

**MEETING OF
THE FLORIDA BOARD OF AUCTIONEERS**
The Department of Business and Professional Regulation
Casa Monica Hotel

95 Cordova Street
St. Augustine, Florida 32084
Thursday, December 10, 2009 @ 9:00am est.

CALL TO ORDER

Mr. Moecker, Chair, called the meeting to order at 9:05a.m. Mr. Moecker asked everyone to stand and recite the Pledge of Allegiance and Mr. Dietrich gave the invocation. There was a roll call and a quorum was established.

BOARD MEMBERS PRESENT

Michael Moecker, Chair
Craig Accardo
H. Fred Dietrich, III
Donald "Don" Shearer

STAFF PRESENT

Anthony Spivey, Executive Director
Renese Jones, Government Analyst
LeChea Parson, Prosecuting Attorney
David Flynn, Assistant Attorney General

OTHERS PRESENT

John Coakley, Auction Bazaar
Gayle Dietrich, Dietrich and Assoc.
Kale Albritton, Retired
Gary Bowman
Blen Gibson
Jimmy Tipton
Jake A. Shallow

COURT REPORTER

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Opening Remarks: Each individual should state their first and last name before speaking.

APPROVAL OF MINUTES FROM SEPTEMBER 29, 2009

The minutes were approved with no changes and corrections.

Motion: Mr. Shearer moved to approve the minutes.

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

PUBLIC COMMENTS

No comments

APPLICATIONS

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

AUCTIONEER RATIFICATION LIST 9.1.2009-11.11.2009

Apprentice

NONE

Examination

CUTICELLI, JONATHAN P	AU	4009
EOUSE, SABRINA DORTHY	AU	4029
GUTTRIDGE, DARYL BELSON	AU	4011
JONES, WILLIAM NICHOLS	AU	4018
KRAJIC, MICHAEL KENNETH	AU	4041
LICATA-BERNATH, ANDREA JOEL	AU	4007
LOVELADY, JEFFERY S JR	AU	4039
MALONE, SARAH NELL	AU	4019
MALONE, WILLIAM CHARLIE	AU	4020
MCLENNON, JOSEPH ALAN	AU	4023
MIRANDA, ROBERT G	AU	4027
NEWTON, DEIDE ELLEN	AU	4040
SPARLING, BRIAN CHRISTOPHER	AU	4038
STEEN, JOHN GERRIT	AU	4036
STORER, RANDY RAY	AU	4010
SUGGS, DANA KIRBY	AU	4021
WASHINGTON, ALONZO T	AU	4022

Endorsement

BATES, SHERYL LYNN	AU	4025	TX
BENNETT, DERRELL C JR	AU	4012	GA
BLECHMAN, MARK B	AU	4028	TX, PA, NY
DANHAUER, LEE MARTIN	AU	4015	NC, SC, TN
FORTNER, JOEY LEE	AU	4048	GA

HERTLING, JOHN B	AU	4044	VA
JAKOB, FRANK ADAM	AU	4014	NC
KRIEBEL, STEPHEN ALAN	AU	4032	PA
MANGES, JAMES SYLVESTER	AU	4035	MN, WI, IL
MCLEOD, KENNETH ALLAN	AU	4033	GA
MERRILL, BOB H	AU	4043	TX
PAINE, STANLEY J	AU	4046	MA
PERRONE, RONALD CHARLES	AU	4037	VA
ROGERS, DUSTIN BRACKY	AU	4016	NC
SHADLE, TIMOTHY JOHN	AU	4042	PA
STALEY, CHRIS LEE	AU	4030	IL
TAYLOR, O W DUSTY	AU	4017	LA, MS, TX
VAUGHN, JAMES ERIC	AU	4047	GA
VOSS, ANDREA M	AU	4034	TX, NY
WALKER, JACOB	AU	4031	TX
WEAVER, LAWAYNE GWYN	AU	4026	GA
WILSON, LARRY DAWSON	AU	4045	AR, MS, AL
WINKEL, JOHN R	AU	4008	IN
WOOTEN, CHARLES R	AU	4024	AL

Null & Void

IRVING, WAYNE E	AU	4013	
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Business

