoke license #AB 2154.

Ms. Hill made the motion to accept the finding of facts and conclusion of law. Mr. Moecker seconded it. The motion passed unanimously.

Mr. Moecker moved to accept the proposed administrative fine of \$6500.00; costs of \$507.85; restitution of \$148.00 plus 18% interested dating from May 11, 2002 and revoking license #AB 2154. The motion passed unanimously.

Case #2002-006091, Lake Worth Antique Mall was presented by Mr. Pellegrini. The Board considered a motion for default and final order an administrative complaint was filed on March 11, 2003. The complaint was served on respondent in the *Jupiter Courier* June 4, 11, 19 & 25, 2003. The department charged the respondent with a violation against license number # AB 2154 conducting an auction without a proper written agreement and failure to turn over proceeds of \$1064.00. The auction was conducted on April 13, 2002.

Respondent was charged with violating Sections 468.389 (1) (c), F.S., failure to account for money and property of another, and Sections 468.389(1)(e), F.S., conduct demonstrating bad faith or dishonesty. The respondent failed to file an election of rights to establish a disputed issue of material facts within 21 days and has waived his rights to request an evidentiary hearing. The respondent and his attorney, Mr. Lapreta, were served by certified mail and neither was present on the conference call.

The department recommended that the Board issue a final order and adopt the findings of fact and conclusion of law imposing a fine of \$12,000.00, costs of \$822.16, restitution in the amount of \$949.00 with interest of 18% dating from May 15, 2002; and revoke respondent's license AB 2154. Mr. Moecker moved to accept findings of facts and conclusion of law. Mr. Accardo seconded the motion. The motion passed unanimously.

Ms. Hill moved to accept the proposed administrative fine and costs. Mr. Moecker seconded it and the motion passed unanimously.

Stipulations

Case # 2002-01431, Joseph A. Shaia. The Board considered a settlement stipulation for license #AU717 that ended August 26, 2003. In an administrative complaint filed March 11, 2003 the department charged the respondent with a violation of Section 468.391 (c), F.S., failing to account for money or property of another in his control. The respondent conducted the auction in November 1998. At the time of the complaint in April 2000, the respondent had paid only \$1800 in proceeds of a \$16,115.00 sale. Mr. Pellegrini reported that since then, Mr. Shaia has been successful in paying proceeds in full. The respondent has two prior disciplines; the first in 1994 where he entered into a stipulation on allegations of fraud, deceitful practice and unlawful advertising. He paid a fine of \$1000.00 and costs of \$410.70. In 2002, he entered into another stipulation settlement on allegations of violating Sections of 468.389 (1) (a) and (l), F.S. In that case, he paid a fine of \$1000.00, costs of \$567.10 and his license was suspended for six (6) months.

As discipline in this case, the settlement stipulation would impose a fine of \$1000.00, investigative costs of \$642.02; and place respondent on probation for 12 months. The department requests that the Board enter a final order adopting the settlement stipulation.

Mr. Nardella agreed with the settlement stipulation on behalf of Mr. Shaia. Mr. Shaia was sworn in by Ms. Clark and informed the Board that he has sold his business and is currently working one day a week acting as a bid caller. Mr. Dietrich expressed his concern about this being Mr. Shaia's third case of discipline.

Mr. Skeen was sworn in and spoke on of the character of Mr. Shaia. He explained that he has monitored Mr. Shaia's sales for about 2 1/2 years. In addition he stated that Mr. Shaia runs an exemplary auction and that this case is different in that it is a long-term business arrangement and does not affect the public. Mr. Nardella stated that Mr. Shaia had hundreds of thousands of dollars of assets impounded by attorneys in Delaware. He informed the Board that Mr. Shaia had the option of filing bankruptcy, but he did not and this debt has since settled.

A motion was offered by Ms. Hill to accept the findings of fact and the conclusion of law. Mr. Accardo seconded it and the motion passed unanimously.

A motion was offered by Mr. Moecker to accept the settlement stipulation of an administrative fine in the amount of \$1000.00, investigative costs of \$642.02 and place respondent on probation for 12 months. The motion was seconded by Ms. Hill and passed unanimously.

Case # 2002-01549, Joseph A, Shaia, d/b/a American International Appraisers and Joseph Shaia Auction, Inc. holder of AU 717(Mr. Shaia) & AB 426 (Amer. Intern'l Appr.) entered with the department August 26, 2003. In an administrative complaint filed June 4, 2003 the department charged the respondent with violating Sections 468.389 (1) (d), F.S., unlawful advertising and 468.389 (j), F.S. Also, respondent was charged with violations of section 468.388 (4), F.S. requiring the auction to held under auspices of a licensed auction business, and (11) (b) disseminating unlawful advertising. The respondent conducted an auction on January 20, 2000, under an unlicensed auction business name.

In the settlement stipulation, an administrative fine of \$1,000.00 would be imposed; costs of \$543.64; and probation for 12 months to run concurrent with probation in the previous case. The department requests that the Board enter a final order adopting the settlement stipulation.