5 STAR AUCTIONEERS	AB	2878
AAA LICENSED AUCTIONEERS ASSOCIATION OF AMERICA	AB	2884
AFFORDABLE ANTIQUES INC	AB	2883
ANGELS BUSINESS CENTER LLC	AB	2868
AUCTION BORKERS LLC	AB	2864
BARFIELD AUCTIONS INC	AB	2863
BILL HOUKES AUCTION'S LLC	AB	2867
BURTON AUCTIONEERS	AB	2870
CHARLESTON AUCTIONEERS INC	AB	2869
COASTLINE AUCTION AND REALTY INC	AB	2882
FRED'S BARGAIN BARN	AB	2885
GLENN RASCO	AB	2874
HARRIS AUCTIONS LLC	AB	2873
HICKORY HILL AUCTIONS	AB	2881
IAS FAMILY INC	AB	2877
LANGAR LLC	AB	2879
LINDA'S HOMETOWN FURNITURE & AUCTION	AB	2871
MAAS COMPANIES INC	AB	2862
NORTHWEST FLORIDA AUCTION GROUP INC	AB	2875

PHOENIX AUCTION SERVICES	AB 2866
RAYMOND J RAU MANAGEMENT CORP	AB 2872
RENAISSANCE ESTATE AUCTION GALLERY LLC	AB 2876
ROSE AUCTIONS LLC	AB 2865
ROYAL AUCTIONS INC	AB 2880

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

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

APPLICATION REVIEW

Kale E. Albritton - Mr. Albritton was present and was sworn in by the court reporter. Mr. Dietrich informed the board that he had known Mr. Albritton for 40 plus years and he found him to be an honest auctioneer. Mr. Flynn asked Mr. Dietrich would he be able to render a fair decision in this case. Mr. Dietrich stated: *"facts is the facts"*. Mr. Albritton gave a verbal history of why his license was not renewed in a timely manner.

Motion: Mr. Dietrich made a motion to approve his application for reinstatement.

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

Gary Wayne Bowman - Mr. Bowman was present and was sworn in by the court reporter. Mr. Bowman gave a verbal history of why his license was not renewed in a timely manner.

Motion: Mr. Dietrich made a motion to approve his application for reinstatement.

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

John W. Coakley - Mr. Coakley was present and was sworn in by the court reporter. Mr. Coakley gave a verbal history of why his license was not renewed in a timely manner. Staff provided Mr. Coakley with a copy of the Florida laws and rules.

Motion: Mr. Dietrich made a motion to approve his application for reinstatement.

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

Scott Alexander Peterson – Mr. Peterson was not present or represented by council. Mr. Peterson failed to submit unusual illness hardship to allow the board to reinstate his license.

Motion: Mr. Dietrich made a motion to deny his application.

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

Jake A Shallow – Mr. Shallow was present and was sworn in by the court reporter. Mr. Shallow gave a verbal history of why his license was not renewed in a timely manner.

Motion: Mr. Dietrich made a motion to approve his request for reinstatement.

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

Jimmy Franklin Tipton – Mr. Tipton was present and was sworn in by the court reporter. He was convicted of mail and/or insurance fraud which affected his ability to practice and his insurance agent license was revoked in the state of Florida. The board members denied his application on June 12, 2009. Mr. Tipton challenged the denial by submitting additional information, requesting a hearing and appearing before the board. The board vacated the denial and granted his application for licensure by examination. He must appear before the board at its December 2010 general meeting and give a full report and account of his practice as an auctioneer.

Motion: Mr. Dietrich made a motion to approve his application for licensure by examination.

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

Mr. Tipton thanked Pam and Renese for their outstanding services rendered to him.

PROSECUTING ATTORNEY REPORT

CASE LOAD STATUS

Ms. Parson presented the prosecuting attorney report in a new format that consisted of more details on each case. She agreed to provide the members with a copy of the status codes via e-mail.

#2008-019875, Blen Gibson, AU31

Ms. Parson presented case #2008-019875, Blen Gibson, AU 31. The respondent was present and sworn in by the court reporter. The department filed an administrative complaint against respondent on February 5, 2009. The respondent has been charged with violating Section 468.389 (1)(j), violating a statute or administrative rule regulating the practice under this part or a lawful disciplinary order of the board or the department shall be grounds for the disciplinary activities provided in subsections (2), (3) and 468.388 (4) each auction must be conducted by an auctioneer who has an active license or by an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent. Each auction must be conducted under the auspices of a licensed auction business. Any auctioneer or apprentice auctioneer conducting an auction, and any auction business under whose auspices such auction is held, shall be responsible for determining that any auctioneer, apprentice, or auction business with whom they are associated in conducting such auction has an active Florida auctioneer, apprentice, or auction business license.

Based on the new evidence, Ms. Parson requested that the board terminate and dismiss the administrative complaint.

Motion: Mr. Dietrich moved to withdraw the informal hearing motion and terminate the administrative complaint.

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

Motion: Mr. Shearer moved to dismiss the administrative complaint.

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

Recess

#2008-065058, Joseph Benigo d/b/a Bestbuy Auctioneer, AU 3555

Ms. Parson presented case #2008-065058, AB 3555. The respondent was not present and was not sworn in by the court reporter. The department filed an administrative complaint against the respondent on March 4, 2009. The administrative complaint charged the respondent with violating 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 and 468.388 (4) each auction must be conducted by an auctioneer who has an active license or by an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent. The board rejected the respondent settlement agreement to pay a fine of \$250.00 and \$183.79 costs.

Motion: Mr. Accardo made a motion for the board to reject the settlement stipulation as presented by the department.

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

#2008-038299, Travis W. McCluskey d/b/a Lucky Bidder Auction, AB 2673

Ms. Parson presented case #2008-038299, Travis W. McCluskey d/b/a Lucky Bidder Auction, AB 2673. The respondent was present and sworn in by the court reporter. The department filed an administrative complaint against respondent on March 5, 2009. The respondent has been charged with violating Section 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 shall be grounds for the disciplinary actions provided in subsections (2), (3), 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. The respondent failed to file an Election of Rights form disputing issues of 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 the right to request a hearing where there is a disputed issue of material facts. The department believes that it is appropriate at this time for the chair to entertain a motion finding that the respondent waived the right to a hearing.

Motion: Mr. Accardo moved to approve that the respondent waived the right to a hearing.

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

Ms. Parson stated that *“the department believes that it is appropriate for the chair to entertain a motion adopting the allegations and facts and conclusions 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. Accardo moved to approve the findings of facts and conclusions of law.

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

Ms. Parson stated that *“the department’s recommendation in this case is that Travis W. McCluskey d/b/a Lucky Bidder Auctions, AB 2673, pay a fine in the amount of \$2000, costs of \$692 and revoke the license.”*

Motion: Mr. Shearer made a motion for Travis W. McCluskey d/b/a Lucky Bidder Auctions to pay a \$2000 fine, \$692 costs and revoke this license.

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

#2008-032429, Abraham Avi Asher, AU1623

Mr. Asher requested a continuance to the next meeting.

Motion: Mr. Dietrich moved to deny Mr. Asher’s request.

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

Ms. Parson presented case #2008-032429, Abraham Asher, AU 1623. The respondent was not present or represented by council. The department filed an administrative complaint against respondent on June 22, 2009. The respondent has been charged with violating Section 468.389 (1)(j), 468.388 (4) each auction must be conducted by an auctioneer who has an active license or by an apprentice who has an active apprentice auctioneer license and who has received prior written sponsor consent. Each auction must be conducted under the auspices of a licensed auction business. Any auctioneer or apprentice auctioneer conducting an auction, and any auction business under whose auspices such auction is held, shall be responsible for determining that any auctioneer,

apprentice, or auction business with whom they are associated in conducting such auction has an active Florida auctioneer, apprentice, or auction business license. 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 the right to request a hearing where there is a disputed issue of material facts. The department believes that it is appropriate at this time for the chair to entertain a motion finding that the respondent waived the right to a hearing.

Motion: Mr. Shearer moved to approve that the respondent waived the right to a hearing.

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

Ms. Parson stated that *“the department believes that it is appropriate for the Chair to entertain a motion adopting the allegations and facts and conclusions 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. Shearer moved to approve the findings of facts and conclusions of law.