Mr. Nardella addressed the Board agreeing that there was a problem with Mr. Shaia not having properly registered the business name. He explained that all phone numbers and license numbers were properly displayed on the advertisement and that no one was harmed by this mistake. He agreed to the stipulation of a fine of \$1000.00 and probation.

Mr. Accardo moved to accept the findings of facts and conclusion of law. Mr. Moecker seconded it. The motion passed unanimously.

Ms. Hill asked about stipulations and conditions of probation. Mr. Pellegrini responded by saying that the stipulations may deal with education, remediation, or something relating to the offense to ensure that it will not occur again.

Along with the department's recommendation to the settlement stipulation of imposing an administrative fine of \$1,000.00; cost of \$543.64; and probation for 12 months to run concurrent

with previous order of probation, Mr. Skeen of Florida Auctioneer Academy would monitor 50% of Mr. Shaia's auctions and submit a probation report within 15 days of the end of quarter to the board office. There were no objections and the recommendation passed by general consent.

Case # 2003-004217, Daniel J. Perry license #AU 2630 (ended with the department on September 15, 2003). In an administrative complaint filed June 4, 2003, the department charged the respondent with a violation of Section 468.389 (1) (c), F.S., failing to account for the money or property of another in his control. The respondent conducted an auction on April 17, 2002, in which he failed to account for or return unsold items. The respondent has no prior discipline. As discipline, the settlement stipulation will impose a fine of \$100.00; and costs of \$125.27.

Mr. Pellegrini explained that this discipline is below the disciplinary guidelines by the absence of a reprimand as Mr. Perry fully complied with requests as well as put forth efforts to correct problems with the complainant and that there are no prior complaints or discipline.

The department requested that the Board entered a final order adopting the settlement stipulation in this matter.

Mr. Moecker made a motion to accept the findings of facts and conclusion of law. Mr. Accardo seconded it. The motion passed unanimously.

Case # 2002-010001, Mr. Richard Royal Gibbs, license # AU0003008 entered the department on October 6, 2003, in an administrative complaint filed March 4, 2003. The department charged the respondent with 16 counts of violating Chapters 468 Part VI & 455, all relating to the professional conduct while his license was delinquent then null and void. Counts 15 and 16 in the administrative complaint relating to the unlicensed activity of Forest Gibbs proved to be unsustainable. Case # 2003-047096 of an unlicensed activity complaint against Mr. Gibbs was closed on May 30, 2003, on findings of insufficient evidence. The respondent has no prior discipline. As discipline in this matter, the settlement stipulation would impose an administrative fine of \$4100.00; costs of \$264.71, and a reprimand. The department requested that the Board enter a final order adopting the settlement stipulation as the disposition in this order.

Mr. Houston, attorney for Mr. Gibbs, explained that Mr. Gibbs' auction business license remained in effect although his auctioneer's license had expired. Mr. Gibbs expressed his embarrassment in this situation and noted health problems that somewhat contributed to his negligence in not renewing his auctioneer's license.

Mr. Moecker made a motion to accept the findings of fact and conclusion of law. Mr. Accardo seconded the motion. At this point Mr. Boyleston, complainant of Mr. Gibbs offered mitigation. He was sworn in and addressed the Board concerning the internal investigation report against Mr. Gibbs. Mr. Boyleston expressed his concerns with Mr. Gibbs' continuance to do auctions after he had expressed to him in a conversation that he was no longer doing auctions as an auctioneer. He indicated that if Mr. Gibbs had the control to keep the AU license, he had the same control to keep the AB license renewed. Mr. Dietrich commented that Mr. Gibbs had an active AB license that allowed him to participate in auctions within the scope of the law. Mr. Dietrich pointed out the instances where he hired auctioneers, however, Mr. Pellegrini's investigation found where he conducted an auction from start to finish without an active AU license and one where he relieved the auctioneer for about 15 minutes.

The stipulated disposition would impose an administrative fine \$4100.00; costs of \$1264.71; and reprimand of respondent's license.

Ms. Hill moved to accept the recommended stipulated disposition. Mr. Moecker seconded it. Mr. Dietrich offered an amendment of \$2000, costs of \$1264.71; and one year probation. The motion failed, and the original motion stands. The motion passed unanimously.

Motion to Deny Petition

Case # 2002-005210, Donnie Clay Connolly was rescheduled for the next general meeting on December 5, 2003.

APPLICATIONS WITH DISCLOSED CRIMINAL HISTORY

Todd Buchard, application for auctioneer apprentice # 69 was presented by Ms. Malone. The motion to accept Mr. Buchard's application was made by Mr. Moecker. It was seconded by Mr. Accardo. The motion passed unanimously.

City of Longwood, auction business application # 576 submitted by Rhonda Ledford. Ms. Ledford requested that the application for an auction business license be presented before the Board for clarity as to whether or not the City of Longwood (a governmental entity) would require an AB license to auction city surplus material on the Internet. Mr. Pellegrini referred to Section 468.433 (1), F.S., to explain that auctions conducted by an owner and/or a governmental agency are exempt from the requirements of an AB license. However, if the City of Longwood allows other governmental agencies to sell surplus on its site, may exclude the City of Longwood from its exempt status.