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

Mr. Flynn requested Ms. Parson to read Mr. Asher statement into the record:

1. *“Ezra Abadi is my uncle and has been an auctioneer for the last 40 or 50 years. He came with me to the auction as he had just completed surgery and I thought that a trip would help him.*
2. *At the time that this occurred I had no ideal that Ezra Abadi was not licensed in Florida as I have always known him to be an auctioneer. Ezra Abadi did appear before the board after this occurrence on an unrelated matter and according to the issue was resolved.*
3. *I am currently licensed in 7 states and my and my record is spotless in all states. I have been licensed in Florida since 1994. I have never had a complaint in any state other than Florida and both times the complaints were for omitting to include my license number in an advertisement. I accepted full responsibility for the two occurrences even though the advertisement were placed by a third party. I have been auctioning nearly weekly throughout the USA since 1979 without any complaints against me in any state, whether a state license is required or not. I am a full time auctioneer and my license is 100% derived from auctioneering.*
4. *I realize that a rule was broken when Ezra Abadi started auctioning but please consider that he only auctioned about 3 or 4 items and I was by his side the entire time.*

I respectfully ask that you consider the circumstances and impose the minimum fine, if any.

Sincerely,

Abraham Avi Asher”

Ms. Parson stated that “*the department’s recommendation in this case is that Abraham Asher. AU 1623, pay a fine in the amount of \$1000, costs of \$120.47 and revoke the license.*

Motion: Mr. Accardo made a motion for Abraham Asher to pay a \$1000 fine, \$120.47 costs and revoke the license.

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

Motion: Mr. Dietrich made a motion requesting board staff to send a written response to Kimberly Routt’s supervisor. The board members were impressed with the investigated report she completed on Mr. Asher case.

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

BOARD COUNSEL REPORT

Mr. Flynn informed the board that he withdrew the 2007 null and void rule. At the next meeting he will be submitting new language in a draft format for the board to review and vote on the language.

Mr. Moecker requested Mr. Flynn to provide the members with the language prior to the release of the March 12, 2010 agenda.

Mr. Flynn will be working with Mr. Spivey and Ms. Parson on updating all of the rules. He has requested Mr. Spivey and Ms. Parson to submit the rules they see that need to be worked on. Mr. Dietrich will also be working with Mr. Flynn.

BOARD CHAIR REPORT

Mr. Moecker requested staff to provide the board with the number of recovery applications received, the amount of each claim and the amount paid out of the recovery funds. Mr. Moecker has not gone back to Senator Baker who agrees to sponsor the fingerprint bill. He thinks the best way to show him is to gather the costs paid out of the recovery funds for the past 10 plus years. Mr. Moecker stated “*until the board can prove to the Governor there is a need to go forward with the bill.*”

The board is requesting the department to authorize out of state travel for two individuals to attend the National Auctioneers Convention to be held June 14-17, 2010 in Greensboro, North Carolina. Mr. Spivey reminded them of the restriction on out of state travel.

The board has requested the Division of Regulation to provide a briefing regarding the investigation process of auctioneer cases.

Mr. Dietrich stated that the next Florida Auctioneers Association (FFA) meeting will be held in Lake Mary, Florida, June 13-15, 2010 in the Orlando area. The board members agreed to have their regular board meeting on Monday, June 14, 2010.

EXECUTIVE DIRECTOR'S REPORT

Mr. Spivey informed the board that Secretary Drago is no longer the secretary. He is presently employed by the governor's office. Deputy Secretary Charlie Liem is currently the Interim Secretary.

Mr. Spivey informed the members that the department is requesting every licensee to report their criminal history to the department within 30 days. The department has developed a criminal self-reporting form and it is located on the Internet.

Mr. Spivey reviewed the financial reports ending June 30, 2009. He indicated that the *"operating account shows a balance of \$63,678. The operating account for the recovery fund shows a balance of \$483,272 and the unlicensed activity account shows a balance of \$30,954."*

PearsonVUE report is for information only.

Regulation report is for information only.

OLD BUSINESS

None

NEW BUSINESS

Forthcoming Dates for 2009-2010

March 12, 2010 – Tallahassee, Florida

June 14, 2010 – Lake Mary, Florida

The board changed the June 11, 2010 meeting to June 14, 2010 with a Lake Mary, Florida location.

ADJOURNMENT

Motion: Mr. Shearer moved to adjourn the meeting.

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

The meeting was adjourned at 12:20 pm.