Ms. Clark informed Ms. Ledford that they (the City of Longwood) might want to file a petition of declaratory statement to receive a legally binding statement of their position. A refund will be issued to the City of Longwood.

James W. Sosnowski, application # 124 was presented by Ms. Malone. Mr. Thomas Farner was sworn in and addressed the Board regarding Mr. Sosnowski's character. Mr. Moecker motioned to approve the application. Ms. Hill seconded it. The motion passed unanimously.

Michael Anthony Joyce, application #69 was presented by Ms. Malone. Mr. Joyce and Mr. Scott Robertson both were sworn in by Ms. Clark. Mr. Joyce addressed the Board indicating that he has submitted all documents for the auctioneer's license and that he has been conducting auctions at least 8 years working with Mr. Robertson as the auctioneer. Mr. Robertson addressed the board indicating that there has never been any problems concerning Mr. Joyce as an apprentice and that he is surprised the same criminal history disclosure required coming before the Board again.

Mr. Moecker made a motion to accept the application. The motion was seconded by Ms. Hill and passed unanimously.

Ratification of Applications

Ms. Salters-Thomas presented the ratification lists. There were four (4) auctioneer apprentice applications presented. Mr. Accardo moved to accept the applications. Ms. Hill seconded it. The motion passed unanimously.

There were seven (7) endorsement applications presented for ratification. The motion to approve the applications was made by Mr. Moecker and seconded by Ms. Hill. The motion passed unanimously.

There were fourteen (14) applications presented for auctioneer exam ratification. The motion to approve the application was made by Ms. Hill and seconded by Mr. Moecker. The motion passed unanimously.

There was one (1) application presented for ratification from null & void. The motion to approve the application was made by Mr. Moecker and seconded by Ms. Hill. The motion passed unanimously.

REPORTS

Mr. Dietrich reported that he was very pleased with the Board training held in Tallahassee on September 30 – October 1, 2003. Mr. Moecker commented that he was very impressed with the caliber of people involved with the training and that he appreciated the level of professionalism in the division.

Mr. Dietrich also reported that the request for one board member and a member of staff attends the NALLOA meeting in January was denied. The reason for the denial is that the cruise ship meeting is considered to be out of the country. He suggested that the Board consider sending two representatives (a board member and one staff member) to the NALLOA National meeting on July 15, 2004 in Madison, Wisconsin. Ms. Malone reminded the Board that this recommendation is per budget as the department will be in a new fiscal year at that time. Mr. Moecker moved to accept the recommendation and Mr. Accardo seconded it. The recommendation passed unanimously.

Executive Directors Reports

Ms. Malone reported that she sent letters of commendation to Mr. James Patton and Ms. Cheryl Biesky as requested by the Board at the September 25, 2003, meeting.

Ms. Malone provided financial reports from the unlicensed activity account, operating account and the auctioneer's recovery fund for the Fiscal Year 2002-03. She reported that \$172,500 was transferred 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 the budget and the Legislature that was approved by the Governor. She informed them that this was not a loan and this was, in part due, to the number of spending initiatives that were on the ballot that the voters approved.

Ms. Malone provided to the Board a copy of North Carolina auction business law for research purposes and reported that she did receive statutory citations from Board counsel regarding the criminal background checks for the auction business application. This information will be addressed at the December 5th meeting.

Board Counsel Report

Ms. Clark reported on the proposed rule 61G2-2.0035, F.A.C., draft language. A provision in Chapter 455, F.S., that requires each Board pass a rule to address the renewal exemptions for military spouses. The motion was made to accept the proposed language by Ms. Hill and seconded by Mr. Moecker. The motion passed unanimously and the proposed language will be noticed by Ms. Clark.

Ms. Clark also reported that she met with Mr. Ron Safford regarding violations that could be mediated. She reported that there is nothing available in the rules that involve money, according to the current rules, that can be mediated. She indicated that it is up to the Board to decide if they want to expand mediation to other violations that will reduce costs associated with investigations. Board members shared a concern regarding violations that may be resolved through mediation. The Board wants these to remain public and they want to continue handling these cases.

Next Meeting

Ms. Hill requested to be excused from the December 5, 2003. Mr. Moecker made a motion to excuse Ms. Hill due to a schedule conflict. The motion passed unanimously.

Mr. Dietrich asked to have a public comment section on the agenda for the December 5, 2003, meeting.

Mr. Dietrich suggested that Board members attend the reception at the December 6th Florida Auctioneers Association Convention in Kissimmee.

Mr. Moecker, Ms. Hill, Mr. Dietrich and Ms. Clark commented that they were receiving calls from the public regarding applications and other general information. The Board asked staff to see how the public is contacting them by phone.

The Board recommended that starting in FY 2004, there be two (2) in-person meetings per year. A motion was offered by Mr. Moecker and seconded by Ms. Hill. The motion passed unanimously. Ms. Malone advised the Board that this request be presented to the department.

Ms. Clark advised the Board about swearing in individuals by conference calls.

A Board meeting is tentatively scheduled for March 9, 2004, by conference call. This date will be confirmed at the December 5th meeting in Kissimmee.

The meeting was adjourned at 1:27 p.m.